

立法會
Legislative Council

LC Paper No. LS 96/01-02

**Paper for the House Committee Meeting
on 17 May 2002**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 10 May 2002**

Date of Tabling in LegCo : 15 May 2002

Amendment to be made by : 12 June 2002 (or 3 July 2002 if extended by resolution)

PART I AMENDMENT OF SCHEDULE TO ORDINANCE

Banking Ordinance (Cap. 155)

Banking Ordinance (Amendment of Seventh Schedule) Notice 2002 (L.N. 63)

Under section 16(1) of the Banking Ordinance (Cap. 155) ("the Ordinance"), the Monetary Authority ("MA") has a general discretion to grant or refuse an application for authorization to carry on a banking business or a business of taking deposits. Under section 16(2), the MA is required to refuse an application for authorization if any one or more of the criteria specified in the Seventh Schedule are not fulfilled with respect to the applicant. Under section 135(1) of the Ordinance, the Chief Executive in Council may, by notice in the Gazette, amend the Seventh Schedule.

2. This Notice amends the Seventh Schedule to the Ordinance to achieve the following objects—

- (a) At present, locally incorporated banks are required to have a minimum absolute amount of paid-up share capital (including share premium account) of HK\$150 million. The Notice amends the Seventh Schedule to increase the minimum paid-up share capital requirement from HK\$150 million to HK\$300 million for a company, whether incorporated in or outside Hong Kong, seeking authorization to carry on banking business in Hong Kong (section 1(b) of the Notice). A grace period of two years has been provided for existing banks to meet the revised requirement (section 2 of the Notice).

- (b) At present, an overseas incorporated bank that wishes to set up a branch in Hong Kong must have total assets of more than US\$16 billion (for the whole banking group), while a local applicant for a full banking licence must satisfy the size criteria of total customer deposits of not less than HK\$3 billion and total assets of not less than HK\$4 billion (in addition to other market entry criteria that apply). The Notice amends the Seventh Schedule to unify the amounts so that an applicant company, whether incorporated in or outside Hong Kong, is required to have not less than HK\$3 billion of total customer deposits and HK\$4 billion of total assets respectively (section 1(a) and (c) of the Notice and new paragraph 13(a) of the Seventh Schedule).
- (c) At present, a locally incorporated applicant for a full banking licence must fulfil, among other things, the following criteria:—
- (i) it must have been a restricted licence bank or deposit-taking company in Hong Kong for at least 10 continuous years; and
 - (ii) it must in the opinion of the MA be "closely associated and identified with Hong Kong".

In relation to these criteria, the Notice amends the Seventh Schedule to:—

- (i) reduce the time period for upgrading of a locally incorporated restricted licence bank or deposit-taking company to full licensed status from 10 to 3 years (section 1(c) of the Notice and new paragraph 13 (b)(ii)(A) of the Seventh Schedule); and
 - (ii) remove the requirement that the applicant company should be "closely associated and identified with Hong Kong" (section 1(c) of the Notice).
- (d) At present, a foreign bank is in practice prohibited from subsidiarising its Hong Kong operations through a new locally incorporated company. This is because a new company cannot meet the requirement of having operated as a locally incorporated restricted licence bank or deposit-taking company for the designated period (although the bank may have operated in branch form in Hong Kong for many years). The Notice amends the Seventh Schedule to allow a foreign bank with existing operations in Hong Kong in branch form to subsidiarise these operations subject to the following conditions:—
- (i) the foreign bank has been established in Hong Kong for at least 3 years; and
 - (ii) the amounts of customer deposits and assets that will be transferred to the newly locally incorporated bank should be at least

HK\$3 billion and HK\$4 billion respectively (section 1(c) of the Seventh Schedule and new paragraph 13(b)(ii)(B)).

3. Members may refer to LegCo Brief FSB B9/1/6C(2002) dated 10 May 2002 from the Financial Services Bureau for background information.
4. The legal and drafting aspects of the Notice are in order.

PART II LEGAL NOTICE NOT REQUIRED TO BE TABLED AT THE LEGISLATIVE COUNCIL

United Nations Sanctions Ordinance (Cap. 537)

United Nations Sanctions (Sierra Leone) (Prohibition against Importation of Diamonds) Regulation 2002 (L.N. 64)

5. This Regulation is made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) ("the Ordinance") by the Chief Executive on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.
6. Section 3(5) of the Ordinance provides that sections 34 (placing of subsidiary legislation before Legislative Council) and 35 (approval of Legislative Council to subsidiary legislation) of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under section 3. As a result, the Regulation is not required to be laid before the Legislative Council and it has no power to amend the Regulation.
7. The Regulation gives effect to a decision of the Security Council of the United Nations in Regulation 1385 of 19 December 2001 on prohibition against importation of rough diamonds from Sierra Leone.
8. There is no LegCo Brief on the Regulation.
9. This Regulation will cease to have effect after 4 December 2002.

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16 May 2002