



HONG KONG MONETARY AUTHORITY
香港金融管理局

Our Ref.: S4/3C
G4/26/7C
B1/15C

9 March 2012

The Chief Executive
All authorized institutions

Dear Sir / Madam,

Banking (Amendment) Ordinance 2012

Further to my letter of 8 December 2011 regarding the gazetting of the Banking (Amendment) Bill 2011, I am writing to inform you that the Bill was passed by the Legislative Council on 29 February 2012 and enacted as the Banking (Amendment) Ordinance 2012 (“BAO 2012”). The BAO 2012 was published in the Gazette today.

The main purpose of the BAO 2012 is to amend the Banking Ordinance to put in place the legal framework for implementing the Basel III capital, liquidity and disclosure requirements in Hong Kong. In this regard, the BAO 2012 includes provisions to: -

Capital and liquidity requirements

- replace Part XVII of the Banking Ordinance (capital adequacy ratio of authorized institutions (“AIs”)) with a new Part XVIA (capital requirements) so that the actual capital adequacy ratio to be observed by locally incorporated AIs is removed from the body of the Banking Ordinance and the Monetary Authority (“MA”) is empowered to prescribe

the “capital requirements” applicable to locally incorporated AIs in rules¹. The requirements in the existing sections 99, 100 and 101 of the Banking Ordinance have been carried forward to the new Part, with necessary modifications to cater for Basel III implementation; and

- replace Part XVIII and the Fourth Schedule of the Banking Ordinance (liquidity ratio of AIs) with a new Part XVIB (liquidity requirements) so that the actual liquidity ratio to be observed by AIs is removed from the body of the Ordinance and the MA is empowered to prescribe “liquidity requirements” applicable to AIs in rules. Similar to Part XVIA, Part XVIB contains modified versions of the corresponding existing sections 103, 104 and 105 of the Banking Ordinance to cater for Basel III implementation.

Disclosure requirements

- amend section 60A so that the section is expanded in scope to align with the two new Parts mentioned above in respect of the MA’s rule-making power. The revised section 60A permits the MA to make rules prescribing the information to be disclosed to the general public by AIs relating to their state of affairs, profit and loss or compliance with applicable capital requirements or liquidity requirements.

Codes of practice

- introduce a new Part XVIC into the Banking Ordinance to empower the MA to issue and approve codes of practice. As the rules made under the two new Parts mentioned above and under section 60A will be highly technical in nature, Part XVIC allows the MA to issue and approve codes of practice to provide guidance on provisions in the rules. Such issuance and approval will be subject to the same consultation requirements as applicable to the making of the capital, liquidity and disclosure rules.

¹ The BAO 2012 contains a “savings provision” in respect of the existing Banking (Capital) Rules, made under section 98A(1) of the existing Banking Ordinance and in force immediately before 1 January 2013, deeming them to be made under, and therefore amendable by, the BAO 2012.

Banking Review Tribunal

- rename the Capital Adequacy Review Tribunal as the “Banking Review Tribunal” and amend Part XVIIIA of the Banking Ordinance (Capital Adequacy Review Tribunal) to widen the Tribunal’s review remit so that the Tribunal, rather than the Chief Executive in Council, is the designated forum to hear appeals against decisions by the MA to vary capital or liquidity requirements for individual AIs, or to require remedial actions by individual AIs when they have failed to comply with the capital or liquidity requirements applicable to them. The expanded review remit also covers specified decisions made by the MA under the new capital, liquidity and disclosure rules.

The terms “capital requirements” and “liquidity requirements” introduced in the BAO 2012 will cover the various capital ratios, buffers and liquidity ratios introduced by Basel III as well as their calculation methodologies. As with the existing arrangements for the Banking (Capital) Rules and Banking (Disclosure) Rules, the MA will only be able to make rules under the new Parts after consultation with the Financial Secretary, the Banking Advisory Committee, the Deposit-Taking Companies Advisory Committee and the two industry associations.

In addition to the amendments introduced for the implementation of Basel III, the BAO 2012 also relocates section 106 of the Banking Ordinance to Part XXI (Miscellaneous) of the Ordinance as this section relates to matters that may affect more than the liquidity of an AI. The section is also amended to extend the notification requirement to cover not only civil proceedings, but also criminal proceedings as the latter can also affect an AI’s financial position, for instance, through impacting its reputation.

The provisions of the BAO 2012 will come into operation in phases. Those relating to capital requirements and the corresponding disclosure requirements will be brought into effect from 1 January 2013. The provisions related to liquidity requirements will be brought into effect later in accordance with the

Basel Committee's transitional timetable for Basel III implementation. I shall write to you again when the relevant commencement notices are gazetted.

We have already started preparation for the amendment of the existing Banking (Capital) Rules and Banking (Disclosure) Rules in order to effect the first phase of Basel III implementation (that is, minimum risk-weighted capital adequacy ratios, definition of capital and risk-weighting framework for counterparty credit risk) from 1 January 2013. It is our intention to issue the draft amending rules for statutory consultation in the third quarter of this year, so that they may be tabled for negative vetting by the Legislative Council in the fourth quarter.

Should you have any questions regarding the above, please feel free to contact Mr Richard Chu on 2878-8276 or Miss Samantha Yau on 2878-8284.

Yours faithfully,

Karen Kemp
Executive Director (Banking Policy)

c.c. The Chairman, The Hong Kong Association of Banks
The Chairman, The DTC Association
FSTB (Attn: Miss Natalie Li)