

立法會
Legislative Council

LC Paper No. CB(1)3008/10-11
(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**

**Fifteenth meeting on
Thursday, 2 June 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 Audrey EU Yuet-mee, SC, 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 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 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

I Meeting with the Administration

Follow-up to issues raised at previous meetings

(LC Paper No. CB(1)2355/10-11(01) — Administration's paper on "Outstanding Issues on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill")

Committee Stage amendments proposed by the Administration

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

LC Paper No. CB(1)2355/10-11(02) — Administration's proposed
Committee Stage amendments
to the Bill (excluding
Schedule 2)

Discussion

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

Follow-up actions

- Admin 2. The Administration was requested to provide written responses on the following issues raised at the meeting:
- (a) the need for specifying in the Bill the procedure for sealing of the documents upon which legal professional privilege was claimed;
 - (b) the need to amend the definition of "money changing service" in Part 1 of Schedule 1 of the Bill to avoid the possible loophole due to the exclusion of the money changing service provided by hotels; and
 - (c) the drafting of the Chinese version of clauses 34(8) and 46(2)(d).

II Any other business

Legislative timetable

3. The Chairman said that the Bills Committee had completed scrutiny of the Bill, and subject to the feedback from members on the written responses to be provided by the Administration, no further meeting would be held. If the Administration gave notice to resume the Second Reading debate on the Bill on either 29 June 2011 or 6 July 2011, the deadline for giving notice of amendment(s) to the Bill would be 22 June 2011 and 28 June 2011 respectively. The Bills Committee would report its deliberations to the House Committee on 17 June 2011.

Date of next meeting

4. The Chairman reminded members if it was decided that another meeting should be held, that meeting would be held on 14 June 2011, at 2:30 pm.
5. There being no other business, the meeting ended at 10:32 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
Fifteenth meeting on Thursday, 2 June 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000203 – 000340	Chairman	Introductory remarks	
000341 – 000835	Administration	Briefing by Administration on paragraphs 2 to 5 of the paper on "Outstanding Issues on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill" (LC Paper No. CB(1)2355/10-11(01))(1 st paper)	
000836 – 002428	Ms Audrey EU Administration ALA5	<p><u>Procedure for sealing of documents upon which legal professional privilege was claimed</u></p> <p>Ms EU expressed concern that if provisions on the procedure for sealing of documents were not included in the Bill, the relevant parties might need to refer to other Ordinances with such provisions. However, the procedure for sealing of documents specified in these Ordinances might be different from one another, and this might cause confusion to the parties concerned.</p> <p>The Administration explained that it was uncommon for a piece of legislation to contain provisions on the procedure for sealing of documents when legal professional privilege was claimed. The Ordinances mentioned in paragraph 4 of the 1st paper contained such provisions because of their own specific reasons. Where such procedure was not specified in the relevant legislation, the parties concerned should follow the procedure under case law, which was referred to in paragraph 5 of the 1st paper.</p> <p>Ms EU remarked that sufficient protection should be afforded to the parties subject to a search, because according to her understanding, some authorities such as the Independent Commission Against Corruption (ICAC), adopted a sweeping approach in searching and seizing evidence. Ms EU also opined that the inclusion of provisions on the procedure for sealing of documents could reduce potential disputes. She sought the views of ALA5 in this regard.</p>	

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		<p>ALA5 said that she agreed with the Administration's remark that only a few pieces of legislation in Hong Kong contained provisions on the procedure for sealing of documents, and whether the Bill should include such provisions would be a matter to be decided by the Bills Committee.</p> <p>Ms EU remarked that there would be grey areas if such provisions were not included in the Bill, and she suggested adding such provisions to the Bill.</p> <p>In response, the Administration remarked that the powers of the relevant authorities to search and seize records and documents were subject to various safeguards specified in the Bill. Drawing references to the other Ordinances mentioned in the paper, the Administration added that the procedure for sealing of documents under the Bill should be provided through amending the High Court Ordinance (Cap. 4), rather than the Bill.</p> <p>On Ms EU's enquiry on which clauses of the Bill the relevant parties could refer to should disputes on sealing of documents arise, the Administration advised that reference could be made to the judgment of the case set out in footnote 1 of the 1st paper.</p> <p>Ms EU pointed out that the case mentioned by the Administration was relatively recent and might not be applicable to all potential scenarios arising under the Bill. She considered that the preferred approach was to inform members of the public about their right to sealing of documents through legislative provisions.</p> <p>The Administration responded that clause 80 (on legal professional privilege) set out the relevant protection; under the clause, it was clear that a person might claim legal professional privilege over the documents sought to be inspected or seized by the relevant authority.</p> <p>Ms EU sought ALA5's view on whether the Bill provided sufficient protection for the public regarding the sealing of documents. ALA5 remarked that clause 80 was a general provision on legal professional privilege and the operation</p>	

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		of the legal requirement for sealing of documents, if not provided in the Bill, would be based on case law.	
002429 – 002753	Administration	Briefing by Administration on paragraphs 6-8 of the 1 st paper.	
002754 – 004550	Dr Margaret NG Administration Ms Audrey EU	<p>Dr NG referred to the issue of sealing of documents and considered that the Administration's argument that clause 80 could provide sufficient protection for the public was theoretical. Dr NG pointed out that ordinary citizens suspected of committing the offence under clause 29 could be subject to a search under a warrant granted under clause 46. Unlike regulated financial institutions, ordinary citizens might not have full knowledge of their right to claim legal professional privilege and hence the sealing of documents.</p> <p>The Administration responded that the offence specified under clause 29 was unlicensed operation of money service and if any documents seized by the authority were not relevant to unlicensed operation of money service, such documents would not be used in the prosecution process. Dr NG remarked that the protection mentioned by the Administration (i.e. clause 80 of the Bill and case law in footnote 1 of the 1st paper) was insufficient. Ms EU shared with Dr NG's view and remarked that authorized officer(s) were prone to collect as much information as possible. Both Dr NG and Ms EU suggested that the Bill should include provisions on sealing of documents to protect the rights of the public.</p> <p>In response, the Administration pointed out that the procedure for sealing of documents was set out in the relevant judgment and that a person's right to claim legal professional privilege was well established. In the event that a person claimed legal professional privilege over materials during the execution of a warrant, the authorized officer(s) would have to follow the common law in dealing with the materials and hence the procedure of sealing the materials.</p> <p>Dr NG expressed reservation on whether the public had full knowledge of such rights and</p>	

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		<p>suggested that a provision be added to the Bill to require the authorized officer(s) to inform the person subject to a search warrant of such rights.</p> <p>The Chairman asked the Administration to further consider the concerns and suggestions of Dr NG and Ms EU and provide a written response to the Bills Committee.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
004551 – 005019	Administration	Briefing by Administration on paragraphs 9-11 of the 1 st paper.	
005020 – 005643	Ms Audrey EU Administration	<p>Ms EU enquired about the coverage of the term "a person entrusted with prominent public functions but are not politically exposed persons (PEPs) as defined under the Bill" mentioned in the paper.</p> <p>The Administration clarified that the term "a person entrusted with prominent public functions but are not PEPs as defined under the Bill" was used because some persons holding senior positions in a government (e.g. senior officials of the Mainland) were not covered by the definition of PEP under the Bill. In determining whether a customer was "a person entrusted with prominent public functions", a financial institution might refer to the generic post titles set out in the definition of PEP in the Bill for reference. The Administration added that the relevant authorities would issue guidelines in this regard in due course.</p>	
005644 – 010019	Administration	Briefing by the Administration on paragraphs 12-15 of the 1 st paper.	
010020 – 010700	Administration	Briefing by Administration on the proposed Committee Stage amendments (CSAs) to the Bill (LC Paper No. CB(1)2355/10-11(02)): clauses 3 to 27	
010701 – 010729	Chairman Administration	Regarding the proposed CSA for clause 27(1)(b), the Chairman enquired how the public could contact a money service operator (MSO) if the correspondence address it provided was a post box. The Administration explained that the aim of the register of licensees was to provide the identity and the correspondence address of each licensed MSO for public information to	

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		determine whether he/she was dealing with a licensed MSO. It was possible that the correspondence address of a licensed MSO was a post box.	
010730 – 010914	Administration	Briefing by the Administration on the proposed CSAs: clauses 29 to 30(2)	
010915 – 011334	Ms Audrey EU Administration Chairman	Ms EU enquired whether a "fixed location" MSO would commit an offence if it did not operate in the particular premises approved by the Commissioner of Customs and Excise (the Commissioner). The Administration responded that while the "fixed location" MSO could conduct part of its business (like meeting with customers) outside the particular premises, it would commit an offence if it operated in other business premises without obtaining prior approval of the Commissioner. The Administration added that a "mobile operation" MSO needed the approval of the Commissioner for switching to a "fixed location" MSO if it wished to conduct its business in particular premises.	
011335 – 011425	Administration	Briefing by the Administration on the proposed CSA to clause 30(4)(b).	
011426 – 011533	Ms Audrey EU	Ms EU remarked that a search by a relevant authority in respect of a "mobile operation" MSO would likely be conducted in the MSO's domestic premises, and she was thus concerned whether such a MSO, being an ordinary member of the public, would be aware of his right to claim for sealing of documents if such procedure was not provided in the Bill.	
011534 – 011830	Administration	Briefing by the Administration on the proposed CSAs to clause 30(3)(b), clause 33 to clause 38.	
011831 – 011940	Chairman Administration	The Chairman suggested that the comma between the phrases "但該人並沒有在根據第(4)款給予該人的通知指明的期限內" and "將該牌照交回關長" should be removed in the Chinese version of the proposed new clause 34(8).	The Administration to take action as per paragraph 2 of the minutes.
011941 – 012458	Ms Audrey EU Administration	Ms EU expressed concern on whether the level of penalty for unlicensed operation was too low. Ms EU remarked that currently banks might cancel the accounts of MSOs arbitrarily and she	

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		<p>hoped that with the enactment of the Bill, which would place MSOs under formal regulation, could help to address this problem. As such, she considered that a higher level of penalty could better reflect the severity of unlicensed operation under the proposed MSO regulatory regime.</p> <p>The Administration responded that it had addressed the issue in a previous paper (i.e. LC Paper No. CB(1)2290/10-11(01)), and pointed out that the proposed sanction on unlicensed operation in the Bill (i.e. a fine at level 6 and 6-month imprisonment) was higher than the current sanction (i.e. a fine at level 5) for unregistered operation under the Organized and Serious Crimes Ordinance (Cap. 455).</p> <p>Ms EU further enquired whether the sanction for unlicensed operation under the Bill was similar to comparable offences in other licensing regimes. The Administration replied in the affirmative and pointed out that the Department of Justice had been consulted on the proposed penalties in the Bill.</p>	
012459 – 012800	Administration	Briefing by the Administration on the proposed CSAs: clauses 38A to 46	
012801 – 013411	Ms Audrey EU	Ms EU suggested the Administration consider adding a sub-clause in clause 46 specifying that according to clause 80, the person subject to a search warrant might require the documents being seized to be sealed for a specified period.	The Administration to take action as per paragraph 2 of the minutes.
013412 – 013553	Mrs Sophie LEUNG	Mrs LEUNG remarked that clause 46 should not take precedence over clause 80 and vice versa. Mrs LEUNG also remarked that the Chinese version of clause 46(2)(d) with the proposed amendment was ambiguous.	
013554 – 013810	Mr James TO Administration Chairman	Mr TO remarked that the Bill was not clear on the relationship between clause 46 and clause 80, and suggested the Administration consider amending clause 46 to reflect its intent clearly so as to avoid potential disputes on sealing of documents (e.g. whether the documents should be sealed before or after being taken away by authorized officers if the person subject to a search warrant made a claim that such documents should be sealed).	The Administration to take action as per paragraph 2 of the minutes.

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		<p>The Chairman remarked that the Administration should also examine whether similar amendments should be made to other relevant provisions (such as clause 17) in the Bill.</p> <p>Ms EU asked ALA5 whether there were further examples of legislative provisions where the procedure for sealing of documents was provided in details.</p>	
013811 – 014005	Ms Audrey EU Chairman	Ms EU shared Mrs LEUNG's view that the Chinese version of clause 46(2)(d) was ambiguous and suggested the Administration refine it in a clearer manner.	The Administration to take action as per paragraph 2 of the minutes.
014006 – 014045	Administration	Briefing by the Administration on the proposed CSA to clause 47	
014046 – 014333	Ms Audrey EU Mr James TO Administration	<p>Ms EU queried the need to include the word "found" in clauses 46(2)(d), 46(2)(e) and 46(2)(f), as the inclusion of the word had made the Chinese version of the corresponding clauses difficult to read.</p> <p>The Administration responded that the inclusion of the word "found" would ensure clarity of the meaning of the clauses concerned. Mr. TO remarked that if the word "found" was omitted in clause 46(2)(d), the authorized officer might be able to detain persons found outside the premises. The Administration undertook to review the Chinese version of the clauses concerned with a view to improving their clarity.</p>	The Administration to take action as per paragraph 2 of the minutes.
014334 – 014624	Administration	Briefing by the Administration on the proposed CSAs: clause 52 to section 1 of Schedule 1.	
014625 – 014717	Mr James TO	In reply to Mr TO's enquiry about the proposed CSA to section 1 of Schedule 1, the Administration advised that the CSA was proposed to align the definition of "terrorist financing" under section 1 of Schedule 1 with the prevailing definition of "terrorist financing" the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).	

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014718 – 015007	Administration	Briefing by the Administration on the proposed CSAs to the definition of "beneficial owner" under proposed section 1 of Schedule 2, item 10 of Schedule 3, proposed section 3(4) and 4(4) of Schedule 4, and proposed section 9(4) of Schedule 4.	
015008 – 015815	James TO Administration Mr WONG Ting-kwong Mrs Sophie LEUNG Administration	<p>Mr TO sought explanation for the exclusion of the money changing service provided by hotels within their premises primarily for convenience of guests of the hotel from the definition of "money changing service" in Part 1 of Schedule 1.</p> <p>The Administration explained that money exchange service provided by hotels was currently excluded from the definition of "money changing service" in the Organized and Serious Crimes Ordinance (Cap. 455). Under the Bill, the exemption of money exchange service provided by hotels was subject to the conditions that (a) all transactions only involved the exchange of non-Hong Kong currencies into Hong Kong currencies; and (b) the money exchange service was provided only to hotel guests who had already registered with the hotel. The Administration added that money changing service operated by hotels was also subject to the requirements of recording and reporting of suspicious transactions.</p> <p>Mr TO expressed concern that the exclusion of the money exchange service provided by hotels from the proposed MSO regulatory regime might create a loophole and result in unfair competition between hotels and remittance agents and money changers. As such, he suggested the Administration consider adding two conditions in the definition of "money changing service" in Part 1 of Schedule 1 to specify the maximum amount per transaction and to require the recording of transactions exceeding a certain amount.</p> <p>Mr WONG considered that if there were already guidelines for hotels on their operation of money exchange service, it might not be necessary to amend the Bill to include the service.</p>	The Administration to take action as per paragraph 2 of the minutes.

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		<p>Mrs LEUNG considered that the Administration should ensure that the exclusion of the money exchange service provided by hotels from the Bill would not create a loophole or cause unfairness to remittance agents and money changers.</p> <p>The Administration undertook to study the issue and provide a written response to the Bills Committee.</p>	
015816 – 015918	Chairman Administration	The Chairman remarked that upon receipt of the written responses from the Administration, members' views would be sought on whether another meeting was necessary.	
015919 – 020119	Chairman	The Chairman briefed members about the legislative timetable and requested the Administration to provide relevant information in about a week's time.	

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16 September 2011