

## **LEGISLATIVE COUNCIL BRIEF**

The Secretary for Financial Services and the Treasury submits the following note for Members' information :

<b><u>Title of the Note</u></b>	<b><u>Date of ExCo</u></b>	<b><u>Date of Gazette</u></b>
Banking (Specification of Class of Exempted Charges) Notice	-	6 May 2005

6 May 2005

Financial Services and the Treasury Bureau

## **LEGISLATIVE COUNCIL BRIEF**

### **Banking Ordinance (Chapter 155)**

#### **BANKING (SPECIFICATION OF CLASS OF EXEMPTED CHARGES) NOTICE**

#### **INTRODUCTION**

The Monetary Authority (“MA”) has recently published the Banking (Specification of Class of Exempted Charges) Notice (“the 2005 Notice”), at Annex 1, in the Gazette to replace the Notice made in 1993 (“the 1993 Notice”)<sup>1</sup> at Annex 2.

#### **BACKGROUND**

2. Under section 106(1) of the Banking Ordinance (Cap. 155) (“the Ordinance”), an authorized institution incorporated in Hong Kong is prohibited from creating charges over its assets the value of which, in aggregate, exceed 5% of the value of its total assets, except with the approval of the MA. The purpose of this section is to prevent authorized institutions from creating charges over an excessive portion of their assets without the MA’s prior approval. The MA may, however, by notice in the Gazette, specify under section 106(2) of the Ordinance certain charges or classes of charges to which section 106(1) shall not apply.

3. Pursuant to section 106(2) of the Ordinance, the MA published the 1993 Notice in the Gazette in which exemption from section 106(1) of the Ordinance was given in respect of charges created by authorized institutions in Hong Kong in favour of “Morgan Guaranty Trust Company of New York (acting as operator of the Euroclear System)” and “Cedel S.A.” respectively. This specification of exempted charges was made after considering the industry’s request for specific exemption under section 106(2) of the Ordinance in respect of liens that have been granted as a result of standard requirements imposed on institutions participating in such clearing systems. All other non-

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<sup>1</sup> The 1993 Notice was enacted in 1993 as the Banking (Specification of Class of Exempted Charges) Notice.

exempted charges exceeding the 5% limit under section 106(1) of the Ordinance require the MA's prior approval.

4. The standard requirement for participating institutions to grant liens to the two above-mentioned clearing systems has not changed since then, but there have been changes in the name and entity of these two clearing houses. In particular, Morgan Guaranty Trust Company of New York has transferred its role as operator of the Euroclear System to Euroclear Bank S.A. while Cedel S.A. was restructured and its name was changed to Clearstream Banking S.A. To reflect these changes, the specific exemption under section 106(2) of the Ordinance should be given to "Euroclear Bank S.A. (acting as operator of the Euroclear System)" and "Clearstream Banking S.A." respectively.

## **THE NOTICE**

5. The 2005 Notice, which superseded the 1993 Notice, specifies that charges created by an authorized institution incorporated in Hong Kong in favour of "Euroclear Bank S.A. (acting as operator of the Euroclear System)" or "Clearstream Banking S.A." need not be included in determining whether or not the aggregate value of all charges created over its total assets exceeds the limit set by section 106(1) of the Ordinance.

## **LEGISLATIVE TIMETABLE**

6. The 2005 Notice was published in the Gazette on 6 May 2005 and will be tabled at the Legislative Council on 11 May 2005 for negative vetting. The 2005 Notice will take effect on 1 July 2005.

## **IMPLICATIONS OF THE PROPOSAL**

7. The 2005 Notice is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial or civil service, productivity, environmental or sustainability implications. The amendments will not affect the current binding effect of the existing provisions of the Banking Ordinance.

## **PUBLICITY**

8. The MA will issue a letter to all authorized institutions and the industry associations informing them of the 2005 Notice.

## **ENQUIRIES**

9. Enquiries on this brief may be directed to Ms Rita Yeung, Head (Banking Policy) of the Hong Kong Monetary Authority (telephone number: 2878 1388) or Mr Clement Chan, Assistant Secretary for Financial Services and the Treasury (Financial Services) (telephone number: 2528 9076).

Financial Services Branch  
Financial Services and the Treasury Bureau  
6 May 2005

**L.N. 70 of 2005**

**BANKING (SPECIFICATION OF CLASS OF EXEMPTED CHARGES) NOTICE**

(Made under section 106(2) of the Banking Ordinance (Cap. 155))

**1. Commencement**

This Notice shall come into operation on 1 July 2005.

**2. Specification of exempted charges**

The following classes of charges are charges to which section 106(1) of the Ordinance shall not apply—

- (a) charges created in favour of Euroclear Bank S.A. (acting as operator of the Euroclear System) by an authorized institution incorporated in Hong Kong;
- (b) charges created in favour of Clearstream Banking S.A. by an authorized institution incorporated in Hong Kong.

**3. Repeal**

The Banking (Specification of Class of Exempted Charges) Notice (Cap. 155 sub. leg. F) is repealed.

Joseph C. K. YAM  
Monetary Authority

29 April 2005

**Explanatory Note**

The purpose of this Notice is to—

- (a) specify 2 new classes of charges that need not be included by an authorized institution incorporated in Hong Kong in determining whether or not the aggregate value of all charges existing over its total assets bears to the value of those total assets exceeds the limit set by section 106(1) of the Banking Ordinance (Cap. 155); and
- (b) repeal the exempted charges specified in 1993.

[附屬法例]

[Subsidiary]

銀行業 (受豁免押記類別的指明) 公告

**BANKING (SPECIFICATION OF CLASS OF EXEMPTED CHARGES) NOTICE**

(第 155 章第 106(2) 條)

(Cap. 155, section 106(2))

[1993 年 12 月 31 日]

[31 December 1993]

1. 受豁免押記的指明

1. Specification of exempted charges

以下類別的押記，是本條例第 106(1) 條不適用的押記——

The following classes of charges are charges to which section 106(1) of the Ordinance shall not apply—

- (a) 該條適用的機構在其資產上設定的押記，而該等押記，是為 Morgan Guaranty Trust Company of New York (以歐洲結算及世達國際結算公司的經營者身分行事者) 而設定的押記。

- (a) Charges created over its assets by an institution to which that section applies which charges are created in favour of Morgan Guaranty Trust Company of New York acting as operator of the Euroclear System and Cedel S.A.