

立法會
Legislative Council

LC Paper No. CB(1)933/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/01/10/2

**Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill**

**First meeting on
Tuesday, 30 November 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
- Members absent** : Hon CHIM Pui-chung
- Public officers
Attending** : 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)

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

Mr Hon CHAN
Senior Manager (Anti-money Laundering)
Office of the Commissioner of Insurance

Mr CHAN Chi-keung
Head of the Special Project Planning Team
Trade Controls Branch
Customs and Excise Department

Ms Sophia LAM
Manager (Banking Conduct)
Hong Kong Monetary Authority

Attendance by Invitation : Mrs Yvonne MOK
Director (Intermediaries Supervision)
Securities and Futures Commission

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

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Daniel SIN
Senior Council Secretary (1)7

Ms Haley CHEUNG
Legislative Assistant (1)8

I Election of Chairman

Dr David LI, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

Election of Chairman

2. Mr CHAN Kam-lam was nominated by Ms Starry LEE and the nomination was seconded by Mrs Sophie LEUNG and Mr Paul CHAN. Mr CHAN Kam-lam accepted the nomination. There being no other nomination, Dr David LI declared that Mr CHAN Kam-lam was elected Chairman of the Bills Committee.

Election of Deputy Chairman

3. The Chairman solicited members' views on the need for a Deputy Chairman. At the suggestion of Ms Audrey EU and with the agreement of members, the Chairman invited nominations for the deputy chairmanship. Ms Audrey EU nominated Mr James TO and the nomination was seconded by Mr Paul CHAN. Mr James TO accepted the nomination. There being no other nomination, the Chairman declared that Mr James TO was elected Deputy Chairman of the Subcommittee.

II Meeting with the Administration

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| (LC Paper No. CB(3)122/10-11 | — The Bill |
| File Ref: FSB G13/21C | — The Legislative Council Brief issued by the Financial Services and the Treasury Bureau |
| LC Paper No. LS7/10-11 | — The Legal Service Division Report on Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) and Bill |
| LC Paper No. CB(1)595/10-11 | — Background Brief on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill prepared by the Legislative Council Secretariat) |

Discussion

4. The Committee deliberated (Index of proceedings attached at **Appendix**).

Admin Follow-up actions to be taken by the Administration

5. The Administration was requested to provide the following information:
- (a) guidelines issued by the Hong Kong Monetary Authority on "politically exposed person" in relation to prevention of money laundering and terrorist financing, and explanation on the differences between those guidelines and relevant provisions in the Bill, particularly with regard to the scope of persons covered by the term;
 - (b) advice of the Department of Justice on the legal effect of clause 3, and the application of the Bill to the offices (and their personnel) set up by the Central People's Government and other consular offices and employees in the Hong Kong Special Administrative Region;
 - (c) information on overseas and local cases involving money laundering and/or terrorist financing activities, and in what respects the proposed legislation would contribute to preventing/combating these activities; and
 - (d) comparison between the criminal liabilities provided under the Bill and the relevant legislation of the United Kingdom and the United States.

III Any other business

Invitation for views

6. Members agreed to invite relevant organizations to attend a Bills Committee meeting to express their views and/or provide submissions on the Bill, and to post an invitation notice on the Legislative Council website.

Date of next meeting

7. The Chairman said that he would work out with the Clerk a schedule of meetings and members would be informed of the details in due course.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)639/10-11 on 2 December 2010 of the schedule of meetings, and the organizations/individuals to be invited to give views on the Bill and/or attend the meeting on 22 December 2010.)

8. There being no other business, the meeting ended at 10:13 am.

Council Business Division 1
Legislative Council Secretariat
29 December 2010

**Proceedings of the
Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill
First meeting on Tuesday, 30 November 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000140 – 000244	Dr David LI Ms Audrey EU Mr CHAN Kam-lam	Election of Chairman	
000245 – 000512	Ms Audrey EU Mr Paul CHAN Mr James TO Mr WONG Ting-kwong	Election of Deputy Chairman	
000513 – 002942	Administration	Briefing by the Administration on the proposals of the Bill.	
002943 – 004327	Ms Audrey EU Administration	<p>(a) Ms EU asked whether there would be further phases of anti-money laundering (AML) legislative proposals to cover certain sectors such as law firms which were not covered by the Bill.</p> <p>(b) The Administration advised that the financial institutions subject to the customer due diligence (CDD) and record-keeping requirements under the Bill were provided for in accordance with the prevailing requirements of the Financial Action Task Force (FATF) on the types of business activities or operations that should be subject to adequate AML regulation by designated competent authorities. For some professional sectors such as the legal profession, the relevant professional bodies had issued code/guidelines on AML requirements for the professions to follow. The AML regulation of these sectors did not fall within the scope of this Bill and would be dealt with by the Security Bureau.</p> <p>(c) Ms EU asked whether there were specific measures for property transactions involving the use of large amounts of cash under the Bill.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) The Administration explained that multiple parties including estate agents and lawyers were involved in property transactions and the rules/guidelines issued by the relevant self-regulatory organizations over these parties needed to be followed. However, cash transactions that did not go through the banking system nor handled by other financial institutions specified in the Bill would be outside the coverage of the Bill.</p> <p>(e) Ms EU expressed concerned about the implication of the Bill on the personal data privacy of the public.</p> <p>(f) The Administration explained that at present, financial institutions were already subject to CDD and record-keeping requirements provided in non-statutory guidelines issued by relevant regulatory authorities. Implementation of the proposals in the Bill would not have significant effects on the public in terms of the amount of personal data to be provided to financial institutions. All financial institutions and relevant authorities were subject to requirements for the protection of personal data privacy under the Personal Data (Privacy) Ordinance (Cap. 486) the statutory. In addition, regulatory authorities were bound by the secrecy provisions in the relevant ordinances.</p>	
004328 – 005349	Deputy Chairman Administration	<p>(a) The Deputy Chairman asked, where a law firm had opened an account with a bank, whether the bank was required to conduct CDD on the law firm's clients.</p> <p>(b) The Administration explained that under the Bill, the bank was not required to conduct CDD on individual clients of the law firm when conducting CDD for the law firm's "client's account".</p> <p>(c) The Deputy Chairman sought explanation on the scope of persons covered by the definition of "politically exposed person" in Part 1 of Schedule 2 to the Bill.</p>	

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		<p>(d) The Administration explained that the Bill followed the FATF standards which only covered politically exposed persons from a "foreign country"; under Hong Kong laws, "foreign country" means places outside the People's Republic of China.</p> <p>(e) At the request of the Deputy Chairman, the Administration would provide the guidelines issued by the Hong Kong Monetary Authority (HKMA) on "politically exposed person" in relation to prevention of money laundering and terrorist financing, and explanation on the differences between those guidelines and relevant provisions in the Bill, particularly with regard to the scope of persons covered by the term.</p>	<p>The Administration to take action as per paragraph 5 of the minutes.</p>
005350 – 010026	Dr Margaret NG Administration	<p>(a) Dr NG requested the Administration to provide the advice of the Department of Justice on the legal effect of clause 3, and the application of the Bill to the offices (and their personnel) set up by the Central People's Government and other consular offices and employees in the Hong Kong Special Administrative Region.</p> <p>(b) The Administration added that state organizations did not engage in any financial services and thus needed not be covered by the Bill.</p>	<p>The Administration to take action as per paragraph 5 of the minutes.</p>
010027 – 010823	Mrs Sophie LEUNG Administration	<p>(a) Mrs LEUNG was concerned that the FATF's AML standards might be too stringent and burdensome for local money service operators (MSO). She suggested a pragmatic regulatory regime should be devised.</p> <p>(b) The Administration explained that during two rounds of public consultation MSOs recognized that AML regulation for MSOs was an international requirement. The proposed requirements could enhance the AML regulation over the sector and at the same time offer better safeguards against MSOs being used for illegal activities and might facilitate their access to banking services. Also, in line with the</p>	

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		<p>international standards, money changing transactions involving amounts below \$120,000 and wire transfers below \$8,000 generally were not subject to the CDD and record-keeping requirements. Setting such thresholds would to an extent help alleviate the compliance burden.</p> <p>(c) The Customs and Excise Department (C&ED) would provide focused training and publish guidelines to help MSOs familiarize with the new requirements.</p>	
010824 – 011623	Mr Albert HO Administration	<p>(a) In response to Mr HO's enquiry, the Administration confirmed that the CDD and record-keeping requirements under the Bill would supersede HKMA's current guidelines.</p> <p>(b) Regarding Mr HO's enquiry about the licensing of MSOs, the Administration replied that the licensing system would be operational at the same time as the new legislation commenced operation. Existing MSOs would be given 60 days to apply for a licence. They could continue to operate while their applications were being processed.</p> <p>(c) Mr HO asked if the Administration had sufficiently addressed the sector's concerns in the Bill such as the period of record-keeping.</p> <p>(d) The Administration explained that certain proposals had been revised to provide greater flexibility for MSOs and other financial institutions in the light of comments received during the two rounds of public consultation.</p> <p>(e) In response to Mr HO's enquiry, the Administration replied that MSOs were required to keep specified records for six years, which was consistent with the requirements under the Organized and Serious Crimes Ordinance (Cap. 455).</p> <p>(f) Mr HO asked whether the disciplinary sanctions would be applicable to all financial institutions.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(g) The Administration explained that the disciplinary sanctions would apply to all financial institutions. An independent appeals tribunal would be established under the Bill to review decisions made by the relevant authorities on disciplinary sanctions under the new legislation.</p>	
<p>011624 – 012155</p>	<p>Dr Philip WONG Administration Chairman</p>	<p>(a) Dr WONG asked which party in FATF was responsible for setting the AML standards and how the standards were revised.</p> <p>(b) The Administration explained that the FATF standards and their subsequent revisions were made in concert by all the 36 members of FATF.</p> <p>(c) Dr WONG asked whether the proposed standards had proven effective in combating money laundering locally and overseas.</p> <p>(d) The Administration explained that the proposed measures in the Bill were preventive in nature and was not specifically designed for enhancing money laundering enforcement actions and prosecution.</p> <p>(e) The Administration would provide information on overseas and local cases involving money laundering and/or terrorist financing activities, and explain in what respects the proposed legislation would contribute to preventing/combating these activities.</p>	<p>The Administration to take action as per paragraph 5 of the minutes</p>
<p>012156 – 012455</p>	<p>Mrs Sophie LEUNG Administration</p>	<p>(a) In response to Mrs LEUNG's enquiry, the Administration explained that Hong Kong and Mainland China held separate membership at FATF. FATF's requirements covered both cross-border and domestic fund-flow.</p> <p>(b) In reply to Mrs LEUNG's enquiry, the Administration advised that the presence of MSOs was common in many jurisdictions.</p>	

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012456 – 013405	Mr Albert HO Administration	<p>(a) Mr HO asked if the Bill was too lenient as some contraventions were punishable by disciplinary sanctions only. By comparison, strict criminal liability was imposed under occupational safety legislations.</p> <p>(b) The Administration explained that disciplinary actions could be taken by regulatory bodies for less serious breaches, while breaches committed knowingly or with the intention to defraud were subject to criminal sanctions.</p> <p>(c) Mr HO asked how the mental elements applicable to criminal sanctions provided in the Bill compared with those of overseas regulatory regimes. The Administration advised that the approach varied among FATF members.</p> <p>(d) At Mr HO's request, the Administration would provide a comparison between the criminal liabilities provided under the Bill and the relevant legislation of the United Kingdom and the United States.</p>	The Administration to take action as per paragraph 5 of the minutes
013406 – 013909	Mr WONG Ting-kowng Administration	<p>(a) Mr WONG had received MSOs' complaints that some banks had closed their accounts. He asked if banks would adopt a more accommodating attitude towards MSOs after the enactment of the Bill.</p> <p>(b) The Administration replied that the Bill would introduce a statutory licensing and regulatory system on MSOs. While the Bill would not mandate banks to maintain business relationships with MSOs, as gathered from previous consultations, the introduction of the licensing regime for MSOs and the imposition of statutory CDD requirements on them would enhance banks' confidence in establishing and continuing business relationship with MSOs.</p>	
013910 – 014036	Chairman Mrs Sophie LEUNG Mr WONG Ting-kwong	The Chairman suggested and members agreed that the public and relevant parties should be invited to give views on the Bill.	

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014037 – 014103	Chairman	The Chairman said that members would be informed of the schedule of meetings in due course.	

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