

**立法會**  
**Legislative Council**

LC Paper No. LS13/06-07

**Paper for the House Committee Meeting  
on 24 November 2006**

**Further Report by Legal Service Division on  
Banking (Capital) Rules (L.N. 228) and  
Banking (Disclosure) Rules (L.N. 229)  
gazetted on 27 October 2006**

In the report of the Legal Service Division (LSD) for the House Committee meeting of 3 November 2006 (LC Paper No. LS6/06-07) on the above subsidiary legislation, it was reported that clarification on certain drafting points was being sought from the Administration. The Administration has since replied and agreed to move amendments to the two Rules. The Secretary for Financial Services and the Treasury proposes to move motions for amendments to the two Rules at the meeting of LegCo on 29 November 2006.

2. The proposed amendments to L.N. 228 and L.N. 229 are wholly technical. They are concerned with reflecting more fully the legislative intent in the provisions, defining key terms, removing ambiguity or uncertainty and, in the case of the Chinese version, rendering the Chinese version more consistent with the English. The proposed motions of the Administration are attached respectively as **Annex I** and **II** for Members' perusal.
3. Members are recommended to support the above-mentioned proposed motions.

Encl.

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INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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**RESOLUTION**

(Under section 34(2) of the Interpretation and  
General Clauses Ordinance (Cap. 1))

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BANKING (CAPITAL) RULES

RESOLVED that the Banking (Capital) Rules, published in the  
Gazette as Legal Notice No. 228 of 2006 and laid on the  
table of the Legislative Council on 1 November 2006, be  
amended -

(a) in section 2(1), by repealing the definition of  
"collective provisions" and substituting -

"collective provisions" (集體準備金), in relation to  
the exposures of an authorized institution,  
means an allowance for impairment loss in  
respect of a group of exposures considered by  
the institution as having similar credit risk  
characteristics which are indicative of the  
debtors' ability to pay all amounts due  
according to the contractual terms of the

group of exposures, where the impairment loss has been assessed by the institution on a collective basis in respect of the group of exposures by reference to historical loss experience in respect of exposures with similar credit risk characteristics, relevant observable data reflecting current market conditions and other relevant factors;"

(b) in section 2(1), by repealing the definition of "specific provisions" and substituting -

"specific provisions" (特定準備金), in relation to an exposure of an authorized institution, means an allowance for impairment loss in respect of that exposure where -

- (a) the institution reasonably considers that an event has occurred causing the impairment loss;
- (b) the event occurs after the exposure is originated or acquired by the institution; and
- (c) the allowance is assessed by the institution by reference to the impact that the event has on the cash flows in respect of the exposure insofar as that impact can be reliably estimated;"

- (c) in section 2(1), in the Chinese text, in the definition of "有效雙邊淨額結算協議" -
- (i) in paragraph (d), by repealing "若干";
  - (ii) by repealing paragraph (g) and substituting -  
"(g) 該協議並不受符合以下說明的條文規限：該條文准許無違責的對手方只作有限付款、或甚至不付款予有關違責者或有關違責者的產業，而無須顧及該違責者是否該協議下的淨額債權人；";
- (d) in section 2(1), by adding -  
"regulatory reserve" (監管儲備), in relation to an authorized institution, means that portion of the institution's retained earnings which, for the purposes of paragraph 9 of the Seventh Schedule to the Ordinance, is earmarked or appropriated to maintain adequate provision for losses which the institution will or may incur;";
- (e) by repealing section 48(1)(a) and substituting -  
"(a) the amount of any goodwill which is recognized by the institution as an intangible asset of the institution;";
- (f) in the Chinese text, by repealing section 65(7) and substituting -

"(7) 金融管理專員可藉向認可機構發出書面通知，指示該機構 —

- (a) 在計算該通知指明的住宅按揭貸款的貸款與價值比率時；或
- (b) 在計算屬該通知指明的住宅按揭貸款種類的住宅按揭貸款的貸款與價值比率時，

須包括有關貸款款額的某部分，而該部分若非有本款規定是會依據第(6)款被豁除的。";

- (g) in section 66(1)(a), by adding "which do not fall within section 62" after "institution";
- (h) in the Chinese text, by repealing section 115(4) and substituting -

"(4) 金融管理專員可藉向認可機構發出書面通知，指示該機構 —

- (a) 在計算該通知指明的住宅按揭貸款的貸款與價值比率時；或
- (b) 在計算屬該通知指明的住宅按揭貸款種類的住宅按揭貸款的貸款與價值比率時，

須包括有關貸款款額的某部分，而該部分若非有本款規定是會依據第(3)款被豁除的。";

- (i) in section 153(b), by repealing "a business cycle" and substituting "an economic cycle";
- (j) in section 157(2), by adding "in terms of a million" after "S is expressed";

- (k) in section 173(b), by repealing "a business cycle" and substituting "an economic cycle";
- (l) in section 191(b), by repealing "a business cycle" and substituting "an economic cycle";
- (m) in section 202, by repealing ", with all necessary modifications,";
- (n) in section 234(4), by repealing everything after "effective principal amount of the exposure" and substituting "(being the stated principal amount of the exposure adjusted to take into account the effect of the leverage or enhancement provided by the structure of the exposure) for the purposes of this Division.";
- (o) in section 260(4), by repealing everything after "effective principal amount of the exposure" and substituting "(being the stated principal amount of the exposure adjusted to take into account the effect of the leverage or enhancement provided by the structure of the exposure) for the purposes of this Division.";
- (p) in section 268(2), by repealing everything after "effective principal amount of the exposure" and substituting "(being the stated principal amount of the exposure adjusted to take into account the effect of the leverage or enhancement provided by the structure of the exposure) for the purposes of this Division.";

- (q) in section 284(3), by repealing everything after "effective notional amount of the exposure" and substituting "(being the stated notional amount of the exposure adjusted to take into account the effect of the leverage or enhancement provided by the structure of the exposure) for the purposes of this Part.";
- (r) in section 295, by adding -
  - "(3) In subsection (2) -
  - "structural position" (結構性持倉), in relation to an authorized institution, means a position in foreign exchange held by the institution with the intention of hedging any adverse effect of exchange rate movements on its capital adequacy ratio.";
- (s) by repealing section 296(2)(a)(ii) and substituting -
  - "(ii) its Hong Kong dollars position;"
- (t) in section 305(1), by repealing "a proportional shift in volatility of  $\pm 25\%$ " and substituting "a positive or negative change of 25% in the volatility of the value of the underlying exposures of those option contracts";
- (u) in section 327(1), by adding ", after each calendar quarter end date," after "An authorized institution shall";

- (v) in section 331(1), by adding ", after each calendar quarter end date," after "An authorized institution shall";
- (w) in section 336(1), by adding ", after each calendar quarter end date," after "An authorized institution shall";
- (x) in section 338(1), by adding ", after each calendar quarter end date," after "an authorized institution shall".



INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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**RESOLUTION**

(Under section 34(2) of the Interpretation and  
General Clauses Ordinance (Cap. 1))

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BANKING (DISCLOSURE) RULES

RESOLVED that the Banking (Disclosure) Rules, published in  
the Gazette as Legal Notice No. 229 of 2006 and laid on  
the table of the Legislative Council on 1 November 2006,  
be amended -

- (a) in the heading of section 19, in the Chinese text,  
by repealing "損益表" and substituting "收益表";
- (b) in section 24(2)(c), in the Chinese text, by  
repealing "總額" and substituting "總數";
- (c) in section 25(2), in the Chinese text, by repealing  
"總額" and substituting "毛額";
- (d) in the heading of section 35, in the Chinese text,  
by repealing "損益表" and substituting "收益表";

- (e) in section 35(3)(b), in the Chinese text, by repealing "該等目的" and substituting "提撥該等準備金的目的";
- (f) in section 36(4)(b)(iv), by adding "in the annual reporting period" after "recoveries";
- (g) in section 37(7)(a)(iv), in the Chinese text, by adding "持有的" before "以";
- (h) by repealing section 37(7)(a)(v) and substituting -  
"(v) available-for-sale debt securities; and";
- (i) by repealing section 37(7)(a)(vi) and substituting -  
"(vi) held-to-maturity debt securities; and";
- (j) in section 37(7)(b)(ii), in the Chinese text, by repealing "尚欠";
- (k) in section 37(9)(b), in the Chinese text, by repealing "毛額";
- (l) in section 40(2)(d), in the Chinese text, by repealing "損益表中" and substituting "收益表中";
- (m) in section 42, by adding "as included in the institution's audited annual accounts lodged with the Monetary Authority pursuant to section 60 of the Ordinance in respect of the annual reporting period" after "statement";
- (n) in section 45(3)(c), in the Chinese text, by repealing "總額" and substituting "總數";

- (o) in section 46(8), in the Chinese text, by repealing "總額" and substituting "毛額";
- (p) in section 56(2)(c)(i), by repealing "the title or position of the board and senior management members" and substituting "the titles or positions of the members of the board of directors or the senior management";
- (q) in section 68(2)(c)(i), by repealing "the title or position of the board and senior management members" and substituting "the titles or positions of the members of the board of directors or the senior management";
- (r) in section 75(2)(c)(i), by repealing "the title or position of the board and senior management members" and substituting "the titles or positions of the members of the board of directors or the senior management";
- (s) in section 92(2), by adding "(except section 90(3))" after "of this Part";
- (t) in the heading of section 93, in the Chinese text, by repealing "損益表" and substituting "收益表";
- (u) in section 98(2)(a), in the Chinese text, by repealing "總額" and substituting "毛額".