

立法會
Legislative Council

LC Paper No. LS15/14-15

**Paper for the House Committee Meeting
on 21 November 2014**

**Further Report by Legal Service Division on
Banking (Capital) (Amendment) Rules 2014 and
Banking (Liquidity) Rules Gazetted on 24 October 2014**

Members may recall that at the House Committee meeting on 31 October 2014, we reported that a further report would be made if necessary after we had completed scrutiny of the legal and drafting aspects of the above Rules. To recap, the Rules were made by the Monetary Authority (MA) to impose, amongst others, the Basel III capital buffer requirements and liquidity coverage ratio requirement on authorized institutions in Hong Kong¹.

2. We have sought clarification from the Administration on certain drafting issues in relation to the above Rules (our letter is at **Annex I**) and the Administration has responded to our queries (the Administration's letter is at **Annex II**). The Administration intends to make the following amendments to the Chinese text of the Rules next year when the Rules are further reviewed and revised by MA to incorporate any other latest Basel III requirements -

(a) Banking (Capital) (Amendment) Rules 2014

- (i) under section 3E(1) of the Banking (Capital) Rules (Cap. 155L), "緩衝比率" in the definition of "capital conservation buffer ratio" will be replaced by "緩衝水平" to be consistent with the Chinese rendition of "buffer level" in the English text as provided in the same provision;
- (ii) under section 3Q(9) of Cap. 155L, "銀行業正進入一段受壓期" will be replaced by "銀行業可能正進入一段受壓期" as the Chinese rendition of "the banking sector may be entering a period of stress" in the English text; and

¹ Basel III, which was introduced by the Basel Committee on Banking Supervision, is designed to further enhance the resilience of banks and banking systems and address weaknesses observed in the recent global financial crisis.

- (iii) under section 3U of Cap. 155L, "具本地系統重要性的認可機構" will be replaced by "具本地系統重要性認可機構" to be consistent with the Chinese rendition of "domestic systemically important authorized institution" in the English text as set out in section 3E(1) of Cap. 155L;

(b) Banking (Liquidity) Rules

- (i) under rule 22(4)(a), "應用於計算(但限於在該項計算關乎有關存款及借款的類型的範圍內)該機構的LCR" will be replaced by "應用於計算(但限於在該項計算關乎有關存款及借款的範圍內)該機構的LCR" as the Chinese rendition of "as applicable to the calculation of the institution's LCR insofar as the calculation relates to the deposits and funding concerned" in the English text; and
- (ii) under rule 27(2)(a), "在財務壓力期間, 進入該外匯市場可能會受妨礙" will be replaced by "在財務壓力期間, 進入該外匯市場可能會受妨礙的風險" as the Chinese rendition of "the risk that the access to such markets may be hindered in times of financial stress" in the English text.

3. The Legal Service Division has no further queries in relation to the above proposed amendments to be made by MA.

Encls.

Prepared by

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Assistant Legal Adviser
Legislative Council Secretariat
19 November 2014



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14 November 2014

Miss CHONG Tan-na, Tanna
AS for Financial Services & the Treasury
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Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Miss CHONG,

**Re: Banking (Capital) (Amendment) Rules 2014 (L.N. 128)
and Banking (Liquidity) Rules (L.N. 129)**

I am scrutinizing the above Rules and would like to seek clarification on the matters set out below.

L.N. 128

Section 5

In the Chinese text of the definition of "capital conservation buffer ratio" under new section 3E(1) of the Banking (Capital) Rules (Cap. 155L), "緩衝比率" should be "緩衝水平" instead.

Under new section 3Q(9) of Cap. 155L, "the banking sector may be entering a period of stress" in the English text is rendered as "銀行業正進入一段受壓期" in the Chinese text. Should the Chinese rendition rather be "銀行業可能正進入一段受壓期"? Please note that in the same provision, "are receding" in the English text is rendered as "正在減少" in the Chinese text.

The Chinese rendition of "domestic systemically important authorized institution" in the English text is "具本地系統重要性認可機構" pursuant to new section 3E(1) of Cap. 155L. Accordingly, "具本地系統重要性的認可機構" in the Chinese text of new section 3U of Cap. 155L should instead be "具本地系統重要性認可機構".

Heading of section 17

The Chinese text should be "修訂第 269 條(第 268 條的補充條文)" instead of "第 269 條(第 268 條的補充條文)".

L.N. 129

Rule 22(4)(a)

In the English text of the provision, "less stringent than the requirements of these Rules as applicable to the calculation of the institution's LCR insofar as the calculation relates to the deposits and funding concerned" is rendered as "與應用於計算(但限於在該項計算關乎有關存款及借款的類型的範圍內)該機構的 LCR 的本規則的適用規定相比，屬較為寬鬆" in the Chinese text. Please rectify the inconsistency.

Rule 25(d)

For the sake of clarity in the Chinese text of the provision, should "但限於" be added before "在該等規定關乎該資產的範圍內" as the Chinese rendition of "insofar as those operational requirements relate to the asset" in the English text?

Rule 26


Similar to rule 25(d) as mentioned above, please consider to add "但限於" before "在該規定關乎該資產的範圍內" in the Chinese text as the Chinese rendition of "insofar as the operational requirement concerned relates to the asset" in the English text.

Rule 27(2)(a)

In this provision, "risk" in the English text has not been rendered in the Chinese text.

I would be grateful if you could let me have your reply in bilingual form before 3:30 pm on 17 November 2014.

Yours sincerely,



(Wendy KAN)
Assistant Legal Adviser

cc. HKMA (Attn: Mr Richard CHU, Head (Banking Policy)B (By Fax: 2878 1899) &
Ms Rita YEUNG, Head (Banking Policy)A (By Fax:2878 1886))
DoJ (Attn: Mr Alan CHONG, SGC (By Fax: 2869 1302) &
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19 November 2014

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 Assistant Legal Advisor
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 1 Legislative Council Road, Central
 Hong Kong

Dear Miss Kan,

**Banking (Capital) (Amendment) Rules 2014 (L.N. 128 of 2014)
 and Banking (Liquidity) Rules (L.N. 129 of 2014)**

Thank you for your letter of 14 November 2014. The Administration's reply to the drafting issues you raised is set out below.

Banking (Capital) (Amendment) Rules 2014

Section 5

We accept that, under the new section 3E(1) of the Banking (Capital) Rules, the Chinese text of the definition of "capital conservation buffer ratio" (防護緩衝資本比率) should better read as "就計算某認可機構的緩衝水平而言，指第3M條所列的比率".

Similarly, we accept that the Chinese text for the corresponding English phrase of "the banking sector may be entering a period of stress" should better read as "銀行業可能正進入一段受壓期" in the new section 3Q(9), and that the last phrase of the Chinese text should better read as "具本地系統重要性認可的機構" (with the word "的" deleted as suggested) in the new section 3U.

Heading of section 17

We note that the word “修訂” can be added in the heading as suggested in the Chinese text to reflect the drafting convention, but regardless this should not affect the operation of the relevant provision.

Banking (Liquidity) Rules

Rule 22(4)(a)

We agree that the relevant Chinese text can be suitably adjusted to make it read “金融管理專員信納，在業務所在國家的有關銀行業監管當局施加的流動性規定，就計算（但限於在該項計算關乎有關存款及借款的類型的範圍內）等同LCR的規定而言，與應用於計算（但限於在該項計算關乎有關存款及借款的類型的範圍內）該機構的LCR的本規則的適用規定相比，屬較為寬鬆” (with the words “的類型” deleted as marked) to better reflect the intent. This notwithstanding, the operation of the provision should not be affected.

Rule 25(d) and Rule 26

We do not see the need to add “但限於” as suggested. Similar rendition is present in rules 34(1)(c) and 41(3)(b).

Rule 27(2)(a)

We agree that the term “的風險” can be added to the Chinese text in a manner to read as “進入該外匯市場可能會受妨礙的風險”，although the existing wording “可能” may be read to have reflected the risk factor in this relevant consideration.

The Administration intends to reflect the necessary drafting changes that may be warranted as set out in the above when the relevant Rules are further reviewed and revised by the Monetary Authority next year to incorporate any other latest Basel III requirements.

Yours sincerely,



(Miss Tanna Chong)
for Secretary for Financial Services and the Treasury

c.c.

Chief Executive, Hong Kong Monetary Authority

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