Hong Kong Monetary Authority 香港金融管理局

D T R Carse JP
Deputy Chief Executive

簡達恆 JP
副總裁

Our Ref: B9/56C
B1/15C

5 October 2000

The Chief Executive
All locally incorporated authorized institutions

Dear Sir/Madam

Instruments Eligible for Inclusion in Core Capital

In recent years, an increasing number of banks in other countries have issued innovative capital instruments as a cost-effective way to raise capital. The Basel Committee on Banking Supervision announced in October 1998 that innovative capital instruments were acceptable for inclusion in Tier 1 capital up to a maximum of 15% of a bank's Tier 1 capital subject to certain conditions.

Following consultation with the two industry Associations and other industry participants, the Hong Kong Monetary Authority ("HKMA") has decided to allow this type of capital instrument to be counted as Tier 1 capital in line with the Basel Committee's policy. In this respect, an amendment to the Third Schedule to the Banking Ordinance is gazetted today (Annex 1). The amendment, which takes immediate effect, limits the inclusion of eligible innovative capital instruments as minority interests in Category I – Core Capital of an authorized institution ("AI") to 15% of its Core Capital. The excess amount over the 15% limit shall be included as minority interests in Category II – Supplementary Capital.

The legislative amendment is supplemented by a Guideline issued by the Monetary Authority under section 16(10) of the Banking Ordinance, which is also gazetted today (Annex 2). The Guideline sets out the general requirements and qualifying conditions for innovative capital instruments to be eligible for inclusion in Category I – Core Capital of an AI for capital

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adequacy purposes under Part XVII of the Banking Ordinance. AIs should consult the HKMA and obtain its approval before the issuance of such instruments.

Should you have any questions on the above, please contact Ms Rita Yeung on 2878-1388 or Mr Andrew Wu on 2878-1381.

Yours faithfully

D T R Carse
Deputy Chief Executive

Encl.

c.c. Chairman, HKAB
Chairman, DTC Association
President, Hong Kong Society of Accountants
Auditors of Authorized Institutions
Secretary for Financial Services (Attn: Mr. Edward Mak)

2000年第273號法律公告

《2000年銀行業條例(修訂附表3)公告》

(根據《銀行業條例》(第155章)
第135(3)條訂立)

1. 資本充足比率

《銀行業條例》(第155章)附表3第3段現予修訂——

(*a*) 在(*b*)分節中，廢除"paid-up, irredeemable,"而代以"paid-up irredeemable"；

(*b*) 在(*f*)分節中，廢除"益："而代以——

"益，但因該項綜合處理而在其屬特定目的的工具的所有附屬公司的繳足股款、不可贖回、非累積的優先股方面所產生的少數權益的總款額，不得超逾核心資本(包括該等少數權益在內)的15%："；

(*c*) 在(*l*)分節中，在"累"之前加入"可"；

(*d*) 在(*o*)分節中，廢除"附屬公司的繳足股款、不可贖回、累積的優先股及繳足股款的有期優先股方面所產生的任何少數權益："而代以——

"——

(i) 附屬公司的繳足股款、不可贖回、可累積的優先股及繳足股款的有期優先股方面所產生的任何少數權益；及

(ii) 屬特定目的的工具的所有附屬公司的繳足股款、不可贖回、非累積的優先股方面所產生的、款額超逾准許計算作核心資本的款額的任何少數權益："。

署理財政司司長
俞宗怡

2000年9月28日

Annex 1

L.N. 273 of 2000

BANKING ORDINANCE (AMENDMENT OF THIRD SCHEDULE) NOTICE 2000

(Made under section 135(3) of the Banking Ordinance (Cap. 155))

1. Capital Adequacy Ratio

The Third Schedule to the Banking Ordinance (Cap. 155) is amended, in paragraph 3—

(*a*) in subparagraph (*b*), by repealing "paid-up, irredeemable," and substituting "paid-up irredeemable";

(*b*) in subparagraph (*f*), by repealing "subsidiaries:" and substituting—

"subsidiaries, provided that the minority interests arising on consolidation in the paid-up irredeemable non-cumulative preference shares of all its subsidiaries which are special purpose vehicles shall not exceed 15% of its Core Capital (including such minority interests) in total:";

(*c*) in subparagraph (*l*), by adding "可" before "累";

(*d*) in subparagraph (*o*), by repealing "the paid-up irredeemable cumulative preference shares and paid-up term preference shares of its subsidiaries:" and substituting—

"—

(i) the paid-up irredeemable cumulative preference shares and paid-up term preference shares of its subsidiaries; and

(ii) the paid-up irredeemable non-cumulative preference shares of all its subsidiaries which are special purpose vehicles in excess of the amount permitted for inclusion as its Core Capital:".

Miss Denise YUE
Acting Financial Secretary

28 September 2000

註 釋

本公告對《銀行業條例》(第 155 章) 附表 3 中關於計算認可機構的資本充足比率的若干條文作出修訂。該等修訂的主要目的是規定在以綜合基礎計算該比率的情況下，在認可機構的屬特定目的的工具的所有附屬公司的繳足股款、不可贖回、非累積的優先股所產生的少數權益不得超逾核心資本 (包括該等少數權益在內) 的 15%。該 15% 以外的款額則作為該機構附加資本的少數權益計算。

Explanatory Note

This Notice amends some of the provisions for the calculation of the capital adequacy ratio of an authorized institution under the Third Schedule to the Banking Ordinance (Cap. 155). The main purpose is to limit the minority interests arising on consolidation in the paid-up irredeemable non-cumulative preference shares of all subsidiaries of an authorized institution that are special purpose vehicles to 15% of the Core Capital of that institution. The excess amount over the 15% limit is to be included as minority interests in the Supplementary Capital of the institution.

Annex 2

Instruments Eligible for Inclusion in Core Capital

Purpose

To set out the general requirements and qualifying conditions for innovative capital instruments for inclusion in the Category I – Core Capital of an authorized institution ("AI") for the purpose of capital adequacy under Part XVII of the Banking Ordinance

Classification

A statutory guideline issued by the Monetary Authority ("MA") under the Banking Ordinance, section 16(10)

Previous guidelines superseded

This is a new guideline.

Application

To all locally incorporated AIs

Structure

Instruments Eligible for Inclusion in Core Capital

1. Introduction

1.1 The Basel Committee on Banking Supervision (the "Basel Committee") in October 1998 announced limited acceptance of innovative capital instruments for inclusion in Tier 1 capital. These instruments will however be subject to stringent conditions and limited to a maximum of 15% of a bank's Tier 1 capital.

1.2 It is the position of the MA that common shareholders' funds, i.e. ordinary shares, retained earnings and disclosed reserves, should be the key elements of capital because they are permanently available to the AI and allow it to absorb losses on an on-going basis. As such, the MA expects AIs to meet their minimum capital adequacy ratios ("CARs") without undue reliance on innovative capital instruments. However, considering that innovative capital instruments enable AIs to expand their sources of core capital and thus enhance their competitiveness, the MA has decided to adopt the Basel Committee's policy on Tier 1 capital.

1.3 This guideline deals specifically with "innovative capital instruments" in the form of non-cumulative preference shares issued indirectly by an AI to third-party investors. Typically, this will be done through a special purpose vehicle ("SPV") with the proceeds being upstreamed to the AI in the form of an inter-company loan. Further types of innovative capital instrument may be included within the scope of this guideline as they are developed. This guideline is broad in nature and it should not be assumed that any feature of an innovative capital instrument not mentioned in the guideline will be approved by the MA. The guideline will be subject to review and further elaboration in the light of experience. However, any instrument approved by the MA will not be subject to exclusion from Core Capital should the relevant guidelines subsequently change.

2. Qualifying conditions

2.1 Basic features

2.1.1 Innovative capital instruments will be limited to a maximum of 15% of an AI's total Core Capital. AIs should consult the MA and obtain his approval before the issuance of such instruments. In accordance with the recommendations of the Basel Committee, the instruments must fulfil the following minimum requirements:

Instruments Eligible for Inclusion in Core Capital

- issued and fully paid;
- non-cumulative;
- able to absorb losses within the AI on a going-concern basis;
- junior to depositors, general creditors and subordinated debt of the AI;
- permanent;
- neither be secured nor covered by a guarantee of the AI or related entity or other arrangement that legally or economically enhances the seniority of the claim vis-à-vis the AI's creditors;
- callable at the initiative of the AI only after a minimum of five years with prior approval by the MA and under the condition that it will be replaced with capital of same or better quality unless the MA determines that the AI has capital that is more than adequate in relation to its risks;
- the main features of such instruments must be easily understood and publicly disclosed;
- proceeds must be immediately available without limitation to the AI;
- the AI must have discretion over the amount and timing of distributions, subject only to prior waiver of distributions on the AI's common stock and the AI must have full access to waived payments;
- distributions can only be paid out of distributable items; where distributions are preset they may not be reset based on the credit standing of the AI; and
- the inter-company loan from the SPV to the AI must match substantially the terms and conditions of the preference shares issued by the SPV. The terms of the inter-company loan must not compromise the Tier 1 qualities of the underlying instrument. This means, inter alia, that failure to make payments on the loan or meet covenants must not cause acceleration of repayment and the loan must be

subordinated to depositors, other creditors and subordinated debt.

2.2 Loss absorption

2.2.1 As one of the components of the AI's core capital, an innovative capital instrument should be available to absorb the AI's losses on an on-going basis without triggering the start of insolvency proceedings, and well before serious deterioration in the AI's financial position.

2.2.2 When any of the following trigger event occurs, mandatory conversion should be exercised to convert an innovative capital instrument into ordinary shares or irredeemable non-cumulative preference shares issued directly by the AI:

(a) the MA determines in writing that the AI has a CAR, calculated in accordance with the provisions set out in the Third Schedule to the Ordinance, of less than 8%. The MA may, at its discretion, allow a grace period of no more than 6 months for the AI to bring its CAR to a level above 8%. During such period, the mandatory conversion mechanism need not be triggered;

(b) a winding up petition against the AI is presented to the court; or

(c) the MA exercises his powers under section 52 of the Ordinance to appoint a Manager of the AI.

2.2.3 The rate of conversion must be fixed at the time of subscription to the instrument.

2.3 Step-up restrictions

2.3.1 Moderate step-ups in the instruments are permitted in conjunction with a call option only if the moderate step-up occurs at a minimum of 10 years after the issue date and if it results in an increase over the initial rate that is no greater than either:

- 100 basis points, less the swap spread between the initial index basis and the stepped-up index basis; or

- 50 percent of the initial credit spread, less the swap spread between the initial index basis and the stepped-up index basis.

2.3.2 The terms of the instrument should provide for no more than one rate step-up over the life of the instrument. The swap spread should be fixed as of the pricing date and reflect the differential in pricing on that date between the initial reference security or rate and the stepped-up reference security or rate.

3. Consolidation for capital adequacy

3.1 The preference shares issued by the SPV will be treated as minority interests for the purposes of calculating an AI's consolidated CAR.[1] For the purposes of section 98 of the Ordinance, with the consent of the MA, an AI may also calculate a "solo-consolidated" capital ratio. This would replace the need for the AI to calculate an unconsolidated ratio.

3.2 For the purposes of this guideline, an SPV may only be solo-consolidated with an AI if the following conditions are satisfied:

(a) the ordinary share capital of the SPV is wholly owned by the AI and it is in full control of the voting rights;

(b) the SPV is wholly managed by the AI;

(c) the sole purpose of the SPV is to issue the preference shares, the entire proceeds of which are on-lent to the AI;

(d) the SPV has no external creditors; and

(e) the preference shares issued by the SPV comply with all other requirements under this guideline.

Monetary Authority
October 2000

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1 This is subject to confirmation from the AI's auditors that the same treatment will be applied for the purposes of the AI's consolidated financial statements.

可列作核心資本的
合資格票據

目的

列明在《銀行業條例》(條例)第XVII部有關資本充足比率的規定下，認可機構將創新資本票據列作第I類——核心資本的一般規定及符合條件

類別

金融管理專員根據條例第16（10）條發出的法定指引

取代舊有指引

本指引是全新制定

適用範圍

所有本地註冊的認可機構

結構

1. 引言
2. 符合條件
   2.1 基本特性
   2.2 緩衝作用
   2.3 遞升息率的限制
3. 綜合計算資本充足比率

可列作核心資本的

合資格票據

1. 引言

1.1 巴塞爾銀行監管委員會(巴塞爾委員會)於1998年10月宣布可以有限度地接受將創新資本票據列入第1級資本範圍內。這類票據必須符合嚴格規定，其所佔銀行第1級資本的比率亦不得超過15%的上限。

1.2 金融管理專員認爲，由於普通的股東資金(即普通股、滾存盈餘和已公布儲備)可供認可機構永久支配使用，並持續地爲認可機構發揮着緩衝虧損的作用，理應作爲資本的主要組成部分。基於這個原因，金融管理專員認爲各認可機構不應過分依賴創新資本票據，以符合最低資本充足比率。然而，鑑於認可機構可利用創新資本票據來擴大核心資本來源，從而提高競爭能力，金融管理專員已決定採納巴塞爾委員會此項第1級資本的政策。

1.3 本指引具體針對的「創新資本票據」，是認可機構向第三方投資者間接發行的非累積的優先股。一般來說，認可機構會透過一家特定目的的工具發行這類票據，而所收集的資金將會再由這個工具以公司間貸款的形式轉入該認可機構手中。若市場日後再有發展其他種類的創新資本票據，亦有可能被列入本指引的範圍內。本指引範圍概括，因此認可機構不應假設一些在本指引未有提及的創新資本票據的特性，都會一律獲得金融管理專員同意。金融管理專員將會根據實際經驗不時對本指引作出檢討和進一步的說明。然而，即使日後有關指引進行修改，任何已徵得金融管理專員同意的票據都不會被摒出核心資本範圍。

2. 符合條件

2.1 基本特性

2.1.1 創新資本票據所佔認可機構核心資本總額的比率不得超過15%的上限。認可機構發行這類票據前，應先徵詢金融管理專員的意見，並取得其同意。根據巴塞爾委員會的建議，這些票據必須符合下列的最低要求：

- 已發行和繳足股款；
- 非累積的；

可列作核心資本的

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- 能持續發揮緩衝認可機構虧損的作用；
- 償還次序排在存款客戶、一般債權人和後償債項之後；
- 具有永久性質；
- 認可機構本身或其關連單位並沒有透過擔保書或其他安排，以使有關債權在法律上或經濟上的償還次序排在其他債權人之前；
- 認可機構要贖回票據，只可在最少5年後進行。認可機構須主動提出贖回要求，並事先徵得金融管理專員批準。除非金融管理專員認為該認可機構的資本額已能足夠承受有關風險，否則認可機構亦須以同等或更高質素的資本取代被贖回的票據；
- 有關票據的主要特性必須容易明白並公開披露；
- 所籌集資金必須立即、並在無任何限制的情況下供認可機構支配使用；
- 該認可機構必須有權決定分派股息的數額和時間，但為此認可機構必須事先豁免派發其普通股的股息，而認可機構更可以全權支配豁免派發的款項；
- 認可機構只可利用可分配項目進行派息；若派息數額預先設定，將不可因認可機構的信貸狀況有變而進行調整；
- 特定目的的工具向認可機構提供公司間貸款時，有關的條款大體上必須與其發行優先股的相符。該公司間貸款的條款不得影響相關票據作為第1級資本的特質。換言之，即使認可機構無法償還該貸款或履行合約條件，該貸款的償還次序亦不得提前，而是必須排在存款客戶、其他債權人和後償債項之後。

2.2 緩衝作用

2.2.1 作為認可機構核心資本的一個組成部分，創新資本票據須隨時、並持續地在不至引發展開無力償債訴訟的情況下，和遠在認可機構財政狀

況出現嚴重惡化前，爲認可機構發揮着緩衝虧損的作用。

2.2.2 若出現下列任何一種情況，認可機構必須遵守強制性轉換規定，將創新資本票據換作認可機構直接發行的普通股或不可贖回、非累積的優先股：

(a) 金融管理專員以書面形式確定，認可機構按照條例附表3所述條款計算的資本充足比率低於8%。金融管理專員可酌情決定給予認可機構不超過6個月的寬限期，使資本充足比率回復至8%以上的水平。在此期間，強制性轉換機制無需執行；

(b) 有關方面已向法庭提出認可機構的清盤申請；或

(c) 金融管理專員根據條例第52條行使權力，委任一人爲該認可機構的經理人。

2.2.3 轉換比率必須於認購票據時確定。

2.3 遞升息率的限制

2.3.1 認可機構可在有贖回權的情況下適度遞升票據的息率，但遞升行動必須在票據發行日期後最少10年進行。若經遞升後之息率較最初息率爲高，則其高出的幅度不得超過：

- 100基點，減去最初指數基準與遞升後的指數基準之間的掉期差距；或
- 最初信貸差距的50%，減去最初指數基準與遞升後的指數基準之間的掉期差距。

2.3.2 票據應訂明票據期限內息率遞升不得超過一次的條款。掉期差距應於定價日確定，並能反映當日最初參考證券或參考息率與遞升參考證券或息率之間的差距。

3. 綜合計算資本充足比率

3.1 在計算認可機構的綜合資本充足比率時[1]，特定目的的工具發行的優先股將視作少數權益處理。就條例第98條而言，認可機構在徵得金融管理專員同意後亦可以單一綜合方式計算資本充足比率。此舉使認可機構無需再以非綜合方式計算該比率。

3.2 就本指引而言，特定目的的工具必須符合以下條件，才可與有關認可機構以單一綜合方式處理：

(a) 該特定目的的工具的普通股本由該認可機構全資擁有，並對投票權有全部控制權；

(b) 該特定目的的工具由該認可機構全權管理；

(c) 該特定目的的工具的唯一目的是發行有關優先股，而所收集的資金將會全數轉借給有關認可機構；

(d) 該特定目的的工具並無任何外來債權人；及

(e) 該特定目的的工具發行的優先股均符合本指引的所有其他規定。

金融管理專員

2000 年 10月

[1] 若以綜合形式計算資本充足比率，認可機構必須得到審計師確認，證明該認可機構的綜合財務報表亦會採用同樣的處理方法。