

**立法會**  
**Legislative Council**

LC Paper No. CB(1)610/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/4/14

**Subcommittee on Anti-Money Laundering and Counter-Terrorist  
Financing (Financial Institutions) Ordinance  
(Amendment of Schedule 2) Notice 2015**

**Minutes of the first meeting  
on Tuesday, 10 February 2015, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon James TO Kun-sun  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHUNG Kwok-pan

**Members absent** : Hon SIN Chung-kai, SBS, JP  
Hon Dennis KWOK

**Public officers attending** : Agenda item II  
  
Mr Jackie LIU  
Principal Assistant Secretary for Financial Services  
and the Treasury (Financial Services) 5  
  
Mr John TSE  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services) (5)3

Miss Rosalind CHEUNG  
Principal Assistant Secretary for Security  
(Narcotics) 1

Mr Alex LAI  
Government Counsel  
Department of Justice

Mr Stewart MCGLYNN  
Head  
(Anti-Money Laundering and Financial Crime Risk)  
Hong Kong Monetary Authority

**Clerk in attendance :** Ms Annette LAM  
Chief Council Secretary (1)3

**Staff in attendance :** Miss Evelyn LEE  
Assistant Legal Adviser 10

Ms Connie HO  
Senior Council Secretary (1)3

---

Action

**I. Election of Chairman**

Election of Chairman

1. Mr James TO, the member who had the highest precedence among members of the Subcommittee present at the meeting, presided over the election of the chairman of the Subcommittee. Mr TO invited nominations for the chairmanship of the Subcommittee.
2. Mr CHAN Kam-lam was nominated by Mr Andrew LEUNG and the nomination was seconded by Mr CHUNG Kwok-pan. Mr CHAN accepted the nomination.
3. As there was no other nomination, Mr James TO declared that Mr CHAN was elected Chairman of the Subcommittee.
4. Members agreed that there was no need to elect a Deputy Chairman.

**II. Meeting with the Administration**

(L. N. 16 of 2015

-- Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015

LC Paper No. CB(1)532/14-15(01)

-- Marked-up copy of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015 prepared by Legal Service Division (Restricted to members only)

File Ref: G13/21C

-- Legislative Council Brief issued by the Financial Services and the Treasury Bureau

LC Paper No. LS34/14-15

-- Legal Service Division Report

LC Paper No. CB(1)532/14-15(02)

-- Paper on Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015 prepared by the Legislative Council Secretariat (background brief)

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

**III. Any other business**

Legislative timetable

6. The Subcommittee completed the scrutiny of the Anti-Money

Laundrying and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015 ("the Notice"). The Subcommittee would not propose any amendment to it.

7. The Subcommittee agreed that the Chairman would move at the Council meeting on 25 February 2015 a proposed resolution to extend the scrutiny period of the Notice to the Council meeting of 18 March 2015. Members noted that, upon extension of the scrutiny period, the Chairman would report the Subcommittee's deliberations to the House Committee on 27 February 2015. The deadline for giving notice to move amendments to the Notice was 11 March 2015.

8. There being no other business, the meeting ended at 11:33 am.

Council Business Division 1  
Legislative Council Secretariat  
4 March 2015

**Proceedings of the first meeting of  
the Subcommittee on Anti-Money Laundering and Counter-Terrorist Financing  
(Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015  
on Tuesday, 10 February 2015, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000158	Mr James TO Mr Andrew LEUNG Mr CHAN Kam-lam Mr CHUNG Kwok-pan	Election of Chairman.  Mr CHAN Kam-lam was elected Chairman of the Subcommittee.	
000159 – 000748	Chairman Administration	Briefing by the Administration on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Amendment of Schedule 2) Notice 2015 ("the Notice").	
000749 – 002122	Chairman Mr James TO Administration	<p>Mr James TO declared that he was a practising solicitor in Hong Kong.</p> <p>Referring to the provision in section 18(2) of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance ("AMLO") (Cap. 615) that a financial institution ("FI") that carried out a customer due diligence ("CDD") measure by means of an intermediary remained liable for a failure to carry out that CDD measure, Mr James TO considered that –</p> <p>(a) it would be unfair for FIs to continue to shoulder the ultimate legal responsibility for the failure of their intermediaries in carrying out the CDD measures upon the transition of the relevant professional sectors (i.e. the designated non-financial businesses and professions ("DNFBPs") in Financial Action Task Force ("FATF")'s parlance) to the anti-money laundering and counter-terrorist financing ("AML/CFT") regulatory regime in the future;</p> <p>(b) the intermediaries specified in section 18(3)(a) ("specified intermediaries") should be liable for their own non-compliance after their transition to the AML/CFT regime; and</p> <p>(c) the Administration should consider relieving FIs from the legal liability for their</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>intermediaries' failure to carry out CDD measures so long the FI concerned had exercised due diligence in the selection and appointment of qualified intermediaries in accordance with AMLO.</p> <p>The Administration responded that -</p> <p>(a) the existing provision for FIs to retain the legal responsibility for undertaking CDD obligations and any failure to comply with the CDD requirements was in line with FATF's requirements. This was to ensure due diligence on the part of FIs in the appointment, supervision and control of their intermediaries; and</p> <p>(b) the Administration would take into account Members' views about the respective legal liabilities of FIs and the specified intermediaries when reviewing the relevant provisions in future.</p>	
002123 – 002537	Chairman Mr NG Leung-sing Administration	<p>Mr NG Leung-sing declared that he was a member of the banking sector.</p> <p>Mr NG highlighted the importance of striking a proper balance between regulatory oversight and compliance burden on FIs so as to ensure that the implementation of the CDD and record-keeping requirements would not hamper the operation and efficiency of FIs. He enquired how the continuation of the interim arrangement allowing FIs to rely on specified intermediaries to carry out CDD measures would impact on the competitiveness and compliance costs of local FIs. The Administration advised that –</p> <p>(a) the prescribed CDD measures and record-keeping requirements under AMLO were in line with FATF's recommendations and aligned with the prevailing international best practices. Compliance with these measures therefore would not render the local financial sectors less competitive than their counterparts in other jurisdictions;</p> <p>(b) the Administration had consulted relevant financial sectors, including the Hong Kong Association of Banks, as well as the relevant</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>professional bodies of the specified intermediaries on the proposed continuation of the interim arrangement (i.e. extending the expiry date of section 18(3)(a) for three more years up to the midnight on 31 March 2018). They did not object to the proposal; and</p> <p>(c) the continuation of the interim arrangement would cause the least disruption to the operation of the financial and professional sectors involved, and would facilitate FIs and relevant intermediaries to continue to work together where necessary to comply with the CDD requirements applying to FIs under AMLO.</p>	
002538 – 003609	Chairman Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG Kwok-pan enquired about the number of FIs that had appointed intermediaries to carry out CDD measures on their behalf since the enactment of AMLO in April 2012, as well as the compliance performance of the concerned FIs and intermediaries under the AML/CFT regime. The Administration responded that -</p> <p>(a) FIs including banks, securities companies, insurance companies, remittance agents and money changers had, since the implementation of AMLO in April 2012, strengthened their internal AML/CFT measures. The relevant regulatory authorities, namely the Hong Kong Monetary Authority, the Securities and Futures Commission, the Insurance Authority and the Customs and Excise Department, observed that FIs had, overall speaking, taken compliance with the statutory CDD and record-keeping requirements under AMLO seriously;</p> <p>(b) according to the relevant regulatory authorities, some FIs had engaged intermediaries to carry out CDD measures, but there was no official data on the number of FIs which had been doing so;</p> <p>(c) as the implementation of FATF's recommendations regarding the regulation of CDD and record-keeping requirements for DNFBPs was evolving in different financial centres, the Administration would continue to study and assess the developments in</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>comparable markets to consider when and how to bring the DNFBP sectors into the statutory CDD and record-keeping regime as per the latest FATF recommendations; and</p> <p>(d) the Administration would closely liaise with the regulatory authorities, professional bodies and the industry to enhance the regulatory regime and review the compliance capability of FIs and specified intermediaries.</p> <p>Mr CHUNG Kwok-pan shared Mr James TO's view that the intermediaries specified in section 18(3)(a) should be liable for their own non-compliance after their transition to the AML/CFT regulatory regime.</p>	
003610 – 003858	Chairman Administration	<p>The Chairman enquired about the timeframe for the transition of the DNFBP sectors in Hong Kong to a statutory AML/CFT regulatory regime. The Administration advised that –</p> <p>(a) FATF had started to conduct the 4<sup>th</sup> round of mutual evaluation on its member economies in 2015 to assist them to implement FATF's recommendations regarding the regulation of CDD and record-keeping requirements for DNFBPs;</p> <p>(b) the Administration would consider when and how to bring the DNFBP sectors into the statutory CDD and record-keeping regime having regard to the 4<sup>th</sup> round of mutual evaluation on Hong Kong as it was expected to take place around late 2017/early 2018; and</p> <p>(c) in the meantime, the Administration would closely monitor compliance in other jurisdictions and continue to work with the relevant professional sectors to enhance and strengthen their AML/CFT compliance through, among other measures, the promulgation and implementation of relevant guidance documents by the professional bodies, and other forms of professional development and education work.</p>	



Time marker	Speaker	Subject(s)	Action required
003859 – 004110	Chairman Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG Kwok-pan was concerned that whether an intermediary, such as a solicitor who might not have knowledge of a customer's sources and flow of funds, could effectively detect any suspicious transactions involving AML/CFT activities. The Administration responded that –</p> <p>(a) under the CDD measures, FIs were required to identify and verify the identity of customers and beneficial owners of legal persons and arrangements, understand the control and ownership structure, obtain information on the intended nature of the business and exercise continued monitoring over the changes in their customers' identities and businesses;</p> <p>(b) pursuant to the Organized and Serious Crimes Ordinance (Cap. 455), all persons should report suspected money laundering cases to the Joint Financial Intelligence Unit ("the Unit"). The Unit, consisted of officers from the Hong Kong Police Force and the Customs and Excise Department, was dedicated to analyzing suspicious transaction reports in relation to money laundering and terrorist financing activities and making dissemination of the intelligence to investigation units as appropriate; and</p> <p>(c) FIs and the relevant professional sectors were familiar with the operation of the existing provisions in Schedule 2 to AMLO as well as the reporting requirements under Cap. 455.</p>	
004111 – 004526	Chairman Mr NG Leung-sing Administration	<p>Referring to the requirement for an intermediary to consent in writing to be an FI's intermediary under section 18(1)(a) of Schedule 2 to AMLO, Mr NG Leung-sing enquired whether the Administration would consider specifying a standardized format and provisions in relation to the written consent, such as the respective obligations and liabilities of the FIs and their intermediaries, under AMLO.</p> <p>The Administration responded that –</p> <p>(a) section 18(2) had specified that an FI that carried out a CDD measures by means of an intermediary remained liable under the AMLO for a failure to carry out that CDD</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>measure. The purpose of the written consent was to provide the relevant agreement in writing and reflect the relevant business relationship between the FI and the intermediary concerned; and</p> <p>(b) to allow flexibilities for the contractual parties concerned, the Administration did not consider it necessary to regulate the format and the provisions in relation to the written consent by statute. Guidelines in this respect could be issued by the relevant financial regulators and professional bodies for reference if necessary.</p>	
004527 – 004534	Chairman Assistant Legal Adviser 10 (ALA10) Administration	In response to the Chairman, ALA 10 said that she did not have any questions regarding the Notice.	
004535 – 004923	Chairman Administration Chief Council Secretary (1)3	<p>The Subcommittee completed the scrutiny of the Notice, and did not propose any amendment to it.</p> <p>Extension of the scrutiny period and legislative timetable.</p>	