

立法會
Legislative Council

LC Paper No. CB(1)2974/10-11
(The 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**

**Tenth meeting on
Thursday, 31 March 2011, at 4:30 pm
in Conference Room A 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 Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
- Members absent** : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
- Public officers
Attending** : Mr Patrick HO, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)
- Miss Melo MAN
Acting Principal 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 CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

Mr CHAN Chi-keung
Head of the Special Project Planning Team
Trade Controls Branch
Customs and Excise Department

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

Clause-by-clause examination of the Bill (starting with clause 43)

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| (LC Paper No. CB(3)122/10-11 | — The Bill |
| LC Paper No. CB(1)863/10-11(03) | — Administration's paper on "Information on Reference Materials" |
| LC Paper No. CB(1)979/10-11(03) | — Paper on "Hong Kong legislative reference used by the Administration in drafting the Bill" prepared by the Legal Service Division |

LC Paper No. CB(1)979/10-11(04) — Marked-up copy of the consequential and related amendments of the Bill prepared by the Legal Service Division)

Other papers for members' information

(LC Paper No. CB(1)1639/10-11(01) — Summary of views of organizations and individuals on the Bill and the Administration's response

LC Paper No. CB(1)1762/10-11(01) — List of follow-up actions arising from the meeting on 14 March 2011 prepared by the Legislative Council Secretariat)

Discussion

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

Admin Follow-up actions to be taken by the Administration

2. The Administration was requested to -

Clause 46

- (a) consider adding a provision enabling the authorized officer to retrieve the relevant record or document from a computer system under Clause 46, as the computer system may be protected by passwords and the authorized officer would not be able to gain access to the record or document;
- (b) consider limiting the persons who may be detained under sub-clause (2)(d) to those who appear to the authorized officer to be, or likely to be, relevant to the investigation of the suspected offence;

Clause 47

- (c) consider extending the application of clause 47(5), which as drafted only applies to an arrest, to allow the authorized officer using force reasonably necessary to effect a detention if a person forcibly resists or attempts to evade detention;

Clause 50

- (d) consider providing for an offence for breach of the Regulations (or parts of the Regulations) to be made under clause 50;

Clause 60

- (e) clarify whether the oral evidence or written statements received and considered by the Tribunal under sub-clause (1)(a) would enjoy absolute privilege or qualified privilege (such as privilege from defamation);
- (f) clarify whether under sub-clause 60(2)(e), an employer deducting wages of an employee due to his/her absence from work to appear before the Tribunal would be seen as "causes any loss to be suffered by any person who has attended before the Tribunal, on account of that attendance" and hence may commit an offence under the sub-clause;

Clause 63

- (g) review whether clause 63 would create an inequitable situation between the party seeking a review and the relevant authority, as it appears that the latter is not subject to the same restriction in its exercise of powers leading to the decision which is the subject of the review;

Clause 66

- (h) explain the rationale for clause 66(2) and provide examples of similar provisions in other legislation; and

Other issue

- (i) explain whether there is any channel to lodge a complaint against the Tribunal if a person considered that the Tribunal fails to properly discharge its duties under the Bill.

III Any other business

3. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 1
Legislative Council Secretariat
1 September 2011

**Proceedings of the
Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill
Tenth meeting on Thursday, 31 March 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000702 – 000752	Chairman	Introductory remarks.	
000753 – 000958	Chairman	The Chairman asked whether members had any comments or questions on the paper "Summary of views of organizations and individuals on the Bill and the Administration's response" (LC Paper No. CB(1)1639/10-11(01)). Members raised no question or comment.	
000959 – 001135	Chairman Administration	<p><u>Clause-by-clause examination of the Bill</u></p> <p>Part 5</p> <p>Regulation of Operation of Money Service</p> <p><u>Clause 43 – Procedural requirements in respect of exercise of powers under section 42</u></p> <p>Members raised no question on clause 43.</p>	
001136 – 002748	Chairman Administration Mr James TO Mr Wong Ting-kwong	<p><u>Clause 44 – Guidelines on how Commissioner exercises power to impose pecuniary penalty</u></p> <p>On clause 44(1), in response to the Chairman's enquiry, the Administration responded that apart from publishing the guidelines in the Gazette, Commissioner of Customs and Excise ("the Commissioner") would publish the guidelines on the website of Customs and Excise Department.</p> <p>Mr TO was of the view that it was rare for a regulator to issue guidelines to indicate the manner in which the power to impose pecuniary penalty would be exercised. Although the Securities and Futures Ordinance (Cap. 571) ("SFO") contained similar guidelines, the corresponding context may be different. He requested the Administration to provide details of the guidelines. The Administration responded that in preparing the guidelines, reference would be made to the relevant guidelines under SFO. The Administration</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>undertook to provide the guidelines for members' reference.</p> <p>On clause 42(1)(a), Mr TO remarked that if the regulations to be made under clause 50 were subsidiary legislation, contravention of the regulation could be made an offence. He considered that the penalty for such offence should be decided by the court rather than by the Commissioner.</p> <p>The Administration responded that matters to be covered by the regulations to be made under clause 50 would be matters relating to licensing arrangements. An example would be the failure of a licensee to submit a regular report. As such, it was considered appropriate to impose regulatory sanctions, instead of criminal sanctions for failure to comply with the regulations.</p> <p>Mr TO requested the Administration to explain the scope of matters to be covered by the regulations to be issued under clause 50 for members to decide whether it was appropriate for relevant breaches to be subject to regulatory penalty only. The Administration undertook to study the issue.</p> <p>Mr WONG enquired whether appeals could be made against the Commissioner's order to pay a pecuniary penalty. The Administration responded that appeals could be made to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal ("the Tribunal").</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
002749 – 002811	Administration Chairman	<p><u>Clause 45 – Commissioner may appoint authorized officers</u></p> <p>Members raised no question on clause 45.</p>	
002812 – 003836	Chairman Administration Mr James TO Mr Wong Ting-kwong	<p><u>Clause 46 – Warrant to enter premises to remove evidence of commission of offence</u></p> <p>Mr WONG remarked that a computer system might be protected by passwords and thus the authorized officer would not be able to gain access to the record or document. He suggested that the Administration consider</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>adding a provision enabling the authorized officer to retrieve the relevant record or document from a computer system under clause 46. The Administration undertook to study the issue.</p> <p>On clause 46(2)(a), Mr TO enquired whether there was a corresponding offence for not rendering assistance to the authorized officer under this clause. The Administration replied in the negative and remarked that the aim of the clause was to allow the authorized officer to seek assistance from relevant parties such as locksmiths and that the clause did not allow the authorized officer to force such parties to offer assistance.</p> <p>On clause 46(2)(d), Mr TO suggested the Administration consider limiting the persons who may be detained under sub-clause (2)(d) to those who appear to the authorized officer to be, or likely to be, relevant to the investigation of the suspected offence.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
<p>003837 – 004640</p>	<p>Chairman Administration Mr James TO</p>	<p><u>Clauses 47 – Authorized officer's power to arrest and search, etc.</u></p> <p>Mr TO remarked that the contents of clauses 47(1)(b)(iii) and 47(1)(b)(iv) were very similar and enquired whether they could be combined.</p> <p>The Administration responded that the two clauses were different. For instance, clause 47(1)(b)(iii) might refer to an incomplete address while clause 47(1)(b)(iv) might refer to an address that was suspected by the authorized officer to be invalid. The Administration also pointed out that the clauses were drafted by making reference to existing legislation and suggested keeping the two clauses intact to maintain consistency with other legislation.</p> <p>Mr TO enquired whether (i) on-the-spot enquiries; and (ii) detention were covered by clause 47(3). The Administration advised that both matters were covered by clause 47(1).</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Regarding clause 47(5), Mr TO pointed out that the current drafting might have overlooked the need to empower the authorized officer to use reasonable force to effect a detention. The Administration undertook to consider extending the application of clause 47(5), which as drafted only applies to an arrest, to allow the authorized officer using force reasonably necessary to effect a detention if a person forcibly resists or attempts to evade detention.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
<p>004641 – 005445</p>	<p>Chairman Administration Mr Wong Ting-kwong</p>	<p><u>Clauses 48 – Preservation of secrecy</u></p> <p>Regarding clause 48(3)(e), Mr WONG enquired, if the information to be disclosed was related to a number of persons, whether the consent of each person concerned would be necessary. The Administration replied in the affirmative.</p> <p>In response to Mr WONG, the Administration advised that the consent of a person would be required only if the information to be disclosed was related to that person.</p>	
<p>005446 – 005459</p>	<p>Administration Chairman</p>	<p><u>Clause 49 – Amendment of Schedule 3</u></p> <p>Members raised no question on clause 49.</p>	
<p>005500 – 005518</p>	<p>Administration</p>	<p><u>Clause 50 – Regulations</u></p> <p>The Administration would consider providing for an offence for breach of the Regulations (or parts of the Regulations) to be made under clause 50.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
<p>005519 – 005610</p>	<p>Administration Chairman</p>	<p><u>Clause 51 – Offence to provide false information in connection with application for licence etc.</u></p> <p>Members raised no question on clause 51.</p>	
<p>005611 – 010147</p>	<p>Chairman Administration Mr Wong Ting-kwong</p>	<p><u>Clause 52 – Time limit for prosecution</u></p> <p>The Chairman enquired whether the time limit of 12 months would be too short. Mr WONG remarked that such time limit was not short because the usual time limit was six months.</p> <p>With respect to the question raised by Dr NG in the previous meeting regarding the rationale for</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>clause 52, the Administration remarked that for a number of reasons, including for example the absence of victims who would report the suspected crime, it would be more difficult to discover the offence and thus the time limit had to be lengthened to 12 months.</p> <p>Part 6</p> <p>Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal</p> <p><u>Clause 53 – Interpretation of Part 6</u></p> <p>Members raised no question on clause 53.</p>	
010148 – 010550	Administration Chairman	<p><u>Clause 54 – Establishment of Tribunal</u></p> <p><u>Clause 55 – Composition of Tribunal</u></p> <p><u>Clause 56 – Chairperson and other members of Tribunal may be paid fees</u></p> <p><u>Clause 57 – Schedule 4 has effect</u></p> <p><u>Clause 58 – Application for review of specific decisions</u></p> <p>Members raised no question on clauses 54 to 58.</p>	
010551 – 010913	Chairman Administration Mr James TO	<p><u>Clause 59 – Determination of review by Tribunal</u></p> <p>Mr TO enquired about the standard of proof adopted by the Tribunal in making determinations. The Administration responded that this was specified in clause 59(4).</p>	
010914 – 012040	Chairman Administration Mr James TO Mr Wong Ting-kwong	<p><u>Clause 60 – Powers of Tribunal</u></p> <p>In relation to clause 60(1)(h), Mr WONG enquired under what circumstances sittings would be held in private. The Administration replied that this was specified in sections 6(6) to 6(8) of Schedule 4.</p> <p>In relation to clause 60(1)(a), Mr WONG enquired whether the information involved enjoyed absolute privilege and thus was not governed by the Defamation Ordinance (Cap.</p>	The Administration to take action as per paragraph 2 of

Time Marker	Speaker	Subject(s)	Action Required
		<p>21). The Administration undertook to clarify whether the oral evidence or written statements received and considered by the Tribunal under sub-clause (1)(a) would enjoy absolute privilege or qualified privilege (such as privilege from defamation).</p> <p>Mr TO enquired whether proposed sections 6(7) and 6(8) of Schedule 4 were contradictory. The Administration clarified that proposed section 6(8) referred to the hearing by the Tribunal of an application for a private sitting and not the Tribunal's sittings to determine a review.</p> <p>In relation to clause 60(2)(e), Mr TO requested the Administration to clarify whether an employer deducting wages of an employee due to his/her absence from work to appear before the Tribunal would be regarded as "causes any loss to be suffered by any person who has attended before the Tribunal, on account of that attendance" and hence might commit an offence under the sub-clause. The Administration undertook to clarify the issue.</p>	<p>the minutes.</p> <p>The Administration to take action as per paragraph 2 of the minutes.</p>
012041 – 012158	Administration Chairman	<p><u>Clause 61 – Use of incriminating evidence given under compulsion</u></p> <p>Members raised no question on clause 61.</p>	
012159 – 012431	Chairman Administration Mr Wong Ting-kwong	<p><u>Clause 62 – Contempt dealt with the Tribunal</u></p> <p>Mr WONG enquired whether the act of contempt was a criminal offence and the Administration replied in the affirmative.</p>	
012432 – 013233	Chairman Administration Mr James TO	<p><u>Clause 63 – Privileged information</u></p> <p>Upon Mr TO's enquiry, the Administration gave the following example to illustrate the clause: if a person made an application for review and the person's banker or financial advisor (which is an authorized institution) was required by the Tribunal to make testimony, the authorized institution could not disclose information of its clients other than that person.</p> <p>Mr TO asked whether an authorized institution making an application for review would be allowed to disclose information of its clients to prove that the records were handled properly.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration responded that the clause did not aim at imposing the restriction on the party making an application for review. The clause would only apply to an authorized institution acting as the banker or financial adviser of the party applying for a review.</p> <p>Mr TO requested the Administration to review whether clause 63 would create an inequitable situation between the party seeking a review and the relevant authority, as it appeared that the latter was not subject to the same restriction in its exercise of powers leading to the decision which was the subject of the review.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
013234 – 013355	Administration Chairman	<p><u>Clause 64 – Costs</u></p> <p>Members raised no question on clause 64.</p>	
013356 – 013937	Chairman Administration Mr Wong Ting-kwong	<p><u>Clause 65 – Notification of Tribunal determinations</u></p> <p>Mr WONG asked the Administration to clarify the definition of the Chinese term "盡快" under clause 65(1). The Administration remarked that it meant "as soon as reasonable" and there was no definite time-limit.</p> <p>Mr WONG asked whether there was any channel to lodge a complaint against the Tribunal if a person considered that the Tribunal failed to properly discharge its duties under the Bill. The Administration undertook to study the issue.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
013938 – 014506	Chairman Administration Mr Wong Ting-kwong Dr Margaret NG	<p><u>Clause 66 – Form and proof of orders of Tribunal</u></p> <p>In relation to clause 66(1), Mr WONG enquired whether the seal of the Tribunal was required for the orders of the Tribunal. The Administration replied in the negative.</p> <p>Dr NG requested the Administration to explain the rationale for clause 66(2) and provide examples of similar provisions in other legislation. The Administration responded that the clause was modeled on the SFO and was specified to facilitate, inter alia, the registration of the orders of the Tribunal in the Court of First Instance under clause 67. The Administration undertook to further study the issue.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
014507 – 015040	Administration Chairman	<p><u>Clause 67 – Orders of Tribunal may be registered in Court of First Instance</u></p> <p><u>Clause 68 – Applications for stay of execution of specified decisions</u></p> <p><u>Clause 69 – Applications for stay of execution of determinations of Tribunal</u></p> <p><u>Clause 70 – Appeal to Court of Appeal with leave</u></p> <p><u>Clause 71 – Powers of the Court of Appeal</u></p> <p>Members raised no question on clauses 67 to 71.</p>	
015041 – 015159	Administration Chairman	<p><u>Clause 72 – No stay of execution of Tribunal's determination on appeal</u></p> <p>In response to the Chairman, the Administration confirmed that while the lodging of an appeal would not operate as a stay of execution of the determination of the Tribunal which is the subject of the appeal, the person lodging the appeal could apply to the Court of Appeal for a stay of execution of the determination of the Tribunal.</p>	
015200 – 015246	Administration Chairman Dr Margaret NG	<p><u>Clause 73 – No other right of appeal</u></p> <p>Dr NG enquired whether the clause had any implication on judicial review. The Administration replied in the negative.</p>	
015247 – 015316	Chairman	<p>Date of next meeting</p> <p>The Chairman said that the next two meetings would be held on 14 April 2011 and 28 April 2011 respectively.</p>	