

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2587/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/13/11

**Subcommittee on Banking Ordinance**  
**(Amendment of Seventh Schedule) Notice 2012**

**Minutes of first meeting held on**  
**Tuesday, 12 June 2012, at 4:30 pm**  
**in Conference Room 2A of the Legislative Council Complex**

**Members present :** Hon James TO Kun-sun (Chairman)  
Hon CHIM Pui-chung  
Hon KAM Nai-wai, MH

**Public Officers attending :** Agenda item II

Mr Jackie LIU  
Principal Assistant Secretary for Financial Services  
and the Treasury (Financial Services)

Ms Meena DATWANI, JP  
Executive Director (Banking Conduct)  
Hong Kong Monetary Authority

Mr Trevor KEEN  
Head (Payment Systems Oversight and Licensing)  
Hong Kong Monetary Authority

Ms Rayne CHAI  
Senior Government Counsel  
Department of Justice

**Clerk in attendance :** Mr Derek LO  
Chief Council Secretary (1)6

**Staff in attendance :** Mr Bonny LOO  
Assistant Legal Adviser 3

Mr Hugo CHIU  
Council Secretary (1)5

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Action

**I Election of Chairman**

Mr James TO, the member with the highest precedence among those present at the meeting, presided over the election of the Chairman of the Subcommittee and invited nominations for the chairmanship of the Subcommittee.

2. Mr James TO was nominated by Mr CHIM Pui-chung and the nomination was seconded by Mr KAM Nai-wai. Mr James TO accepted the nomination. There being no other nomination, Mr James TO was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

**II Meeting with the Administration**

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| (L.N. 99 of 2012   | —Banking Ordinance (Amendment of Seventh Schedule) Notice 2012   |
| LC Paper No. LS65/11-12  | —Legal Service Division Report   |
| <i>(issued by the Financial Services and the Treasury Bureau on 16 May 2012)</i> | —Legislative Council Brief   |
| LC Paper No. CB(1)2124/11-12(01)   | —Marked-up copy of the Banking Ordinance (Amendment of Seventh Schedule) Notice 2012 prepared by the Legal Service Division                |
| LC Paper No. CB(1)2124/11-12(02)   | —Paper on Banking Ordinance (Amendment of Seventh Schedule) Notice 2012 prepared by the Legislative Council Secretariat (Background brief) |

4. The Subcommittee deliberated on the Banking Ordinance (Amendment of Seventh Schedule) Notice 2012 ("the Notice") (Index of proceedings attached at **Appendix**).

5. Members expressed concern that, if the requirement that applicants for authorization to carry on banking business in Hong Kong must have customer deposits of not less than HK\$3 billion was removed, overseas banks with no history of taking deposits could do so in Hong Kong, possibly increasing risks to local depositors. Members therefore requested the Hong Kong Monetary Authority ("HKMA") to consider whether it could impose conditions on authorization in such cases to address this risk.

*(Post-meeting note: The Administration's response was issued on 13 June 2012 via email and on 15 June 2012 vide LC Paper No. CB(1)2175/11-12.)*

### **III Any other business**

6. Members noted the critical dates in the legislative timetable as follows –

- (a) the expiry of the scrutiny period of the Notice was 20 June 2012. The Chairman would move a motion at the Council meeting on 20 June 2012 to extend the scrutiny period to 11 July 2012; and
- (b) the deadline for giving notice of amendment to the subsidiary legislation would be 13 June 2012 if the motion set out in item (a) above could not be moved.

*(Post-meeting note: The above motion was not dealt with at the Council meeting of 20 June 2012 owing to the heavy agenda for, and the adjournment of, the meeting. The period for amending the Notice expired at the Council meeting of 20 June 2012 without being extended.)*

7. The Chairman requested the Legal Service Division (LSD) to consider whether, in the light of the definition of "sitting" in section 34(6) of Interpretation and General Clauses Ordinance (Cap. 1) (IGCO), the Notice could be amended or repealed by a resolution passed during the continuation of the Council meeting of 20 June 2012 if it continued onto one or more later days.

*(Post-meeting note: LSD's analysis (LC Paper No. LS81/11-12) was issued on 15 June 2012 vide LC Paper No. CB(1)2184/11-12.)*

8. There being no other business, the meeting ended at 5:38 pm.

**Proceedings of first meeting of the  
Subcommittee on Banking Ordinance (Amendment of Seventh Schedule) Notice 2012  
on Tuesday, 12 June 2012, at 4:30 pm  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I – Election of Chairman</b>			
000001 – 000022	Mr James TO Mr KAM Nai-wai Mr CHIM Pui-chung	Election of Chairman	
<b>Agenda Item II – Meeting with the Administration</b>			
000023 – 000645	Chairman Administration	<p>Briefing by the Administration on the Banking Ordinance (Amendment of Seventh Schedule) Notice 2012 ("the Notice"). The Notice sought to remove the following requirements in the Seventh Schedule to the Banking Ordinance (Cap. 155)("BO") –</p> <p>(a) the requirement for a company seeking authorization to carry on banking business in Hong Kong to have a certain size of total customer deposits and total assets ("the size criteria"); and</p> <p>(b) in the case of a company incorporated in Hong Kong, the requirement to have been a deposit-taking company or a restricted licence bank for not less than three continuous years, or to be a subsidiary of a bank incorporated outside Hong Kong or a holding company of such a bank that has been authorized to carry on banking business in Hong Kong for not less than three continuous years ("the three-year requirement").</p>	
000646 – 003308	Chairman Mr KAM Nai-wai Administration	<p>Mr KAM reiterated the concern he expressed at the meeting of the Panel on Financial Affairs on 2 March 2012 that the proposed amendments to the Seventh Schedule to the BO might increase risks to bank depositors and enquired about the relevant measures for protecting the interests of bank depositors.</p> <p>The Administration gave the following response –</p> <p>(a) The requirement on minimum asset and deposit size was neither included in the Basel standard nor adopted by other major international financial centres ("IFCs");</p> <p>(b) The banking system of Hong Kong was robust as evidenced by banks' average capital adequacy ratio in December 2010 at 15.9%, which was well above the international standard of 8%. Hong Kong would also implement the capital requirement specified under the Basel III framework with effect from 1 January 2013, which would further enhance the stability and robustness of the banking sector;</p>	

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		<p>(c) The Deposit Protection Scheme provided a protection of up to \$500,000 per depositor per institution for eligible deposits; and</p> <p>(d) The Notice only sought to remove the existing market entry criteria that were absent in other IFCs, and would neither affect the stability nor increase the risks of the banking sector in Hong Kong.</p> <p>In response to Mr KAM's request for background information for the Basel Committee to lower the requirement on minimum capital share, the Administration said that there was no such directive from the Basel Committee to reduce the requirement.</p> <p>Mr KAM enquired whether the retention of the size criteria would strengthen the protection for local depositors. The Hong Kong Monetary Authority ("HKMA") replied in the negative. The HKMA supplemented that owing to the three-year requirement, overseas banks wishing to establish a locally incorporated banking subsidiary in Hong Kong must operate as branches for three continuous years before setting up the subsidiary. Given that the HKMA's supervisory control over locally incorporated institutions was closer than over local branches of those incorporated overseas, the removal of three-year requirement would be conducive to better oversight of overseas banks as they would choose to enter the Hong Kong market by local incorporation rather than by establishing branches.</p> <p>The Chairman expressed the following views –</p> <p>(a) The aim of the size criteria was to discourage banks with few deposits from establishing in Hong Kong. If the size criteria were removed, an overseas financial institution meeting the minimum share capital requirement but with an insignificant amount of or even no deposit would establish a branch in Hong Kong to attract local deposits. It might be easier than before for some of these institutions to use such deposits for high-risk investments; and</p> <p>(b) Depositors from the Mainland who trusted the banks authorized in Hong Kong and hence placed deposits in them might be exposed to greater risks due to the removal of authorization requirements.</p> <p>The Administration gave the following response –</p> <p>(a) Notwithstanding the removal of the size criteria and the three-year requirement, banks seeking authorization in Hong Kong would still be required to meet the other stringent criteria set out in the Seventh Schedule to the BO. The criterion on minimum size</p>	

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		<p>of total customer deposits and total assets was only one of such licensing criteria; and</p> <p>(b) The removal of the size criteria sought to attract financial institutions, such as investment banks, which did not take deposits as part of their normal business. The HKMA would monitor the operation of such financial institutions and would be alarmed if they suddenly moved funds at a large scale.</p> <p>The HKMA stressed that such financial institutions had to fulfill the stringent criteria set out in the Seventh Schedule to the BO before they were given the licence to carry out their business in Hong Kong. If an overseas applicant that did not take deposits as part of its normal business were to apply for a banking licence to do so in Hong Kong, the HKMA would carefully examine the business model of the applicant to assess the risks concerned before deciding whether to grant authorization.</p> <p>The Chairman enquired whether the HKMA could undertake to impose a requirement on overseas financial institutions applying for banking licences in Hong Kong that they could not take local deposits if it did not take deposits in their home country. The HKMA expressed difficulty in undertaking to do so on the ground that such requirement would put Hong Kong at a disadvantage when Hong Kong had to compete with other IFCs in attracting international banks to establish a presence here.</p> <p>The Chairman opined that the Administration should adopt a more cautious approach in the wake of the experience in the "Lehman Brothers Incident". The size criteria should be kept as their removal might provide an opportunity for unscrupulous overseas financial institutions to attract local deposits for high-risk uses.</p> <p>The Administration reiterated the stringent criteria set out in the Seventh Schedule to the BO that banks seeking authorization in Hong Kong were required to meet. These requirements included, among other things, the adequacy of financial resources and liquidity, and the adequacy of systems and controls.</p> <p>The Chairman remarked that he considered that benefits arising from the removal of size criteria could not outweigh its potential risks.</p> <p>The HKMA advised that in processing an application for a banking licence, the HKMA would examine the business model of the applicant. It would be highly unlikely for a financial institution with completely no experience in deposit-taking to be granted a banking licence. The HKMA also pointed out that in practice, a financial</p>	

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		<p>institution with little experience in deposit taking would have to resort to high interest rates if it intended to attract lots of deposits. HKMA would treat any such action with caution.</p> <p>In response to the Chairman, the HKMA advised that it did not expect that there would be a surge in the number of applications from overseas financial institutions for banking licence arising solely from the removal of the size criteria.</p>	
003309 – 004830	Chairman Mr CHIM Pui-chung Administration	<p>Mr CHIM expressed the following views –</p> <ul style="list-style-type: none"> <li>(a) The Administration should accord top priority to the protection of Hong Kong people's interests. The Administration might not be able to control the risks associated with the removal of the entry criteria set out in the Notice;</li> <li>(b) The banking sector should be fully consulted on the measures set out in the Notice; and</li> <li>(c) The Notice would facilitate the entry of foreign banks into the Hong Kong market. However, the Administration and the HKMA should consider the fact that both the United States and the European Union where most of these banks came from were not without problems and might encounter financial crisis in future.</li> </ul> <p>The HKMA gave the following response –</p> <ul style="list-style-type: none"> <li>(a) The Notice sought to enhance Hong Kong's status as an IFC by removing market entry criteria absent in the Basel requirements. The size criteria and three-year requirement were imposed in the past to protect infant banks from foreign competition. Such requirements were obsolete now;</li> <li>(b) The HKMA had consulted the Banking Advisory Committee, the deposit-taking company ("DTC") Advisory Committee, the Hong Kong Association of Banks and the DTC Association on the measures set out in the Notice. All of them had indicated support for the proposed amendments set out in the Notice; and</li> <li>(c) The Notice could remove unnecessary hurdles for reputable overseas financial institutions which would otherwise be screened out in the application process to seek the opportunity to start a deposit-taking business in Hong Kong.</li> </ul> <p>The Administration added that Hong Kong would regularly review the licensing requirements of banks having regard</p>	

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		<p>to the Basel requirements. Neither the Basel framework nor other IFCs had the size criteria and the three-year requirement. The removal of such obsolete market entry criteria would not increase the risks of the banking sector.</p> <p>The Chairman reiterated the need for a more cautious approach in making amendment to the BO in recognition of the experience from the "Lehman Brothers Incident" and recent financial turmoil. Having regard to the benefits and potential risks (including the impact on depositors from the Mainland) of the removal of the size criteria, the Chairman said that he would not support the Notice unless the HKMA undertook to impose the requirement on overseas financial institutions as suggested by him above. He also pointed out that a measure that had existed for a long time would not necessarily be obsolete.</p> <p>HKMA pointed out that it currently did not have a policy relevant to the Chairman's suggestion, but it would be very prudent in processing the applications for banking licenses and further consider alternative ways the address the Chairman's concern.</p>	
004831 – 005224	Mr KAM Nai-wai	<p>Mr KAM opined that removal of the size criteria would make it easy for overseas financial institutions to attract local deposits by offering a higher interest. The "Lehman Brothers Incident" revealed the inadequacy of the supervision of the HKMA on banks. He expressed reservation on the removal of size criteria if the Administration and the HKMA did not undertake to impose the requirement as suggested by the Chairman. Mr KAM said that did not have strong views on the removal of the three-year requirement.</p>	
005225 – 010850	<p>Chairman Mr CHIM Pui-chung Administration Assistant Legal Adviser 3 (ALA3)</p>	<p>Mr CHIM considered that as there was no urgent need to make the change in this legislative session and given the concern expressed by the Subcommittee, the Administration could withdraw the Notice so that the matter could be revisited and considered more thoroughly in the Fifth Term of Legislative Council. ALA3 advised that the Notice was subject to negative vetting of the Legislative Council ("LegCo") under section 34 of the Interpretation and General Clauses Ordinance (Cap.1)("IGCO").</p> <p>In response to the Chairman's enquiry, the Administration remarked that it would provide a written response to the Chairman's suggestion above within the following 48 hours.</p> <p>Noting that the expiry of the scrutiny period of the Notice was 20 June 2012, the Chairman remarked that he would move both a motion to extend the scrutiny period and another motion to repeal the Notice. He would discuss</p>	<p>The Administration to take action as per paragraph 5 of the minutes.</p>



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>with members further actions to be taken upon the receipt of the Administration's written response.</p> <p>ALA3 advised that according to rule 35 of the Rules of Procedure of LegCo, a notice of a motion or an amendment might be withdrawn at any time before it was moved, if the Member in whose name the motion or amendment stood gave instructions to that effect to the Clerk.</p> <p>The Chairman also requested the HKMA to provide information on measures or policies adopted in members of the Basel Committee similar to his suggestion above.</p> <p>ALA3 advised that sections 34(2) and 34(6) of the IGCO seemed to suggest that the motion to repeal the Notice must be moved on 20 June 2012 even if the LegCo meeting of 20 June 2012 lasted for more than one day because subsection (6) provided that "sitting", when used to calculate time, meant the day on which the sitting commenced. The Chairman considered such arrangement unreasonable as it did not cater for the fact that a LegCo meeting could continue onto one or more later day. He suggested that ALA3 examine the issue and provide an analysis after the meeting.</p>	