

立法會
Legislative Council

LC Paper No. CB(1)1083/10-11
(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**

**Second meeting on
Thursday, 9 December 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)
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 Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
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 Alan CHONG
Senior Government Counsel
Department of Justice

Mr Trevor KEEN
Head (Banking Conduct)
Hong Kong Monetary Authority

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

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

Attendance by Invitation : Mr Raymond WONG
Associate 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 Meeting with the Administration

(LC Paper No. CB(1)705/10-11(01) — List of follow-up actions arising from the first meeting on 30 November 2010 prepared by the Legislative Council Secretariat

- LC Paper No. CB(1)705/10-11(02) — Administration's paper on "Hong Kong Monetary Authority's Guidelines on "Politically Exposed Persons""
- LC Paper No. CB(1)705/10-11(03) — Administration's paper on "Application to Government"
- LC Paper No. CB(1)705/10-11(04) — Administration's paper on "Information on Overseas and Local Money Laundering Cases"
- LC Paper No. CB(1)705/10-11(05) — Administration's paper on "Criminal Offence Provisions of the United Kingdom and the United States under the Relevant Legislation"
- LC Paper No. CB(1)705/10-11(06) — Letter from Assistant Legal Adviser to the Administration dated 7 December 2010
- LC Paper No. CB(3)122/10-11 — The Bill)

Discussion

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

Admin Follow-up actions to be taken by the Administration

3. The Administration was requested to provide the following information or response:
- (a) response on Hon Audrey EU's suggestion that the special requirements under section 10 of Schedule 2 to the Bill should apply to politically exposed persons (PEPs) outside the Hong Kong Special Administrative Region, instead of PEPs outside the People's Republic of China as currently proposed, so as to include PEPs in the Mainland, Taiwan and Macau;
 - (b) a copy of the current Guidelines on Prevention of Money Laundering issued by the Hong Kong Monetary Authority;

- (c) details of the existing and future anti-money laundering and counter-terrorist financing arrangements in respect of PEPs falling outside the definition of the term in the Bill as provided in guidelines (or elsewhere), and comparison between section 10 and section 15 of Schedule 2 to the Bill in terms of customer due diligence and record-keeping requirements, regulatory arrangements, consequences for breaches of such requirements and sanctions etc.;
- (d) details about the remittance service currently operated by the Post Office, and copy of the relevant clauses in the mutual evaluation report of the Financial Action Task Force on Hong Kong regarding the remittance services operated by Post Office;
- (e) response on Hon Dr Margaret NG's suggestion of revising clause 3 with reference to the Legal Practitioners Ordinance (Cap. 159) and other ordinances with express provisions on application of the legislation to the Government, so that –
 - (i) to avoid giving rise to unintended effects, the provision should simply state that the Ordinance applies to the Government without specifying the particular service and government unit to which the Ordinance shall apply;
 - (ii) rather than exempting the Postmaster General from the licensing requirements in providing remittance service, the Postmaster General (or the Government) should be deemed to have obtained a licence from the Commissioner of Customs and Excise; and
 - (iii) rather than specifying the exception provisions in clause 3, it should be stated in the respective provisions that the Postmaster General (or the Government) is exempted from the relevant requirements/sanctions.
- (f) explanation on how the Bill would help to improve the business relationship between money service operators (MSOs) and financial institutions (FIs), and how the Bill would facilitate MSOs in accessing the services of FIs;
- (g) the definition of "long term business" under the Insurance Companies Ordinance (Cap. 41) and copy of the relevant schedule providing for the classes of insurance business covered by the term, and explanation on why other types of insurance business are excluded from the Bill.

II Any other business

4. There being no other business, the meeting ended at 10:32 am.

Council Business Division 1
Legislative Council Secretariat
17 January 2011

**Proceedings of the
Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill
Second meeting on Thursday, 9 December 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000830 – 000948	Chairman	Introductory remarks	
000949 – 001256	Administration	Briefing by the Administration on the paper on "Hong Kong Monetary Authority's Guidelines on "Politically Exposed Persons"" (LC Paper No. CB(1)705/10-11(02))	
001257 – 002043	Ms Audrey EU Administration	<p>(a) Ms EU asked whether the Administration would envisage problems if the definition of "politically exposed persons" (PEPs) in the Bill was extended to cover all PEPs or at least all those PEPs outside the Hong Kong Special Administrative Region (HKSAR).</p> <p>(b) The Administration explained that the definition in the Bill was drafted having regard to the prevailing standards promulgated by the Financial Action Task Force (FATF). It was a consensus among the members of FATF that enhanced CDD should be conducted on PEPs from foreign country, and there was no need to conduct enhanced CDD on local PEPs. According to the Interpretation and General Clauses Ordinance (Cap. 1), foreign countries referred to countries other than the People's Republic of China. Extending the definition of PEP to cover all PEPs or all PEPs outside HKSAR would have implications on FIs, as FIs would be required to conduct enhanced CDD on a wider scope of PEPs.</p> <p>(c) Ms EU asked what rank or seniority would qualify an official to be a PEP and how financial institutions (FIs) would know a person was a PEP. She also asked which family members of PEPs would be affected.</p> <p>(d) The Administration explained that there were commercial databases for PEP checks.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>What was most important was that FIs had put in place a procedure to check whether a customer was a PEP.</p> <p>(e) The Administration further explained that the list of family members to be covered was drafted with reference to the list under the relevant legislation in the United Kingdom. It covered the PEP's close associates and family members such as spouse, children and their spouses.</p> <p>(f) Ms EU suggested that the Administration should consider that the special requirements under clause 10 of Schedule 2 to the Bill should apply to PEPs outside HKSAR, instead of PEPs outside the People's Republic of China as currently proposed, so as to include PEPs in the Mainland, Taiwan and Macau.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p>
002044 – 002616	Administration	Briefing by the Administration on the paper on "Application to Government" (LC Paper No. CB(1)705/10-11(03))	
002617 – 003416	Dr Margaret NG Administration	<p>(a) Dr NG suggested that clause 3 should be revised with reference to the Legal Practitioners Ordinance (Cap. 159) and other ordinances which had express provisions on application of the legislation to the Government.</p> <p>(b) Dr NG said that, to avoid giving rise to unintended effects, the provision should simply state that the Bill would apply to the Government without specifying the particular service and government unit to which the Bill should apply.</p> <p>(c) The Administration explained that the current drafting approach was intended to make it clear which government service the Bill would apply to.</p> <p>(d) Dr NG suggested that, rather than exempting the Postmaster General (PMG) from the licensing requirements in providing remittance service, PMG (or the Government) should be deemed to have obtained a licence from the Commissioner of Customs and Excise (CCE).</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p> <p>The Administration to take action as per paragraph 3 of the minutes</p> <p>The Administration to take action as per paragraph 3 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(e) Dr NG further suggested that, rather than specifying the exception provisions in clause 3, the Bill should state, in the respective provisions, that PMG (or the Government) was exempted from the relevant requirements/sanctions.</p> <p>(f) Dr NG asked why FATF highlighted the need for Hong Kong to review the mechanism of regulating the remittance service operated by the Post Office.</p> <p>(g) The Administration explained that during its visit to Hong Kong in 2008, FATF observed the absence of AML regulation on the remittance service operated by the Post Office and suggested a review on the arrangement.</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>
<p>003417 – 003846</p>	<p>Mr WONG Ting-kwong Administration</p>	<p>(a) Mr WONG asked whether the requirement in respect of the branches and subsidiaries of an FI would apply to overseas FIs having branches in Hong Kong.</p> <p>(b) The Administration replied that the requirement in respect of branches and subsidiaries was an international requirement promulgated by FATF and that overseas FIs should have instituted globally applicable operational procedures that conformed to the same FATF standards in accordance with the laws in their respective jurisdictions.</p> <p>(c) In response to Mr WONG's enquiry, the Administration explained that overseas FIs' branches or subsidiaries required a licence to operate in Hong Kong and were subject to Hong Kong law and regulatory requirements.</p>	
<p>003847 – 003953</p>	<p>Ms Margaret NG Administration</p>	<p>Dr NG asked the Administration to provide details about the remittance service currently operated by the Post Office, and copy of the relevant clauses in the mutual evaluation report of FATF on Hong Kong regarding the remittance services operated by the Post Office.</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
003954 – 004209	Administration	Briefing by the Administration on the paper on "Information on Overseas and Local Money Laundering Cases" (LC Paper No. CB(1)705/10-11(04))	
004210 – 004621	Administration	Briefing by the Administration on the paper on "Criminal Offence Provisions of the United Kingdom and the United States under the Relevant Legislation" (LC Paper No. CB(1)705/10-11(05))	
004622 – 005329	Ms Audrey EU Chairman Administration	<p>(a) Ms EU said that there were cases where accounts held by money service operators (MSOs) had been closed by banks for "internal reasons", causing hardship to these operators. She asked how the Bill could improve the situation.</p> <p>(b) The Administration said that banks had to act in accordance with their internal risk management system when handling clients' accounts. While the commencement of the Bill would not guarantee account-opening for MSOs, it was expected that banks would have more confidence in handling transactions with them in future given that there would be better regulation of MSOs under the Bill.</p> <p>(c) Ms EU asked the Administration to provide a paper to explain how the Bill would help to improve the business relationship between MSOs and FIs, and how the proposals in the Bill would facilitate MSOs in accessing the services of banks.</p>	The Administration to take action as per paragraph 3 of the minutes.
005330 – 010200	Mrs Sophie LEUNG Administration	<p>(a) Mrs LEUNG said banks needed to safeguard their business interests, and even after MSOs were licensed as proposed in the Bill, it was inappropriate to mandate banks to provide services to MSOs.</p> <p>(b) Mrs LEUNG said MSOs might experience difficulties as they depended on a few FIs for certain banking services. As the market developed, more FIs would enter the competition and MSOs would have wider choice and better access to banking services.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) The Administration responded that whether or not to establish an account and continue the business relationship with any customer was a commercial decision of the bank concerned. It was inappropriate to direct how FIs should make commercial decisions by law.</p>	
<p>010201 – 010529</p>	<p>Chairman Administration Mr WONG Ting-kwong</p>	<p><u>Clause-by-clause examination of the Bill</u></p> <p>Part 1</p> <p>Preliminary</p> <p><u>Clause 1 – Short title and commencement</u></p> <p>(a) Mr WONG asked whether the Bill, if passed, could commence operation earlier if the Bills Committee was able to complete examination of the Bill earlier.</p> <p>(b) The Administration said the proposed effective date of 1 April 2012 was determined having regard to the time needed for consultation with the relevant sectors on the regulatory guidelines after the passage of the Bill. There was little room for advancing the effective date.</p>	
<p>010530 – 011123</p>	<p>Administration Mr WONG Ting-kwong Ms Sophie LEUNG Chairman</p>	<p><u>Clause 2 – Interpretation</u></p> <p>(a) In reply to Mr WONG's enquiry, the Administration confirmed that under clause 2(2), amendments to Part 2 of Schedule 1 made by the Secretary for Financial Services and the Treasury were subject to the negative vetting procedure.</p> <p><u>Clause 3 – Application to Government</u></p> <p>(b) Mrs LEUNG asked the Administration to consider adopting the drafting approach suggested by Dr Margaret NG by simply stating that the Ordinance applied to the Government.</p> <p>(c) The Administration replied that the current drafting approach was meant to make it clear which part of the Government and which specific types of activities would be</p>	

Time Marker	Speaker	Subject(s)	Action Required
		subject to the Bill (when enacted) but the Administration would revisit the drafting.	
011124 – 011457	Administration Mr WONG Ting-kwong	<p><u>Clause 4 – Immunity</u></p> <p>(a) Mr WONG asked if PMG would be immune from civil liabilities.</p> <p>(b) The Administration clarified that clause 4 applied to supervisory authorities and not to PMG, who was, exempted from the supervisory fines and the licensing requirements under the Bill under other provisions.</p>	
011458 – 012454	Administration Mrs Sophie LEUNG Hong Kong Monetary Authority (HKMA) Mr WONG Ting-kwong	<p>Part 2</p> <p>Requirements Relating to Customer Due Diligence and Record-keeping</p> <p><u>Clause 5 – Schedule 2 has effect with respect to financial institutions</u></p> <p>In reply to the enquiries of Mrs LEUNG and Mr WONG, the Administration explained that -</p> <p>(a) the conditions for each multi-purpose card were imposed by the Hong Kong Monetary Authority (HKMA) under the Banking Ordinance (Cap. 155) (BO). The proposed CDD and record keeping requirements would not apply to those multi-purpose cards where the maximum storage value did not exceed \$3,000;</p> <p>(b) the current maximum storage value of the only multi-purpose card currently authorized by HKMA under the BO was \$1,000; and</p> <p>(c) clause 5(4) would not have the effect of restricting the maximum storage value of multi-purpose cards which should be determined by HKMA in giving authorization.</p>	
012455 – 013033	Mrs Sophie LEUNG Administration	(a) Mrs LEUNG asked whether it would be more desirable to align the storage value limit specified in clause 5(4) with the maximum permissible storage limit	

Time Marker	Speaker	Subject(s)	Action Required
		<p>imposed by HKMA on multi-purpose cards under the BO.</p> <p>(b) The Administration explained that the storage value limit specified in the Bill was determined on the basis of money laundering risk. HKMA might impose any ceiling on the storage value of individual multi-purpose cards as a licensing condition under the BO. There was no need to align the two limits.</p>	
<p>013034 – 015452</p>	<p>Deputy Chairman Administration Chairman Mrs Sophie LEUNG</p>	<p>LC Paper No. CB(1)705/10-11(02)</p> <p>(a) The Deputy Chairman asked why the Bill excluded PEPs from the Mainland and Taiwan from the enhanced CDD requirements in the Bill, whereas the current HKMA Guidelines on Prevention of Money Laundering did not.</p> <p>(b) The Administration advised that the objective of the Bill was to implement FAFT standards which only required enhanced CDD on PEPs from foreign countries. Under Cap.1, "foreign country" excluded Taiwan and the Mainland. Clause 15 of Schedule 2 to the Bill required FIs to comply with enhanced CDD requirements on high risk clients, regardless of where their origin might be. After commencement of the Bill (when enacted), HKMA would issue new guidelines that would be consistent with the new statutory requirements.</p> <p>(c) The Deputy Chairman asked whether HKMA would specify in its new guidelines that PEPs from any place outside Hong Kong should be subject to the same CDD requirements. He also asked whether the legal effects of a breach of HKMA guidelines related to clause 15 of Schedule 2 to the Bill would be the same as failure to comply with the requirements under clause 10 of Schedule 2 to the Bill.</p> <p>(d) The Administration explained that failure to apply enhanced CDD on high risk clients (who might be PEPs from Taiwan or</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mainland) might constitute a contravention of clause 15 of Schedule 2, and would be subject to the same penalties as specified in clause 5 of the Bill.</p> <p>(e) Mrs LEUNG said that the current HKMA guidelines on handling PEPs of the Mainland should be preserved. She understood the objective of the Bill was to tackle an international problem, but did not consider it necessary to adapt the local system to FAFT standards unless the situation so warranted.</p> <p>(f) The Deputy Chairman asked whether the CDD requirements in respect of high risk clients under clause 15 of Schedule 2 were the same as those on foreign PEPs under clause 10 of the Schedule.</p> <p>(g) The Administration explained that for FIs, the two situations would involve essentially the same enhanced CDD measures.</p>	
015453 – 015607	Deputy Chairman Administration	The Deputy Chairman asked the Administration to provide a copy of the current Guidelines on Prevention of Money Laundering issued by the Hong Kong Monetary Authority.	The Administration to take action as per paragraph 3 of the minutes
015608 – 020201	Deputy Chairman Administration	<p>Long-term business</p> <p>(a) The Deputy Chairman enquired about the meaning of "long term business" in clause 5(2).</p> <p>(b) The Administration explained that "long term business" referred to the types of insurance services specified under Part 2 of Schedule 1 to the Insurance Companies Ordinance (Cap. 41). These included products with life insurance and investment elements.</p> <p>(c) The Deputy Chairman asked why only long-term business was covered under the Bill.</p> <p>(d) The Administration explained that FATF only required that CDD and record-keeping</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>requirements be applicable to life and investment-linked insurance products. Other insurance such as medical insurance involved less money laundering risk and hence were not covered.</p> <p>(e) The Deputy Chairman requested the Administration to clarify the definition of "long term business" under the Insurance Companies Ordinance (Cap. 41) and provide a copy of the relevant schedule providing for the classes of insurance business covered by the term, and an explanation on why other types of insurance business were excluded from the Bill.</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>
020202 – 020221	Chairman	<p>Date of next meeting</p> <p>The Chairman said that the next meeting would be held on 22 December 2010.</p>	

Council Business Division 1
Legislative Council Secretariat
 17 January 2011