

立法會
Legislative Council

LC Paper No. CB(1) 610/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/10/02/2

Bills Committee on Deposit Protection Scheme Bill

Minutes of the eighth meeting
held on Thursday, 11 December 2003, at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Albert HO Chun-yan (Chairman)
Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing, JP
Hon Margaret NG
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
- Members absent** : Dr Hon Eric LI Ka-cheung, GBS, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
- 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

Ms Grace LEUNG
Government Counsel

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

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

Mrs Mary TANG
Senior Assistant Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 456/03-04 -- Minutes of the meeting held on
18 November 2003)

The minutes of the meeting held on 18 November 2003 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 556/03-04(01) -- List of follow-up actions arising
from previous meetings (as at
10 December 2003)

LC Paper No. CB(1) 556/03-04(02) -- Administration's paper on
"Confidentiality"

LC Paper No. CB(1) 556/03-04(03) -- Draft Committee Stage
amendments proposed by the
Administration)

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

3. The Administration was requested to -
 - (a) critically review the extent to which a person should “aid in preserving secrecy” and to consider the practicability of adding “take such reasonable steps” before “aid in preserving secrecy” under clause 44(1)(a);
 - (b) advise whether the definition of “bare trustee” under clause 2 would include “resulting trust”;
 - (c) delete the part “or in some other publication determined by the Board” in clause 7A(2). To also review the need for clauses 7A(4)(b) and 7A(5) when all the guidelines issued by the Board would have to be published in the Gazette;
 - (d) refine the drafting of clause 7A(4) with reference to similar provisions in other legislation, including the Building Management Ordinance (Cap. 344), Road Traffic Ordinance (Cap. 374) and Personal Data (Privacy) Ordinance (Cap. 486);
 - (e) review the drafting of clause 14(4)(a) to make it clear that the provision would apply to the Board only; and
 - (f) provide a separate paper on clause 22 addressing the following issues -
 - (i) whether a Scheme member should be given an opportunity to present his case before the Monetary Authority (MA) would serve a notice in respect of the Scheme member under clause 21(2);
 - (ii) the need to specify in clause 22(4) the circumstances under which the Chief Executive in Council (CE in C) could exercise its power to revoke MA’s decision under clause 21(2); and
 - (iii) the time-frame within which CE in C should decide whether to confirm or revoke MA’s decision.

4. The meeting ended at 10:45 am.

**Proceedings of the meeting of the
Bills Committee on Deposit Protection Scheme Bill
Meeting on Thursday, 11 December 2003, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000106	Chairman	Introductory remarks and confirmation of minutes of the meeting held on 18 November 2003 (LC Paper No. CB(1) 456/03-04)	
000107 - 000719	Chairman Administration	<p>Discussion on the Administration's paper on "Confidentiality" (LC Paper No. CB(1) 556/03-04(02))</p> <p>(a) Applicability of defences under clause 48 to contravention of clause 44(1)(a) which was an offence under clause 44(5);</p> <p>(b) Need for prosecution to prove mens rea for offence under clause 44(5) which was not a strict liability offence; and</p> <p>(c) Provision of defence for offence under clause 44(5) would make it a strict liability offence</p>	

Time marker	Speaker	Subject(s)	Action required
000720 - 002321	Miss Margaret NG Administration Chairman	Need to be clear about the extent of duty required under clause 44(1)(a) with regard to “aid in preserving secrecy” so that a person so entrusted would know exactly what was expected of him; consideration be given to adding the words “take such reasonable steps” before “aid in preserving”; and concern about “read across” implications on other legislation with similar provisions	The Administration to critically review the extent to which a person should “aid in preserving secrecy” and to consider the practicability of adding “take such reasonable steps” before “aid in preserving secrecy” under clause 44(1)(a)
002322 - 002752	Ms Audrey EU Administration Miss Margaret NG Chairman	Contravention of clause 44(1)(a) was a “conduct crime” rather than a “result crime” since a person would commit an offence if he failed in preserving or aid in preserving secrecy, irrespective of whether the secret was leaked out or not	
002753 - 003013	Chairman Administration	Examination of draft Committee Stage amendments (CSAs) proposed by the Administration and continuation of clause-by-clause examination of the Bill (Annex B to LC Paper No. CB(1) 556/03-04(03)) Part 1 Preliminary Clause 2 - Definition of “bare trustee”	The Administration to advise whether the definition of “bare trustee” under clause 2 would include “resulting trust”

Time marker	Speaker	Subject(s)	Action required
003014 - 004643	Chairman Administration ALA6 Ms Audrey EU Mr NG Leung-sing	Part 2 Hong Kong Deposit Protection Board Clause 7A - Board to issue guidelines	The Administration to - (a) delete the part “or in some other publication determined by the Board” in clause 7A(2); (b) review the need for clauses 7A(4)(b) and 7A(5) when all the guidelines issued by the Board would have to be published in the Gazette; and (c) refine the drafting of clause 7A(4) with reference to similar provisions in other legislation, including the Building Management Ordinance (Cap. 344), Road Traffic Ordinance (Cap. 374) and Personal Data (Privacy) Ordinance (Cap. 486)
004644 - 013042	Chairman Ms Audrey EU Administration ALA6	Part 3 Deposit Protection Scheme Part 4 Deposit Protection Scheme Fund Clause 14 - Contributions to Fund - Concern about the situation where contribution had been made by a Scheme member but had not been credited to the Fund	The Administration to review the drafting of clause 14(4)(a) to make it clear that the provision would apply to the Board only
013043 - 013753	Chairman Administration	Part 5 Compensation Clause 21 - Occurrence of specified event	

Time marker	Speaker	Subject(s)	Action required
013754 - 010916	Chairman Administration Miss Margaret NG Mr Ambrose LAU Mr Jasper TSANG	<p>Clause 22 - Monetary Authority (MA) to report to Chief Executive in Council (CE in C) on occurrence of specified event</p> <p>(a) Concern about the need for power of revocation by CE in C under clause 22(4) when MA had already issued a notice under clause 21(2);</p> <p>(b) Need to spell out in clause 22(4) the circumstances and time frame under which CE in C could exercise its power to revoke MA's decision under clause 21(2);</p> <p>(c) Concern about the serious implications associated with the power of revocation and its impact on the stability of the financial market, particularly in the case when revocation was made after interim payment was paid to depositors; and</p> <p>(d) Need to review triggering mechanism</p>	<p>The Administration to provide a separate paper on clause 22 addressing the following issues -</p> <p>(a) whether a Scheme member should be given an opportunity to present his case before MA would serve a notice in respect of the Scheme member under clause 21(2);</p> <p>(b) the need to specify in clause 22(4) the circumstances under which CE in C could exercise its power to revoke MA's decision under clause 21(2); and</p> <p>(c) the time-frame within which CE in C should decide whether to confirm or revoke MA's decision</p>

Time marker	Speaker	Subject(s)	Action required
010917 - 021917	Chairman Administration Miss Margaret NG Mr Ambrose LAU Mr Jasper TSANG	Explanation on clause 22(4) by the Administration - (a) Clause 22(4) meant to provide check and balance, and was a part of natural justice such that the failed Scheme member would be given a chance to present its case within seven days to CE in C, in line with the arrangements under sections 52 and 53 of the Banking Ordinance (Cap. 155); and (b) Power of revocation would also enable changes to be made to take account of new developments, as in the case of a takeover of a failed bank by a prospective buyer	
021918 - 021956	Chairman Administration	Date of next meeting	