

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2997/10-11  
(These 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**

**Twelfth meeting on  
Thursday, 28 April 2011, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon Albert HO Chun-yan  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Ting-kwong, BBS, JP
- Members absent** : Hon James TO Kun-sun (Deputy Chairman)  
Dr Hon David LI Kwok-po, GBM, GBS, JP  
Dr Hon Margaret NG  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon CHIM Pui-chung  
Hon Starry LEE Wai-king, JP  
Hon Paul CHAN Mo-po, MH, JP
- Public officers  
Attending** : 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 Trevor KEEN  
Head (Banking Conduct)  
Hong Kong Monetary Authority

Ms Carol HUI  
Acting Assistant Commissioner of Insurance  
(Policy and Development Division)

Mr CHAN Chi-keung  
Acting Head of Trade Controls  
Customs and Excise Department

**Attendance by Invitation** : Mr Raymond WONG  
Associate Director (Intermediaries Supervision)  
Securities and Futures Commission

Mr Mark STEWARD  
Executive Director  
Enforcement Division  
Securities and Futures Commission

**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**

### Follow-up to issues raised at previous meetings

(LC Paper No. CB(1)1554/10-11(02) — List of follow-up actions arising from the meeting on 24 January 2011 prepared by the Legislative Council Secretariat

- LC Paper No. CB(1)1554/10-11(03) — List of follow-up actions arising from the meeting on 9 February 2011 prepared by the Legislative Council Secretariat
- 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
- LC Paper No. CB(1)2030/10-11(01) — Administration's paper on "Further Information on the Provisions Relating to Investigatory Powers"
- LC Paper No. CB(1)2030/10-11(02) — Administration's paper on "Further Information on the Provisions Relating to Supervisory Sanctions")

Clause-by-clause examination of the Bill (starting with section 11 of Schedule 2)

- (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)

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:
  - (a) consider specifying under section 21 of Schedule 2 that a copy of the records should be kept in Hong Kong to facilitate inspection by the relevant authority;
  - (b) consider amending section 3(4)(a) and 4(4)(a) of Schedule 4 to clarify that a notice for resignation cannot take effect retrospectively;
  - (c) clarify whether under section 4(1) of Schedule 4, the Secretary may appoint panel members as ordinary members of the Tribunal if the chairperson has not made any recommendation; and if positive, consider whether the Chinese version of the section should be amended to better reflect the intention; and
  - (d) consider whether the circumstances under which the Chairperson may sit as the sole member of the Tribunal as provided under section 9 of Schedule 4 should be restricted to cases where only procedural matters are involved or where the contentious issue only involves a question of law; and to review whether the arrangement that "the chairperson must report to the Tribunal" after making a determination as the sole member of the Tribunal is appropriate.

## **II Any other business**

### Date of next meeting

3. The Chairman reminded members that the next meeting would be held on 16 May 2011.
4. There being no other business, the meeting ended at 4:16 pm.

**Proceedings of the  
Bills Committee on Anti-Money Laundering and  
Counter-Terrorist Financing (Financial Institutions) Bill  
Twelfth meeting on Thursday, 28 April 2011, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
001146 – 001340	Chairman	Introductory remarks	
001341 – 002840	Administration Ms Audrey EU Chairman	<p data-bbox="564 629 1217 770">Briefing by the Administration on the paper "Further Information on the Provisions Relating to Investigatory Powers" (LC Paper No. CB(1)2030/10-11(01))</p> <p data-bbox="564 813 1217 987">Ms EU expressed concern that the Bill might confer excessive powers to the regulators and enquired whether reference had been made to the prevailing international practices in drafting the enabling provisions of the Bill.</p> <p data-bbox="564 1030 1217 1608">The Administration responded that while the Financial Action Task Force (FATF) did not set out detailed requirements on the powers of the relevant authorities, it required that the relevant authorities should be empowered to carry out routine inspections including sample checking and to require production of records and documents from financial institutions without a court order. In drafting the relevant provisions of the Bill, the Administration had made reference to Part VIII of the Securities and Futures Ordinance (Cap. 571) ("SFO") because FATF had reviewed SFO during the mutual evaluation on Hong Kong and had not commented about any inadequacy of the Ordinance.</p> <p data-bbox="564 1650 1217 2092">Ms EU clarified that her concern was that while the Bill conferred a broad range of powers to the regulators, there might not be sufficient checks and safeguards to ensure sufficient protection for stakeholders. She was also concerned whether the Bill was in line with the prevailing international practices (if any) without granting excessive powers to the regulators. She requested the Legal Adviser of the Bills Committee to pay particular attention to this aspect in assisting the Bills Committee in the scrutiny of the Bill.</p>	

Time Marker	Speaker	Subject(s)	Action Required
002841 – 003343	Administration	Briefing by the Administration on the paper "Further Information on the Provisions Relating to Supervisory Sanctions" (LC Paper No. CB(1)2030/10-11(02))	
003345 – 010310	Administration Chairman	<p><u>Clause-by-clause examination of the Bill</u></p> <p><b>Schedule 2</b></p> <p><b>Part 2 -</b></p> <p><b>Division 2 –Special Requirements</b></p> <p><u>Section 11 – Special requirements for insurance policies</u></p> <p><u>Section 12 – Special requirements for wire transfers</u></p> <p><u>Section 13 – Special requirements for remittance transactions</u></p> <p><u>Section 14 – Special requirements for correspondent banking relationships</u></p> <p><u>Section 15 – Special requirements in other high risk situations</u></p> <p><b>Division 3 – Prohibitions</b></p> <p><u>Section 16 – Anonymous accounts etc.</u></p> <p><u>Section 17 – Correspondent banking relationships with shell banks</u></p> <p><b>Division 4 –Miscellaneous</b></p> <p><u>Section 18 – Carrying out customer due diligence measures by means of intermediaries</u></p> <p>The Administration remarked that while in Hong Kong, lawyers, accountants, and trust and company service providers were common intermediaries that financial institutions for conducting customer due diligence, but they were at present not regulated for anti-money laundering and counter terrorist financing (AML) purpose to the extent as required by FATF. Section 18(5) therefore specified that the arrangement to allow reliance on the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>abovementioned intermediaries would lapse three years after the commencement of the Ordinance. Meanwhile, the Security Bureau would work towards establishing an AML regulatory framework for the intermediaries based on FATF requirements. Thereafter, a new provision would be enacted to cover the "intermediary reliance" arrangement for local intermediaries.</p> <p><u>Section 19 – Financial institutions to establish procedures</u></p> <p>The Administration remarked that it might move Committee Stage amendments (CSAs) to sections 12(9)(b), 12(10)(b), 15 and 19(3) after further discussion with the Hong Kong Association of Banks (HKAB). Besides, pursuant to a relevant view of the Hong Kong Institute of Certified Public Accountants, the Administration would move a CSA to change the term "certified public accountant (practicing)" in section 18(7) to "certified public accountant".</p> <p>Members raised no question on sections 11 to 19.</p>	
010311 – 010604	Administration Chairman	<p><b>Part 3 – Record-keeping Requirements</b></p> <p><u>Section 20 – Duty to keep records</u></p> <p>Members raised no question on section 20.</p>	
010604 – 011109	Mr WONG Ting-kwong Administration Securities and Futures Commission (SFC)	<p><u>Section 21 – Manner in which records are to be kept</u></p> <p>Mr WONG enquired whether there were any requirements on financial institutions to keep customers' records in Hong Kong. The Administration responded that the Bill did not contain such requirement, and FATF did not specify requirements on the location for keeping records. However, since the relevant authorities may require financial institutions to produce relevant records or documents irrespective of their location, it was not necessary to require financial institutions to keep records or documents in Hong Kong. SFC supplemented that according to section 130 of SFO, licensed corporations needed to seek approval from SFC</p>	The Administration to take action as per paragraph 2 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>on premises for keeping records. SFC's current practice was to only approve premises located in Hong Kong for the keeping of records or documents under s130 of SFO.</p> <p>Mr WONG suggested the Administration consider specifying under section 21 that a copy of the records should be kept in Hong Kong to facilitate inspection by the relevant authority.</p>	
011110 – 011254	Administration Chairman	<p><b>Part 4 – Miscellaneous</b></p> <p><u>Section 22 – Duties extended to branches and subsidiaries outside Hong Kong</u></p> <p><u>Section 23 – Financial institutions to prevent contravention of Part 2 or 3 of this Schedule</u></p> <p>Members raised no question on sections 22 to 23.</p>	
011255 – 011617	Administration Chairman	<p><b>Schedule 3 – Fees</b></p> <p>The Chairman enquired about the principle applied in determining the fees and the Administration responded that the principle of cost-recovery was used and the fees would be subject to regular reviews.</p>	
011618 – 011823	Administration Chairman	<p><b>Schedule 4 – Provisions Relating to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal</b></p> <p><u>Section 1 – Interpretation</u></p> <p><u>Section 2 – Appointment of panel</u></p> <p>Members raised no question on sections 1 and 2.</p>	
011824 – 012130	Mr Albert HO Administration Mr WONG Ting-kwong Chairman	<p><u>Section 3 – Tenure of chairperson</u></p> <p>In relation to section 3(4), Mr HO remarked that that current wording might create a situation where the chairperson specified in his notice of resignation that the resignation was to take effect at a date earlier than its submission and suggested the Administration consider amending section 3(4)(a) and 4(4)(a) to clarify that a notice for resignation might not take effect retrospectively.</p>	The Administration to take action as per paragraph 2 of the minutes.



Time Marker	Speaker	Subject(s)	Action Required
		In relation to section 3(2), Mr WONG enquired whether there would be any upper limits on the number of time a person could be re-appointed as chairperson. The Administration replied in the negative.	
012131 – 012512	Mr WONG Ting-kwong Administration Chairman	<u>Section 4 – Appointment of ordinary members</u>  In relation to section (4)(1), Mr WONG requested the Administration to clarify whether the Secretary might appoint panel members as ordinary members of the Tribunal if the chairperson had not made any recommendation; and if so, consider whether the Chinese draft should be amended to better reflect the intention.	The Administration to take action as per paragraph 2 of the minutes.
012513 – 012628	Administration Chairman	<u>Section 5 – Further provisions relating to chairperson and ordinary members</u>  Members raised no question on section 5.	
012629 – 013303	Mr Albert HO Administration Chairman	<u>Section 6 – Procedure</u>  Noting that section 6(5) provided that "a question of law is to be determined by the chairperson alone", Mr HO remarked that it might be difficult to determine whether an issue was a "question of law" and enquired whether the legislation for other Tribunals had provisions stipulating similar arrangements. The Administration responded that the legislation governing the operation of the Securities and Futures Appeals Tribunal and Capital Adequacy Review Tribunal had provisions providing similar arrangements and there had been no operational difficulty arising from those provisions. Noting the Administration's reply, Mr HO raised no further question.  Noting the use of conjunction "and" for clauses 6(9)(a) and 6(9)(b), Mr HO enquired whether a party to the review had to be present in a sitting of the Tribunal if the party was represented by a solicitor or counsel. The Administration replied that the Bill did not have specific requirement in this regard.	
013304 – 013605	Administration Chairman	<u>Section 7 – Preliminary conferences</u>  <u>Section 8 – Consent orders</u>  Members raised no question on sections 7 and 8.	

Time Marker	Speaker	Subject(s)	Action Required
013606 – 014434	Mr Albert HO Administration Chairman	<p><u>Section 9 – Chairperson as sole member of Tribunal</u></p> <p>Mr HO said that in section 9(4), the phrase "the chairperson must report to the Tribunal" should be replaced by "the chairperson must report the following –" or "the chairperson must make a record on –", because the Tribunal consisted of the chairperson only.</p> <p>The Administration clarified that the chairperson needed to report the determination made under section 9(2)(b) to the Tribunal since the substantive hearing would still be heard by the full Tribunal and members should be informed of the chairperson's determination under section 9(4)(b).</p> <p>Mr HO considered that section 9 was not clear about the membership of the Tribunal. He suggested the Administration should (a) consider whether the circumstances under which the Chairperson might sit as the sole member of the Tribunal as provided under section 9 should be restricted to cases where only procedural matters were involved or where the contentious issue only involved a question of law; and (b) review whether the arrangement that "the chairperson must report to the Tribunal" after making a determination as the sole member of the Tribunal was appropriate.</p>	The Administration to take action as per paragraph 2 of the minutes.
014435 – 014510	Administration Chairman	<p><u>Section 10 – Privileges and immunities</u></p> <p>Members raised no question on section 10.</p>	
014511 – 014620	Chairman Administration	The Chairman remarked that the clause-by-clause examination of the Bill had been completed and enquired the Administration when it could provide its draft CSAs to the Bills Committee for consideration. The Administration responded that the draft CSAs were under preparation and the progress of its discussion with HKAB was satisfactory.	
014621 – 014657	Mr WONG Ting-kwong Chairman Administration	Mr WONG remarked that the next meeting should be held when the all the draft CSAs of the Administration were ready. The Chairman remarked that apart from draft CSAs, the Committee also needed to consider the	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		Administration's replies to outstanding questions raised by members.	
014658 – 014805	Chairman	<u>Date of Next meeting</u>  The Chairman remarked that the next meeting was scheduled for 16 May 2011. If necessary, it might be postponed to allow more time for the Administration to prepare relevant papers for the meeting.	

Council Business Division 1  
Legislative Council Secretariat  
14 September 2011