

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1204/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/4/13

**Bills Committee on Loans (Amendment) Bill 2014**

**First meeting on**  
**Tuesday, 25 February 2014, at 8:30 am**  
**in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon Kenneth LEUNG (Chairman)  
Hon James TO Kun-sun  
Hon WONG Ting-kwong, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Charles Peter MOK

**Member absent** : Hon Starry LEE Wai-king, JP

**Public officers attending** : Mr Jackie LIU  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)5

Ms Jenny LEE  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)5(1)

Miss Selina LAU  
Acting Senior Assistant Law Draftsman  
Department of Justice

Mr Daryl HO  
Head (Market Development)  
Hong Kong Monetary Authority

Ms Carrie CHAN  
Senior Manager (Market Development)1  
Hong Kong Monetary Authority

**Clerk in attendance** : Ms Connie SZETO  
Chief Council Secretary (1)4

**Staff in attendance** : Mr KAU Kin-wah  
Senior Assistant Legal Adviser 3

Mr Hugo CHIU  
Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

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Action

**I Election of Chairman**

Election of Chairman

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr Kenneth LEUNG was nominated by Mr WONG Ting-kwong and the nomination was seconded by Mr Charles MOK. Mr Kenneth LEUNG accepted the nomination. There being no other nomination, Mr LEUNG was elected the Chairman of the Bills Committee.

3. Members agreed that there was no need to elect a Deputy Chairman.

**II Meeting with the Administration**

(LC Paper No. CB(3)323/13-14 — The Bill

LC Paper No. CB(1)966/13-14(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

- File Ref: B9/33/3C — Legislative Council Brief
- LC Paper No. LS23/13-14 — Legal Service Division Report
- LC Paper No. CB(1)966/13-14(02) — Background brief on Loans (Amendment) Bill 2014 prepared by the Legislative Council Secretariat)

Discussion

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

Follow-up actions to be taken by the Administration

- Admin 5. The Administration was requested to provide the following information:
- (a) plans and measures to enhance the further development of Islamic finance in Hong Kong, including training for manpower and liaison with relevant financial institutions and Islamic communities; and
  - (b) plans and measures to promote Hong Kong's established platform for sukuk issuance to local and international investors in the coming two years.

**III Any other business**

Invitation of views

6. Members agreed to post a notice on the website of the Legislative Council to invite written views from the public.

*(Post-meeting note: A notice on invitation for written submissions was posted on the website of the Legislative Council on 25 February 2014. No submissions have been received.)*

Legislative timetable

7. The Chairman said that the Bills Committee had completed scrutiny of the Bill. The Bills Committee supported the Administration's preliminary proposal to resume the Second Reading debate on the Bill at the Council meeting of 26 March 2014. Accordingly, the Bills Committee would report its

deliberations to the House Committee on 14 March 2014, and the deadline for giving notice of amendment(s) to the Bill would be 17 March 2014.

Way forward

8. The Administration's written response on the follow-up actions in paragraph 5 above and written submissions from the public on the Bill (if any), would be circulated to members when ready. The Administration would also confirm the proposed date for resumption of the Second Reading debate on the Bill.

*(Post-meeting note: The Administration has confirmed that it proposes the Second Reading debate on the Bill be resumed at the Council meeting of 26 March 2014. The Administration's written response was issued to members on 6 March 2014 vide LC Paper No. CB(1)1044/13-14(02).)*

9. There being no other business, the meeting ended at 10:09 am.

Council Business Division 1  
Legislative Council Secretariat  
3 April 2014

**Proceedings of the  
Bills Committee on Loans (Amendment) Bill 2014  
First meeting on Tuesday, 25 February 2014, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000131 – 000220	Mr James TO Mr WONG Ting-kwong Mr Charles MOK Mr Kenneth LEUNG	Election of Chairman	
000221 – 001143	Chairman Administration	Briefing by the Administration on the Loans (Amendment) Bill 2014 ("the Bill")	
001144 – 002218	Mr Charles MOK Administration Hong Kong Monetary Authority ("HKMA")	<p>Mr MOK's enquiries about:</p> <ul style="list-style-type: none"> <li>(a) the Administration's assessment of the development of Islamic finance in Hong Kong with the proposed issuance of Islamic bonds ("sukuk") under the Government Bond Programme ("GBP");</li> <li>(b) the proposed issuance size of sukuk under GBP; and</li> <li>(c) the Administration's plan, if any, to issue bonds denominated in other currencies, such as Renminbi, under GBP to enhance diversification of products in the local bond market.</li> </ul> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> <li>(a) Upon the enactment of the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Ordinance 2013 ("the ABS Ordinance") by the Legislative Council ("LegCo") in July 2013, the market had indicated interest in using Hong Kong's established platform to issue sukuk, and the local professional services industry had been providing relevant services (like legal, banking and accounting services) to sukuk issuers. The Administration considered that the proposal to accommodate sukuk issuance under GBP would signal to the market that Hong Kong's legal, regulatory and taxation frameworks were well established for</li> </ul>	

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		<p>issuance of sukuk and other bonds, thereby attracting more global issuers and investors to Hong Kong, including those from the Middle East. The presence of more international issuers and investors would strengthen Hong Kong's role in meeting the financing needs of corporations and providing opportunities for investors to diversify their investment, thus further reinforcing Hong Kong's status as a major international financial centre and an asset management centre.</p> <p>(b) In 2012, sukuk issuances worldwide reached some US\$130 billion and about 70% sukuk in the global market were originated from Malaysia. The Administration had been liaising with relevant parties in Malaysia to study their experience in developing Islamic finance.</p> <p>(c) The local bond market witnessed a remarkable growth in the last ten years. In September 2013, the total outstanding bonds denominated in Hong Kong dollar stood at HK\$1400 billion, which registered a growth of 136% over the last ten years.</p> <p>(d) Both Muslim and non-Muslim investors could purchase sukuk under GBP. The parameters of sukuk issuance, including the timing and issuance size would be determined taking into account the prevailing market conditions and needs. The preliminary thinking was that the initial issuance size might be around US\$500 million or above.</p> <p>(e) The resolutions passed by LegCo in 2009 and 2013 on the maximum borrowing ceiling by the Government for the purposes of the Bond Fund ("BF") did not place restriction on the currency denomination of government bonds ("GBs"). While conventional Hong Kong Dollar-denominated bonds were issued under GBP in the past, the Administration would decide whether to issue sukuk under GBP in Hong Kong dollar or US</p>	

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		<p>dollar with reference to international practice.</p> <p>(f) The local bond market was diversified with various kinds of players, including corporations with fund-raising needs, multilateral banks and foreign financial institutions. Some players would issue bonds denominated in Hong Kong dollar and subsequently convert the proceeds received to other currencies through foreign exchange transactions or currency swaps.</p>	
002219 – 003411	Mr WONG Ting-kwong Administration HKMA	<p>Mr WONG was supportive of the proposal which aimed at diversifying products in Hong Kong bond market and developing Islamic finance. He expressed concerns about:</p> <p>(a) Hong Kong's competitiveness in developing a sukuk market vis-à-vis other jurisdictions like Malaysia which had well-developed sukuk markets, and in the light of increasing competition from other economies like the United States;</p> <p>(b) whether investors would prefer purchasing sukuk originated from Islamic countries given that sukuk had certain unique features like religious elements yet Hong Kong had a small population of Muslims and without strong ties with Islamic countries; and</p> <p>(c) the Administration's plans and measures in enhancing the development of Hong Kong's sukuk platform and promoting the platform overseas, such as increasing publicity work through the networks of Hong Kong Economic and Trade Offices ("HKETOs").</p> <p>The Administration responded as follows:</p> <p>(a) Hong Kong's strengths lay in its sound regulatory regime, simple taxation system, well-established financial infrastructure and efficient intermediary services, including banking, legal and accounting, all providing strong support</p>	

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		<p>for the financial sector. The issuance of sukuk under GBP could further promote Hong Kong's well established financial platform to global issuers and investors, and attract them to Hong Kong.</p> <p>(b) Hong Kong was one of the two jurisdictions in the Asian region (the other one being Singapore) attaining a credit rating of AAA. The Administration envisaged that a number of institutional investors and central banks in the Middle East would be attracted to the sukuk issued under GBP. Also, Hong Kong as Mainland's gateway to the global financial markets would have the advantage of matching the needs of fund raisers and investment demands of investors between Mainland and the Middle East.</p> <p>(c) A number of non-Muslim jurisdictions like the United Kingdom were developing their sukuk markets through issuance of sovereign sukuk to attract investors from the oil-producing countries. Hong Kong should not lag behind these jurisdictions.</p> <p>(d) The Administration was aware of the challenges posed by other jurisdictions and had been promoting Hong Kong's sukuk platform after enactment of the ABS Ordinance. The Administration would continue to step up its efforts in this area making reference to the experience of other jurisdictions like Malaysia. The Administration had been making concerted efforts with relevant parties, such as HKETOs and banks, in launching various promotional activities to publicize Hong Kong's latest development in sukuk platform and Islamic finance. Senior Government officials would also highlight Hong Kong's development in this area during their overseas duty visits.</p>	
003412 – 005013	Chairman Administration HKMA	The Chairman's enquiries on the following matters:	



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		<p>(a) the currency denomination of GBs issued under GBP, which stood at around HK\$107.5 billion as at 15 December 2013;</p> <p>(b) the parameters and details of the sukuk issuance mechanism under GBP, including the timing, size and currency denomination of sukuk to be issued, target investors (the proportion of institutional and retail investors), the need for the Administration to create a special purpose vehicle ("SPV") for each tranche of sukuk issued and whether the SPVs concerned would be wholly owned by the Government, soliciting arrangements for the sukuk vis-à-vis those of other GBs issued under GBP, human resources and expertise for handling sukuk under GBP;</p> <p>(c) the credit ratings of GBs issued and the main reasons for the high credit ratings of GBs; and</p> <p>(d) the need for introducing amendments to relevant ordinances to enable statutory bodies to issue sukuk, and whether the Administration had plan to undertake such review.</p> <p>The Administration responded as follows:</p> <p>(a) All the existing GBs issued under GBP were denominated in Hong Kong dollar.</p> <p>(b) Sukuk to be issued under GBP could be denominated in Hong Kong dollar or other currencies. As the purpose of sukuk issuance under GBP was to promote development of the bond market, the preliminary thinking was that the sukuk would be issued in US dollar in order to attract more investors. The issuance size was envisaged to be around US\$500 million or above and the actual issuance size would be determined having regard to the prevailing market conditions and needs.</p>	

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		<p>(c) As most sukuk investors were institutional investors, the target investors of the inaugural sukuk issuance under GBP would be institutional investors. Depending on market interest and developments, future issuances of sukuk under GBP might be extended to retail investors if appropriate.</p> <p>(d) Credit rating details of Hong Kong were set out in footnote 4 of the LegCo Brief on the Bill. Hong Kong enjoyed high credit ratings mainly because of its economic strength as well as stable fiscal and market conditions.</p> <p>(e) The international practice was to engage professional service providers like banks as arrangers or global coordinators for the issuance of sukuk. A number of international banks with presence in Hong Kong were well experienced in sukuk issuance, some of which were originated out of the Asian region. Thus Hong Kong had the relevant expertise in sukuk issuance.</p> <p>(f) A SPV would have to be created for each tranche of sukuk issued under GBP and such SPV would be wholly owned by the Government. For sukuk issued by private companies, the SPV might be owned by a third party like a charitable trust.</p> <p>(g) The need of appointing arrangers for issuance of GBs would depend on the type and structure of bond to be issued. In general, arrangers were appointed for some kinds of GBs, such as iBonds and Hong Kong Link (the latter is securitized bonds involving Government-owned tunnels and bridges), whereas conventional "plain-vanilla" HK Dollar-denominated bonds targeting institutional investors were directly issued by the Government by way of tender.</p> <p>(h) Statutory bodies could raise funds through various channels (including the issuance</p>	

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		<p>of sukuk) having regard to their individual circumstances. Whether the legislation governing a statutory body needed to be amended to enable the issuance of sukuk by the body would depend on the specific legislation concerned.</p>	
005014 – 005653	Mr Alan LEONG Administration	<p>Mr LEONG's enquiry about the protection for sukuk investors and concern about whether regulators like the Securities and Futures Commission ("SFC") had staff with knowledge and expertise in sukuk.</p> <p>The Administration responded as follows:</p> <p>(a) Similar to other financial products, sukuk would be subject to the prevailing regulatory regime in respect of product offering, marketing, disclosure and intermediaries requirements in accordance with the relevant provisions of the Securities and Futures Ordinance (Cap. 571) ("SFO") and the Companies Ordinance (Cap. 622). For instance, issuers were required under SFO to seek authorization from SFC on the issuance of any advertisement, invitation or document, which was or contained an invitation to the public to enter into or offer to enter into an agreement to acquire the relevant sukuk products, unless an exemption applied. Given that the target investors of the inaugural sukuk to be issued under GBP would be institutional investors, certain exemptions under SFO would apply.</p> <p>(b) Six sukuk had been listed in Hong Kong, so SFC had relevant expertise to regulate sukuk. SFC had been maintaining regular liaison with relevant overseas regulators and international organizations to strengthen its knowledge of sukuk regulation.</p>	
005654 – 005947	Chairman HKMA Administration	<p>The Chairman enquired about provision of training by SFC and HKMA on sukuk regulation and related matters for their relevant staff, including courses and programmes on Islamic finance organized by other jurisdictions.</p>	

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		<p>The Administration responded that HKMA had been organizing seminars and workshops on Islamic finance for market practitioners. Representatives from the Government, HKMA and SFC could attend relevant seminars as necessary.</p> <p>At the Chairman's request, the Administration was requested to provide information on:</p> <p>(a) plans and measures to enhance the further development of Islamic finance in Hong Kong, including training for manpower and liaison with relevant financial institutions and Islamic communities; and</p> <p>(b) plans and measures to promote Hong Kong's established platform for sukuk issuance to local and international investors in the coming two years.</p>	<p>The Administration to take action as per paragraph 5 of the minutes.</p>
005948 – 010022	Chairman Mr Alan LEONG	Members agreed to post a notice on the website of LegCo to invite submissions from the public on the Bill.	
<b><u>Clause by Clause Examination of the Bill</u></b>			
010023 – 010857	Chairman Administration Mr Alan LEONG	<p><b>Part 1</b></p> <p><b>Preliminary</b></p> <p><u>Clause 1 – Short title</u></p> <p><b>Part 2</b></p> <p><b>Amendments to Loans Ordinance</b></p> <p><u>Clause 2 – Loans Ordinance amended</u></p> <p><u>Clause 3 – Section 2 amended (interpretation)</u></p> <p>In response to the Chairman's enquiry about the need of clause 3 given the extensive coverage of the term "borrow" in section 2 of the Loans Ordinance (Cap. 61)("LO"), the Administration remarked that clause 3 amended the definition of "borrow" in section 2 of the LO to make it clear that a borrowing within the meaning of the new section 2A</p>	

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		<p>would also fall within the meaning of "borrow". (Note: The new section 2A provides for the meaning of "borrow" in the case of money borrowed by the issue of sukuk.).</p>	
<p>010858 – 012343</p>	<p>Administration Chairman</p>	<p><u>Clause 4 – Section 2A added</u></p> <p>The Administration advised that the new section 2A(2) provides for the interpretation of "borrow" and "principal" in the case of an alternative bonds scheme described in the new section 2A(1).</p> <p>The Chairman's enquiries about:</p> <ul style="list-style-type: none"> <li>(a) the coverage of the phrase "or otherwise" in subsection 1(d);</li> <li>(b) whether the terms "bond proceeds" and "sum received by the Government" in subsection 1(d) and subsection 2(a) respectively would involve the same amount of money under all conditions;</li> <li>(c) whether the expenses and costs incurred in the issuance of sukuk would be paid out of the bond proceeds;</li> <li>(d) whether bond proceeds and expenses incurred in the issuance of bonds would be included in the calculation of the maximum borrowing ceiling of HK\$200 billion or equivalent under GBP; and</li> <li>(e) the investment strategies of the Bond Fund ("BF").</li> </ul> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> <li>(a) Some types of sukuk might have more complex structures. For instance, under profits sharing arrangement, the Government and the SPV would form a joint venture, and the Government would receive bond proceeds indirectly through the joint venture. The term "or otherwise" in subsection 1(d) was to cater for such scenarios.</li> </ul>	

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		<p>(b) The term "bond proceeds" in subsection 1(d) and the term "sum received by the Government" in subsection 2(a) of the new section 2A would involve the same amount of money under all conditions.</p> <p>(c) The expenses and costs incurred in the issuance of sukuk would not be reflected in the bond proceeds and thus clause 7 of the Bill would address this issue separately.</p> <p>(d) Under the relevant resolutions passed by LegCo, the maximum borrowing ceiling for GBP was HK\$ 200 billion or equivalent, and the expenses and costs incurred in the issuance of sukuk would not be taken into account. The principal amount raised under GBP would be credited to BF.</p> <p>(e) The relevant resolutions passed by LegCo stipulated that BF had to be invested in the manner the Financial Secretary ("FS") considered "appropriate for the prudent management of the Fund". In practice, BF was managed by HKMA. Similar to the fiscal reserves placed with the Exchange Fund ("EF"), BF was placed with EF for investment and the return was calculated based on the average annual rate of return of EF's investment portfolio over the past six years or the average annual yield of three-year Exchange Fund Notes for the previous year, whichever was the higher.</p>	
012344 – 012811	Administration Chairman	<p><u>Clause 5 –Section 3 amended (power to borrow)</u></p> <p>In response to the Chairman's enquiry about whether FS would cause a copy of the agreement on individual GBs and sukuk issued under GBP to be laid on the table of LegCo, the Administration remarked that each issuance under GBP was transparent and the relevant documents on GBs and any sukuk issued under GBP (like information memorandum and offering circulars) could be accessed at the GBP's website. For this reason, they had not been tabled before LegCo.</p>	

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012812 – 013145	Administration Chairman	<p><b>Part 3</b></p> <p><b>Related Amendments</b></p> <p><i>Division 1—Enactments Amended</i></p> <p><u>Clause 6 – Enactments amended</u></p> <p><i>Division 2—Amendment to Resolution of the Legislative Council Establishing Bond Fund (Cap. 2 sub. leg. S)</i></p> <p><u>Clause 7 – Paragraph (ea) added</u></p> <p>In response to the Chairman's enquiry about whether amendments had to be made to the resolution on raising the ceiling of the outstanding principal of BF, the Administration explained that the resolution passed by LegCo under section 29 of the Public Finance Ordinance (Cap. 2) ("PFO") in 2009 was for the establishment of BF while the two resolutions made and passed by LegCo under LO in 2009 and 2013 stipulated the maximum borrowing ceilings of GBP.</p>	
013146 – 013535	Administration Chairman	<p><i>Division 3—Amendments to Inland Revenue Ordinance (Cap. 112)</i></p> <p><u>Clause 8 – Section 26A amended (exclusion of certain profits from tax)</u></p> <p>In response to the Chairman's comment that two types of profits tax exemptions were being applied to different types of bonds, the Administration advised that:</p> <p>(a) sections 14A and 26A of the Inland Revenue Ordinance (Cap. 112) ("IRO") covered concessions/exemptions of profits tax on bonds;</p> <p>(b) under section 14A of IRO, half of the profits tax would be exempted for certain kinds of qualifying debt instruments (including those issued by statutory bodies);</p>	

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		(c) under section 26A of IRO, interests paid on, and profits on sale and other disposal of or on the redemption of, bonds issued by the Government and certain bodies (like multilateral agencies) would be granted full exemption from profits tax.	
013536 – 013717	Administration	<u>Clause 9 – Schedule 17A amended (specified alternative bond scheme and its tax treatment)</u>	
013718 – 014002	Chairman Administration	Legislative timetable and way forward	

Council Business Division 1  
Legislative Council Secretariat  
3 April 2014