L.N. 249 of 2002

Banking Ordinance (Amendment of Third Schedule) Notice 2002

(Made under section 135(3) of the Banking Ordinance (Cap. 155))

1. Capital Adequacy Ratio

The Third Schedule to the Banking Ordinance (Cap. 155) is amended, in paragraph 3---

(a) in subparagraph (k), by adding---

"(vii) if the rate of interest payable on the debt is liable to be increased under the terms of the debt instrument, the rate of interest will not be increased---

(A) until the expiry of 10 years from the day when the debt is issued;

(B) more than once; and

(C) beyond a limit considered appropriate by the Monetary Authority;";

(b) in subparagraph (l), by repealing everything after "preference shares" and substituting---

", if the Monetary Authority is satisfied that under the terms on which the shares are to be issued, the following conditions are met---

(i) the shares are not redeemable without the prior consent of the Monetary Authority;

(ii) the money raised by the issue of the shares is available to meet losses without the authorized institution being obliged to cease trading;

(iii) if the dividends payable on the shares are liable to be increased under the terms, such dividends will not be increased---

(A) until the expiry of 10 years from the day when the shares are issued;

(B) more than once; and

(C) beyond a limit considered appropriate by the Monetary Authority;";

(c) in subparagraph (m)---

(i) in sub-subparagraph (iii), by repealing everything after "years" and substituting "(even though that period may be subsequently reduced with the prior consent of the Monetary Authority);";

(ii) by repealing sub-subparagraph (iv) and substituting---

"(iv) any debt repayable prior to maturity will not be so repaid without the prior consent of the Monetary Authority;";

(iii) by adding before the proviso---

"(v) if the rate of interest payable on the debt is liable to be increased under the terms of the debt instrument, the rate of interest will not be increased---

(A) until the expiry of 5 years from the day when the debt is issued;

(B) more than once; and

(C) beyond a limit considered appropriate by the Monetary Authority:";

(iv) in paragraph (A) of the proviso, by adding "of the original amount of such debt" after "20%";

(d) in subparagraph (n)---

(i) by repealing "the shares have been issued and remain subject to the following conditions" and substituting "under the terms on which the shares are to be issued, the following conditions are met";

(ii) in sub-subparagraph (i), by adding "(even though that period may be subsequently reduced with the prior consent of the Monetary Authority)" after "years";

(iii) by repealing sub-subparagraph (ii) and substituting---

"(ii) any shares redeemable prior to maturity will not be so redeemed without the prior consent of the Monetary Authority;

(iii) if the dividends payable on the shares are liable to be increased under the terms, such dividends will not be increased---

(A) until the expiry of 5 years from the day when the shares are issued;

(B) more than once; and

(C) beyond a limit considered appropriate by the Monetary Authority:";

(iv) in paragraph (A) of the proviso, by adding "of such shares" after "amount".

Antony LEUNG

Financial Secretary

20 December 2002

Explanatory Note

This Notice amends some of the provisions for the calculation of the capital adequacy ratio of an authorized institution under the Third Schedule to the Banking Ordinance (Cap. 155). The main purpose is to enable the Monetary Authority to approve certain capital instruments (namely perpetual subordinated debt, term subordinated debt, paid-up term preference shares and paid-up irredeemable cumulative preference shares), which permit increase in the interest rate or dividends, to be included in the Supplementary Capital of the institution.