Annex

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Banking (Disclosure) (Amendment) Rules 2013

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Banking (Disclosure) (Amendment) Rules 2013

(Made by the Monetary Authority under section 60A of the Banking Ordinance (Cap. 155) after consultation with the Financial Secretary, the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The DTC Association)

1. Commencement

These Rules come into operation on 30 June 2013.

2. Banking (Disclosure) Rules amended

The Banking (Disclosure) Rules (Cap. 155 sub. leg. M) are amended as set out in sections 3 to 28.

3. Section 2 amended (interpretation)

(1) Section 2(1)—

Repeal the definition of *available-for-sale*

Substitute

"***available-for-sale*** (可供出售)—

(a) in relation to financial assets other than derivative contracts, means that the financial assets—

(i) are designated by an authorized institution as available for sale;

(ii) are not classified by an authorized institution as—

(A) loans and receivables; or

(B) financial assets at fair value through profit or loss; or

(iii) are not classified by an authorized institution as held to maturity investments;

(b) in relation to financial instruments other than derivative contracts, means that the financial instruments—

(i) are designated by an authorized institution as available for sale;

(ii) are not classified by an authorized institution as—

(A) loans and receivables; or

(B) financial instruments at fair value through profit or loss; or

(iii) are not classified by an authorized institution as held to maturity investments; or

(c) in relation to loans, means that the loans are designated by an authorized institution upon initial recognition as available for sale;".

(2) Section 2(1), definition of ***capital requirements***, paragraph (a)—

Repeal

"or 6,"

Add

"or 6 or Division 4 of Part 6A,".

(3) Section 2(1)—

Repeal the definition of *debt securities*

Substitute

"***debt securities*** (債務證券) means any negotiable securities other than loan capital, shares, stocks, certificates of deposit or import or export trade bills;".

(4) Section 2(1), definition of ***surplus provisions***—

Repeal

"supplementary capital"

Substitute

"Tier 2 capital".

(5) Section 2(1)—

(a) definition of ***consolidation requirement***;

(b) definition of ***issued debt securities***—

Repeal the definitions.

(6) Section 2(1)—

Add in alphabetical order

"***general wrong-way risk*** ( ) means the risk that arises when the probability of default of a counterparty is positively correlated with general market risk factors;

specific wrong-way risk (特定錯向風險) has the meaning given by section 226A of the Capital Rules;".

4. Section 5 amended (disclosure policy)

Section 5(a)(i)(A)—

Repeal

"profit and loss or capital adequacy ratio;"

Substitute

"including its profit and loss and its financial resources (including capital resources and liquidity resources);".

5. Section 6 amended (medium and location of disclosure and issue of press release)

(1) Section 6(1)—

Repeal

"and (3),"

Substitute

"and (3) and sections 24(5) and (6) and 45(5) and (6),".

(2) After section 6(1)(a)—

Add

"(ab) presenting the information required to be disclosed in the format, and using the standard disclosure templates, specified by the Monetary Authority;".

(3) Section 6(8)—

Repeal

"Where"

Substitute

"Subject to sections 24(4) and (5) and 45(4) and (5), where".

(4) Section 6(9)—

Repeal

"Where"

Substitute

"Subject to sections 24(4) and (5) and 45(4) and (5), where".

(5) After section 6(10)—

Add

"(10A) An authorized institution must—

(a) keep a copy of each of its disclosure statements relating to reporting periods ending on or after 30 June 2013 in readily accessible form; and

(b) if any disclosure statement kept under paragraph (a) contains a prescribed summary, keep a copy of

all the disclosures referred to in the prescribed summary in readily accessible form.".

6. Section 11 amended (consolidated group level disclosures)

(1) Section 11(3)—

Repeal

"profit and loss or capital adequacy ratio,"

Substitute

"including its profit and loss and its financial resources (including capital resources and liquidity resources),".

(2) Section 11(5)—

Repeal

"profit and loss or capital adequacy ratio"

Substitute

"including its profit and loss and its financial resources (including capital resources and liquidity resources),".

7. Section 14 amended (frequency)

(1) Section 14(1)—

Repeal

"An"

Substitute

"Subject to sections 24(6) and 45(6), an".

(2) Section 14(2)—

Repeal

"An"

Substitute

"Subject to sections 24(6) and 45(6), an".

8. Section 15 amended (group-wide disclosures made by parent bank of authorized institution)

Section 15—

Repeal paragraph (b)

Substitute

"(b) the foreign disclosures are prepared in accordance with the prevailing banking supervisory standards relating to disclosure issued by the Basel Committee and adopted by the relevant banking supervisory authority of the parent bank;".

9. Section 18 amended (scope of consolidation)

Section 18—

Repeal paragraph (a)

Substitute

"(a) the basis of consolidation including—

(i) an outline of the differences between the accounting scope of consolidation and the regulatory scope of consolidation;

(ii) a list of—

(A) the institution's subsidiaries (if any) that are included within the accounting scope of consolidation but are not included within the regulatory scope of consolidation;

(B) the institution's subsidiaries (if any) that are included within the regulatory scope of consolidation but are not included within the accounting scope of consolidation; and

(C) the institution's subsidiaries (if any) that are included within both the accounting scope of

consolidation and the regulatory scope of consolidation where the methods of consolidation differ between those 2 scopes, and an explanation of the differences in the 2 consolidation methods;

(iii) if the institution's shareholdings in any of its subsidiaries are deducted from the institution's CET1 capital, a list of such subsidiaries; and

(iv) a description of the principal activities of each of the subsidiaries mentioned in subparagraphs (ii)(A), (B) and (C) and (iii), including the amount of total assets and the amount of total equity reported on the financial statements of each subsidiary; and".

10. Section 24 substituted

Section 24—

Repeal the section

Substitute

"**24. Capital disclosures**

(1) An authorized institution must disclose the following information regarding its capital base as set out in the returns relating to capital adequacy it submitted to the Monetary Authority pursuant to section 63 of the Ordinance in respect of the interim reporting period—

(a) a detailed breakdown of the CET1 capital, Additional Tier 1 capital, Tier 2 capital and regulatory deductions applied pursuant to section 38(2) of the Capital Rules and Division 4 of Part 3 of those Rules to the capital base of the institution, showing which of those items are benefiting from

the transitional provisions set out in Schedule 4H to those Rules;

(b) a full reconciliation of the CET1 capital items, Additional Tier 1 capital items, Tier 2 capital items and regulatory deductions applied pursuant to section 38(2) of the Capital Rules and Division 4 of Part 3 of those Rules to the capital base of the institution and the balance sheet in the published financial statements of the institution;

(c) a description of the main features of the CET1 capital instruments, Additional Tier 1 capital instruments and Tier 2 capital instruments issued by the institution;

(d) the full terms and conditions of all CET1 capital instruments, Additional Tier 1 capital instruments and Tier 2 capital instruments;

(e) separate disclosure of the nature and amounts of—

(i) each regulatory deduction applied pursuant to section 38(2) of the Capital Rules and Division 4 of Part 3 of those Rules to the capital base of the institution (reported separately for CET1 capital, Additional Tier 1 capital and Tier 2 capital, as the case requires); and

(ii) items not deducted from CET1 capital pursuant to section 43(1)(o) and (p) of the Capital Rules;

(f) a description of all limits and minima applied to the calculation of the capital base of the institution in accordance with the Capital Rules and the instruments and regulatory deductions to which those limits or minima, as the case may be, apply;

(g) where the institution discloses capital ratios calculated using elements of capital determined on a basis other than that laid down in the Capital Rules, a comprehensive explanation of the basis on which those capital ratios are calculated.

(2) For the purposes of section 6(1)(ab), an authorized institution must make the disclosures required by subsection (1)(a), (b), (c), (e) and (f) by using the standard disclosure templates specified by the Monetary Authority.

(3) An authorized institution must either—

(a) include the standard disclosure templates applicable to its disclosures in the interim financial statements published by it; or

(b) provide a direct link in its interim financial statements to the relevant sections of its website where the standard disclosure templates referred to in paragraph (a) can be found.

(4) An authorized institution must establish and maintain an archive of—

(a) all disclosures made by the institution under subsection (1)(a), (b), (e), (f) and (g) that relate to reporting periods ending on or after 30 June 2013; and

(b) all disclosures made by the institution under subsection (1)(c) and (d) for a period that corresponds to the remaining life of the capital instrument concerned.

(5) Subject to subsection (6) and unless otherwise approved by the Monetary Authority, an authorized institution

must make available on its website the full terms and conditions of all instruments included in its capital base.

(6) Whenever—

(a) a new capital instrument is issued and included in an authorized institution's capital base; or

(b) there is a redemption, conversion or write-down, or other material change, in the nature of a capital instrument included in an authorized institution's capital base,

the institution must, as soon as is practicable, update the disclosures it has made under subsection (5) in order to take account of that new capital instrument, or that redemption, conversion or write-down, or other material change, as the case may be.

(7) An authorized institution must disclose the total amount of any relevant capital shortfall in any of its subsidiaries that are outside the regulatory scope of consolidation.

(8) Subject to subsections (9) and (10), an authorized institution must disclose its—

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio.

(9) Where an authorized institution is required under section 3C of the Capital Rules to calculate its capital adequacy ratio on a consolidated basis, the institution must disclose its—

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio,

calculated, in each case, on a consolidated basis.

(10) Where subsection (9) does not apply to an authorized institution, the institution must disclose its—

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio,

calculated, in each case, on a solo basis or solo-consolidated basis, as the case requires.

(11) Where an authorized institution has earmarked part of its retained earnings for maintaining its regulatory reserve for general banking risks to satisfy the provisions of the Ordinance for prudential supervision purposes, the institution must disclose—

(a) this fact; and

(b) the amount of retained earnings so earmarked.

(12) In this section—

relevant capital shortfall ( ), in relation to a subsidiary of an authorized institution—

(a) that is a securities firm or insurance firm; and

(b) that is not the subject of consolidation under a section 3C requirement,

means the amount that is deducted from the institution's CET1 capital pursuant to section 43(1)(k) of the Capital Rules.".

11. Section 32 amended (interpretation of Part 4)

Section 32—

(a) definition of ***forecast transaction***;

(b) definition of ***highly probable forecast transaction***—

Repeal the definitions.

12. Section 33 amended (scope of consolidation)

Section 33—

Repeal paragraph (a)

Substitute

"(a) the basis of consolidation including—

(i) an outline of the differences between the accounting scope of consolidation and the regulatory scope of consolidation;

(ii) a list of—

(A) the institution's subsidiaries (if any) that are included within the accounting scope of consolidation but are not included within the regulatory scope of consolidation;

(B) the institution's subsidiaries (if any) that are included within the regulatory scope of consolidation but are not included within the accounting scope of consolidation; and

(C) the institution's subsidiaries (if any) that are included within both the accounting scope of consolidation and the regulatory scope of consolidation where the methods of consolidation differ between those 2 scopes, and an explanation of the differences in the 2 consolidation methods;

(iii) if the institution's shareholdings in any of its subsidiaries are deducted from the institution's CET1 capital, a list of such subsidiaries; and

(iv) a description of the principal activities of each of the subsidiaries mentioned in subparagraphs (ii)(A), (B) and (C) and (iii), including the amount of total assets and the amount of total equity

reported on the financial statements of each subsidiary; and".

13. Section 40 amended (hedge accounting)

Section 40(2)(e)—

Repeal

"forecast transaction"

Substitute

"uncommitted but anticipated future transaction".

14. Section 45 substituted

Section 45—

Repeal the section

Substitute

"**45. Capital disclosures**

(1) An authorized institution must disclose the following information regarding its capital base as set out in the returns relating to capital adequacy it submitted to the Monetary Authority pursuant to section 63 of the Ordinance in respect of the annual reporting period—

(a) a detailed breakdown of the CET1 capital, Additional Tier 1 capital, Tier 2 capital and regulatory deductions applied pursuant to section 38(2) of the Capital Rules and Division 4 of Part 3 of those Rules to the capital base of the institution, showing which of those items are benefiting from the transitional provisions set out in Schedule 4H to those Rules;

(b) a full reconciliation of the CET1 capital items, Additional Tier 1 capital items, Tier 2 capital items

and regulatory deductions applied pursuant to section 38(2) of the Capital Rules and Division 4 of Part 3 of those Rules to the capital base of the institution and the balance sheet in the published financial statements of the institution;

(c) a description of the main features of the CET1 capital instruments, Additional Tier 1 capital instruments and Tier 2 capital instruments issued by the institution;

(d) the full terms and conditions of all CET1 capital instruments, Additional Tier 1 capital instruments and Tier 2 capital instruments;

(e) separate disclosure of the nature and amounts of—

(i) each regulatory deduction applied pursuant to section 38(2) of the Capital Rules and Division 4 of Part 3 of those Rules to the capital base of the institution (reported separately for CET1 capital, Additional Tier 1 capital and Tier 2 capital, as the case requires); and

(ii) items not deducted from CET1 capital pursuant to section 43(1)(o) and (p) of the Capital Rules;

(f) a description of all limits and minima applied to the calculation of the capital base of the institution in accordance with the Capital Rules and the instruments and regulatory deductions to which those limits or minima, as the case may be, apply; and

(g) where the institution discloses capital ratios calculated using elements of capital determined on a basis other than that laid down in the Capital

Rules, a comprehensive explanation of the basis on which those capital ratios are calculated.

(2) For the purposes of section 6(1)(ab), an authorized institution must make the disclosures required by subsection (1)(a), (b), (c), (e) and (f) by using the standard disclosure templates specified by the Monetary Authority.

(3) An authorized institution must either—

(a) include the standard disclosure templates applicable to its disclosures in the annual financial statements published by it; or

(b) provide a direct link in its annual financial statements to the relevant sections of its website where the standard disclosure templates referred to in paragraph (a) can be found.

(4) An authorized institution must establish and maintain an archive of—

(a) all disclosures made by the institution under subsection (1)(a), (b), (e), (f) and (g) that relate to reporting periods ending on or after 30 June 2013; and

(b) all disclosures made by the institution under subsection (1)(c) and (d) for a period that corresponds to the remaining life of the capital instrument concerned.

(5) Subject to subsection (6) and unless otherwise approved by the Monetary Authority, an authorized institution must make available on its website the full terms and conditions of all instruments included in its capital base.

(6) Whenever—

(a) a new capital instrument is issued and included in an authorized institution's capital base; or

(b) there is a redemption, conversion or write-down, or other material change, in the nature of a capital instrument included in an authorized institution's capital base,

the institution must, as soon as is practicable, update the disclosures it has made under subsection (5) in order to take account of that new capital instrument, or that redemption, conversion or write-down, or other material change, as the case may be.

(7) An authorized institution must disclose the total amount of any relevant capital shortfall in any of its subsidiaries that are outside the regulatory scope of consolidation.

(8) Subject to subsections (9) and (10), an authorized institution must disclose its—

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio.

(9) Where an authorized institution is required under section 3C of the Capital Rules to calculate its capital adequacy ratio on a consolidated basis, the institution must disclose its—

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio,

calculated, in each case, on a consolidated basis.

(10) Where subsection (9) does not apply to an authorized institution, the institution must disclose its—

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio,

calculated, in each case, on a solo basis or solo-consolidated basis, as the case requires.

(11) Where an authorized institution has earmarked part of its retained earnings for maintaining its regulatory reserve for general banking risks to satisfy the provisions of the Ordinance for prudential supervision purposes, the institution must disclose—

(a) this fact; and

(b) the amount of retained earnings so earmarked.

(12) In this section—

relevant capital shortfall ( ), in relation to a subsidiary of an authorized institution—

(a) that is a securities firm or insurance firm; and

(b) that is not the subject of consolidation under a section 3C requirement,

means the amount that is deducted from the institution's CET1 capital pursuant to section 43(1)(k) of the Capital Rules.".

15. Section 52 amended (corporate governance)

(1) Section 52(b), after "Institutions";"—

Repeal

"and".

(2) After section 52(b)—

Add

"(ba) the extent of its compliance with Part 3 (Disclosure on remuneration) of the Supervisory Policy Manual module

CG — 5 issued by the Monetary Authority and entitled "Guideline on a Sound Remuneration System; and".

(3) Section 52(c)—

Repeal

"referred to in paragraph (b)"

Substitute

"mentioned in paragraph (b) or the guideline mentioned in paragraph (ba)".

16. Section 54 amended (interpretation of Part 5)

Section 54—

Repeal

"51"

Substitute

"51(1)".

17. Section 57 amended (credit risk: specific disclosures)

(1) Section 57(d), after "equivalent amount"—

Add

"or default risk exposure".

(2) Section 57(f)—

Repeal

"deducted from the institution's core capital and supplementary capital"

Substitute

"that are risk-weighted at 1,250%".

18. Section 58 amended (general disclosures for counterparty credit risk-related exposures)

(1) Section 58(1)—

Repeal

"OTC derivative transactions, repo-style transactions and credit derivative contracts (other than recognized credit derivative contracts)"

Substitute

"securities financing transactions and derivative contracts".

(2) Section 58(1)(a), after "exposures;"—

Repeal

"and".

(3) Section 58(1)(b)—

Repeal

"provisions."

Substitute

"provisions;".

(4) After section 58(1)(b)—

Add

"(c) its policies with respect to exposures that give rise to general wrong-way risk or specific wrong-way risk; and

(d) the impact on it in terms of the amount of collateral that it would have to provide if there were a downgrade in its credit rating.".

(5) Section 58—

Repeal subsection (3)

Substitute

"(3) An authorized institution must disclose, in respect of the relevant transactions—

(a) the gross total positive fair value of the relevant transactions that are not securities financing transactions;

(b) the default risk exposures, after taking into account the effect of any valid bilateral netting agreements, for the relevant transactions that are not securities financing transactions;

(c) the default risk exposures, after taking into account the effect of any valid bilateral netting agreements, for the relevant transactions that are repo-style transactions;

(d) the default risk exposures, after taking into account the effect of any valid cross-product netting agreements, for the relevant transactions;

(e) the recognized collateral (broken down by type of collateral) held by the institution for the relevant transactions;

(f) the default risk exposures, after taking into account the effect of any recognized collateral, for the relevant transactions;

(g) the respective risk-weighted amounts for the relevant transactions;

(h) the notional amounts of recognized credit derivative contracts that provide credit protection for the relevant transactions; and

(i) the breakdown of the institution's default risk exposures and the risk-weighted amount of the default risk exposures for each type of relevant

transaction and for each of the current exposure method and the IMM(CCR) approach.".

(6) Section 58—

Repeal subsection (5).

19. Section 60 amended (asset securitization)

(1) Section 60(1)(i)—

Repeal

"related companies (within the meaning of section 35 of the Capital Rules)

Substitute

"affiliates".

(2) Section 60(1)(u)—

Repeal

"core capital"

Substitute

"CET1 capital".

(3) Section 60(1)(v)—

Repeal

"have been deducted from the institution's core capital and supplementary capital"

Substitute

"the institution has allocated a risk-weight of 1,250%".

20. Section 61 amended (market risk)

Section 61(3)(b)(i)—

Repeal

"316(3)"

Substitute

"4A".

21. Section 63 amended (equity exposures: disclosures for banking book positions)

Section 63(c)—

Repeal subparagraph (ii)

Substitute

"(ii) the total unrealized gains recognized in, or unrealized losses deducted from, the institution's retained earnings (or reserves) but not passing through the profit or loss account.".

22. Section 69 amended (asset securitization)

Section 69(1)(k)—

Repeal

"core capital and supplementary capital"

Substitute

"CET1 capital or allocated a risk-weight of 1,250%".

23. Section 70 amended (market risk)

Section 70(3)(b)(i)—

Repeal

"316(3)"

Substitute

"4A".

24. Section 80 amended (general disclosures for counterparty credit risk-related exposures)

(1) Section 80(1)—

Repeal

"OTC derivative transactions, repo-style transactions and credit derivative contracts (other than recognized credit derivative contracts)"

Substitute

"securities financing transactions and derivative contracts".

(2) Section 80(1)(a), after "exposures;"—

Repeal

"and".

(3) Section 80(1)(b)—

Repeal

"provisions."

Substitute

"provisions;".

(4) After section 80(1)(b)—

Add

"(c) its policies with respect to exposures that give rise to general wrong-way risk or specific wrong-way risk; and

(d) the impact on it in terms of the amount of collateral that it would have to provide if there was a downgrade in its credit rating.".

(5) Section 80—

Repeal subsection (3)

Substitute

"(3) An authorized institution must disclose, in respect of the relevant transactions—

(a) the gross total positive fair value of the relevant transactions that are not securities financing transactions;

(b) the default risk exposures, after taking into account the effect of any valid bilateral netting agreements, for the relevant transactions that are not securities financing transactions;

(c) the default risk exposures, after taking into account the effect of any valid bilateral netting agreements, for the relevant transactions that are repo-style transactions;

(d) the default risk exposures, after taking into account the effect of any valid cross-product netting agreements, for the relevant transactions;

(e) the recognized collateral (broken down by type of collateral) held by the institution for the relevant transactions;

(f) the default risk exposures, after taking into account the effect of any recognized collateral, for the relevant transactions;

(g) the respective risk-weighted amounts for the relevant transactions;

(h) the notional amounts of recognized credit derivative contracts that provide credit protection for the relevant transactions; and

(i) the breakdown of the institution's default risk exposures and the risk-weighted amount of the default risk exposures for each type of relevant

transaction and for each of the current exposure method and the IMM(CCR) approach.".

(6) Section 80—

Repeal subsection (5).

25. Section 82 amended (asset securitization)

(1) Section 82(1)(i)—

Repeal

"related companies (within the meaning of section 35 of the Capital Rules)"

Substitute

"affiliates".

(2) Section 82(1)(u)—

Repeal

"core capital"

Substitute

"CET1 capital".

(3) Section 82(1)(v)—

Repeal

"have been deducted from the institution's core capital and supplementary capital"

Substitute

"the institution has allocated a risk-weight of 1,250%".

26. Section 83 amended (market risk)

Section 83(2)(b)(i)—

Repeal

"316(3)"

Substitute

"4A".

27. Section 85 amended (equity exposures: disclosures for banking book positions)

Section 85(c)—

Repeal subparagraph (ii)

Substitute

"(ii) the total unrealized gains recognized in, or unrealized losses deducted from, the institution's retained earnings (or reserves) but not passing through the profit and loss account.".

28. Section 105 amended (capital and capital adequacy)

(1) Section 105(a)—

Repeal subparagraphs (i) and (ii)

Substitute

"(i) the prevailing banking supervisory standards relating to capital adequacy issued by the Basel Committee and adopted by the relevant banking supervisory authority of the jurisdiction in which the institution is incorporated; or

(ii) any other standards that are substantially similar to those described in subparagraph (i),".

(2) Section 105(b)—

Repeal

"document or Directive"

Substitute

"standards".

Monetary Authority

2013

Explanatory Note

These Rules are made by the Monetary Authority under section 60A of the Banking Ordinance (Cap. 155) as amended by the Banking (Amendment) Ordinance 2012 (3 of 2012), and amend the Banking (Disclosure) Rules (Cap. 155 sub. leg. M) (***principal Rules***).

2. The main purpose of the Rules is to incorporate into the principal Rules—

(a) Pillar 3 disclosures (basically, the public disclosure of prudential information) specific for authorized institutions using the internal model approach to calculate capital requirements for counterparty credit risk exposures as set out in Table 8 (general disclosures for exposures related to counterparty credit risk) to the document entitled "International Convergence of Capital Measurements and Capital Standards — A Revised Framework (Comprehensive Version)" published by the Basel Committee on Banking Supervision (***Basel Committee***) in June 2006;

(b) amendments necessitated by the new disclosure requirements contained in the document entitled "Composition of capital disclosure requirements — Rules text" published by the Basel Committee in June 2012;

(c) amendments necessitated by the amendments made to the Banking Ordinance by the Banking (Amendment) Ordinance 2012 (3 of 2012); and

(d) amendments necessitated by the amendments made to the Banking (Capital) Rules (Cap. 155 sub. leg. L) by the Banking (Capital) (Amendment) Rules 2012 (L.N. 156 of 2012).

3. The Rules come into operation on 30 June 2013.