

立法會
Legislative Council

LC Paper No. CB(1)3007/10-11
(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**

**Fourteenth meeting on
Thursday, 26 May 2011, at 2:30 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
Dr Hon Philip WONG Yu-hong, GBS
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** : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, 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 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 CHAN Chi-keung
Head of the Special Project Planning Team
Trade Controls Branch
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

I Confirmation of minutes of meeting

(LC Paper No. CB(1)2226/10-11 — Minutes of meeting on
24 January 2011)

The minutes of the meeting held on 24 January 2011 were confirmed.

II Meeting with the Administration

Follow-up to issues raised at previous meetings

(LC Paper No. CB(1)2290/10-11(01) — Administration's paper on "Further Information on Money Service Operators Licensing Regime"

LC Paper No. CB(1)2290/10-11(02) — Administration's paper on "Response to Hong Kong Association of Banks' Submission")

Committee Stage amendments proposed by the Administration

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

LC Paper No. CB(1)2290/10-11(03) Administration's proposed Committee Stage amendments to Schedule 2)

Discussion

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

Admin Follow-up action

2. The Administration was requested to devise appropriate arrangements to facilitate the supervisory and enforcement work of the Commissioner of Customs and Excise in respect of money service operators (MSOs) registered as "mobile operation" MSOs.

III Any other business

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on 2 June 2011, at 8:30 am.

4. There being no other business, the meeting ended at 3:55 pm.

**Proceedings of the
Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill
Fourteenth meeting on Thursday, 26 May 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000117 – 000220	Chairman	Confirmation of minutes of meeting on 24 January 2011 (LC Paper No. CB(1)2226/10-11)	
000221 – 000913	Administration Chairman	Briefing by the Administration on paragraphs 1-5 of the paper on "Further Information on Money Service Operators Licensing Regime" (LC Paper No. CB(1)2290/10-11(01)) (1 st Paper)	
000914 – 001746	Chairman Administration	<p>Noting that the Administration proposed to amend the Bill to allow money service operators (MSOs) to operate either under the mode of "mobile operation" or "fixed location", the Chairman enquired about the following:</p> <p>(a) whether a "fixed location" MSOs would be induced to change to a "mobile operation" MSOs or even make false claim that it was a "mobile operation" MSO, given that, based on the information set out in the 1st Paper, the requirements to be imposed on "mobile operation" MSOs seemed to be less stringent;</p> <p>(b) the arrangements for a "mobile operation" MSO with more than one person running the business; and</p> <p>(c) whether the requirements on record-keeping for a "mobile operation" MSO would be different from those for a "fixed location" MSO.</p> <p>The Administration made the following responses:</p> <p>(a) there were specific requirements on the business premises of an MSO operating under the mode of "fixed location". The Commissioner of Customs and Excise (the Commissioner) would consider (i) whether the premises were suitable for the MSO to conduct its business; and (ii) whether the premises were reasonably accessible to an authorized person for inspections. Such</p>	

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		<p>two requirements would also be applicable to a new branch opened by a "fixed location" MSO;</p> <p>(b) the Customs and Excise Department would conduct inspection to ensure that an MSO would not make false claim on the mode of operation; and</p> <p>(c) as all MSOs (regardless of their mode of operation) would need to comply with the customer due diligence and record-keeping requirements specified in Schedule 2 to the Bill, there would be little incentive for an MSO to switch from "fixed location" mode of operation to "mobile operation".</p> <p>The Chairman further enquired whether an MSO would be required to specify in their licence application the location for keeping customer records. The Administration responded that while the Bill did not have such requirement, an MSO had to observe the relevant requirements in Schedule 2 to the Bill and ensure that it could provide the relevant documents during an inspection.</p>	
001747 – 002020	Mr James TO Administration Chairman	<p>Mr TO shared the Chairman's concern that the requirements on "mobile operation" MSOs seemed to be less stringent, and pointed out that there would be practical difficulties for Commissioner of Customs and Excise to conduct surprise inspections on "mobile operation" MSOs. Mr TO suggested the Administration give further thoughts on the issue and devise appropriate arrangements.</p> <p>The Administration remarked that "mobile operation" MSOs would also be required to produce documents to the Commissioner for inspection and investigation purposes, and agreed that appropriate arrangements would be devised to facilitate the Commissioner's supervisory and enforcement work in respect of "mobile operation" MSOs.</p>	The Administration to take action as per paragraph 2 of the minutes.
002021 – 002229	Mr WONG Ting-kwong Administration Chairman	In reply to Mr WONG's enquiry, the Administration advised that there were already mobile MSOs in Hong Kong. These operators might or might not have fixed business premises and catered to their customers' needs by operating	

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		in a mobile mode. In fact, the MSO licensing regime in the United Kingdom (UK) also allowed the registration of "mobile operation" MSOs.	
002230 – 002429	Chairman Administration	The Chairman enquired whether the legislation of UK required a "mobile operation" MSO to have a fixed business premises. The Administration replied in the negative.	
002430 – 002551	Administration	Briefing by the Administration on paragraph 6 of the 1 st Paper.	
002552 – 003034	Mr WONG Ting-kwong Administration Chairman	<p>Mr WONG remarked that the scale of operation and the amount of money involved in different cases of unlicensed operation varied, and enquired whether different penalty levels would apply based on the scale of operation and the amount of money involved.</p> <p>The Administration responded that the Bill did not provide for different penalty levels for the offence of unlicensed operation based on the scale of operation and the amount of money involved. The Bill had set out the maximum penalty level for unlicensed operation and the Court would determine the penalty level having regard to relevant factors, including the scale of operation and the amount of money involved. The Administration added that the Court could issue a disqualification order in addition to criminal fine and imprisonment term if necessary.</p>	
003035 – 004032	Administration Chairman	Briefing by the Administration on paragraphs 7-15 of the 1 st Paper.	
004033 – 005205	Administration	Briefing by the Administration on the paper "Response to Hong Kong Association of Banks' Submission" (LC Paper No. CB(1)2290/10-11(02))	
005206 – 005619	Mr WONG Ting-kwong Administration	<p>Mr WONG sought clarification on when financial institutions would be allowed to conduct verification on beneficial owners according to the 25% threshold.</p> <p>The Administration clarified that financial institutions would not be allowed to make arbitrary decisions in applying the 10% or 25% threshold on the verification of beneficial owners. The Administration had proposed amendments to the Bill (as set out in LC Paper No.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>CB(1)2290/10-11(03)) to set out the circumstances under which the 10% or 25% threshold should apply. The relevant authorities would also issue guidelines on the kind of customers and scenarios that should be assessed to be of high risk and the corresponding additional measures to be taken in due course.</p> <p>Mr WONG remarked that some MSOs had expressed the wish that the Bill could take effect quickly as the operation of the MSO licensing system would facilitate their business operations. The Administration referred members to clause 1(2), which provided that the future Ordinance would come into operation on 1 April 2012.</p>	
005620 – 012407	Chairman Administration Mrs Sophie LEUNG	<p>Briefing by Administration on the paper "Administration's proposed Committee Stage amendments to Schedule 2" (LC Paper No. CB(1)2290/10-11(03))</p> <p>Mrs LEUNG sought confirmation as to whether the amendment to section 9(b) of Schedule 2 to the Bill was proposed in response to the request of the Hong Kong Association of Banks. The Administration replied in the affirmative.</p>	
012408 – 012440	Administration Chairman	<p>The Administration remarked that it aimed at submitting responses on all the outstanding issues raised at previous meetings and the remaining proposed Committee Stage amendments before the next meeting.</p>	
012441 – 012458	Chairman	<p>The Chairman informed members that Ms Starry LEE Wai-king had given notice of withdrawal from the Bills Committee's membership with effect from 25 May 2011, and that the quorum of the Bills Committee had been revised to three members (including the Chairman) accordingly.</p>	
012459 – 012532	Chairman	<p>The Chairman said that the next two meetings were scheduled for 2 June 2011 at 8:30 am and 14 June 2011 at 2:30 pm.</p>	