

**立法會**  
**Legislative Council**

LC Paper No. CB(1)3013/10-11  
(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**

**Thirteenth meeting on  
Monday, 16 May 2011, at 8:30 am  
in Conference Room B 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 WONG Ting-kwong, BBS, 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  
Hon Audrey EU Yuet-mee, SC, JP  
Hon CHIM Pui-chung  
Hon Starry LEE Wai-king, JP

**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 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 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 Hugo CHIU  
Council Secretary (1)5

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**I Confirmation of minutes of meeting**

(LC Paper No. CB(1)2042/10-11 — Minutes of meeting on  
13 January 2011)

The minutes of the meeting held on 13 January 2011 were confirmed.

## II Meeting with the Administration

### Follow-up to issues raised at previous meetings

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

LC Paper No. CB(1)2165/10-11(01) — Administration's paper on "Further Information on the Anti-Money Laundering and Counter-Terrorist (Financial Institutions) Review Tribunal"

LC Paper No. CB(1)2174/10-11(01) — Administration's paper on "Further Information on the Criminal Offences Provisions")

### Other papers for discussion/information

(LC Paper No. CB(1)2165/10-11(02) — Letter from Assistant Legal Adviser to the Administration dated 29 April 2011

LC Paper No. CB(1)2165/10-11(03) — Administration's reply to Assistant Legal Adviser's letter

LC Paper No. CB(1)2165/10-11(04) — List of follow-up actions arising from the meeting on 19 April 2011 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2165/10-11(05) — List of follow-up actions arising from the meeting on 28 April 2011 prepared by the Legislative Council Secretariat)

### Discussion

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

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### Follow-up actions

2. The Administration agreed that the relevant public officer would, in delivering his speech upon the resumption of the Second Reading debate on

the Bill, state expressly the legislative intent that the word "allow" in the relevant provisions (i.e. sections 10(7), 10(8), 13(7) and 13(8) of the Bill) connotes "elements of awareness and capability of control" so as to ensure certainty in the interpretation of the word in the relevant provisions.

ALA  
Clerk

3. To facilitate follow-up by the relevant Panel and discussion by the Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation, the Legal Adviser to the Bills Committee was requested to beef up the information in the Administration's paper LC Paper No. CB(1)2165/10-11(03) with appropriate wording and necessary information.

## **II Any other business**

### Date of next meeting

4. The Chairman said that the next meeting would be held on 26 May 2011, at 2:30 pm.

5. There being no other business, the meeting ended at 9:27 am.

Council Business Division 1  
Legislative Council Secretariat  
16 September 2011

**Proceedings of the  
Bills Committee on Anti-Money Laundering and  
Counter-Terrorist Financing (Financial Institutions) Bill  
Thirteenth meeting on Monday, 16 May 2011, at 8:30 am  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
001252 – 001426	Chairman	Confirmation of minutes of meeting on 13 January 2011 (LC Paper No. CB(1)2042/10-11)  Introductory remarks	
001427 – 001630	Dr Margaret NG ALA5	Referring to the paper "Administration's reply to Assistant Legal Adviser's letter" (LC Paper No. CB(1)2165/10-11(03)), Dr NG said that while she understood that the drafts of the guidelines and subsidiary legislations referred to in the paper were not yet available for scrutiny by the Bills Committee, she would suggest that the paper be forwarded to the relevant Panel for follow-up and to the Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation for information and discussion as appropriate. For the said purpose, she requested ALA5 to beef up the information in the paper with appropriate wording and necessary information.	ALA and Clerk to follow-up
001631 – 002951	Administration Chairman	Briefing by Administration on the paper "Further Information on the Anti-Money Laundering and Counter-Terrorist (Financial Institutions) Review Tribunal" (LC Paper No. CB(1)2165/10-11(01)).	
002952 – 003353	Deputy Chairman Administration Mr WONG Ting-kwong	Noting from paragraph 3 of the paper that an employer might, subject to the terms in the employment contract, deduct an employee's wage on account of the employee's absence from work to appear before the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal ("the Tribunal"), Mr TO enquired whether the same arrangement was provided in the Jury Ordinance (Cap. 3).  The Administration responded that the arrangement under the Bill was the same as that for a person appearing in court as witness for civil or criminal proceeding.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr TO sought confirmation from the Administration of his understanding that, if the arrangement for appearing before the Tribunal was not set out in the employment contract and an employee was absent from work as he was required to appear before the Tribunal, (a) the employer could not dismiss the employee; and (b) the employer could deduct the wage of the employee if the employee was not entitled to take leave for reasons such as having exhausted his leave balance.</p> <p>The Administration replied in the affirmative and supplemented that the arrangement on wage for an employee serving as a juror would also be subject to the relevant terms set out in the employee's employment contract, and that an allowance would be granted to a person serving as a juror.</p> <p>Mr WONG said that according to his experience, under the relevant legislation, an employer was required to grant leave to an employee for serving as a juror but incidental wage arrangements were not provided in the legislation.</p>	
003354 – 003746	Mr WONG Ting-kwong Administration	<p>Referring to the sentence "It is unlikely that the relevant authority could fulfill the above-mentioned requirements and obtain information from an authorized institution in relation to the affairs of a person that is not related to the one under the inspection or investigation" in paragraph 6 of the paper, Mr WONG enquired why the word "unlikely" was used and whether this sentence implied that investigators would not take into account information irrelevant to the case during the investigation.</p> <p>The Administration clarified that the sentence referred to does not apply to Hong Kong Monetary Authority's ("HKMA") inspection or investigation of banks, and elaborated that for inspections or investigations involving other financial institutions, a relevant authority might need to seek information from the financial institution's bank. It would be unlikely for the relevant authority to collect information that was irrelevant to the operating business of the financial institution under inspection or investigation.</p>	

Time Marker	Speaker	Subject(s)	Action Required
003747 – 004514	Administration Chairman	Briefing by Administration on the paper "Further Information on the Criminal Offences Provisions" (LC Paper No. CB(1)2174/10-11(01)).	
004515 – 004751	Mr WONG Ting-kwong Administration	<p>Referring to paragraph 10 of the paper, Mr WONG sought clarification on the meaning of the phrase "not within the person's power to stop his colleague from performing certain act".</p> <p>The Administration responded that the scenarios covered included (a) a subordinate not having the power to stop the act of his supervisor; and (b) an employee without a superior-subordinate relationship with his colleague and thus did not have the power nor responsibility to stop the act of the colleague.</p> <p>In view of the Administration's reply, Mr WONG expressed concern that a person might use "the lack of power" as an excuse to evade criminal liability under the Bill and enquired whether failing to report a breach for which the person has no power to stop was an offence under the Bill. The Administration advised that a person would have criminal liability under the Bill only if the mental threshold relating to the criminal sanctions specified by the Bill was met. As such, the mere act of failing to report a breach for which the person has no power to stop would not be regarded as an offence under the Bill.</p>	
004752 – 005106	Deputy Chairman Administration	<p>Mr TO enquired about the details of the court judgment mentioned in paragraph 11 of the paper regarding the interpretation of the term "allow". The Administration responded that the judgment was given by a court in an overseas jurisdiction in a case involving leakage of gas.</p> <p>Mr TO said that while he agreed to the interpretation of the word "allow" in the court judgment as connoting "elements of awareness and capability of control", he was concerned that the judgment was not directly relevant to the situations covered by the Bill. He thus suggested the Administration further explore whether there were relevant local court judgments/cases involving interpretation of the word "allow". If there were no such court judgments/cases, Mr TO suggested that to ensure certainty in the interpretation of the word, the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>relevant public officer should, in delivering his speech upon the resumption of the Second Reading debate on the Bill, state expressly the legislative intent that the word "allow" in the relevant provisions (i.e. sections 10(7), 10(8), 13(7) and 13(8) of the Bill) connotes "elements of awareness and capability of control". The Administration agreed to Mr TO's suggestion.</p>	<p>Administration to take action as per paragraph 2.</p>
005107 – 005340	Deputy Chairman Administration	<p>Referring to paragraph 3 of the paper, Mr TO said that he did not agree that it was necessary to provide for criminal offences in the Bill in order to fulfill the requirement of Financial Action Task Force (FATF) as he understood that civil sanctions were imposed in the relevant legislations of some EU countries.</p> <p>The Administration responded that although FATF did not explicitly require imposition of criminal sanctions, those EU countries which had passed the scrutiny of FATF have all enacted anti-money laundering/counter terrorist financing legislation with criminal offences (e.g. UK, Norway and Italy). It would be difficult for Hong Kong to justify that the sanctions available were "effective, proportionate and dissuasive" if no criminal offences were provided in the Bill. There was also a tendency for other EU countries to tighten their anti-money laundering/counter terrorist financing legislation by including criminal offences.</p>	
005341 – 005501	Chairman Administration	<p>The Chairman asked when the draft Committee Stage amendments (CSAs) to be moved by the Administration would be ready. The Administration replied that the draft CSAs were under preparation. The Administration aimed to provide the draft CSAs and its responses to the outstanding issues arising from previous meetings for the Bills Committee's consideration at the next meeting scheduled for 26 May 2011.</p>	
005502 – 005534	Chairman	Schedule of future meetings	