

立法會
Legislative Council

LC Paper No. CB(1)2873/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/10/2

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

**Eighth meeting on
Thursday, 17 February 2011, at 4:30 pm
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
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
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
Dr Hon Philip WONG Yu-hong, GBS

**Public officers
Attending** : Mr Patrick HO, JP
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Miss Melo MAN
Acting Principal 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 Hon CHAN
Senior Manager (Anti-money Laundering)
Office of the Commissioner of Insurance

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

**Attendance by
Invitation**

: Mr Tommy WONG
Anti-money Laundering Specialist Compliance Division
Operational Risk and Compliance Department
Bank of China (Hong Kong) Limited
(also Chairman, Anti-money Laundering Committee,
Hong Kong Association of Banks)

Ms Lily HO
Regional Money Laundering Control Officer, Asia Pacific
The Hongkong and Shanghai Banking
Corporation Limited

Mr Stanley WU
Deputy Country Money Laundering Prevention Officer
Standard Chartered Bank (Hong Kong) Limited

Mr Richard MAZZOCHI
Partner
Mallesons Stephen Jaques

Ms Urszula McCORMACK
Registered Foreign Lawyer
Mallesons Stephen Jaques

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 Clara LO
Legislative Assistant (1)10

I Meeting with the Hong Kong Association of Banks and the Administration

Receiving views from The Hong Kong Association of Banks

(LC Paper No. CB(1)1196/10-11(01) — Submission from The Hong Association of Banks on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill (English version only) dated 21 January 2011)

Discussion

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

Admin Follow-up actions to be taken by the Administration

2. The Administration and the Hong Kong Monetary Authority were requested to discuss with the Hong Kong Association of Banks the proposals in the latter's submission, and to report back to the Bills Committee on agreed proposed amendments to the Bill as well as issues for which agreement could not be reached, if any.

3. The Administration was also requested to provide information on the possible impact on Hong Kong's ability to seek the consent of the Financial Action Task Force to remove Hong Kong from its regular follow-up process, if the criminal offences in relation to the statutory customer due diligence and record-keeping requirements are removed.

III Any other business

4. The Chairman reminded members that the next meeting would be held on 14 March 2011.

5. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
9 August 2011

**Proceedings of the
Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill
Eight meeting on Thursday, 17 February 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000644 – 000758	Chairman	Introductory remarks	
000759 – 002001	HKAB	Introduction by the Hong Kong Association of Banks (HKAB) on its submission (LC Paper No. CB(1)1196/10-11(01)).	
002002 – 002812	Mr James TO HKAB	<p>Mr TO enquired whether HKAB had discussed its proposals with the Administration. Mr TO also opined that for the present legislative exercise, it would be sufficient for Hong Kong to fulfill the minimum requirements of the prevailing international standards. He sought HKAB's view on whether the Bill contained any requirements exceeding those of the prevailing international standards.</p> <p>HKAB responded that before the Bill was formally introduced, HKAB had forwarded its views on certain issues to the Administration, including the request for adopting the risk-based approach in the Bill, the difficulties in conducting ongoing due diligence for all customers indiscriminately and whether it would be necessary to extend the application of the proposed legislation to the offshore branches and subsidiary undertakings of locally incorporated financial institutions. HKAB expressed concurrence with Mr TO's view that it would be sufficient for Hong Kong to meet the minimum requirements of the prevailing international standards. Regarding the requirements set out in the Bill that might exceed those of the prevailing international standards, HKAB quoted the 10% threshold under the proposed definition of "beneficial owner" and the requirements on instantaneous monitoring of wire transfers and remittance transactions as examples.</p>	
002813 – 003721	Dr Margaret NG HKAB	Dr NG asked whether the banking sector considered that it would be more desirable for financial institutions to assess its own risk of	

Time Marker	Speaker	Subject(s)	Action Required
		<p>money laundering and terrorist financing (AML). Dr NG also asked how the application of a risk-based approach would facilitate financial institutions in implementing AML measures.</p> <p>HKAB responded that currently, the banking sector was using the risk-based approach in implementing AML procedures. Under this approach, banks would consider the complete profile of a customer in deciding the appropriate AML procedures rather than making the decisions based on one or two specific factors only.</p> <p>Dr Ng said that from the Administration's perspective, adopting a risk-based approach as suggested by HKAB might result in uncertainty in the operation of the AML procedures/requirements. She requested HKAB to address this concern and explain why the adoption of a risk-based approach would not result in financial institutions taking arbitrary decisions. HKAB responded that it never intended to lower the AML standards to be adopted by Hong Kong, and to facilitate financial institutions to fulfill the AML requirements in a consistent manner, HKAB suggested that the relevant authorities should publish unified guidelines on mandatory requirements and supplement them by sector-specific requirements. In this regard, HKAB had set out relevant suggestions in Annexure 2 of its submission.</p>	
003722 – 003803	Mr James TO HKAB	Noting that Annexure 1 of HKAB's submission set out a number of proposed amendments to the Bill relating to the adoption of the risk-based approach, Mr TO enquired whether HKAB considered that such amendments were the pre-conditions for the proposals set out in Annexure 2 of the submission. HKAB replied in the affirmative.	
003804 – 005558	Mr James TO Chairman Dr Margaret Mrs Sophie LEUNG	Mr TO remarked that HKAB's submission was highly technical and suggested that HKAB explain its submission to the Bills Committee in detail. The Chairman considered that this might not be necessary and this might result in insufficient time for member's discussion with	

Time Marker	Speaker	Subject(s)	Action Required
		<p>the Administration and HKAB. After discussion, it was agreed that while the Administration would follow up and respond to the proposals of HKAB after the meeting, members would seek clarification from HKAB on issues raised in its submission as necessary.</p>	
005559 – 005652	Mr James TO HKAB	<p>In response to Mr TO's enquiry, HKAB remarked that it was not sure about the Administration's position on the adoption of a risk-based approach for the Bill, but HKAB noted that that the Bill did not contain an overarching principle of a risk-based approach.</p>	
005653 – 010144	Mrs Sophie LEUNG HKAB	<p>Mrs LEUNG suggested that the Hong Kong Monetary Authority (HKMA) should discuss with HKAB the latter's proposals and convey their consolidated views to the Administration. HKAB remarked that it had already planned to discuss its proposals with HKMA.</p>	
010145 – 012017	Dr Margaret Ng Administration Mr James TO Chairman Mrs Sophie LEUNG	<p>In response to Dr NG's enquiry about the Administration's view on HKAB's submission, the Administration advised that HKAB had previously expressed its view on the adoption of a risk-based approach for the Bill and the Administration had taken into account such view in drafting the Bill. While the Bill did not contain a single overarching principle on the risk-based approach, the principle was incorporated in the Bill in that different levels of due diligence measures are applicable to customers of different risk profiles. The Administration added that it had not discussed with HKAB over the proposed amendments set out in Annexure 1 of HKAB's submission as these were specific drafting amendments not raised in the previous public consultations.</p> <p>Dr NG said that it appeared that the Administration was agreeable to adopting a risk-based approach in principle, though it held different views from HKAB on implementation issues. In response, the Administration remarked that the Financial Action Task Force (FATF) did not prefer leaving it to the trades to set the criteria for assessment of AML risks.</p> <p>Mr TO suggested that HKAB should further discuss with the Administration with a view to</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>working out a framework which was acceptable to both parties and could fulfill the requirements of prevailing international standard set by the FATF as well. The Chairman concurred with Mr TO's suggestion. Mrs LEUNG reiterated that HKMA, being the frontline regulator of the banking sector, should assist HKAB in explaining the banking sector's concerns to the Administration.</p> <p>Members agreed that (i) the Administration and HKMA would discuss with HKAB the proposals in the latter's submission, and (ii) the Administration would report back to the Bills Committee on agreed proposed amendments to the Bill as well as issues for which agreement could not be reached, if any.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
012018 – 012641	Dr Margaret NG HKAB	<p>Dr NG considered that although the Administration and HKAB agreed on the use of risk-based approach in principle, HKAB had worries over the guidelines to be made under the Bill because the relevant enabling provisions of the Bill were not clear enough. In this regard, she suggested that HKAB might propose relevant amendments for the Administration/Bills Committee's consideration.</p>	
012642 – 013821	Mr James TO Dr Margaret NG Administration HKAB	<p>Mr TO suggested that the Administration should conduct consultation on the draft guidelines. He also considered that issues relating to the guidelines to be made under the Bill should be covered in the discussion between the Administration and HKAB.</p> <p>Dr NG agreed with Mr TO's suggestion. She suggested that the Administration might provide a paper on how the guidelines would be drafted so that stakeholders could express their views more easily. Submission of progress report(s) to the relevant Panel for discussion might also be considered.</p>	
013822 – 014953	Mr James TO Dr Margaret NG Administration HKAB	<p>In view of the fact that frontline staff of financial institutions were subject to criminal liability under certain provisions in the Bill, Mr TO requested the Administration to advise on the possible impact on Hong Kong's ability to seek the consent of the FATF to remove Hong Kong from its regular follow-up process, if the</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		criminal offences in relation to the statutory customer due diligence and record-keeping requirements are removed.	
014954 – 015000	Chairman	<u>Date of next meeting</u> The Chairman said that the next meeting would be held on 14 March 2011.	

Council Business Division 1
Legislative Council Secretariat
9 August 2011