

立法會
Legislative Council

LC Paper No. CB(1)1508/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/BC/5/04

Bills Committee on Banking (Amendment) Bill 2005

Meeting on
Wednesday, 27 April 2005, at 8:30 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon Jeffrey LAM Kin-fung, SBS, JP (Chairman)
Hon Bernard CHAN, JP (Deputy Chairman)
Hon SIN Chung-kai, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
- Members absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon CHAN Kam-lam, JP
- Public Officers Attending** : Mr William RYBACK
Deputy Chief Executive
Hong Kong Monetary Authority
- Ms Rose LUK
Head (Banking Policy Division)
Hong Kong Monetary Authority
- Mrs Clarie LO
Deputy Secretary for Financial Services and the Treasury
(Financial Services)
- Mrs Millie NG
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)
- Mr Jonothan ABBOTT
Senior Assistant Law Draftsman
Department of Justice

Mr Sunny CHAN
Senior Government Counsel
Department of Justice

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

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

Ms Anita SIT
Senior Council Secretary (1)9

Action

I Election of Chairman and Deputy Chairman

Mr Bernard CHAN, the member who had the highest precedence among members of the Bills Committee, presided over the election of Chairman. Mr Jeffrey LAM was nominated by Mr Andrew LEUNG and the nomination was seconded by Mr Ronny TONG. Mr Jeffrey LAM accepted the nomination. There being no other nominations, Mr Jeffrey LAM was elected Chairman of the Bills Committee. He then took over the chair.

2. The Bills Committee agreed that a Deputy Chairman should be elected. Mr Bernard CHAN was nominated by Mr Ronny TONG and the nomination was seconded by Mr Andrew LEUNG. Mr Bernard CHAN accepted the nomination. There being no other nominations, Mr Bernard CHAN was elected Deputy Chairman of the Bills Committee.

II Meeting with the Administration

- the Bill;
- the Legal Service Division Report (LC Paper No. LS44/04-05);
- the Legislative Council Brief issued by the Financial Services and the Treasury Bureau on 2 March 2005 (File Ref: G4/16/36C);
- Background Brief on Banking (Amendment) Bill 2005 prepared by the Secretariat (LC Paper No. CB(1)1372/04-05); and
- Marked-up copy of the Bill (LC Paper No. CB(1)1373/04-05(01)).

3. The Bills Committee deliberated (index of proceedings attached at **Annex A**).

Action

4. A set of presentation notes provided by the Hong Kong Monetary Authority (HKMA) was tabled at the meeting.

(Post-meeting note: The presentation notes were issued vide LC Paper No. CB(1)1400/04-05 on 27 April 2005.)

5. Regarding the proposed amendment to provide for a mechanism that would allow certain decisions of the Monetary Authority (MA) made under the Capital Rules to be subject to an appeal to the Chief Executive in Council, the Deputy Chief Executive, HKMA (DCE/HKMA) advised that the proposed appeal mechanism would only apply to MA's decisions on the options of capital charge calculation methodologies provided for individual authorized institutions (AIs). The appeal mechanism would not apply to the technicality of the capital adequacy ratio requirement. The Deputy Secretary for Financial Services and the Treasury (Financial Services) also advised that under the existing Banking Ordinance (Cap. 155) (BO), any appeal in relation to the decisions of the MA should be made to the Chief Executive in Council. The proposed amendment was to provide that the same appeal mechanism would apply to certain decisions of MA made under the Capital Rules.

6. Mr SIN Chung-kai opined that the Chief Executive in Council should not continue to be the body for handling appeal cases, since the Executive Council was primarily an organ for assisting the Chief Executive in policy-making. Moreover, the Executive Council might lack the time and expertise required to deal with such appeal cases. The Administration should consider establishing a specific appeal body for handling appeal cases relating to the decisions of MA made under the Banking Ordinance (Cap. 155) (BO), as in the case of the Securities and Futures Ordinance (Cap. 571), where a Securities and Futures Appeals Tribunal had been established to handle appeals against the decisions of the Securities and Futures Commission (SFC). A similar mechanism was also available under the Telecommunications Ordinance (Cap. 106).

7. Mr Ronny TONG also considered that the existing appeal mechanism whereby persons aggrieved by the decisions of the MA could only appeal to the Chief Executive in Council was not suitable for present-day circumstances.

8. Mr SIN Chung-kai suggested that the Administration take the opportunity of this Bill to establish a new appeal mechanism such as a banking appeal board so that appeals pertinent to the exercise of powers conferred on MA by the proposed amendments would be handled under the new mechanism, and in future reviews of the BO, the Administration should consider whether the existing appeal mechanism in the BO should be revamped. Mr SIN also sought details on the decisions of the MA that would be appealable under the proposed amendments.

9. The Administration and HKMA agreed to provide a written response to the enquiry and suggestion made by Mr SIN.

Action

10. In response to Mr Ronny TONG's enquiry, DCE/HKMA advised that the proposed amendment relating to the liability of a manager of an authorized institution (AI) for certain contraventions under the BO was not related to the implementation of Basel II but was made in response to the concerns expressed by the banking industry on the present strict liability offences in BO. HKMA did not consider that consumers' interest would be adversely affected by the proposed amendment. The Head (Banking Policy Division), HKMA also advised that the draft Bill which included the said proposed amendment had been circulated to various parties including the Consumer Council and the banking industry. The Consumer Council had responded to HKMA's consultation but had not expressed any views on the said proposed amendment.

11. Mr Ronny TONG suggested that the Bills Committee should look into the issue of whether and how bank customers' interest would be affected by the said proposed amendment.

Admin 12. The Chairman requested and the Administration and HKMA agreed to provide a written response on whether and how the proposed amendment relating to the liability of a manager of an AI would affect bank customers' interest.

III Any other business

Public consultation

13. The Bills Committee agreed that the public should be invited to give views on the Bill and the deadline for submission of views should be 18 May 2005. For this purpose, an invitation notice should be posted on the website of the Legislative Council and a press release should be issued. The organizations which had been consulted by HKMA on the draft Bill would also be invited to give views on the Bill.

Date of next two meetings

14. The Bills Committee agreed that the next two meetings should be held on 19 May 2005 and 2 June 2005, both at 8:30 am. The Bills Committee would meet with deputations, if any, at the meeting on 2 June 2005.

15. There being no other business, the meeting ended at 9:25 am.

**Proceedings of the first meeting of Bills Committee on
Banking (Amendment) Bill 2005
Wednesday, 27 April 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Election of Chairman</i>			
000000 – 000416	Mr Bernard CHAN Mr Andrew LEUNG Mr Ronny TONG Chairman	Election of Chairman and Election of Deputy Chairman	
<i>Agenda Item II – Meeting with the Administration</i>			
000417 – 000649	Administration	<ul style="list-style-type: none"> - Administration’s briefing on the main objective of the Bill, i.e. to provide for the implementation of the revised international capital adequacy framework promulgated by the Basel Committee on Banking Supervision in June 2004, commonly known as “Basel II”, in Hong Kong - Administration’s advice that HKMA had undertaken extensive consultation on the implementation plan on Basel II and the draft Bill. 	
000650 – 001618	HKMA	<ul style="list-style-type: none"> - HKMA’s presentation on the main provisions of the Bill with the aid of Powerpoint 	
001619 – 001902	Mr Ronny TONG HKMA Administration Chairman	<ul style="list-style-type: none"> - proposed amendment relating to the liability of a manager of an AI for certain contraventions under the BO - The Chairman’s advice that HKMA had consulted the following organizations on the draft Bill - <ul style="list-style-type: none"> (a) The Hong Kong Association of Banks (b) The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (c) Hong Kong Institute of Certified Public Accountants (d) The Law Society of Hong Kong (e) Hong Kong Bar Association (f) Consumer Council (g) Privacy Commissioner for Personal Data Office 	

Time marker	Speaker	Subject(s)	Action required
		(h) Securities and Futures Commission	
001903 – 002943	Mr SIN Chung-kai HKMA Administration Chairman Mr Ronny TONG	- proposed amendment to provide for a mechanism that would allow certain decisions of the MA made under the Capital Rules to be subject to an appeal to the Chief Executive in Council	Administration and HKMA to provide a written response to the suggestion and enquiry made by Mr SIN
002944 -	Mr Bernard CHAN HKMA Chairman	<ul style="list-style-type: none"> - In reply to Mr CHAN's enquiry, HKMA's advice that it had consulted the industry on the proposed amendments relating to the disclosure of disciplinary actions on AI's securities business. The industry had not expressed negative comments on the proposed amendments. The proposed amendments mainly sought to establish a level playing field between the securities industry supervised by SFC and the banking industry supervised by MA in regard to the securities business of these industries. - HKMA's advice that to enable international banking groups to use the Basel II approaches in their operations in Hong Kong, HKMA aimed to submit Capital Rules and Disclosure Rules for LegCo's negative vetting by mid-2006. Given this timetable, HKMA hoped that the Bill could be passed by LegCo within the current legislative session - In reply to the Chairman, HKMA's advice that other jurisdictions were also on the way to establish the legislative framework for implementation of Basel II and in parallel, were drawing up the relevant rules. So far, no jurisdiction had completed the enactment of relevant legislation. In the course of developing the Capital Rules and Disclosure Rules, HKMA would continue to solicit views from the banking industry and other interested parties. 	
003640 – 004927	Mr Ronny TONG Chairman Clerk HKMA	<ul style="list-style-type: none"> - Mr TONG expressed support for enhancing the risk management of and disclosure of information by AIs - Mr TONG's suggestion that the Bills Committee should in particular look into whether consumers' rights would be affected by the proposed amendment relating to the liability of managers of AIs. 	Administration to provide a written response on the concern raised by Mr TONG

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item III – Any other business</i>			
004928 – 005426	Chairman	<ul style="list-style-type: none">- Public consultation by the Bills Committee on the Bill- Date of next two meetings	

Council Business Division 1
Legislative Council Secretariat
12 May 2005