

立法會
Legislative Council

LC Paper No. CB(1)2080/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/BC/5/04

Bills Committee on Banking (Amendment) Bill 2005

Meeting on
Thursday, 2 June 2005, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Bernard CHAN, JP (Deputy Chairman)
Dr Hon David LI Kwok-po, GBS, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
- Public Officers Attending** : Mr Simon TOPPING
Executive Director (Banking Policy)
Hong Kong Monetary Authority
- Ms Rose LUK
Head (Banking Policy Division)
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

- the Bill;
- Draft Committee Stage amendments proposed by the Administration (LC Paper No. CB(1)1670/04-05(01));
- Marked-up copy of the proposed Committee Stage amendments prepared by the Administration (LC Paper No. CB(1)1692/04-05(01)); and
- 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 scrutiny of the English version of the Committee Stage amendments (CSAs) proposed in LC Paper No. CB(1)1670/04-05(01). The Administration undertook to provide the final version of the proposed CSAs to the Bills Committee as soon as possible. The Legal Adviser was requested to examine the drafting aspects of the Chinese version of the proposed CSAs upon receipt of such from the Administration. The Bill Committee agreed that the final version of the proposed CSAs could be sent to Members of the Bills Committee for consideration by circulation.

II Any other business

Report to the House Committee

2. The Bills Committee agreed that it would report its deliberation to the House Committee on 17 June 2005, recommending the resumption of the Second Reading debate on the Bill on 6 July 2005.
3. There being no other business, the meeting ended at 10:30 am.

**Proceedings of the meeting of Bills Committee on
Banking (Amendment) Bill 2005
Thursday, 2 June 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Meeting with the Administration</i>			
000217 – 000356	Chairman	Opening remarks	
000357 – 000834	Administration Mr Ronny TONG	<p>Draft Committee Stage amendments relating to Capital Adequacy Review Tribunal</p> <ul style="list-style-type: none"> - Proposed new section 98A(3A) - <u>Proposed new part XVIIIA – Capital Adequacy Review Tribunal</u> - Proposed new section 101A - Mr TONG commended Hong Kong Monetary Authority (HKMA) and the Administration for their willingness to accept members’ suggestion of setting up a new appeals mechanism under the Bill and for the efficacy of the work done in this regard. 	
000835 – 001236	Administration	<ul style="list-style-type: none"> - Proposed new sections 101B, 101C, 101D, 101E - Administration’s advice that the phrase “For the avoidance of doubt,” would be added at the beginning of subsection (3) of proposed new section 101E 	
001237 – 003059	Administration Mr SIN Chung-kai Mr Ronny TONG Chairman HKMA Dr David LI	<ul style="list-style-type: none"> - Proposed new section 101F - In reply to Mr SIN’s enquiry, the Administration advised that the question as to whether a tribunal should hold its sittings in private or in public was decided on a case-by-case basis. In the case of the proposed Review Tribunal (RT), proposed section 101F(1) provided that “the sittings of the Review Tribunal shall be held in private.” - Mr TONG commented that whilst he understood that in most cases, there was a need for the sittings of the RT to be held in private, it might be desirable to impart a certain extent of flexibility to the Tribunal, and this could be done by slightly amending 	

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		<p>proposed new section 101F(1), e.g. by rephrasing it as “<i>Subject to the direction of the Review Tribunal, the sittings of the Review Tribunal shall be held in private.</i>”</p> <ul style="list-style-type: none"> - In reply to Mr TONG’s enquiry on whether the determinations of the RT would be made public, the Administration advised that according to the advice of the Department of Justice, since the proposal was for the sittings of the RT to be held in private, the RT should follow Practice Direction 25.2 published by the Judiciary which provided that “No report should be made of any proceedings (including the judgment) held in chambers not open to the public without the authority of the master or the judge before whom the proceedings were conducted. If the master or the judge considers that proceedings should be open for reporting or the judgment should be released for publication he should afford the parties an opportunity to make representations upon the matter before so declaring.” - Administration advised that proposed section 101D(2) provided that “A determination made by the Review Tribunal may be registered in the Court of First Instance; and a determination so registered shall be deemed to be an order of the Court.”. Since there was no provision in this Bill specifying other arrangements, the determinations of the RT so registered would be subject to the normal procedures applicable to the records of the High Court. - Mr TONG’s view that for the following reasons, the determinations of the RT and the reasons for the determinations should be made public if the RT considered it appropriate – <ul style="list-style-type: none"> (a) the determinations and the reasons for the determinations would be of interest to the public; (b) a compilation of the determinations would help the banking industry to understand how to comply with the Capital Rules and hence would be of educational value; and 	

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		<p>(c) the records would serve as useful reference for future proceedings of the RT.</p> <ul style="list-style-type: none">- The Bills Committee noted that the Judiciary had published new Practice Directions on 1 June 2005 to effect the opening up to the public of chambers hearings in civil proceedings in the High Court, the District Court, the Lands Tribunal and the Family Court.- HKMA advised that the main objective of the proposed tribunal mechanism was to put in place a more independent and workable appeals mechanism. The present proposal was modeled on other existing tribunals in Hong Kong with modifications in relation to privacy matters. Reference had also been made to the financial services legislations in the United Kingdom and Australia, where provisions in respect of tribunal sittings did provide for the holding of hearings in private.- HKMA advised that providing for the determinations of the RT to be made public in the legislation was not directly pertinent to the aforesaid objective and indeed information on the proceedings of RT, if published, might be misinterpreted by the public or market as implying that the authorized institution (AI) concerned had got problems and the information might also be made use of by the AI's competitors to create rumors about the AI. As such, there would be less chance that the industry would make use of the appeals mechanism.- Dr LI commented that the banking industry fully supported the present proposal that the sittings of the RT were to be held in private. He also remarked that the banking sector in Hong Kong was a very competitive market. Information on the proceedings of the RT was sensitive information and could be used for mischievous purposes.- Mr TONG clarified that what he was suggesting was that a determination of the RT should be made public if that was considered appropriate by the RT and any reference to the identities of the parties concerned should be removed from the determination so published. He hoped that	

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		<p>HKMA and the Administration would further consider the suggestion and consult the industry on the suggestion.</p> <ul style="list-style-type: none"> - The Administration and HKMA took note of Mr TONG's view and agreed to consider the matter further. 	
003100 – 003446	Administration Mr Ronny TONG	<ul style="list-style-type: none"> - Administration advised that the Financial Services and Treasury Bureau would provide secretariat support for the RT. - On the right of the appellant and the Monetary Authority to be represented by counsel or a solicitor at the proceedings of the RT, the Administration advised that the relevant provisions were set out in proposed new section 101C(3) and section 4(8) of the proposed Fifteenth Schedule. 	
003447 – 003859	Administration Mr SIN Chung-kai Mr Ronny TONG ALA6	<ul style="list-style-type: none"> - Proposed new sections 101G, 101H, 101I - Administration advised that it would amend subsection (3) of proposed new section 101H to add a provision to the effect that the Court of Appeal might also remit the matter in question to the Monetary Authority with such directions as it considered appropriate. - The Bills Committee noted that provisions governing whether and how an appeal in respect of a judgment of the Court of Appeal might be heard by the Court of Final Appeal were laid down in the Hong Kong Court of Final Appeal Ordinance (Cap. 484). - With regard to the hearing of the Court of Appeal in respect of an appeal against a determination of the RT, the Administration advised that in the absence of any application by the parties for the hearing to be held in private, the hearing would be held in public. 	
003900 – 004436	Mr SIN Chung-kai Administration ALA6	<ul style="list-style-type: none"> - Proposed new section 101B(1) - In response to Mr SIN's enquiry, the Administration advised that the policy intent was that the right of appeal to the RT should lie in the AI or party to which/whom the decision under appeal was directly related. The Administration would consider amending proposed new section 	

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		101B(1) to reflect this policy intent more accurately.	
004437 – 005152	Administration	<ul style="list-style-type: none"> - Proposed definition of “Review Tribunal” to be added under section 2(1) - Proposed addition of subsection (da) to section 120(5) - Proposed amendment to section 135(1) - Proposed new Fifteenth Schedule to the Banking Ordinance (Cap. 155) - The Administration advised that it would amend section 2(4) of the proposed Fifteenth Schedule by deleting the phrase “,after consultation with the Chief Justice,”. - The Administration advised that it would amend section 4(5) and (6) of the proposed Fifteenth Schedule to provide that the person who was appointed to act as Chairman or a member of the RT would continue to sit on the RT until the end of the proceedings of the appeal case(s) that were attended to by the acting Chairman/member. - Proposed consequential amendment to Schedule 2 to the Electronic Transactions Ordinance (Cap. 533) 	
<i>Agenda Item II – Any other business</i>			
005153 – 005460	Chairman Administration Mr SIN Chung-kai	<ul style="list-style-type: none"> - Mr SIN commended HKMA and the Administration for their willingness to accept members’ suggestion of setting up a new appeals mechanism under the Bill and for the efficacy of the work done in this regard. 	