

立法會
Legislative Council

LC Paper No. LS66/19-20

**Paper for the House Committee Meeting
on 8 May 2020**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 April 2020**

Tabling in LegCo : Council meeting of 29 April 2020

Amendment to be made by : Council meeting of 27 May 2020 (or that of 17 June 2020 if extended by resolution)

Banking (Capital) (Amendment) Rules 2020 (L.N. 44)

L.N. 44 is made by the Monetary Authority under section 97C of the Banking Ordinance (Cap. 155) to amend the Banking (Capital) Rules (Cap. 155L)¹ after consultation with 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. The main purpose of L.N. 44 is to implement the new method for calculating the exposure amount of counterparty credit risk ("CCR") arising from derivative contracts, as set out in the document entitled "*The standardized approach for measuring counterparty credit risk exposures*" ("CCR document") promulgated by the Basel Committee on Banking Supervision ("Basel Committee")² in March 2014 (revised in April 2014).

2. The major amendments to Cap. 155L by L.N. 44 include:

- (a) introducing a new method as promulgated in the CCR document for calculating the exposure amount of CCR arising from derivative contracts, namely the standardized CCR approach ("SA-CCR

¹ The Banking (Capital) Rules (Cap. 155L) are rules made by the Hong Kong Monetary Authority to prescribe capital requirements for authorized institutions (e.g. banks) incorporated in Hong Kong, after taking into account the risks associated with the institutions.

² The Basel Committee is an international standard-setting body which promotes sound standards of banking supervision globally.

approach"), by adding the new Division 1A of Part 6A to Cap. 155L³; and amending sections 10A, 10B, 10C and 10D of Cap. 155L such that an authorized institution⁴ must use the SA-CCR approach to calculate the exposure amount of CCR arising from derivative contracts, unless exemption applies and the institution may use the current exposure method;

- (b) revising capital treatment of default fund contributions and exposures in respect of access to central clearing services through multiple layers of intermediaries⁵ by amending provisions in Division 4 of Part 6A relating to an authorized institution's exposures arising from transactions cleared by a central counterparty ("CCP"), such that the existing method for calculating the capital charges of an authorized institution's exposures arising from its default fund contribution made to a qualifying CCP ("QCCP") will be replaced by a new approach under which the SA-CCR approach will be used to determine a QCCP's risk exposures to its clearing members which utilize the QCCP for clearing derivatives contracts directly; and adding new section 2AA to introduce a multi-level client structure in which a bank may clear its derivatives contracts at the QCCP indirectly through intermediaries; and
- (c) other amendments:
 - (i) new schedule 16 is added to provide for a transitional arrangement for authorized institutions to regard existing CCPs in jurisdictions which have yet to implement the SA-CCR approach as QCCPs under the amended Division 4 of Part 6A; and
 - (ii) miscellaneous amendments including, among other things, revision of the treatment of underlying exposures of eligible securitization transactions in section 230 and Schedule 10 to Cap. 155L.

³ Main formula and other details for calculation of default risk exposure under the SA-CCR approach can be found in section 75 of L.N. 44 and Subdivision 2 of the newly added Division 1A of Part 6A of Cap. 155L.

⁴ Under section 2(1) of Cap. 155, an authorized institution means a bank, a restricted licence bank or a deposit-taking company.

⁵ This approach was set out in in the document entitled "*Capital requirements for bank exposures to central counterparties*" published by the Basel Committee in April 2014. According to paragraph 5 of the LegCo Brief, the revised standards together with other related amendments aim to ensure that there are incentives for banks to mitigate CCR by adopting central clearing services for derivative contracts, and that banks handle their exposure to central counterparties in a risk-sensitive manner.

3. According to paragraphs 2 and 4 of the Legislative Council ("LegCo") Brief (File Ref: B&M/2/1/63C) dated 22 April 2020 issued by the Financial Services and the Treasury Bureau and the Hong Kong Monetary Authority ("HKMA"), the revised standards set out in the CCR document form an important part of the Basel III reform package to ensure the capital adequacy of banks and provide a more robust method for measuring a bank's risk exposures arising from derivative contracts entered into with counterparties. According to paragraph 3 of the LegCo Brief, HKMA also considers that it is incumbent upon Hong Kong, a major international financial centre and a member of Basel Committee, to implement the international standards promulgated by the Basel Committee.

4. According to paragraph 12 of the LegCo Brief, HKMA has closely engaged the banking industry in the course of formulating the legislative amendments, through industry consultations conducted in October 2015 and August 2018, and statutory consultation conducted in March 2020 pursuant to section 97C of Cap. 155. L.N. 44 has taken into consideration comments received from the banking community on the policy proposals and the draft provisions, with adjustments made as appropriate.

5. The Clerk to the Panel of Financial Affairs has advised that at the meetings on 6 May 2019 and 2 March 2020 when the Panel received briefings by HKMA on its work, members were informed of HKMA's plan of amending Cap. 155L to implement the Basel III standards promulgated by the Basel Committee. Members did not raise objection to the plan of HKMA. The Panel has not been consulted on L.N. 44.

6. L.N. 44 comes into operation on 30 June 2021.

**Air Pollution Control (Vehicle Design Standards) (Emission)
(Amendment) Regulation 2020**

(L.N. 45)

7. The Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311J) are made by the Secretary for the Environment under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment ("ACE") to provide, among other matters, that motor vehicles must be so constructed that their emissions conform to the emission standards specified in the various Schedules to Cap. 311J. Those emission standards were last tightened in 2017 (L.N. 24 of 2017, as amended by a resolution passed by LegCo (L.N. 55 of 2017)).

8. L.N. 45 amends Cap. 311J to impose more stringent vehicle design standards on:

- (a) light buses having a design weight of more than 3.5 tonnes ("Light Buses") and buses having a design weight of not more than 9 tonnes ("Buses"), registered on or after 1 March 2021 (implementing Euro VI On-Board Diagnostics ("OBD") Phase C standards); and
- (b) motor cycles registered on or after 1 October 2020 (implementing Euro 4 emission standards).

L.N. 45 also repeals obsolete provisions in Cap. 311J.

9. It is noted that section 5 of L.N. 45 repeals subregulation (1) of regulation 7D (relating to motor cycles) of Cap. 311J, and thus regulation 7D would no longer be concerned with motor cycles. Upon the enquiries of the Legal Service Division ("LSD") as to whether the words "motor cycles and" in the heading of regulation 7D should be consequentially deleted, the Environmental Protection Department ("EPD") has replied that as the words "motor cycles and" in the heading of regulation 7D do not have legal effect, they will amend the heading of regulation 7D at the next suitable opportunity. We consider that this is unlikely to cause any interpretation difficulties.

10. According to paragraphs 14 to 16 of the LegCo Brief (no file reference) issued by EPD in April 2020, all authorized motor cycle dealers consulted by EPD in August and September 2018 did not object to the tightening of emission standards for first registered motor cycles to Euro 4 from the second half of 2020. EPD does not agree with the parallel-import motor cycle suppliers which indicated difficulty in sourcing parallel-import motor cycles from other places that could meet the Euro 4 standards. EPD also consulted the light bus and bus trade and relevant vehicle suppliers. No objection was received on the tightening of emission standards for first registered Light Buses and Buses to Euro VI OBD Phase C starting from early 2021. EPD also consulted ACE on 3 December 2018, which was supportive of the legislative proposal.

11. As advised by the Clerk to the Panel on Environmental Affairs, the Panel was consulted at its meeting on 19 December 2018 on the proposal to implement Euro 4 emission standards for first registered motor cycles and Euro VI OBD Phase C standards for first registered Light Buses and Buses. Members did not raise objection to the proposal and called on the Administration to ensure the sufficient supply of compliant vehicles of different models in the market before tightening the emission standards in question.

12. L.N. 45 comes into operation on 1 October 2020.

Revised Road Users' Code

(G.N. 2056)

13. Pursuant to section 109(1) of the Road Traffic Ordinance (Cap. 374), the Road Users' Code ("RUC") (last revised in 2000) is revised by the Secretary for Transport and Housing. The revised RUC is set out in the Schedule to G.N. 2056 published on 24 April 2020. The revision is to reflect amendments to relevant legislation since the last update in 2000, to provide additional advice to road users, to update information (e.g. traffic signs and road markings) etc. Members may refer to Annex B to the LegCo Brief (File Ref.: THB(T) L 1/12/22) issued by the Transport and Housing Bureau ("THB") on 22 April 2020 for major revisions to RUC.

14. Pursuant to section 109(5) of Cap. 374, a failure on the part of any person to observe any provisions of RUC shall not of itself render that person liable to criminal proceedings of any kind but any such failure may in any proceedings whether civil or criminal and including proceedings for an offence under Cap. 374 be relied upon by any party to the proceedings as tending to establish or negative any liability which is in question in those proceedings.

15. Under section 109(6) of Cap. 374, for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), RUC and any alterations shall be deemed to be subsidiary legislation. As such, RUC has to be tabled in LegCo and is subject to amendment by LegCo under the negative vetting procedure.

16. As advised by the Clerk to the Panel on Transport, the Panel was consulted at its meeting on 16 March 2018 by the Administration on the proposed update of RUC. Members expressed support for the Administration's legislative proposal. During discussion, some members raised their concern over the need to specify guidelines to enhance cycling safety, to provide definition of fatigue driving and to give advice to right-driving arrangement in Hong Kong. They also asked about the frequency of updating RUC and gave views on the procedures for the update and promotion of RUC.

17. It is noted that there is no commencement date in the revised RUC or in G.N. 2056. However, it is stated in paragraph 6 of the LegCo Brief that the revised RUC comes into operation on 19 June 2020. Upon LSD's enquiries, THB has explained that since section 109(6) of Cap. 374 does not stipulate how to give effect to the revised RUC, as an administrative measure, the Administration intends to set 19 June 2020 as the effective date of the revised RUC. This is to allow the negative vetting procedure to run its full course and to cater for the possibility of any amendments that need to be made and be passed by way of a LegCo resolution which will need to be gazetted thereafter. THB has further stated that upon completion of the negative vetting procedure, a press release will be issued by the Transport Department to announce the publication and the effective date of the revised RUC. That was also the practice adopted in 2000 when RUC was last revised.

Concluding observations

18. LSD is scrutinizing the legal and drafting aspects of L.N. 44 and G.N. 2056. A further report will be provided if necessary. Subject to Members' view on the issue mentioned in paragraph 9 above, no difficulties have been identified in relation to the legal and drafting aspects of L.N. 45.

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