

Bills Committee on Banking (Amendment) Bill 2005

Proposal of Establishing a New Appeals Mechanism under the Bill

Purpose

At the Bills Committee meeting held on 27 April 2005, Members suggested the Administration consider establishing a new appeals mechanism such as a banking appeal board so that appeals pertinent to the exercise of powers conferred on the Monetary Authority (MA) by the proposed amendments under the Banking (Amendment) Bill 2005 (“the Bill”) would be handled under the new mechanism. This paper provides the Administration’s response to Members’ suggestion.

Proposed New Appeals Mechanism under the Bill

2. First of all, we wish to point out that the existing appeals mechanism in the Banking Ordinance, i.e. the Chief Executive in Council being the appellate body, has been in place for a long time and its appropriateness has not been questioned by the banking industry. In our public consultation on the Bill, the banking industry has expressed no objection to maintaining the existing mechanism.

3. Nevertheless, we see merit in Members’ proposal, given the technical nature of appeals under the rules to be prescribed under the proposed section 98A of the Banking Ordinance, i.e. the “Capital Rules”, and are therefore prepared to move Committee Stage Amendments (CSAs) to the Bill to provide for the establishment of a tribunal that would review certain decisions of the MA made under the Capital Rules. CSAs are being prepared in consultation with the banking industry and will be submitted to the Bills Committee for scrutiny as soon as possible.

4. The Bills Committee also sought details on the decisions of the MA that would be appealable under the proposed amendments in the Bill. We envisage that the right of appeal will only lie in respect of the fundamental decision as to which approach to capital adequacy calculation an authorized institution (AI) may adopt, which may have a material impact on the AI’s capital requirement. The detailed calculation technicalities, which are to be prescribed in accordance with the international standards of Basel II, would not be subject to appeal. The Capital Rules would be made after thorough industry consultation as proposed in clause 4 of the Bill.

Other Appeals under the Existing Banking Ordinance

5. Members noted at the last meeting that, in future reviews of the Banking Ordinance, the Administration should consider whether the existing appeals mechanism should be revamped. For the moment, the Administration does not see the need to change the appeals mechanism which has been working well and is accepted by the banking industry. We however agree that this matter can be reviewed in future where necessary.

Hong Kong Monetary Authority
Financial Services and the Treasury Bureau
13 May 2005