

立法會
Legislative Council

LC Paper No. CB(1) 997/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/10/02/2

Bills Committee on Deposit Protection Scheme Bill

Minutes of the Eleventh meeting
held on Wednesday, 4 February 2004, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present : Hon Albert HO Chun-yan (Chairman)
Dr Hon Eric LI Ka-cheung, GBS, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon Bernard CHAN, JP
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon CHAN Kam-lam, JP

Public officers attending : Hong Kong Monetary Authority

Mr Raymond LI
Executive Director (Banking Development)

Mr Raymond CHAN
Acting Division Head (Banking Development)

Financial Services and the Treasury Bureau

Mr Edmond LAU
Principal Assistant Secretary (Financial Services)

Mrs Millie NG
Assistant Secretary (Financial Services)

Department of Justice

Mr Lawrence PENG
Senior Assistant Law Draftsman

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Mary TANG
Senior Council Secretary (1)2

I. Confirmation of minutes

- (LC Paper No. CB(1) 788/03-04 -- Minutes of the meeting held on
22 December 2003
LC Paper No. CB(1) 883/03-04 -- Minutes of the meeting held on
5 January 2004)

The minutes of the meetings held on 22 December 2003 and 5 January 2004 were confirmed.

II. Meeting with the Administration

- LC Paper No. CB(1) 556/03-04(03) -- Draft Committee Stage
(issued for the meetings on 11 and 22 December 2003) amendments proposed by the
Administration
LC Paper No. CB(1) 683/03-04(02) -- Marked-up copy of Schedule 5 to
(issued for the meeting on 5 January 2004) the Bill incorporating the draft
Committee Stage amendments as at
29 December 2003
LC Paper No. CB(1) 918/03-04(01) -- List of follow-up actions arising
from previous meetings (as at
2 February 2004)
LC Paper No. CB(1) 918/03-04(02) -- Administration's response to the
latest concerns of the Law Society
of Hong Kong)

2. The Committee deliberated (Index of proceedings attached at **Annex A**).

3. The Administration was requested to -
 - (a) advise the effect of the deeming provision under clause 22(5) on third-party dealings which had taken place before the revocation;
 - (b) provide the original submission of the Law Society of Hong Kong setting out its latest views on the Bill;
 - (c) review the drafting of clause 38 taking into account similar provisions in other legislation apart from the Securities and Futures Ordinance (Cap. 571) (SFO);
 - (d) re-consider the propriety of adapting the same provisions under section 217 of SFO to clauses 40 and 42 of the Bill given the different scopes of the two Tribunals. To also consider putting clause 40(3)(b) under clause 42 such that any possible acts of contempt should only be dealt with by the Tribunal. To specify in clause 40(3)(c) the subsection referred to was subsection (1)(c); and
 - (e) review the drafting of clause 43(2) to ensure that the proposed amendments were consistent with similar provisions in other legislation.
4. The meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
16 February 2004

**Proceedings of the meeting of the
Bills Committee on Deposit Protection Scheme Bill
Meeting on Wednesday, 4 February 2004, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000314	Chairman	Confirmation of minutes of the meetings held on 22 December 2003 and 5 January 2004 (LC Paper Nos. CB(1) 788/03-04 and 883/03-04 respectively)	
000315 - 000658	Chairman Administration	Administration's response to concern on provisions relating to confidentiality and revocation by Chief Executive in Council still outstanding	
000659 - 001008	Miss Margaret NG Administration	Effect of the deeming provision under clause 22(5) on third-party dealings which had taken place before the revocation	The Administration to advise the effect of the deeming provision under clause 22(5) on third-party dealings which had taken place before the revocation
001009 - 001637	Chairman Administration ALA6	Clause-by-clause examination of the Bill Clause 30 - Board's duties and powers on occurrence of specified event	
001638 - 001755	Chairman	Clause 31 - Board's powers in relation to arrangements designed to increase amount of compensation	
001756 - 002002	Chairman Administration	Clause 32 - Compensation in Hong Kong dollars Clause 33 - Limits to amount of compensation Clause 34 - Interim payment	
002003 - 002120	Chairman ALA6	Clause 35 - Recovery of payment by Board	

Time marker	Speaker	Subject(s)	Action required
002121 - 004250	Chairman Administration Miss Margaret NG ALA6	<p>Clause 36 - Subrogation</p> <p>(a) Concern raised by Law Society of Hong Kong (LS) regarding the effect of the clause on the interests of a law firm which maintained both an office account and a client account with the Scheme member. Given that LS was not able to cite specific cases of this nature, and that a law firm and its clients would each receive their share of compensation under the Deposit Protection Scheme (DPS), the Administration had advised LS that amendments to the clause were not necessary; and</p> <p>(b) Need for administrative measures to prevent duplication of compensation under DPS and Investor Compensation Fund</p>	The Administration to provide the original submission of LS setting out its latest views on the Bill
004251 - 004319	Chairman	Clause 37 - Reimbursement from provisional liquidator	
004320 - 011454	Chairman Miss Margaret NG Administration ALA6	<p>Part 6 - Review by Deposit Protection Appeals Tribunal</p> <p>Clause 38 - Establishment of Deposit Protection Appeals Tribunal</p> <p>(a) Drafting of clause 38(2) seemed to imply that the Tribunal had other purposes which required different composition of the Tribunal;</p>	The Administration to review the drafting of clause 38 taking into account similar provisions in other legislation apart from the Securities and Futures Ordinance (Cap. 571) (SFO)

Time marker	Speaker	Subject(s)	Action required
		<p>(b) Drafting of clause 38 might need to allow for appointment of more than one Tribunal in special circumstances;</p> <p>(c) Concern about duplication of efforts in the appointment of members of Tribunal by the Financial Secretary and the Chief Executive under clauses 38(2)(b) and (4) respectively;</p> <p>(d) Need to improve drafting of clause 38(7); and</p> <p>(e) Drafting of the Bill need not adhere to SFO which was passed in haste</p>	
011455 - 012014	Chairman Administration	Clause 39 - Review of decisions or assessments by Tribunal	
012015 - 014108	Chairman Administration Miss Margaret NG ALA6	<p>Clause 40 - Powers of Tribunal</p> <p>(a) Need to specify in clause 40(3)(c) that the subsection referred to was subsection (1)(c);</p> <p>(b) More appropriate to put clause 40(3)(b) under clause 42 so that any acts of disruption would be dealt with by the Tribunal as contempt and not by the Police as a crime; and</p> <p>(c) Propriety of adapting the same provisions under sections 217 of SFO to clauses 40 and</p>	<p>The Administration to</p> <p>(a) specify in clause 40(3)(c) that the subsection referred to was subsection (1)(c);</p> <p>(b) consider putting clause 40(3)(b) under clause 42 such that any possible acts of contempt should only be dealt with by the Tribunal; and</p> <p>(c) re-consider the propriety of adapting the same provisions under sections 217 of SFO to clauses 40 and 42 of the Bill given the different scopes of the two Tribunals</p>

Time marker	Speaker	Subject(s)	Action required
		42 of the Bill given that the scope of the Deposit Protection Appeals Tribunals was much narrower than the Securities and Futures Appeals Tribunal and hence might not require the same degree of power and formality	
014109 - 014251	Chairman Administration	Clause 41 - Use of incriminating evidence required by Tribunal	
014252 - 014407	Chairman Administration	Clause 42 - Contempt dealt with by Tribunal	
014408 - 015341	Chairman Miss Margaret NG Administration Ms Audrey EU	Clause 43 - Appeal to Court of Appeal (a) Rationale behind the proposed amendment to clause 43(2); (b) Whether the word “or” in clause 43(2)(a) should be replaced by the words “and/or”; and (c) Whether the drafting of clause 43(2) was consistent with similar provisions in other legislation	The Administration to review the drafting of clause 43(2) to ensure that the proposed amendments were consistent with similar provisions in other legislation
015342 - 015428	Chairman	Date of next meeting	