

立法會
Legislative Council

LC Paper No. CB(1)2996/10-11
(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**

**Eleventh meeting on
Tuesday, 19 April 2011, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon Audrey EU Yuet-mee, SC, JP
Hon CHIM Pui-chung
Hon Paul CHAN Mo-po, MH, JP
- Members absent** : Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Starry LEE Wai-king, JP
- Public officers
Attending** : Miss Melo MAN
Acting Principal Assistant Secretary for Financial
Services and the Treasury (Financial Services)
- Mr Alan CHONG
Senior Government Counsel
Department of Justice

Mr Trevor KEEN
Head (Banking Conduct)
Hong Kong Monetary Authority

Mr Hon CHAN
Senior Manager (Anti-money Laundering)
Office of the Commissioner of Insurance

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 74)

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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)1941/10-11(01) — List of follow-up actions arising from the meeting on 31 March 2011 prepared by the Legislative Council Secretariat)

The Deputy Chairman said that as the Chairman might not be able to attend this meeting, he would chair the meeting during the Chairman's absence.

(The Chairman subsequently arrived at about 2:50 pm, and took over the chairmanship at 2:57 pm.)

Discussion

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

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Follow-up actions to be taken by the Administration

3. The Administration was requested to:

Clause 77

- (a) explain the rationale for this clause and the consequence of deleting it, given that it has been established in case law that the civil standard of proof should apply in circumstances other than in criminal proceedings;
- (b) consider deleting this clause to allow for more flexibility as the standard of proof should be higher than the civil standard when the legal proceedings involved may affect an individual's right substantially;

Clause 78

- (c) explain why sub-clause (1) only includes the offence of conspiracy to commit an offence under this Bill but not also other inchoate offences such as the offences of attempt or incitement to commit an offence under this Bill;
- (d) consider whether a mechanism for appointment of officers eligible to exercise the power provided under sub-clause(2) should be established; and

Section 10 of Schedule 2

- (e) explain how financial institutions may establish the source of wealth and the source of funds of a politically exposed person as required under section 10(1)(b) and 10(2)(b).

III Any other business

- 4. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 1
Legislative Council Secretariat
14 September 2011

**Proceedings of the
Bills Committee on Anti-Money Laundering and
Counter-Terrorist Financing (Financial Institutions) Bill
Eleventh meeting on Tuesday, 19 April 2011, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000452 – 000623	Deputy Chairman	Opening remarks	
000624 – 000817	Deputy Chairman Administration	Noting that clause 70 provided that no appeal might be made unless leave to appeal had been granted by the Court of Appeal and that the Securities and Futures Ordinance (Cap. 571) ("SFO") did not contain such requirement, the Deputy Chairman enquired the reason for such leave requirement under clause 70. The Administration explained that the leave requirement was included in the Bill upon making reference to the new section 14AA of the High Court Ordinance (Cap 4) which was enacted as part of the Civil Justice Reform. The Judiciary had been consulted on that clause.	
000818 – 001809	Deputy Chairman Administration	<p><u>Clause-by-clause examination of the Bill</u></p> <p>Part 6</p> <p>Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal</p> <p><u>Clause 74 – Time when specified decisions take effect</u></p> <p>Regarding clause 74(1)(c), the Deputy Chairman remarked that a person might delay the execution of a specified decision by applying for a review without giving concrete grounds for application. He enquired about the longest time the person could delay the execution of the specified decision by doing this. In response, the Administration remarked that such case could be prevented by clause 58(4) because the application for review must state the grounds for the application such that the person could not file an application with no grounds just to delay the time when the decision took effect.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Deputy Chairman remarked that the applicant might state only a simple reason in the application and enquired about the approximate time taken for the review process. The Administration responded that while a concrete timeframe was not specified in the Bill, the Tribunal would conduct the review under a reasonable timeframe. The Administration added that the Securities and Futures Appeals Tribunal had very few abuse cases.</p> <p>In reply to the Deputy Chairman, the Administration confirmed that it had made reference to SFO in drafting clause 74(2). As a decision made under clause 74(2) was not covered in the definition of "specified decisions" in Part 6 of the Bill, no appeal of such decision might be made to the Tribunal. However, clause 68 of the Bill provided that an application for stay of execution of specified decision could be made and the decision made under clause 74(2) would be covered.</p>	
001810 – 001837	Deputy Chairman Administration	<p><u>Clause 75 – Power of Chief Justice to make rules</u></p> <p>Members raised no questions on clause 75.</p>	
001837 – 002148	Deputy Chairman Administration	<p>Part 7</p> <p>Miscellaneous Provisions</p> <p><u>Clause 76 – Regulations by Chief Executive in Council</u></p> <p>The Deputy Chairman enquired why two authorities (i.e. the Chief Executive in Council and the Commissioner of Customs and Excise ("Commissioner")) were involved in making regulations under the Bill. The Administration explained that similar provisions were present in a number of local legislation. The Bill specified that regulations in Part 5 would be made by the Commissioner. To avoid ambiguity, clause 76 specified that the Chief Executive in Council might make regulations for the purposes of the Ordinance except Part 5 of the Ordinance.</p> <p>In reply to the Deputy Chairman, the Administration advised that there were no specific regulations planned to be made under clause 76 at the moment.</p>	

Time Marker	Speaker	Subject(s)	Action Required
002149 – 002252	Chairman Deputy Chairman	The Chairman arrived and took over the chairmanship of the meeting.	
002253 – 003113	Administration Chairman Mr James TO Dr Margaret NG	<p><u>Clause 77 – Standard of proof</u></p> <p>Mr. TO remarked that while only the criminal standard of proof and the civil standard of proof were mentioned in the clause, he understood that under the common law, for legal proceedings that might affect an individual’s rights substantially (e.g. revocation of licence), a standard of proof more stringent than the civil standard but lower than the criminal standard would be applied. Mr TO suggested that the Administration examine this issue.</p> <p>Dr NG remarked that the Court of Final Appeal had given a judgment establishing that the civil standard of proof should apply in circumstances other than in criminal proceedings. She requested the Administration to explain the rationale for this clause and the consequence of deleting it. The Administration undertook to study the issue.</p> <p>Mr TO remarked that in spite of Dr NG's comments, there were some cases in which a standard of proof more stringent than the civil standard of proof but lower than the criminal standard had been applied in view of the sanctions that could be imposed. He suggested the Administration consider deleting this clause to allow for more flexibility.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p> <p>The Administration to take action as per paragraph 3 of the minutes.</p>
003114 – 003717	Administration Chairman Mr James TO	<p><u>Clause 78 – Prosecution of offences by relevant authorities</u></p> <p>Mr TO requested the Administration to explain why clause 78(1) only included the offence of conspiracy to commit an offence under this Bill but not other inchoate offences such as the offences of attempt or incitement to commit an offence under this Bill.</p> <p>Mr TO suggested the Administration consider whether a mechanism for appointment of officers eligible to exercise the power provided under clause 78(2) should be established.</p>	<p>The Administration to take action as per paragraph 3 of the minutes.</p> <p>The Administration to take action as per paragraph 3 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		The Administration undertook to examine the issues.	
003718 – 003822	Administration Chairman	<u>Clause 79 – Giving of notices by relevant authorities</u> Members raised no question on clause 79.	
003823 – 003904	Administration Chairman	<u>Clause 80 – Legal professional privilege</u> The Administration remarked that it would provide in due course written response to members' questions raised at a previous meeting regarding clause 80(2).	
003905 – 004201	Administration Chairman	<u>Clause 81 – Transitional provision with regard to money changers and remittance agents carrying on business before commencement of this Ordinance</u> Members raised no question on clause 81.	
004201 – 005050	Administration Chairman Mr Albert HO	Part 8 Consequential and Related Amendments <u>Clause 82 – Enactments amended</u> <u>Clause 83 – Section 53A amended (Secrecy)</u> <u>Clause 84 – Section 7 amended (Exemption from liability)</u> <u>Clause 85 – Section 120 amended (Official secrecy)</u> <u>Clause 86 – Part IVA repealed</u> Mr HO enquired why the clauses to be added as consequential amendments under clause 83 and clause 85 were different (the former ended with "披露" while the latter ended with "披露資料"). The Administration explained that this was due to the different starting sentences (首述句子) in the corresponding provisions concerned. Members raised no other question on clauses 82 to 86.	

Time Marker	Speaker	Subject(s)	Action Required
005051 – 005221	Administration Chairman	<p><u>Clause 87 – Section 180 amended (Supervision of intermediaries and their associated entities)</u></p> <p><u>Clause 88 – Section 378 amended (Preservation of secrecy, etc.)</u></p> <p><u>Clause 89 – Schedule 1 amended (Interpretation and general provisions)</u></p> <p>Members raised no question on clause 87 to 89.</p>	
005222 – 005931	Administration Chairman	<p>Schedule 1</p> <p>Interpretation</p> <p><u>Part 1</u></p> <p>Regarding the definition of the term "terrorist financing", the Administration remarked that it would move a Committee Stage amendment (CSA) to bring the definition in line with that in the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575). Members raised no question on Part 1.</p>	
005932 – 010049	Administration Chairman	<p><u>Part 2</u></p> <p>Members raised no question on Part 2.</p>	
010050 – 011223	Administration Chairman	<p>Schedule 2</p> <p>Requirements Relating to Customer Due Diligence and Record-keeping</p> <p><u>Part 1</u></p> <p><u>Section 1 Interpretation</u></p> <p>The Administration remarked that it would move a CSA to the definition of "beneficial owner" having regard to the relevant view of the Hong Kong Association of Banks ("HKAB").</p> <p>The Chairman enquired why the term "municipal or urban council" was included in the definition of the term "public body" given that the Urban Council and the Regional Council had been abolished. The Administration clarified that such terms were included to refer to the relevant authorities in other jurisdictions. The</p>	

Time Marker	Speaker	Subject(s)	Action Required
		Administration also clarified that the term "municipal or urban council" covered the District Councils of Hong Kong.	
011224 – 014121	Administration Chairman	<p><u>Part 2</u></p> <p><u>Section 2 – What are customer due diligence measures</u></p> <p><u>Section 3 – When customer due diligence measures must be carried out</u></p> <p><u>Section 4 – Simplified customer due diligence</u></p> <p><u>Section 5 – Duty to continuously monitor business relationships</u></p> <p><u>Section 6 – Provisions relating to pre-existing customers</u></p> <p><u>Section 7 – Provisions relating to pre-existing respondent banks</u></p> <p><u>Section 8 – Requirements in this Division are additional to those in section 3 and 5 of this Schedule</u></p> <p><u>Section 9 – Special requirements when customers is not physically present for identification purpose</u></p> <p>The Administration remarked that it might, having regard to the relevant views of HKAB, move CSAs to sections 2(b), 4(5) and 6(1)(b). Members raised no question on sections 2 to 9.</p>	
014122 – 015723	Administration Chairman Dr Margaret NG Mr Albert HO	<p><u>Section 10 – Special requirements when customer is politically exposed person</u></p> <p>Dr NG noted that section 10 required a financial institution to establish the source of wealth of a customer who was a politically exposed person, and considered that "source of wealth" was a broad concept. Dr NG further pointed out that based on the definition of politically exposed person set out in Part 1 of Schedule 2, the source of wealth of family members of the customer might also have to be established. She requested the Administration to explain how financial institutions may in practice establish</p>	The Administration to take action as per

Time Marker	Speaker	Subject(s)	Action Required
		<p>the source of wealth, apart from the source of funds involved in the (proposed) business relationship, of a politically exposed person, as required under sections 10(1)(b) and 10(2)(b).</p> <p>While the Administration undertook to provide relevant information on how such requirements would be fulfilled by financial institutions in practice, it remarked that (i) the requirement on establishing the source of wealth was one of the requirements of the Financial Action Task Force; (ii) the Bill did not empower financial institutions to make investigations; and (iii) having regard to the relevant view of HKAB, the Administration would move a CSA to change the term "adequate measures" in sections 10(1)(b) and 10(2)(b) to "reasonable measures".</p> <p>Noting that the terms "adequate measures" in sections 10(1)(b) and 10(2)(b) might be changed to "reasonable measures", Mr HO enquired whether the change would result in material differences. The Administration replied in the affirmative.</p>	<p>paragraph 3 of the minutes.</p>
<p>015724 – 015735</p>	<p>Chairman</p>	<p><u>Date of next meeting</u></p> <p>The Chairman said that the next meeting would be held on 28 April 2011.</p>	