

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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**Subcommittee on Banking (Capital) (Amendment) Rules 2012,
Banking (Specification of Multilateral Development Bank)
(Amendment) Notice 2012 and Banking (Amendment)
Ordinance 2012 (Commencement) Notice 2012**

**Minutes of the first meeting on
Monday, 5 November 2012, at 4:00 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon NG Leung-sing, SBS, JP (Chairman)
Hon Abraham SHEK Lai-him, SBS, JP
Hon Starry LEE Wai-king, JP
Hon Alan LEONG Kah-kit, SC
Hon James TIEN Pei-chun, GBS, JP
Hon SIN Chung-kai, SBS, JP

Member attending : Hon James TO Kun-sun

**Public officers
Attending** : Mr Jackie LIU
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Ms Karen KEMP, JP
Executive Director (Banking Policy)
Hong Kong Monetary Authority

Mr Richard CHU
Head (Banking Policy)
Hong Kong Monetary Authority

Ms Samantha YAU
Senior Manager (Banking Policy)
Hong Kong Monetary Authority

Mr Michael LAM
Senior Assistant Law Draftsman
Department of Justice

Ms Mandy NG
Government Counsel
Department of Justice

Mr Manuel NG
Government Counsel
Department of Justice

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Wendy KAN
Assistant Legal Adviser 6

Mr Hugo CHIU
Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

I Election of Chairman

Mr Abraham SHEK, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr NG Leung-sing was nominated by Mr James TIEN and the nomination was seconded by Mr Abraham SHEK. Mr NG Leung-sing accepted the nomination. There being no other nomination, Mr NG Leung-sing was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

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|---------------------------------|---|
| (L.N. 156 of 2012 | -- Banking (Capital) (Amendment) Rules 2012 |
| L.N. 157 of 2012 | -- Banking (Specification of Multilateral Development Bank) (Amendment) Notice 2012 |
| L.N. 158 of 2012 | -- Banking (Amendment) Ordinance 2012 (Commencement) Notice 2012 |
| File Ref: G4/16/44C | -- Legislative Council Brief |
| LC Paper No. LS5/12-13 | -- Legal Service Division Report |
| LC Paper No. CB(1)114/12-13(01) | -- Background brief on the implementation of Basel III prepared by the Legislative Council Secretariat) |

Discussion

4. The Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up action to be taken by the Administration

5. The Administration was requested to take the following actions –
- (a) in relation to the Banking (Specification of Multilateral Development Bank) Notice (Cap. 155 sub. leg. N) ("Notice"), to check and confirm (except subsection 2(c) and the new subsection 2(n)) whether there are Chinese renditions for the banks and bodies specified in section 2 of the Notice; and
 - (b) in respect of the Banking (Capital) (Amendment) Rules 2012, to provide a paper setting out: (i) the major differences/modifications in the Rules for implementing Basel III in Hong Kong from the relevant regulatory capital standards promulgated by the Basel Committee on Banking Supervision; and (ii) reasons and justifications for making the changes, as well as views, if any, of the banking sector and relevant bodies on the changes.

III Any other business

6. Members agreed that as more time was required to scrutinize the three items of subsidiary legislation, the Chairman of the Subcommittee would move a motion at the Council meeting of 14 November 2012 to extend the scrutiny period to 12 December 2012.

7. Members agreed that the next meeting would be held on Friday, 16 November 2012, at 8:30 am.

8. There being no other business, the meeting ended at 5:33 pm.

(Post-meeting note: Mr NG Leung-sing declared in writing that he was a remunerated director of the Bank of China (Hong Kong) Trustees Limited and the Chiyu Banking Corporation Limited. His letter was circulated to members vide LC. Paper No. CB(1)148/12-13 on 7 November 2012.)

Council Business Division 1
Legislative Council Secretariat
23 November 2012

**Proceedings of the
Subcommittee on the Banking (Capital) (Amendment) Rules 2012,
Banking (Specification of Multilateral Development Bank)
(Amendment) Notice 2012 and Banking (Amendment)
Ordinance 2012 (Commencement) Notice 2012
First meeting on Monday, 5 November 2012, at 4:00 pm
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000053 – 000355	Mr Abraham SHEK Mr James TIEN Mr NG Leung-sing	Election of Chairman	
000356 – 000526	Chairman	Introductory remark	
000527 – 000945	Administration	Hong Kong Monetary Authority ("HKMA")'s briefing on the three items of subsidiary legislation which were designed to cater for the implementation of the first phase of Basel III in Hong Kong with effect from 1 January 2013.	
000946 – 001106	Chairman	The Chairman's remarks that the banking sector was willing to follow the international timeframe for implementation of Basel III, and that Hong Kong would not implement Basel III ahead of the timeframe promulgated by the Basel Committee on Banking Supervision ("BCBS").	
001107 – 001624	Mr James TIEN Administration	Mr TIEN's enquiries as follows: (a) progress of banks in Europe in implementing Basel III and whether they could meet the timeframe promulgated by BCBS; (b) different treatment, if any, in capital requirements for local banks and banks in Europe with subsidiaries set up in Hong Kong; and (c) impact of the implementation of Basel III requirements on banks, including whether borrowing costs of the banking sector and the general business would be increased. HKMA's replies as follows: (a) The relevant deadline (i.e. 1 January 2013) set by BCBS remained unchanged. Major	

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		<p>jurisdictions in Asia like Japan, Singapore, Australia and the Mainland had already issued their relevant rules. Regarding the situation in the European Union ("EU"), the EU version for the implementation of Basel III was known as CRD IV. The European Commission, the European Council and the European Parliament had proposed their respective versions of CRD IV and the three parties were currently in negotiation to agree on the version to be adopted by all banks in EU, and the three parties were expected to hold meetings in November 2012 to discuss the matter. While there could be possibility of delay for EU in adopting the final version of CRD IV due to this political process, BCBS remained committed to its scheduled implementation timeframe, and there was no reason to believe that CRD IV would not come into operation relatively soon subjecting banks in Europe to the requirements of Basel III;</p> <p>(b) Local banks and subsidiaries of international banks set up in Hong Kong would both be subject to the Banking (Capital) (Amendment) Rules 2012 ("the Amendment Rules"); and</p> <p>(c) It was not envisaged that implementation of the new minimum capital adequacy ratios under Basel III in the Amendment Rules would increase the costs of borrowing from banks within the local banking sector because the capital adequacy ratio for banks in Hong Kong had been maintained at a very high level (standing at 15.9% at the end of June 2012 which well exceeded the statutory requirement of 8%, and with a Tier 1 ratio of 13% as at end June 2012) and a transitional period would be provided. Borrowing costs for general business were therefore also not expected to be increased by implementation of the Amendment Rules.</p>	
001625 – 002030	Mr SIN Chung-kai Administration	Mr SIN enquired whether the banking sector would become more prudent in lending upon the implementation of Basel III, which might cause difficulty for the small and medium enterprises ("SMEs") and members of the public in obtaining credit.	

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		<p>HKMA's responses as follows:</p> <p>(a) Banks' lending was affected by a host of factors and capital requirement was only one of them; and</p> <p>(b) Implementation of the new minimum capital adequacy ratios under Basel III in the Amendment Rules should not adversely affect banks' lending to SMEs and members of the public as banks in Hong Kong already maintained strong capital bases. On the other hand, Basel III would further enhance the resilience of banks and their ability to lend could be strengthened during periods of economic downturn.</p>	
002031 – 002447	Chairman Administration	<p>The Chairman said that on the advice of the Monetary Authority ("MA"), individual banks in Hong Kong had set up dedicated groups to study the implementation of Basel III. Based on the current assessment, the new capital requirements under Basel III would have no adverse impact on the banking sector in respect of costs and lending of banks in the short and medium term. Some international banks might need to raise capital to fulfill the Basel III requirements in the long run.</p> <p>The Administration noted that it did not envisage large-scale capital-raising activities for banks in Hong Kong in order to meet the requirements in the first phase implementation of Basel III.</p> <p>As regards the Chairman's enquiry on the comments of the banking sector on the subsidiary legislation under scrutiny, the Administration advised that HKMA had conducted a general industry consultation on the detailed proposals to be included in the Amendment Rules in early 2012, and the text of the draft Amendment Rules had been provided for comments by the relevant banking organizations in August and September 2012. The organizations' views and comments had been taken into account in finalizing the Amendment Rules.</p>	
002448 – 002642	Mr James TIEN Administration	<p>In response to Mr TIEN's enquiry on the need for local banks to raise capital in order to fulfill the Basel III requirements, HKMA pointed out that while a number of banks might need to adjust their</p>	

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		<p>capital mixes in response to the new ratios on capital requirements, no problem was envisaged for such banks in the process. It was HKMA's assessment that no bank in Hong Kong would have difficulty in fulfilling the new capital requirements of the first phase of Basel III implementation.</p>	
002643 – 003618	<p>Chairman Mr James TIEN Administration Mr SIN Chung-kai Mr Abraham SHEK</p>	<p>Mr TIEN suggested that the Subcommittee should invite views from the banking sector on the implementation of Basel III requirements in Hong Kong.</p> <p>The Chairman reiterated that individual banks in Hong Kong had set up dedicated groups to study the implementation of Basel III and relayed The Hong Kong Association of Banks ("HKAB")'s view that it was unnecessary to invite representatives of the Association to attend meetings of the Subcommittee to express their views. According to HKAB's assessment, local banks would have no difficulty in complying with the requirements of the first phase implementation of Basel III. However, some foreign banks with subsidiaries in Hong Kong might be affected by their parent companies in their home countries.</p> <p>The Administration confirmed that under section 97C of the Banking Ordinance (Cap. 155), MA was required to consult the Financial Secretary, the Banking Advisory Committee ("BAC"), the Deposit-taking Companies Advisory Committee ("DTCAC"), HKAB and The DTC Association ("DTCA") on proposed changes to the Banking (Capital) Rules (Cap. 155 sub leg. L). The draft version of the Amendment Rules had been provided to these bodies for comments and their views had been taken into account before finalizing the Rules.</p> <p>Mr SIN suggested that the Subcommittee should invite written views from the relevant banking bodies. Mr SHEK concurred and remarked that the Administration should provide more information on its consultation with the banking sector in the Legislative Council Brief.</p> <p>Members agreed that the Subcommittee would invite views from the relevant banking bodies on the three items of subsidiary legislation.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<i>(Post-meeting note: The Subcommittee sent a letter to BAC, DTCAC, HKAB and DTCA on 6 November 2012 to invite their written views.)</i>	
003619 – 003924	Chairman Ms Starry LEE Mr James TIEN	Members agreed that the next meeting would be held on 16 November 2012, at 8:30 am.	
Clause-by-clause examination of the subsidiary legislation			
003925 – 004132	Administration	<p><u>Banking (Specification of Multilateral Development Bank) (Amendment) Notice 2012 (L.N. 157 of 2012)</u></p> <p><u>Banking (Amendment) Ordinance 2012 (Commencement) Notice 2012 (L.N. 158 of 2012)</u></p> <p>Members raised no question on the above two items of subsidiary legislation.</p>	
004133 – 004600	Mr SIN Chung-kai Administration Chairman Administration	<p>Mr SIN enquired whether there were Chinese renditions for the banks and bodies specified in section 2 (except subsection 2(c) and the new subsection 2(n)) of the Banking (Specification of Multilateral Development Bank) Notice (Cap.155 sub. leg. N).</p> <p>The Administration was requested to check and confirm the above.</p>	The Administration to take action as required in paragraph 5(a) of the minutes.
004601 – 010020	Administration Mr James TIEN Assistant Legal Adviser 6 Mr SIN Chung-kai Administration	<p><u>Banking (Capital) (Amendment) Rules 2012 (L.N. 156 of 2012)</u></p> <p>(Marked-up copy (English version) tabled at the meeting and issued vide LC Paper No. CB(1)138/12-13(01) on 6 November 2012)</p> <p><u>Section 1 – Commencement</u></p> <p><u>Section 2 –Banking (Capital) Rules amended</u></p> <p><u>Section 3 – Section 2 amended (interpretation)</u></p> <p><u>Section 4 – Part 1A heading added</u></p> <p><u>Section 5 – Section 3 substituted</u></p> <p><u>Section 6 – Sections 3A to 3D added</u></p>	

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		<p>The Administration's explanation on the definitions of certain terms in the proposed section 5 and the difference between the terms "Tier 1 capital" and "CET1 capital".</p> <p>With respect to section 6, HKMA's confirmation that banks in Hong Kong could comply with the successive increases in the minimum capital adequacy ratio from 2013 to 2015.</p>	
010021 – 010922	Administration	<p><u>Section 7 – Section 4 amended (interpretation of Part 2)</u></p> <p><u>Section 8 – Section 4A amended (valuation of exposures measured at fair value)</u></p> <p><u>Section 9 – Section 5 amended (authorized institution shall only use STC approach, BSC approach or IRB approach to calculate its credit risk for non-securitization exposures)</u></p> <p><u>Section 10 – Section 10 amended (measures which may be taken by Monetary Authority if authorized institution using BSC approach or IRB approach no longer satisfies specified requirements)</u></p> <p><u>Section 11 – Sections 10A to 10D added</u></p> <p><u>Section 12 – Section 15 amended (authorized institution shall only use STC(S) approach or IRB(S) approach to calculate its credit risk for securitization exposures)</u></p> <p><u>Section 13 – Section 16 amended (authorized institution using IRB(S) approach shall use ratings-based method or supervisory formula method to calculate its credit risk for securitization exposures)</u></p> <p><u>Section 14 – Part 2, Division 4A added</u></p> <p><u>Section 15 – Section 19 amended (measures which may be taken by Monetary Authority if authorized institution using IMM approach no longer satisfies specified requirements)</u></p> <p><u>Section 16 – Section 21 amended (measures which may be taken by Monetary Authority if authorized institution using approach used by parent bank no longer satisfies specified requirements)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Section 17 – Section 27 amended (authorized institution shall calculate its capital adequacy ratio on solo basis, solo-consolidated basis or consolidated basis)</u></p> <p><u>Section 18 – Section 28 amended (authorized institution may apply for approval to calculate its capital adequacy ratio on solo-consolidated basis)</u></p> <p><u>Section 19 – Section 29 amended (solo basis for calculation of capital adequacy ratio)</u></p> <p><u>Section 20 – Section 30 amended (solo-consolidated basis for calculation of capital adequacy ratio)</u></p> <p><u>Section 21 –Section 31 amended (consolidated basis for calculation of capital adequacy ratio)</u></p> <p><u>Section 22 – Section 33 amended (exceptions to section 27)</u></p> <p><u>Section 23 – Part 2, Division 7A heading amended (attachment of conditions to approvals granted under section 6(2)(a), 8(2)(a), 18(2)(a), 20(2)(a) or 25(2)(a))</u></p> <p><u>Section 24 – Section 33A amended (attachment of conditions to approvals granted under section 6(2)(a), 8(2)(a), 18(2)(a), 20(2)(a) or 25(2)(a))</u></p> <p><u>Section 25 – Section 34 amended (reviewable decisions)</u></p>	
010923 – 011123	Administration	<p><u>Section 26 – Part 3 substituted</u></p> <p>The Administration pointed out that in drafting the Amendment Rules, Hong Kong had to comply with the requirements set in the relevant policy papers issued by BCBS, which contained technical standards and rules to be adopted by all jurisdictions implementing Basel III. Thus the Amendment Rules were similar to the comparable legislation of other jurisdictions for implementing Basel III.</p>	
011124 – 011341	Mr SIN Chung-kai Administration Chairman	Mr SIN enquired whether the Department of Justice ("DoJ") had compared the provisions of the Amendment Rules and the relevant legislation for implementing Basel III of other jurisdictions.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>DoJ responded that HKMA had specified the parts of BCBS's policy papers that must be complied with and there was little room for making modifications. In the course of drafting the Amendment Rules, DoJ had examined whether there would be conflict between the proposed rules and existing local legislation, and made modifications as necessary to maintain consistency in the relevant provisions.</p> <p>Mr SIN suggested that HKMA should highlight and explain to members the differences/modifications in the Amendment Rules from those in BCBS's policy papers.</p>	
011342 – 011721	Mr James TIEN Administration	<p>The Administration confirmed that the legislation of all jurisdictions implementing Basel III should comply with BCBS's policy papers.</p> <p>HKMA informed that while there might be textual differences among the relevant legislation of jurisdictions, they should essentially be the same in substance as they had to reflect the substance of Basel III.</p>	
011722– 012514	Administration Mr James TIEN	<p><u>Section 26 – Part 3 substituted (sections 35-42)</u></p> <p><u>Section 160 – Schedules 4A to 4H added (Schedules 4A to 4C)</u></p> <p>Mr TIEN's remarks that making reference to the relevant legislation of the United Kingdom ("UK") had occurred in the past in formulating banking regulation in Hong Kong and his enquiry as whether the Amendment Rules and the Schedules concerned would mirror the practice of the UK instead of the practice set out in BCBS's policy papers.</p> <p>HKMA's clarification that all jurisdictions implementing Basel III should comply with BCBS's policy papers and their relevant legislation should be the same in substance.</p>	
012515 – 013014	Administration Mr James TIEN	<p><u>Section 26 – Part 3 substituted (sections 43-48)</u></p> <p>HKMA's explanation that the arrangements for the regulatory deductions of (a) unrealized gains on property revaluation; and (b) deferred tax assets in the Amendment Rules differed from BCBS's policy</p>	

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		papers, and that the Amendment Rules had included a unique anti-avoidance provision to avoid capital investments in a connected company being "re-characterized" as a loan.	
013015 – 013143	Mr SIN Chung-kai Administration	In respect of the Amendment Rules, Mr SIN requested the Administration to provide a paper setting out: (a) the major differences/modifications in the Rules for implementing Basel III in Hong Kong from the relevant regulatory capital standards promulgated by BCBS; and (b) reasons and justifications for making the changes, as well as views, if any, of the banking sector and relevant bodies on the changes.	The Administration to take action as in paragraph 5(b) of the minutes.
013144 – 013205	Chairman	<u>Extension of scrutiny period</u> Members' agreement to extend the scrutiny period of the three items of subsidiary legislation to 12 December 2012.	