

立法會
Legislative Council

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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 second meeting on
Friday, 16 November 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon NG Leung-sing, SBS, JP (Chairman)
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 absent** : Hon Abraham SHEK Lai-him, SBS, JP
- 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

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

I Meeting with the Administration

(LC Paper No. CB(1)175/12-13(01) -- Letter dated 14 November 2012
from Banking Advisory
Committee and Deposit-taking
Companies Advisory Committee
(English version only)

LC Paper No. CB(1)175/12-13(02) -- Letter dated 14 November 2012
from the DTC Association
(English version only)

LC Paper No. CB(1)175/12-13(03) -- Letter dated 15 November 2012
from the Hong Kong Association
of Banks (English version only)

LC Paper No. CB(1)138/12-13(01) -- Marked-up copy of L.N. 156 of
2012 prepared by Legal Service
Division (Restricted to Members)

- LC Paper No. CB(1)138/12-13(02) -- Marked-up copy of L.N. 157 of 2012 prepared by Legal Service Division
- LC Paper No. CB(1)167/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 5 November 2012
- LC Paper No. CB(1)167/12-13(02) -- The Administration's response to the issues arising from the meeting held on 5 November 2012
- 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

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

2. As agreed at the meeting, the Clerk to the Subcommittee would write to The Hong Kong Association of Banks ("HKAB") to seek clarification/further views regarding whether the first phase implementation of Basel III standards in Hong Kong with effect from 1 January 2013 would place Hong Kong in a less advantageous position vis-à-vis other jurisdictions with possible delay in the implementation given that Basel III requirements should be implemented globally in order to create a level playing field.

Follow-up action to be taken by the Administration

3. To address members' concern about possible delay in other jurisdictions in implementing Basel III on 1 January 2013 which might cause competitive disadvantages to banks in Hong Kong, the Administration was requested to provide a paper on the implementation of Basel III in other jurisdictions covering the followings –

- (a) jurisdictions which have issued their final rules for implementation of Basel III to take effect on 1 January 2013; and
- (b) jurisdictions in an advanced stage of preparation, including the situations and progress in the European Union and the United States, and latest development.

III Any other business

Legislative timetable and report to the House Committee

4. The Subcommittee had completed scrutiny of the three items of subsidiary legislation and would not move amendments to them. The deadline for giving notice of amendment to the subsidiary legislation was 5 December 2012. It was agreed that the replies from HKAB and the Administration as requested in paragraphs 2 and 3 above would be circulated to members. If members had no further views on the replies, the Chairman would report the Subcommittee's deliberations to the House Committee on 30 November 2012. Members further agreed that the Chairman would report the Subcommittee's deliberations at the motion debate to take note of the relevant report of the House Committee on consideration of subsidiary legislation and other instruments at the Council meeting of 12 December 2012.

5. There being no other business, the meeting ended at 9:25 am.

Council Business Division 1
Legislative Council Secretariat
5 December 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
Second meeting on Friday, 16 November 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000118 – 000315	Chairman	Opening remark	
000316 – 000932	Chairman Administration	<p>The Chairman remarked that the submissions from The Hong Kong Association of Banks ("HKAB"), The DTC Association ("DTCA"), the Banking Advisory Committee and the Deposit-taking Companies Advisory Committee on the subsidiary legislation under scrutiny had been received and issued to members.</p> <p>The Chairman relayed the following views of the banking sector:</p> <ul style="list-style-type: none"> (a) There were some news reports suggesting that some developed economies might delay the implementation of Basel III; (b) The Financial Services Authority of the United Kingdom ("UK") and the regulatory authorities in the United States ("US") issued statements on 1 August 2012 and 9 November 2012 respectively about delay in implementing Basel III standards; and (c) In the light of the above developments, there might not be strong justification for Hong Kong to be in the first batch of countries/regions implementing Basel III. <p>The Hong Kong Monetary Authority ("HKMA")'s replies as follows:</p> <ul style="list-style-type: none"> (a) The date for implementation of Basel III (i.e. 1 January 2013) set by the Basel Committee on Banking Supervision ("BCBS") remained unchanged. Major jurisdictions in Asia e.g. the Mainland, Singapore, Australia, Japan and India would implement Basel III as scheduled; 	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) Both the US and European Union ("EU") were moving towards implementation of Basel III although there might be some delay in the process;</p> <p>(c) In respect of the situation in the US, HKMA was aware of the relevant statement made by the regulatory authorities but it should be noted that the statement also stated that "the U.S. agencies take seriously our internationally agreed timing commitments regarding the implementation of Basel III, and are working as expeditiously as possible to complete the rule making process". The US regulatory authorities had been conducting a stress testing programme on major US bank holding companies with a view to ensuring they had sufficient capital to continue operations in times of economic stress. This had resulted in these institutions effectively being subject to capital requirements at a level comparable to that of Basel III; and</p> <p>(d) In the EU, the European Commission, the European Council and the European Parliament were still in negotiation on the Capital Requirements Directive ("CRD IV") (the EU vehicle for the implementation of Basel III), with a view to reaching a political agreement within 2012.</p>	
000933 – 001840	Mr James TIEN Administration	<p>Mr TIEN's enquiries as follows:</p> <p>(a) Whether operational problem would arise for local banks with parent companies in the US and the EU if the two jurisdictions delayed the implementation of Basel III;</p> <p>(b) If some jurisdictions delayed the implementation of Basel III while Hong Kong implemented the new standards on 1 January 2013 as scheduled, whether banks in Hong Kong would be placed in a less advantageous position vis-à-vis those in such jurisdictions;</p> <p>(c) Benefits for Hong Kong in following the Basel III implementation timeframe promulgated by BCBS, and the views of the Hong Kong banking sector on the implementation timetable; and</p>	

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		<p>(d) The reasons for the possible delay in implementing Basel III in the EU.</p> <p>HKMA's replies as follows:</p> <p>(a) Both the EU and the US were working towards the implementation of Basel III standards;</p> <p>(b) Basel III was formulated having regard to the lessons of the recent global financial crisis, and the new regulatory standards would enhance resilience of the Hong Kong banking system, and thus it would be beneficial for Hong Kong to follow the timeframe of BCBS;</p> <p>(c) HKAB and DTCA were the two main industry bodies in the Hong Kong banking sector. HKMA had consulted these industry bodies on its detailed proposals for the implementation of the first phase of Basel III, and the banking sector had not expressed concern about banks' compliance with such Basel III requirements; and</p> <p>(d) It was the case that, generally speaking, banks in Asia (being less directly adversely affected by the global financial crisis) might be better placed to comply with Basel III than some of their counterparts in other jurisdictions. However, the likelihood of delay of implementation in the EU and the US could also be attributed at least in part to other jurisdiction-specific issues. In the case of the US, these included the need to implement the Dodd–Frank Wall Street Reform and Consumer Protection Act (which required regulators to remove references to credit ratings from financial rules and was therefore at odds with existing requirements of the Basel capital standard which relied on credit ratings), and in the case of the EU, the negotiation on the establishment of a banking union under the newly proposed single-regulator supervisory framework covering all EU members also played a role.</p>	
001841 – 002809	Mr Alan LEONG Administration	Mr LEONG referred to HKAB's submission and remarked that it seemed to suggest that the implementation of Basel III standards in Hong	

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		<p>Kong in accordance with the timeframe promulgated by BCBS would place Hong Kong in a less advantageous position vis-à-vis other jurisdictions which might have delay in implementing Basel III standards (like the EU and the US), in particular HKAB's views that Basel III proposals should be implemented globally in order to create a level regulatory playing field.</p> <p>Mr LEONG enquired whether there could be exemption for banks in Hong Kong from compliance with Basel III requirements, and whether the delay of Basel III implementation in some jurisdictions would make local banks less competitive from the point of view of investors.</p> <p>HKMA's replies as follows:</p> <ul style="list-style-type: none"> (a) All banks in Hong Kong would be subject to the Basel III capital standards in the subject subsidiary legislation and there would be no exemption; (b) HKMA would monitor the developments in the implementation of Basel III in other jurisdictions. Some jurisdictions might make modifications in their rules for implementing Basel III to suit their specific circumstances, but the underlying principle (which Hong Kong also followed) was that Basel III represented a minimum standard for international implementation; (c) Basel III addressed the deficiencies of Basel II by requiring banks to hold more and better quality capital. Implementation of Basel III would be beneficial to Hong Kong as it would enhance the resilience of banks and the banking system and reduce the risk of adverse spillover effects to the real economy in times of stress. A strong resilient banking sector would attract more investors to Hong Kong; and (d) The EU and the US might have some difficulty in implementing Basel III in accordance with the BCBS timetable but they had announced their commitment to implementing Basel III as soon as possible. 	

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002810 – 003139	Mr SIN Chung-kai Administration	<p>Mr SIN raised enquiries on the following:</p> <ul style="list-style-type: none"> (a) The jurisdictions which would implement Basel III requirements on 1 January 2013; and (b) The progress of the US, the UK and Germany in implementing Basel III. <p>HKMA's replies as follows:</p> <ul style="list-style-type: none"> (a) Australia, Mainland China, India, Japan, Singapore and Switzerland had issued their final rules for Basel III implementation. All of these jurisdictions, with the exception of Japan, would implement Basel III from 1 January 2013. In Japan's case, implementation would take effect from March 2013 to coincide with the fiscal cycle for banks in Japan. Korea was in an advanced stage of preparation for implementation of Basel III and Indonesia had issued draft regulations for industry consultation in June 2012; (b) The UK and Germany would implement Basel III after finalization of CRD IV. Both countries had however taken some preparatory action for implementation of CRD IV; and (c) While there might be delay in the US in implementing Basel III, the US had specifically indicated its awareness of its international commitments and was working expeditiously to complete the rule-making process. 	
003140 – 003317	Chairman Administration	<p>The Chairman's remarks that the Administration and HKMA should examine whether more flexibility could be provided in the implementation of Basel III, and his request for the Administration to provide a paper on the progress of other jurisdictions in the implementation of Basel III covering the following:</p> <ul style="list-style-type: none"> (a) Jurisdictions which had issued their final rules for implementation of Basel III to take effect on 1 January 2013; and 	The Administration to take action as requested in paragraph 3 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		(b) Jurisdictions in an advanced stage of preparation, including the situations and progress in the EU and the US, and latest development.	
003318 – 003515	Mr James TIEN Administration Chairman Clerk	<p>Mr TIEN's views that the Subcommittee should seek clarification with HKAB on its views regarding whether the implementation of Basel III standards in Hong Kong on 1 January 2013 in accordance with the timeframe promulgated by BCBS would place Hong Kong in a less advantageous position vis-à-vis other jurisdictions (like the EU and the US) where there might be delay, given its views in the submission that Basel III proposals should be implemented globally in order to create a level regulatory playing field.</p> <p>Members' agreement that the Clerk should seek clarification/further views from HKAB in this regard.</p> <p><i>(Post-meeting note: The Clerk wrote to HKAB on 16 November 2012 to seek the latter's clarification/further views on the issue.)</i></p>	
003516 – 005429	Administration Mr James TIEN Chairman	<p><u>Briefing by the Administration on its response to the issues arising from the meeting held on 5 November 2012.</u> (LC Paper No. CB(1)167/12-13(02)).</p> <p>Mr TIEN declared that he had business in the property development sector and had borrowed from banks for some of his projects.</p> <p><i>Clause-by-clause examination of the Banking (Capital) (Amendment) Rules 2012 ("the Amendment Rules")</i></p> <p>The Subcommittee continued with the clause-by-clause examination of the Amendment Rules with the Administration's highlighting the major differences/modifications in the Amendment Rules from the relevant regulatory capital standards promulgated by BCBS as set out in the Administration's information paper.</p> <p>Mr TIEN's enquiries on the item "unrealized gains on property revaluation as CET1 capital" as follows:</p>	

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		<p>(a) Modification on the treatment on unrealized gains on property revaluation to exclude them from the determination of Common Equity Tier 1 ("CET1") capital and to subject them to a 55% haircut might have significant impacts on banks holding properties on a long-term basis as banks usually held large amount of properties as collateral for loans. There might be subsequent effect on banks' lending activities; and</p> <p>(b) The treatment for unrealized gains on property revaluation under the scenario in which a bank sold its property to its subsidiaries.</p> <p>HKMA's replies as follows:</p> <p>(a) The item on "unrealized gains on property revaluation as CET1 capital" applied to properties owned by banks only, and a bank would not be regarded as having realized the revaluation gains in property until the property it owned was sold; and</p> <p>(b) The Amendment Rules had a provision, viz., section 38(2)(d) to cover the scenario mentioned by Mr TIEN.</p>	
005430 – 005554	Chairman ALA6	<p>The Chairman remarked that the Subcommittee had completed the scrutiny of the English text of the Amendment Rules and requested ALA6 to report on the scrutiny of the Chinese text.</p> <p>ALA6 remarked that she had sought clarification from the Administration regarding certain drafting issues in respect of the Chinese text of the Amendment Rules, and no further follow-up actions were required.</p>	
005555 – 005830	Chairman Mr James TIEN	<p>Members agreed that the responses from the Administration and HKAB would be circulated to members and no further meeting would be held unless members had queries on the responses concerned.</p> <p><i>(Post-meeting note: The responses from the Administration and HKAB were circulated to members vide LC Paper No. CB(1)193/12-13 on 21 November 2012, and no members raised enquiries on the replies.)</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		Legislative timetable, and reporting the Subcommittee's deliberations to the House Committee on 30 November 2012 and during the motion debate to take note of the relevant report of the House Committee on consideration of subsidiary legislation and other instruments at the Council meeting of 12 December 2012	

Council Business Division 1
Legislative Council Secretariat
5 December 2012