

立法會
Legislative Council

LC Paper No. CB(1)1220/10-11
(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**

**Third meeting on
Wednesday, 22 December 2010, at 10:45 am
in the Chamber 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
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Paul CHAN Mo-po, MH, JP
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon Starry LEE Wai-king, JP
- Public officers
Attending** : Mr Patrick HO
Deputy 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 Trevor KEEN
Head (Banking Conduct)
Hong Kong Monetary Authority

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

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

**Attendance by
Invitation**

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

Ms Jeanne LEE
Chairman
Hong Kong Securities Professionals Association

Ms LO Siu-wan
Acting Vice-President
Hong Kong Money Changer and Remittance Association

Ms CHENG Wai-nan
Committee Member
Hong Kong Money Changer and Remittance Association

Mr Jojo CHOY
Chairman
The Institute of Securities Dealers Limited

Mr Tom CHAN
Legal Consultant
The Institute of Securities Dealers Limited

Mr Albert AU
Past President
Hong Kong Institute of Certified Public Accountants

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 deputations and the Administration

Meeting with deputations

(LC Paper No. CB(1)842/10-11(01) — Submission from Hong Kong Money Changer and Remittance Association

LC Paper No. CB(1)863/10-11(01) — Submission from Hong Kong Institute of Certified Public Accountants)

Submissions/ letters from organizations not attending the meeting

(LC Paper No. CB(1)842/10-11(02) — Submission from The Hong Kong Association of Banks

LC Paper No. CB(1)842/10-11(03) — Submission from The Hong Kong Association of Online Brokers

LC Paper No. CB(1)842/10-11(04) — Submission from Hong Kong Institute of Chartered Secretaries

LC Paper No. CB(1)842/10-11(05) — Submission from Hong Kong Investment Funds Association

LC Paper No. CB(1)863/10-11(02) — Submission from The Law Society of Hong Kong)

The Chairman welcomed 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).

2. The deputations presented their views on the Bill.

II Meeting with the Administration

Clause-by-clause examination of the Bill (starting at clause 5(5))

(LC Paper No. CB(3)122/10-11 — The Bill

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(1)863/10-11(03) — Administration's paper on "Information on Reference Materials")

3. Members noted the following papers tabled at the meeting -

- (a) Administration's paper on "Politically Exposed Persons";
- (b) Administration's paper on "Remittance Services Operated by the Post Office";
- (c) Administration's paper on "Money Service Operators' Access to Banking Services"; and
- (d) Administration's paper on "Definition of Long Term Business and Rationale of its inclusion in the Bill".

(Post-meeting note: The above papers were issued to members vide LC Paper No. CB(1)881/10-11 on 23 December 2010.)

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 co-ordinate with the Hong Kong Monetary Authority (HKMA) and the banking sector to provide a paper to address members' concern that upon implementation of the Bill, even if a money service operator (MSO) had met the licensing requirements and there was no evidence of any breach of the other requirements under the Bill, a bank might still terminate the account of the MSO (and those of his associates / family members). In this connection, members requested the Administration/HKMA to clarify what other risks would be of concern to the bank in respect of such a MSO, whether the bank was obliged to give reasons for terminating a client's account, and in the case of inadvertent non-compliance or a light breach of the requirements in the Bill by a MSO, whether the bank should pursue other remedies instead of resorting to terminating the account of the MSO right away.

III Any other businessDate of next meeting

6. The Chairman said that the Clerk would notify members of the date and time of the next meeting.

7. There being no other business, the meeting ended at 12:20 pm.

**Proceedings of the
Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill
Third meeting on Wednesday, 22 December 2010, at 10:45 am
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000147 – 000350	Chairman	Introductory remarks	
000351 – 000553	Hong Kong Securities Professionals Association (HKSPA)	<p>Presentation of views. HKSPA requested the Administration to provide detailed guidelines regarding the implementation of customer due diligence procedure (CDD), and suggested that instead of requiring financial institution to apply CDD on all existing customers within two years from the commencement of the Bill, financial institutions should only be required to update customers' information under the following circumstances:</p> <ul style="list-style-type: none"> (a) after a major transaction; (b) when there was major revision of document relating to a customer; (c) where a financial institute (FI) found that the information of a customer was inadequate; or (d) when the FI was aware of certain substantial changes in the way a customer's account was being operated. <p>The Association requested the Administration to consult the industry before finalizing the Code of Practice.</p>	
000554 – 000804	Hong Kong Money Changer and Remittance Association (HKMCRA)	Presentation of views (LC Paper No. CB(1)842/10-11 (01))	
000805 – 001005	The Institute of Securities Dealers Limited (ISDL)	Presentation of views. ISDL said there was no need for FI to update customers' information. Inactive customers were unlikely to be involved in money laundering activities, while the information of active customers were already up to date. ISDL suggested that the Bill should	

Time Marker	Speaker	Subject(s)	Action Required
		include a clear definition of "money laundering" so that FIs would not, inadvertently, breach the law.	
001006 – 001350	Hong Kong Institute of Certified Public Accountants (HKICPA)	Presentation of views (LC Paper No. CB(1)863/10-11 (01))	
001351 – 002024	Ms Audrey EU Chairman HKMCRA	<p>Ms EU asked if the money service operators (MSOs) were assured that the Bill would encourage banks to maintain business accounts with them.</p> <p>HKMCRA said the sector requested that banks would be more transparent in handling MSOs' accounts, and better safeguards should be introduced against arbitrary closure of bank accounts where the MSOs concerned had obtained a licence from the relevant authority and had not contravened any law. HKMCRA also suggested that Hong Kong Monetary Authority (HKMA) should play a more active role in following up MSOs' complaints on unfair banking practices.</p>	
002025 – 003037	Deputy Chairman HKMCRA	<p>The Deputy Chairman asked whether MSOs had information on the recipients of remittances and the identity of their clients to satisfy the proposed customer due diligence (CDD) requirements under the Bill.</p> <p>HKMCRA said that MSOs had information on the identities of their clients who gave them instructions to conduct remittances. However, some of MSOs' clients were intermediaries who were reluctant to reveal information about their own clients (viz. the beneficial owners). HKMCRA also advised that some recipients of remittance were merchandise vendors who might be unwilling to co-operate with MSOs in their effort to conduct CDD.</p>	
003038 – 003629	Mr Albert HO HKMCRA	Mr HO asked if the MSO sector foresaw difficulties in complying with the proposed CDD and record-keeping requirements, and whether MSOs had a lot of dealings with "politically exposed persons" (PEP).	

Time Marker	Speaker	Subject(s)	Action Required
		<p>HKMCRA said the MSO sector did not foresee great difficulties in complying with the CDD and record-keeping requirements and was in the process of updating clients' information.</p> <p>MSOs did not have frequent dealings with PEPs, and only raised the issue in their written submission because they did not have a clear idea of the special requirements applicable to PEPs.</p>	
003630 – 003957	Mr CHIM Pui-chung HKMCRA	<p>In response to Mr CHIM's query, HKMCRA commented that as MSOs were already required to be registered at present, they did not foresee particular difficulties in obtaining a licence under the Bill if similar licensing criteria were adopted. The sector hoped that the new licensing regime would give banks greater confidence in maintaining MSOs' accounts.</p>	
003958 – 004300	Mr CHIM Pui-chung ISDL	<p>Mr CHIM pointed out that local securities brokers might receive instructions and funds from overseas institutions to buy local stocks. They might not be able to check the source of funds to identify possible money laundering activities. He queried if FIs were aware of the definition of money laundering.</p> <p>ISDL agreed that a clear definition of money laundering should be given, and said that while they could keep the audit trail of the flow of clients' funds, local securities firms did not have the authority to require clients to provide information about the source or the ultimate beneficiaries of the funds.</p>	
004301 – 005153	Mr Albert HO HKICPA	<p>Mr HO asked if Certified Public Accountants (CPAs) in Hong Kong would be capable of certifying whether a company was compliance with statutory anti-money laundering requirements.</p> <p>HKICPA advised the institution had been following the development of anti-money laundering regulation and had issued a legal bulletin in 2005 giving guidelines on how accounting firms could comply with anti-money laundering standards. HKICPA said CPAs could adapt the guidelines to audit the anti-money laundering procedures implemented by other companies.</p>	

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005154 – 005959	Administration	<p>The Administration responded that:</p> <ul style="list-style-type: none"> (a) The Bill did not impose a duty on FIs to investigate or identify money laundering activities. Under the Bill, FIs were only required to conduct CDD and keep proper records so as to provide useful information for law enforcement agencies to conduct formal investigation into alleged criminal activities. (b) In the light of the comments received from previous public consultation, the requirement for FIs to conduct CDD on all existing clients afresh within two years had been removed. The Bill now specified the circumstances where CDD measures should be applied to existing customers. (c) Where a professional service company (such as a law firm or accounting firm) referred a client to open an account with a FI, the FI concerned might rely on the CDD on the client conducted by the professional service company, in which case it would not need to conduct its own CDD on the client. In any case, the statutory obligation of conducting CDD fell on the FIs and they would be held responsible for any breaches of the relevant requirements. (d) As regards HKICPA's comments regarding the reference to "CPAs (practising)" under the Bill, the Administration undertook to review whether the provision should be revised. (e) While the Bill required termination of accounts for failure to complete CDD, it fell outside the scope of the Bill to impose a statutory obligation on FIs to maintain business relationships with individual customers or types of customers. 	
010100 – 010309	Hong Kong Monetary Authority (HKMA)	<p>HKMA said FIs were expected to act reasonably and serve adequate notice should a FI decide to terminate business relationship with the affected MSOs. However, FIs were also required to take precautions and remediation actions against money laundering activities. While the introduction of a new licensing system for MSOs</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>should give FIs more confidence that the AML risks of maintaining a business relationship with MSOs could be better managed, it would still be a commercial decision of the FIs to decide whether to maintain a business relationship with individual customers having regard to the relevant factors concerning the individual cases. HKMA would not require FIs to maintain accounts with certain groups of customers.</p>	
010310 – 010512	Deputy Chairman HKMCRA Administration	<p>The Deputy Chairman explained to HKMCRA about the CDD requirements under the Bill in respect of PEPs. The Administration confirmed the Deputy Chairman's understanding.</p>	
010513 – 012653	Ms Audrey EU Deputy Chairman HKMA Chairman Administration	<p>Ms EU and the Deputy Chairman requested the Administration to co-ordinate with HKMA and the banking sector to address members' concerns that upon implementation of the Bill, even if a MSO had met the licensing requirements and there was no evidence of any breach of the other requirements under the Bill, a bank might still terminate the account of the MSO (and those of his associates / family members). The Administration/HKMA should clarify what other risks would be of concern to the bank in respect of such a MSO, whether the bank was obliged to give reasons for terminating a client's account, and in the case of inadvertent non-compliance or a light breach of the requirements in the Bill by a MSO, whether the bank should pursue other remedies instead of resorting to terminating the account of the MSO right away.</p> <p>HKMA said FIs were required to take appropriate steps if they perceived possibility of customers using their accounts for money laundering activities.</p> <p>HKMA further explained that there were circumstances where it would be difficult for FIs to issue warning letters or state the reasons for terminating a MSO's account.</p>	<p>The Administration to take action as per paragraph 5 of the minutes</p>
011755 – 012653	Deputy Chairman Chairman Administration	<p>The Deputy Chairman said while the Administration had said that MSOs were considered to have discharged their responsibilities under the Bill by complying with the CDD and record keeping requirements without having to investigate or identify money laundering activities, the HKMA would still</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>allow a FI to terminate a MSO's business accounts if that FI suspected the account had been used for money laundering purposes. The Deputy Chairman considered that HKMA's position was in conflict with that of the Administration.</p> <p>The Administration explained that the introduction of CDD and record keeping requirements together with the implementation of the licensing system of MSOs might not eliminate money laundering activities conducted through remittance or money changing operations. FIs should have the discretion to take necessary measures to reduce the risk of money laundering activities.</p> <p>The Deputy Chairman said a FI should report any suspected money laundering activities to the Police or the respective regulatory body for investigation, rather than penalizing the MSO concerned; otherwise the FI would become a de facto regulatory body of MSOs.</p>	
012654 – 013003	Administration	Briefing by the Administration on the paper on "Politically Exposed Persons" (LC Paper No. CB(1)881/10-11(02))	
013004 – 013212	Administration	Briefing by the Administration on the paper on "Remittance Services Operated by the Post Office" (LC Paper No. CB(1)881/10-11(03))	
013213 – 013301	Administration	Briefing by the Administration on the paper on "Money Service Operators' Access to Banking Services" (LC Paper No. CB(1)881/10-11(04))	
013302 – 013546	Administration	Briefing by the Administration on the paper on "Definition of Long Term Business and Rationale of its inclusion in the Bill" (LC Paper No. CB(1)881/10-11(05))	
013547 – 013637	Chairman	Date of next meeting	