

立法會
Legislative Council

LC Paper No. LS22/16-17

**Paper for the House Committee Meeting
on 6 January 2017**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 December 2016**

Tabling in LegCo : Council meeting of 11 January 2017

Amendment to be made by : Council meeting of 8 February 2017 (or that of 1 March 2017 if extended by resolution)

Banking (Disclosure) (Amendment) Rules 2016 (L.N. 195)

**Banking (Specification of Class of Exempted Charges)
(Amendment) Notice 2016** (L.N. 196)

L.N. 195

L.N. 195 is made by the Acting Monetary Authority under section 60A of the Banking Ordinance (Cap. 155) after consultation with the Financial Secretary and certain specified persons¹. It amends the Banking (Disclosure) Rules (Cap. 155M) mainly to implement the requirements for disclosures by authorized institutions² ("AIs") set out in the document entitled *Revised Pillar 3 disclosure requirements* issued by the Basel Committee on Banking Supervision ("BCBS")³.

2. The key amendments to Cap. 155M by L.N. 195 are as follows:

- (a) adding a new Part 2A which contains the requirements for disclosures under the *Revised Pillar 3 disclosure requirements*, including the disclosures of AIs' risk management objectives and policies, risk-

¹ The specified persons are the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (see section 60A(2) of Cap. 155).

² Authorized institutions refer to licensed banks, restricted licence banks, and deposit-taking companies authorized under the Banking Ordinance (Cap. 155).

³ BCBS, of which Hong Kong is a member, is an international body that sets standards on banking regulation with a view to enhancing financial stability.

weighted amount for credit risk, risk-weighted amount for market risk, credit risk for non-securitization exposures, counterparty credit risk and securitization exposures. The existing Parts 5 to 7 of Cap. 155M are repealed, as they contain the disclosure requirements which are to be covered and replaced by the corresponding requirements in the new Part 2A;

- (b) adding a new Part 2B to impose a new requirement on AIs for quarterly disclosures of key regulatory capital and leverage ratios with their constituent components;
- (c) amending the financial disclosure requirements contained in Parts 3 and 4 of Cap. 155M to remove duplications with the Hong Kong Financial Reporting Standards with which AIs are already required to comply under the relevant provisions of the Companies Ordinance (Cap. 622); and
- (d) amending section 45C to enhance the existing disclosure requirement relating to the identification of potential global systemically important AIs.

3. According to paragraph 3 of the Legislative Council ("LegCo") Brief issued by the Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority on 28 December 2016 (File Ref: B&M/2/1/63C), the *Revised Pillar 3 disclosure requirements*, which were published by BCBS in January 2015, aim to improve the comparability and consistency of disclosure between banks and across jurisdictions. According to the Administration and the Hong Kong Monetary Authority ("MA"), L.N. 195 is to apply the *Revised Pillar 3 disclosure requirements* to AIs incorporated in Hong Kong, by amending Cap. 155M, so as to ensure that regulatory disclosures made by AIs in Hong Kong are consistent with the international standards.

4. L.N. 195 comes into operation on 31 March 2017.

5. According to paragraph 18 of the LegCo Brief, MA has engaged the banking industry in formulating L.N. 195. In accordance with section 60A of Cap. 155, MA issued a draft of the relevant provisions to consult the Financial Secretary, the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks, and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies in October 2016. General support was received for the amendments proposed. According to MA, relevant technical or drafting comments have been addressed, and the intent of certain provisions has been clarified.

L.N. 196

6. Under section 119A(2) of Cap. 155, except with the approval of MA, an AI incorporated in Hong Kong is prohibited from creating any charge over its assets if either (a) the aggregate value of all existing charges over its total assets (excluding contra items) is 5% or more of the value of its total assets; or (b) creating a new charge would cause the aggregate value of all charges (including the newly created charge) over its total assets (excluding contra items) to be more than 5% of the value of those total assets. Under section 119A(3) of Cap. 155, MA may by notice published in the Gazette specify certain charges or classes of charges to which section 119A(2) does not apply.

7. L.N. 196 is made by the Acting Monetary Authority under section 119A(3) and (6) of Cap. 155. It amends the Banking (Specification of Class of Exempted Charges) Notice (Cap. 155K) by adding a new exempted class of charges which are created in connection with the relevant AI's provision of initial margin for over-the-counter ("OTC") derivative transactions so that such class of charges is exempted from the prohibition under section 119A(2) of Cap. 155, up to a value equivalent to 5% of an AI's total assets.

8. According to paragraphs 7 and 10 of the LegCo Brief, the amendment in L.N. 196 aims to strike a balance between facilitating AIs' compliance with the latest margin and risk mitigation standards promulgated by BCBS and the International Organisation of Securities Commissions for OTC derivatives that are not cleared through central counterparties on the one hand and preserving the integrity of section 119A of Cap. 155, which is to limit the extent of charges that can be created by an AI over its total assets on the other.

9. L.N. 196 comes into operation on 3 March 2017.

10. According to paragraph 19 of the LegCo Brief, MA has consulted the banking industry in November 2016 on the proposed amendment in L.N. 196 and received responses indicating general support for the amendment.

11. In response to our enquiry on the legal basis for making L.N. 195 and L.N. 196 by the Acting MA instead of MA himself, the Administration has confirmed that the Acting MA was duly appointed by the Financial Secretary to hold the office of MA and to exercise the powers vested in MA to make L.N. 195 and L.N. 196 pursuant to section 5A(1) of the Exchange Fund Ordinance (Cap. 66) and sections 54 and 56 of the Interpretation and General Clauses Ordinance (Cap. 1).

12. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 195 and L.N. 196. During the briefing on the work of MA at the Panel meetings on 23 May and 16 November 2016, members were informed of MA's plan of amending Cap. 155M to implement the latest disclosure standards of BCBS. Members had no objection to the plan.

13. No difficulties in relation to the legal and drafting aspects of L.N. 195 and L.N. 196 have been identified.

Prepared by

YICK Wing-kin
Assistant Legal Adviser
Legislative Council Secretariat
5 January 2017

LS/S/12/16-17