

立法會
Legislative Council

LC Paper No. CB(1)2079/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/BC/5/04

Bills Committee on Banking (Amendment) Bill 2005

Meeting on
Tuesday, 24 May 2005, at 4:30 pm
in Conference Room B of the Legislative Council Building

- Members present** : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Dr Hon David LI Kwok-po, GBS, JP
Hon SIN Chung-kai, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Bernard CHAN, JP (Deputy Chairman)
Hon CHAN Kam-lam, JP
- Public Officers Attending** : Mr William RYBACK
Deputy Chief Executive
Hong Kong Monetary Authority
- Mr Simon TOPPING
Executive Director (Banking Policy)
Hong Kong Monetary Authority
- Mr Raymond CHAN
Division Head (Banking Development)
Hong Kong Monetary Authority
- Mrs Clarie LO
Deputy Secretary for Financial Services and the Treasury
(Financial Services)
- Mrs Millie NG
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Mr Jonothan ABBOTT
Senior Assistant Law Draftsman
Department of Justice

Mr Sunny CHAN
Senior Government Counsel
Department of Justice

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Anita SIT
Senior Council Secretary (1)9

Action

I Meeting with the Administration

(LC Paper No. LS70/04-05 - Paper on "Powers exercisable by the Monetary Authority in respect of non-compliance with the provisions of the Banking Ordinance on the part of authorized institutions" prepared by Legal Service Division of the Legislative Council Secretariat)

- the Bill;
- Marked-up copy of the Bill (LC Paper No. CB(1)1373/04-05(01)).

The Bills Committee deliberated (index of proceedings attached at **Annex A**). The Bills Committee completed the clause-by-clause examination of the Bill.

Proposal of establishing a new appeals mechanism under the Bill

2. Regarding the tribunal proposal, HKMA and the Administration advised that they were working towards the target of taking on board the proposal in the context of the Bill and aimed at submitting the relevant Committee Stage Amendments (CSAs) to the Bills Committee for consideration in about one week's time. A draft of the relevant CSAs had been prepared and the consultation with the banking industry on the proposal was underway. Separately, the Administration was examining certain issues regarding the consistency of the draft CSAs with the Hong Kong Bill of Rights Ordinance (Cap. 383).

Action

3. The Bills Committee decided that the draft CSAs would be circulated to members once such were received from the Administration, and if necessary, the Bills Committee would convene a meeting to consider the draft CSAs. For this purpose, a meeting was tentatively scheduled for 2 June 2005 at 8:30 am.

II Any other business

4. The Chairman informed members that the Hong Kong Association of Banks had advised that it would not submit any views on the Bill. The Bills Committee was still awaiting the confirmation from the Hong Kong Institute of Certified Public Accountants on whether it would submit views on the Bill.

5. There being no other business, the meeting ended at 5:55 pm.

Council Business Division 1
Legislative Council Secretariat
18 July 2005

**Proceedings of the meeting of Bills Committee on
Banking (Amendment) Bill 2005
Tuesday, 24 May 2005, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Meeting with the Administration</i>			
000000 – 000504	Chairman	- Paper on "Powers exercisable by the Monetary Authority in respect of non-compliance with the provisions of the Banking Ordinance on the part of authorized institutions" (LC Paper No. LS70/04-05)	
000505 – 001317	Mr SIN Chung-kai Administration	<u>Section 1 of Part 1 of the Schedule – Interpretation</u> - Proposed definition of “Tier 1 country” - On proposed new section 2(19), the Administration’s advice that the notice published in the Gazette under this provision would be subsidiary legislation and it was necessary for those banks that were deemed to be multilateral development banks to be listed out	
001318 – 002126	Chairman Mr SIN Chung-kai Administration ALA6	<u>Section 2 of Part 1 of the Schedule – Functions of the Monetary Authority</u> - The Administration’s confirmation that the guidelines to be made under section 7(3) of the Banking Ordinance (BO) (Cap. 155) were not subsidiary legislation - The Administration’s advice that infringement of the guidelines per se was not punishable - ALA6’s advice on the standing arrangement agreed between the Law Draftsman of the Department of Justice and the Legal Service Division of the Legislative Council Secretariat that if there was any doubt on whether an instrument being made and published in the gazette was a piece of subsidiary legislation, it would be expressly stated in the Ordinance if the instrument was not subsidiary legislation - ALA’s advice that it was generally understood that guidelines were not subsidiary legislation	

Time marker	Speaker	Subject(s)	Action required
002127 – 002208	Administration	<u>Section 3 of Part 1 of the Schedule – Interpretation and application</u>	
002209 – 003530	Administration HKMA Mr SIN Chung-kai Hon Ronny TONG	<u>Section 4 of Part 1 of the Schedule – Limitations on advances by authorized institutions</u> <ul style="list-style-type: none"> - The Administration’s confirmation that the proposed substitution of existing section 81(2)(c) with a new provision would not confer additional power on MA - The Administration’s confirmation that the rules to be made by MA under the BO would be subsidiary legislation and would form part of the BO and thus would be included in the Laws of Hong Kong in the normal way - HKMA’s advice that examples of “off-balance sheet items” were derivative contracts held by a bank and commitment to a customer made by a bank that it would advance funds under certain circumstances - HKMA’s advice that the process of formulating the rules made under the BO would be highly open and transparent 	
003531 – 003700	Administration HKMA Mr SIN Chung-kai	<u>Section 5 of Part 1 of the Schedule – Appeals</u> <ul style="list-style-type: none"> - HKMA’s confirmation that the decisions referred to in proposed section 132A(1)(fc) were those decisions to which the proposed new appeals mechanism would apply 	
003701 – 003710	Administration	<u>Section 6 of Part 1 of the Schedule – Power to amend Schedules</u>	
003711 – 003725	Administration	<u>Section 7 of Part 1 of the Schedule – Capital adequacy ratio</u>	
003726 – 003800	Administration	<u>Section 8 of Part 1 of the Schedule – Liquidity ratio Subsection (1)</u>	
003801 – 003930	HKMA Mr SIN Chung-kai Chairman	<u>Section 5 of Part 1 of the Schedule – Appeals</u> <ul style="list-style-type: none"> - The Administration’s advice that according to proposed section 132A(1A), those rules to be made under section 98A(1) could specify which decisions of MA made in the exercise of the power conferred on it by the rules would be subject to appeal 	

Time marker	Speaker	Subject(s)	Action required
003931 – 004844	Administration Mr SIN Chung-kai ALA6 HKMA	<p><u>Section 8 of Part 1 of the Schedule – Liquidity ratio Subsections (2) and (3)</u></p> <ul style="list-style-type: none"> - HKMA’s confirmation that the “notice in the Gazette” under proposed section 1A of the Fourth Schedule would be subsidiary legislation - ALA6’s advice that since the “notice in the Gazette” under proposed section 1A of the Fourth Schedule would be subsidiary legislation, such notice would be subject to negative vetting of the Legislative Council - HKMA’s advice on the reason for conferring on MA the power to specify “public sector entities” for the purpose of the Fourth Schedule - HKMA’s advice that the list of public sector entities in Hong Kong specified by MA would continue to be appended to the BO 	
004845 – 005000	Administration	<u>Section 9 of Part 1 of the Schedule – Minimum criteria for authorization</u>	
005001 – 005020	Administration	<u>Section 10 of Part 1 of the Schedule – Minimum criteria for approval as money broker</u>	
005021- 005044	Administration	<u>Section 11 of Part 1 of the Schedule – Repeal</u>	
005041 – 005115	Administration	<u>Section 12 of Part 1 of the Schedule – Repeal</u>	
005116 – 005200	Administration	<u>Section 1 of Part 2 of the Schedule – Preferential payments</u>	
005201 – 005212	Administration	<u>Section 2 of Part 2 of the Schedule – Deposits specified for purposes of definitions of “protected deposit” and “relevant deposit” in section 2(1) of this Ordinance</u>	
005213 – 005442	Administration	Part 3 of the Bill <u>Clause 7 – Interpretation</u>	
005443 – 005610	Administration	<u>Clause 8 – Revocation of authorization</u>	

Time marker	Speaker	Subject(s)	Action required
005611 – 010856	HKMA Mr SIN Chung-kai Chairman Administration ALA6	<p><u>Clause 9 – Disciplinary action in respect of relevant individuals</u></p> <ul style="list-style-type: none"> - Mr SIN’s query on why under proposed section 58A(4A), MA “may” disclose instead of “shall” disclose to the public details of the decision he had made under section 58A(1) - HKMA’s advice that the purpose of Clause 9 was to provide MA with similar powers as the Securities and Futures Commission (SFC) with regard to disclosure of disciplinary decisions. This would be conducive to ensuring a level playing field between the securities business of AIs and that of the securities industry - Mr SIN’s comment that SFC maintained on its website a record of disciplinary records covering all the intermediaries licensed by SFC for the past five years. If MA was to be empowered to publish his disciplinary decisions, the public would rightly expect that he would publish all such decisions as far as possible - The Administration’s advice that – <ul style="list-style-type: none"> (a) the corresponding provision in the Securities and Futures Ordinance (Cap. 571) was constructed in the same manner as proposed section 58A(4A), i.e. SFC “may” disclose, not “shall” disclose, its disciplinary decisions (b) at present, MA might update the public register maintained under section 20 of the BO by including a record of any public disciplinary action taken by him against a relevant individual or an executive officer. The public register could be accessed on the website of HKMA. However, MA was precluded by section 120 of the BO from publishing the facts and findings of each case in relation to the disciplinary action taken by him against a relevant individual or executive officer. - ALA6’s advice that HKMA and SFC had signed a memorandum specifying that they would adopt the same policy in respect of, 	

Time marker	Speaker	Subject(s)	Action required
		inter alia, the disclosure of information relating to employees engaged in the securities business of AIs and of the intermediaries licensed by SFC	
010857– 011259	Administration	<u>Clauses 10 to 14</u>	
<i>Agenda Item II – Any other business</i>			
011300 – 012309	Chairman Mr SIN Chung-kai Administration HKMA ALA6	<ul style="list-style-type: none"> - Progress of the tribunal proposal - Date of meeting 	

Council Business Division 1
Legislative Council Secretariat
 18 July 2005