

立法會

Legislative Council

LC Paper No. LS30/11-12

Paper for the House Committee Meeting on 10 February 2012

Further Legal Service Division Report on Banking (Amendment) Bill 2011

Members may recall that at its meeting on 6 January 2012, the House Committee decided to consider a further report on the Banking (Amendment) Bill 2011 after we had completed scrutiny of its legal and drafting aspects. To recap, the purposes of the Bill are to empower the Monetary Authority (MA) to make rules to prescribe capital and liquidity requirements for authorized institutions to facilitate the implementation of Basel III¹ and approve codes of practice for provision of guidance, and make other related and consequential amendments to the Banking Ordinance (Cap. 155) (the Ordinance) and a consequential amendment to the Electronic Transactions Ordinance (Cap. 553).

2. The Administration, having consulted MA, has now responded to our queries on minor drafting issues. The Administration has agreed to propose Committee Stage amendments (CSA) to the Bill to address some of the drafting problems (the proposed CSA are at Annex I).

Proposed CSA

3. In clause 3(5) of the Bill, "standards of banking supervision" is rendered as "銀行監管標準" in the Chinese text, whereas "banking supervisory standards" in proposed sections 60A(3)(b), 97C(3)(b) and 97H(3)(b) is rendered as "銀行業監管標準". For the sake of consistency, the Administration will move CSA to replace "銀行監管標準" by "銀行業監管標準".

¹ Basel III, which was introduced by the Basel Committee on Banking Supervision, aims at strengthening global capital and liquidity rules with the goal of promoting a more resilient banking sector.

4. In proposed section 97G, "liquidity risks" is rendered as "風險" in the Chinese text, whereas the term is rendered as "流動資產風險" in proposed sections 97H(1)(a), 97H(3)(a) and 97K(1). Having reviewed the different usages, the Administration will move CSA to adopt "流動性風險" for "liquidity risks" throughout these proposed sections. According to the Administration, the revised rendition would reflect better the nature of the risks and would not cause a misunderstanding that the term refers to the risks associated with liquid assets. In a similar vein, CSA will be moved to use "流動性" instead of "流動資產" as the Chinese rendition of "liquidity" throughout the Bill, except for "liquidity ratio", which should follow the rendition "流動資產比率" in the Ordinance.

5. In proposed section 97H(4)(a)(ii), "20% or more, but not more than 50%" is incorrectly rendered as "多於 20%但不多於 50%的" in the Chinese text. The Administration will move CSA to replace it with "不少於 20%但不超過 50%".

6. Under proposed Part XVIC, MA is required to consult with specified persons before approving any codes of practice and withdrawing its approval of any codes of practice. These statutory duties to consult are set out in subsections (1) and (5) of proposed section 97M respectively. Proposed section 97M(8), however, only clarifies that MA's duty to consult under subsection (1) does not operate to prevent MA from consulting with any other person that MA thinks fit but no reference is made to its similar duty under subsection (5). CSA will be moved to expand the scope of proposed section 97M(8) so that the clarification also applies to its duty under subsection (5).

Need for consequential amendments to subsidiary legislation of the Ordinance

7. The "Bank for International Settlements" is rendered as "國際清算銀行" in the Chinese text of clause 3(5) of the Bill but as "國際結算銀行" in the Chinese text of section 2(1) of the Banking (Capital) Rules (Cap. 155 sub. leg. L) (BCR). The Administration has confirmed that the official name of the bank should be "國際清算銀行". Accordingly, amendment to BCR is required. Consequential amendment to BCR will be made later when BCR is amended for implementing Basel III in Hong Kong.

8. In view of the proposed amendments to the Chinese equivalent of "liquidity" mentioned in paragraph 4 above, consequential amendments should be made to the subsidiary legislation of the Ordinance. Upon our further enquiry, we were informed that such amendments would be made later when the subsidiary legislation was to be amended for implementing Basel III in Hong Kong.

9. The drafting of the proposed CSA to be moved by the Administration is in order. We have no further queries on the drafting aspects of the Bill.

Encl.

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LS/B/6/11-12

Banking (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	In the Chinese text, by deleting “流動資產” and substituting “流動性”.
3(5)	In the proposed definition of <i>liquidity requirement rule</i> , by deleting “流動資產” and substituting “流動性”.
3(5)	In the Chinese text, in the proposed definition of <i>巴塞爾委員會</i> , by deleting “銀行監管標準” and substituting “銀行業監管標準”.
4(1)	In the Chinese text, by deleting “流動資產” and substituting “流動性”.
8	In the proposed Part XVIB, in the Chinese text, in the heading, by deleting “流動資產” and substituting “流動性”.

- 8 In the proposed section 97G, in the Chinese text, by deleting “流動資產資源，達致與穩健和穩妥(指經考慮到與該等機構有關聯的)” and substituting “流動性資源，達致與穩健和穩妥(指經考慮到與該等機構有關聯的流動性)”.
- 8 In the proposed section 97H, in the Chinese text, in the heading, by deleting “流動資產” and substituting “流動性”.
- 8 In the proposed section 97H(1) and (3), in the Chinese text, by deleting “流動資產” (wherever appearing) and substituting “流動性”.
- 8 In the proposed section 97H(4)(a)(ii), in the Chinese text, by deleting “多於20%但不多於50%的” and substituting “不少於20%但不超過50%”.
- 8 In the proposed section 97I(2), in the Chinese text, by deleting “流動資產” (wherever appearing) and substituting “流動性”.
- 8 In the proposed section 97K, in the Chinese text, in the heading, by deleting “流動資產” and substituting “流動性”.

8 In the proposed section 97K(1), (3), (6) and (7), in the Chinese text, by deleting “流動資產” (wherever appearing) and substituting “流動性”.

8 In the proposed section 97M(8), by adding “or (5)” after “(1)”.

18 By adding—

“(1A) Seventh Schedule, Chinese text, section 7(a)—

Repeal

“流動資產”

Substitute

“流動性”.

18(3) In the Chinese text, by deleting “流動資產” and substituting “流動性”.

New By adding—

“18A. Fourteenth Schedule amended (affairs or business of authorized institutions specified for purposes of definition of *manager*)

Fourteenth Schedule, Chinese text, section 1, definition of ~~財政管理~~

Repeal

“流動資產”

Substitute

“流動性”.