

立法會
Legislative Council

LC Paper No. CB(1)2850/09-10

(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

**Minutes of special meeting
held on Monday, 24 May 2010 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG kang, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king
Dr Hon LAM Tai-fai, BBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members absent : Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

**Public officers
attending**

: Agenda Item I

Financial Services and the Treasury Bureau

Ms Angelina KWAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Miss Melo MAN
Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Hong Kong Monetary Authority

Mr Trevor KEEN
Head (Banking Conduct)

Office of the Commissioner of Insurance

Ms Carol HUI
Acting Assistant Commissioner of Insurance (Policy and
Development Division)

Customs and Excise Department

Mr CHEUNG Sai-yan
Head of Trade Controls

**Attendance by
invitation**

: Agenda Item I

Securities and Futures Commission

Mrs Yvonne MOK
Director, Intermediaries Supervision

Civic Party

Ms Jacqueline NG
Honourary Secretary of Economy and Public Finance Branch

Hong Kong Securities Professionals Association

Ms Jeanne LEE
Chairman

Hong Kong Securities and Futures Industry Staff Union

Mr WONG Kwok-on
Chairman

Hong Kong Securities Association Limited

Mr Dannis LEE
Director

The Association of Remittance Agents and Money Changers
in Hong Kong

Mr Edwin SHIU
Chairman

The Hong Kong Confederation of Insurance Brokers

Mr Patrick CHAN
General Committee Member

Institute of Financial Planners of Hong Kong

Mrs Francine FU
President

Hong Kong Money Changer and Remittance Association

Ms Christy WONG
Association Consultant

The Hong Kong Association of Banks

Mr Vincent LI
Chairman, AML Committee

The General Agents and Managers Association of Hong Kong

Mr Kenneth LEUNG
1st Vice President

Law Society of Hong Kong

Mr Timothy LOH
Member, Security Law Committee

The Life Underwriters Association of Hong Kong
Limited

Ms Andy MOK
Assistant Director

Clerk in attendance: Ms Anita SIT
Chief Council Secretary (1)5

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

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Proposed new anti-money laundering legislation for financial institutions

Submissions from deputations attending the meeting

(LC Paper No. CB(1)1970/09-10(01) — Submission from Civic Party

LC Paper No. CB(1)1926/09-10(01) — Submission from Hong Kong
Securities Professionals
Association

LC Paper No. CB(1)1926/09-10(02) — Submission from Hong Kong
Securities Association Limited

LC Paper No. CB(1)1926/09-10(03) — Submission from The Association
of Remittance Agents and Money
Changers in Hong Kong

LC Paper No. CB(1)1926/09-10(04) — Submission from The Hong Kong
Confederation of Insurance
Brokers

LC Paper No. CB(1)1926/09-10(05) — Submission from Institute of
Financial Planners of Hong Kong

LC Paper No. CB(1)1926/09-10(06) — Submission from Hong Kong Money Changer and Remittance Association

LC Paper No. CB(1)1926/09-10(07) — Submission from The Hong Kong Association of Banks

LC Paper No. CB(1)1926/09-10(08) — Submission from The Law Society of Hong Kong)

Submissions from organizations not attending the meeting

(LC Paper No. CB(1)1926/09-10(09) — Submission from Hong Kong Bar Association

LC Paper No. CB(1)1926/09-10(10) — Submission from Hong Kong Investment Funds Association

LC Paper No. CB(1)1926/09-10(11) — Submission from Dr YANG Mo, PhD, member of the Southern District Council)

LC Paper No. CB(1)1970/09-10(02) — Submission from Mr YEUNG Wai-sing, MH, member of the Eastern District Council)

Other relevant papers

(LC Paper No. CB(1)1926/09-10(12) — Administration's paper on proposed new anti-Money laundering legislation for financial institutions

LC Paper No. CB(1)601/09-10(11) — Administration's paper on proposed new anti-money laundering legislation for financial institutions — detailed legislative proposals

LC Paper No. CB(1)587/09-10(01) — Administration's consultation document on proposed new legislation on the customer due diligence and record-keeping requirements for financial institutions and the regulation of remittance agents and money changers — detailed proposals

LC Paper No. CB(1)1932/09-10 — Background brief on the proposed new anti-money laundering legislation for financial institutions prepared by the Legislative Council Secretariat)

The Chairman welcomed the representatives of the Administration and deputations to the meeting. He reminded the deputations that their views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). He invited the deputations to present views on the Administration's proposals for new anti-money laundering (AML) legislation for financial institutions.

Presentation of views by deputations

Civic Party

2. Ms Jacqueline NG, Honourary Secretary for Economy and Public Finance Branch of Civic Party, said that while the Civic Party supported the proposed AML legislation, the Party was of the view that the legislation should not only cover the traditional financial institutions, but should be extended to include real estate agents and companies registered with the Estate Agents Authority (EAA), so that customer due diligence (CDD) would be carried out on buyers who made cash payments in buying properties. The real estate agents and companies should be required to conduct CDD on a buyer who paid the down-payment in cash for a property of, say, \$4 million. Given that money laundering activities usually involved the use of off-shore companies, the regulatory bodies such as the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) should draw up guidelines requiring financial institutions/EAA to maintain records of account holders which were off-shore companies and submit regularly updated records of the same to HKMA and SFC, which should play a more active role in the AML regime. The Administration should step up its AML measures to prevent Hong Kong from being labeled as a money laundering and tax evasion haven, and to uphold Hong Kong's status as an international financial centre.

Hong Kong Securities Professionals Association

3. Ms Jeanne LEE, Chairman of the Hong Kong Securities Professionals Association, said that the Association was of the view that the legislative proposals had failed to set out the required standard of or steps to be taken for Simplified Due Diligence (SDD) and Enhanced Due Diligence (EDD). As the new legislation would affect the business and operation of all financial institutions, the Government should set out these in detail for public consultation. The Association disagreed with the proposal on ongoing CDD as the existing Securities and Futures Ordinance (Cap. 571) (SFO) already required financial institutions to set up a system for the prevention of money laundering. The SFC had also issued detailed guidelines for financial institutions to follow in this respect. Banks would undertake CDD on their

customers before funds were transferred to or from the securities brokers. The proposal that all financial institutions were required to review and update the customer identification records within two years after commencement of the legislation was impractical and burdensome, as it would impose additional costs and administrative burdens on the financial institutions, especially the long established companies which might have a large number of customers, and many of these customers might be inactive, dormant and overseas companies. Keeping up-to-date identification documents of clients would increase the administrative work of financial institutions as they had to update their clients' particulars such as business registration number, identity or travel documents, and addresses. The Association proposed that financial institutions might issue a letter to their clients and ask them to inform the financial institutions of any change of their particulars. If no response was received from the clients within a certain period of time, the financial institutions might assume that there was no change of the particulars of their clients. Ms LEE said that the Association objected to the proposal to make it a criminal offence for any breaches of the CDD and record-keeping requirements.

Hong Kong Securities and Futures Industry Staff Union

4. Mr WONG Kwok-on, Chairman of the Hong Kong Securities and Futures Industry Staff Union, said that the existing system for financial institutions to prevent money laundering activities, namely the "know your client" system, had proved to be effective, and it was doubtful whether the proposed legislation was necessary. Mr WONG opined that the first line of defence against money laundering should be the banks as they would handle the money transfers on securities transactions. The proposed measures would add burdens on the administrative work of securities firms and adversely affect their operation.

Hong Kong Securities Association Limited

5. Mr Dennis LEE, Director of the Hong Kong Securities Association Limited, said that the SFO had already required financial institutions to set up a system for the prevention of money laundering. The Association doubted the suitability of introducing a piece of legislation to cover different disciplines of the financial services sectors. It would be more appropriate to lay down the AML principles in the legislation, and issue separate guidelines to different financial service operators. The Association was concerned about the impact on the financial institutions if the identity of the clients had to be verified before any wire transfer of funds was accepted. Some financial institutions might have difficulty in maintaining a large amount of client information. The Association had reservation on the proposal of maintaining the audio records of transactions for six years.

The Association of Remittance Agents and Money Changers

6. Mr Edwin SHIU, Chairman of the Association of Remittance Agents and Money Changers, said that while the Association supported the legislative proposal in principle, certain terms in the legislation, such as "reasonable suspicion", should be more clearly defined, and clear guidelines on implementation of the legislative proposals should also be issued to operators of different financial services. Given that financial institutions would have difficulty in identifying the persons behind the customers and in conducting CDD on customers of inactive and dormant accounts, Mr SHIU said that the Association was concerned about the coverage of the definition of "customers" for the conduct of CDD and the requirement for on-going CDD. In view of the fact that many remittance agents and money changers (RAMCs) were small business only, the Government should provide support to the RAMCs in implementing the enhanced AML requirements. With the improved compliance by RAMCs under the licensing system, banks should take a more accommodative attitude towards RAMCs.

The Hong Kong Confederation of Insurance Brokers

7. Mr Patrick CHAN, the General Committee Member of the Hong Kong Confederation of Insurance Brokers, said that the Confederation had already made a written submission to the Panel. Mr CHAN said that as a self-regulatory organization, the Confederation would continue to co-operate with the Office of the Commissioner of Insurance.

Institute of Financial Planners of Hong Kong

8. Mrs Francine FU, President of the Institute of Financial Planners of Hong Kong, said that the Institute had made a written submission on the legislative proposals concerning the cost-effectiveness of the proposals, the adequacy of the existing system, and the cost implications and practical difficulties of the proposals. The Institute was concerned about the proposal to conduct ongoing CDD of all clients of a financial institution within two years, given that some accounts of the financial institutions might be inactive or dormant, and the risk of money laundering of these accounts would be minimal. The Institute was also concerned about the difficulty in tracking information of customers relating to inward remittances, and the proposed legislation should allow some flexibility for financial institutions in this regard.

Hong Kong Money Changer and Remittance Association

9. Ms Christy WONG, Association Consultant of Hong Kong Money Changer and Remittance Association, said that the Association was concerned about the requirement of CDD on the recipients of remittance, as the recipients were not customers of the RAMCs, and had no obligation in providing their particulars to RAMCs. The RAMC concerned might also be held responsible for any delay in remittance of funds due to CDD on the recipient. The requirement of CDD on all

company owners who held 10% or more of the shares or voting right of a company was complicated and time consuming. The CDD requirement should be relaxed to cover only the person who made the remittance. With the establishment of the licensing system for RAMCs, banks should refrain from terminating the bank accounts of RAMCs and allow RAMCs to open new accounts.

The Hong Kong Association of Banks

10. Mr Vincent LI, Chairman of AML Committee, the Hong Kong Association of Banks (HKAB) said that HKAB had submitted its views on the proposed legislation to the Government in February 2010. While the HKAB supported the legislative proposals on CDD and record-keeping requirements for financial institutions and the regulation of RAMCs, the implementation of the legislation should not cause undue disruptions to the operation of the financial institutions. As the legislation would cover different financial institutions, such as banks, insurance companies, securities firms and RAMCs, detailed guidelines should be issued for compliance by different financial institutions. The new legislation should come into effect one year after issue of the guidelines so that the financial institutions concerned could have sufficient time to revise their operational systems and procedures to meet the CDD and record-keeping requirements. HKAB was of the view that the CDD measures under the proposed legislation should be drawn up based on the "risk base approach", and the Association had great reservation on the proposed requirement for remediation of existing accounts within two years. Since the CDD and record-keeping requirements in different jurisdictions might vary, it might be difficult for an overseas branch offices of a local financial institution to comply with the proposed legislation. It should be the financial institution, rather than a member of the institution, which should be subject to criminal or supervisory liability for breaches of the CDD and record-keeping requirements.

The General Agents and Managers Association of Hong Kong

11. Mr Kenneth LEUNG, 1st Vice President of the General Agents and Managers Association of Hong Kong said that given that Hong Kong had a free economy and the development of the financial sector should not be hindered, while the Association agreed that the proposed legislation was necessary, the Administration should be mindful of the impact on the competitiveness of Hong Kong as an international financial centre.

Law Society of Hong Kong

12. Mr Timothy LOH, Member of the Security Law Committee, Law Society of Hong Kong (Law Society) said that as an international financial centre, it was imperative that Hong Kong complied with the international standards on regulation of the financial institutions. However, a balance had to be struck between prevention of money laundering and facilitation of business transactions, and between protection of individual rights and enforcement needs. Mr LOH said that the Law Society was particularly concerned about the right of silence for the accused during

investigation, as the Government had proposed that the regulatory bodies might compel a person to provide information, which might be used in regulatory proceedings, and the evidence arising from the replies of the person might be used against him in criminal prosecutions. The Law Society considered that the right of silence was the fundamental right of a person which was integral in the assumption that a person remained innocent until proven guilty. Without the right of silence, a person had to prove his innocence against allegation of breaches of the CDD and record-keeping requirements. An innocent person might choose to remain silent, for reasons of being scared or unsure of what to say. Despite the claim that the right of silence might create a barrier for investigation of breaches of AML requirements, regulatory infractions were not criminal offences, and the right of silence should not be removed in the legislation on CDD and record-keeping for financial institutions.

The Life Underwriters Association of Hong Kong Limited

13. Ms Andy MOK, the Assistant Director of the Life Underwriters Association of Hong Kong Limited, said that while the Association supported the legislative proposals in principle, detailed guidelines should be provided to the financial institutions regarding the CDD and record-keeping requirements. Appropriate training should also be arranged for the operators and personnel of the financial institutions for compliance with the requirements.

The Administration's response

14. At the invitation of the Chairman, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (PAS(FS)) gave a preliminary response to some of the views presented by the deputations. A summary of the salient points were as follows:

- (a) While the existing CDD and record-keeping requirements for financial institutions were now provided for in guidelines issued by the financial regulators, i.e. HKMA, SFC and the Insurance Authority (IA), the lack of statutory backing and appropriate sanctions for such requirements and the absence of an AML regulatory regime for RAMCs in Hong Kong were highlighted in the mutual evaluation report published by the Financial Action Task Force (FATF), the international AML standard setter, as major areas that require improvement. Hong Kong was required to take follow-up actions to substantially improve these areas by 2011. The proposed legislation sought to enhance our AML regime to better align with the international standards which helped to maintain Hong Kong's status as an international financial centre.

- (b) Two consultation exercises on the legislative proposals were conducted in July and December 2009 respectively. The detailed legislative proposals set out in the consultation document for the second-round consultation were drawn up after taking into account the views of the industry.
- (c) It was proposed that the CDD measures under the new legislation would only apply to financial institutions. Separately, the Security Bureau, in consultation with the relevant stakeholders, was considering means to enhance the AML regulation for non-financial sectors, including the real estate agents. At present, banks and lawyers involved in property transactions had to comply with CDD and record-keeping requirements set out in the guidelines issued by the HKMA and Law Society.
- (d) On-going CDD and remediation of existing accounts were two different requirements. For ongoing CDD, financial institutions were required to monitor the transactions of their existing customers for risk management purpose and ensure documents obtained for identification purpose were up to date. Since the legislative proposals would not have retrospective effect, the Administration proposed that financial institutions should conduct fresh CDD according to the new legislation for business relationships entered into prior to the commencement of the legislation upon the occurrence of triggering events to be specified in the legislation such as an unusual or suspicious transaction. The Administration noted the concerns raised by the industry on the proposed requirement on remediation of existing accounts, particularly on the administrative burden arising from the requirement for updating sizeable number of dormant accounts. The Administration would critically review the concerned proposal.
- (e) After enactment of the relevant AML legislation, the regulatory authorities concerned would issue draft guidelines to facilitate compliance by the financial institutions for industry consultation. The guidelines would need to be ready before the implementation for the new legislation.
- (f) As regards the concern raised by the securities sector on the requirements on wire transfers, it should be noted that the requirement was meant to apply to financial institutions which carried out wire transfers on behalf of their customers. Securities companies transferring funds from their own accounts for settlement with their customers would not be covered.

- (g) There would be a reasonable lead time between the enactment and commencement of the legislation to allow financial institutions to enhance their internal control system and procedures for compliance with the new legislation. The relevant regulatory authorities would also organize workshops and seminars to facilitate financial institutions to familiarize with the new legislation.
- (h) The requirement to conduct CDD on beneficial owners, including the major shareholders of a company, i.e. those holding 10% or more of the shares or voting rights of a company was an important preventive measure and could not be removed for compliance with the international standards. Under the legislative proposal, a financial institution would be allowed to conduct SDD on its customers if the latter were also financial institutions covered under the new legislation. In future, since licensed RAMCs would be regulated for AML purpose, the AML risks arising from business relationships with these businesses would be properly managed. It was believed that banks would be more forthcoming in establishing/maintaining business relationship with licensed RAMCs. The same situation also applied to business relationship between licensed RAMCs.
- (i) In relation to the concern about the requirement for financial institutions to provide information to the regulatory authorities in an investigation under the legislation, it should be noted that the relevant arrangement were modeled on the SFO and the exercise of such investigation powers by the relevant authorities would generally be confined to their respective regulated entities, i.e. financial institutions, except in certain circumstances as specified in the future legislation. Different from other law enforcement agencies, the relevant authorities did not have the wide range of criminal investigation powers to probe into regulatory breaches under AML contexts which usually involved concealment of the identity of the customers or sources or flow of funds. The power to compel information by relevant authorities was essential to ensure effective enforcement. There would be statutory safeguards for the use of self-incriminating information under the legislation which would specifically prohibit the use of such evidence for criminal prosecution against the party concerned.

15. In response to the Chairman's enquiry, PAS(FS) said that drafting work was in progress. The Administration would take heed of deputations' views and comments given at this meeting in finalizing the draft legislation for introduction into the Legislative Council as soon as practicable within 2010.

16. While supporting the AML legislative proposals on CDD and record-keeping requirements for financial institutions and the regulation of RAMCs, Mr CHAN Kin-por opined that the implementation of the legislation should not hamper the operation and efficiency of financial institutions, and cause undue additional costs to them. Mr CHAN commented that the requirement to apply CDD to all existing accounts within two years upon the commencement of the legislation was questionable. For instance, each year there were about one million new insurance policies and there were nearly nine million existing life insurance policies. Insurance companies might have difficulty in complying with the requirement to carry out CDD checks on all their clients within two years.

17. Mr Albert HO enquired whether the legislative proposals were more or less vigorous than the international standards. In particular, he was concerned whether the requirements to apply CDD to all existing accounts within two years and to adopt the threshold of 10% or more of the shares or the voting rights of a company in the definition of beneficial owner of corporate customers were in line with international standards. He also enquired whether CDD was required for the customer's customers in cases where the customer acted on the instruction of his customers, and whether in the case of wire transfer, both the RAMC and the bank concerned had to conduct CDD on the same customers. Mr HO said that the licensing system for RAMCs should be set up as soon as practicable so that banks would continue to provide services to licensed RAMCs.

18. PAS(FS) responded that the Administration was fully aware of the need to avoid causing undue disruption to the operation of financial institutions in complying with the CDD and record-keeping requirements. She further explained that while the requirement for conducting CDD on all existing customers within two years was not part of the international standards, it was drawn up in response to some specific suggestions received during the first round of public consultation. The Administration would review this specific requirement in light of comments raised at the meeting. PAS(FS) remarked that the international standards required financial institutions to conduct due diligence on beneficial owners when establishing business relationship. The international standards did not prescribe a numeric threshold on how "beneficial owner" should be defined. The proposed 10% threshold under the definition of "beneficial owner" was in line with the relevant requirement under the existing guidelines issued by the HKMA, SFC and IA for their respective financial institutions. That said, a financial institution would be allowed to apply SDD when it had reasonable ground to believe that the customer or the product fell under one of the categories specified in item 8 of the detailed legislative proposals set out in Annex A of the consultation document. PAS(FS) added that the Administration intended to implement the licensing system for RAMCs together with other statutory requirements upon the commencement of the new legislation.

II Any other business

19. There being no other business, the meeting ended at 3:50 pm.

Council Business Division 1
Legislative Council Secretariat
17 September 2010