

立法會
Legislative Council

LC Paper No. CB(1)854/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/15/2

Bills Committee on Financial Institutions (Resolution) Bill

**Minutes of the second meeting on
Tuesday, 5 January 2016, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
- Public officers attending** : Mr James H. LAU Jr., JP
Under Secretary for Financial Services & the Treasury
- Miss Angora NGAI
Principal Assistant Secretary for Financial Services &
the Treasury (Financial Services) International and
Mainland Affairs (Acting)
- Ms Karen Deborah KEMP, JP
Executive Director (Banking Policy)
Hong Kong Monetary Authority

Mr Ben PLANT
Senior Manager (Banking Policy) (Resolution) 1
Hong Kong Monetary Authority

Mr PENG Si Yun, Lawrence
Senior Assistant Law Draftsman, Law Drafting
Division
Department of Justice

Mr Manuel NG
Senior Government Counsel, Law Drafting Division
Department of Justice

Mr Eugene GOYNE
Senior Director (Enforcement)
Securities and Futures Commission

Mr Tony CHAN
Ag Assistant Commissioner of Insurance (Policy and
Development)
Office of the Commissioner of Insurance

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

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Miss Sharon LO
Senior Council Secretary (1)9

Ms Sharon CHAN
Legislative Assistant (1)4

Action

I Confirmation of minutes of meeting

(LC Paper No. CB(1)362/15-16 — Minutes of meeting on
15 December 2015)

The minutes of the meeting held on 15 December 2015 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)382/15-16(01) — Administration's paper on proposed work plan

LC Paper No. CB(1)382/15-16(02) — Administration's paper on "An effective resolution regime for financial institutions in Hong Kong"

LC Paper No. CB(1)382/15-16(03) — Administration's paper on "Overview of the Bill")

Other relevant papers

(LC Paper No. CB(3)165/15-16 — The Bill

LC Paper No. CB(1)381/15-16(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)

File Ref: B&M/2/1/27C — Legislative Council Brief

LC Paper No. LS15/15-16 — Legal Service Division Report

LC Paper No. CB(1)289/15-16(01) — Background brief on Financial Institutions (Resolution) Bill prepared by the Legislative Council Secretariat)

Discussion

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

3. Mr Andrew LEUNG declared that he was a director of a bank and an insurance company.

Admin Follow-up actions to be taken by the Administration

Clawback of remuneration - the proposed Part 8 of the Bill

4. The Administration was requested to provide supplementary information:

(a) comparing the clawback provisions on the remuneration of officers/former officers of a within scope financial institutions ("FI") under the proposed resolution regime with those proposed/implemented by other member jurisdictions of the Financial Stability Board, including the items of remuneration to be subject to clawback, the controlled period, the matters/conditions to be taken into account by the court in determining the application of a clawback, and exemption of a clawback; and

(b) the sanctions under the existing regulatory regimes for officers/former officers of an FI who had caused the FI to cease to be viable due to their misconduct/misbehaviour in the performance of their functions.

Cross-border resolution

5. Under the proposed resolution regime, host jurisdictions were required to support the group-wide resolution plan carried out by the home jurisdiction to facilitate cross-border resolution. The Administration was requested to provide written responses to address members' concerns on:

(a) whether the ring-fence mechanism (i.e. the regulator could ring-fence the assets of the Hong Kong FI to prevent the assets from being transferred to the parent company or other branches in overseas jurisdictions) available under the existing regulatory regimes would still be applicable with implementation of the proposed resolution regime;

(b) how the resolution authority ("RA") could ensure that the interest of creditors, shareholders, and customers of the Hong Kong FI concerned would be properly protected in the group-wide resolution plan; and

(c) whether the Hong Kong FI, which remained financially sound and viable, would be required to go into compulsory liquidation if its parent company, being a cross-border group, entered into liquidation. Under such circumstances, whether the RA would initiate the proposed resolution regime to protect the interest of the creditors, shareholders, and customers of the Hong Kong FI concerned even if the conditions for initiating resolution were not met.

(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)443/15-16(02) on 18 January 2016.)

III Any other business

Date of next meeting

6. The Chairman reminded members that the next meeting would be held on 19 January 2016, from 8:30 am to 10:30 am, to meet with deputations and the Administration.

7. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 1
Legislative Council Secretariat
27 April 2016

Proceedings of the Bills Committee on Financial Institutions (Resolution) Bill
Second meeting on Tuesday, 5 January 2016, at 10:45 am
in Conference Room 2B of the Legislative Council Complex

Time Marker	Speaker	Subject(s)	Action Required
000236 – 000435	Chairman	Introductory remarks and confirmation of minutes of the meeting held on 15 December 2015 [LC Paper No. CB(1)362/15-16]	
000436 – 001445	Chairman Administration Mr Kenneth LEUNG	<p>Briefing by the Administration on proposed work plan [LC Paper No. CB(1)382/15-16(01)]</p> <p>Noting the tight timeframe for enacting the Bill by June 2016, the complexity of the Bill and its far-reaching impacts on financial institutions ("FIs"), Mr LEUNG enquired about the implications if the Bill could not be enacted by June 2016 and whether the Administration had explored the feasibility of introducing the resolution regime in phases, e.g. covering FIs in one financial sector at a time.</p> <p>The Administration advised that –</p> <p>(a) all member jurisdictions of the Financial Stability Board ("FSB") were expected to meet the international standards set by FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions ("KAs") by the end of 2015. Hong Kong was a "host" jurisdiction to 29 of the 30 global systemically important banks and 8 of the 9 global systemically important insurers identified by FSB. It was expected that Hong Kong, as an FSB member, would introduce a resolution regime that was compliant with the standards set by KAs as soon as practicable;</p> <p>(b) the Bill proposed to establish a single cross-sector resolution regime conferring powers on the Monetary Authority ("MA"), the Securities and Futures Commission ("SFC") and the Insurance Authority ("IA") to resolve, and take preparatory actions to be able to resolve, those FIs that were within scope of the regime and that operated under their existing respective regulatory purviews;</p>	

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		<p>(c) without a KA-compliant resolution regime in place, systemically important financial institutions ("SIFIs") with cross-border operations in Hong Kong, might assess that the Hong Kong authorities would be unable to support orderly cross-border resolution of their groups. Where the support of the Hong Kong authorities could not be relied upon, foreign resolution authorities or, indeed the cross-border SIFIs themselves, might take actions to reduce SIFIs' exposures to, and/or dependencies upon, their Hong Kong operations in order to improve the resolvability of the wider group (potentially to the detriment of SIFIs' operations in Hong Kong);</p> <p>(d) self-assessments by the authorities, later confirmed by FSB's Thematic Review on Resolution Regimes: Peer Review Report conducted in 2013, had concluded that although the authorities already possessed a range of supervisory intervention powers for dealing with distressed financial institutions, not all of the powers now required by the new international standards set by KAs for the resolution of SIFIs were available in Hong Kong. The implementation of an effective resolution regime would complement Hong Kong's existing prudential regulatory mechanisms thus strengthening the resilience of its financial system;</p> <p>(e) FSB would conduct another thematic review on bank resolution regimes in 2016, and risks could be posed to Hong Kong's position as an international financial centre if a resolution framework could not be established in a timely manner (<i>Post-meeting note</i>: FSB published the second thematic peer review on 18 March 2016) ;</p> <p>(f) the Administration had made reference to the regimes in, and communicated with, selected FSB member jurisdictions (e.g. the United Kingdom and the United States of America) to ensure that the Bill aligned with international standards and practices whilst reflecting local circumstances as appropriate; and</p>	

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		<p>(g) given the proposed cross-sector model under which similar powers were required for resolution of different types of FIs, phased implementation of the resolution regime for different financial sectors might not be appropriate and might compromise the integrity of the regime.</p> <p>To facilitate timely examination of the Bill, the Chairman urged that both the Administration and members should endeavour to reach a shared understanding of the details of the Bill and that the Administration should address Legislative Council Members' concerns where arising promptly.</p>	
001446 – 005123	Administration	<p>Briefing by the Administration on "An effective resolution regime for financial institutions in Hong Kong" [LC Paper No. CB(1)382/15-16(02)]</p>	
005124 – 005513	<p>Mr Andrew LEUNG Administration Hong Kong Monetary Authority ("HKMA") Hong Kong Monetary Authority</p>	<p>Mr LEUNG's declaration of interests</p> <p><u>Cross-border resolution</u></p> <p>Given that the proposed resolution regime required the resolution authority ("RA") of the host jurisdiction to support the group-wide resolution plan carried out by the home jurisdiction to facilitate cross-border resolution, Mr LEUNG asked how RA in Hong Kong could ensure that the assets, and interest of creditors, shareholders and customers of the Hong Kong FI concerned would be properly protected in the group-wide resolution plan, in particular when the Hong Kong FI remained financially sound.</p> <p>The Administration and HKMA responded that –</p> <p>(a) cross-border FIs tended to be highly integrated and connected intra-group and it might not be possible for the Hong Kong FI to continue operating when the wider group became non-viable;</p> <p>(b) under the proposed resolution regime, an RA in Hong Kong would seek to work together with home jurisdictions of cross-border groups in Hong Kong to develop resolution plans, strategies and operational procedures</p>	<p>The Administration to take action as paragraph 4(b) of the minutes</p>

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		<p>for orderly resolution of the cross-border group in a coordinated and cooperative manner, which should support the delivery of better outcomes for both home and host jurisdictions (when compared with the alternative of disorderly break up or government bail-out at the top of the group in the event of failure);</p> <p>(c) under the proposals, an RA in Hong Kong would not be "coerced" to support cross-border resolution action initiated by an overseas RA in respect of a cross-border group with operations in Hong Kong. Rather the Bill conferred a discretion on an RA in Hong Kong to do so, whilst also retaining the flexibility for an RA in Hong Kong to act independently in respect of the local operations if the group-wide resolution plan for the cross-border FI in question would prejudice financial stability and/or prejudice achievement of the resolution objectives locally and/or disadvantage the shareholders or creditors of the FI's Hong Kong operations; and</p> <p>(d) to facilitate group-wide resolution, the proposed resolution regime therefore provided a framework enabling an RA in Hong Kong to "recognize" all or part of a foreign resolution action so that it would produce substantially the same legal effect in Hong Kong as it would have produced had it been made, or been authorized to be made, under the laws of Hong Kong; or to "support" a foreign resolution action through triggering and use of the local regime in a manner consistent with the group resolution plan.</p>	
005514 – 011454	Mr Albert HO Administration HKMA Chairman	<p><u>Cross-border resolution</u></p> <p>Mr HO sought clarification on –</p> <p>(a) whether an RA in Hong Kong could ring-fence the assets of the Hong Kong FI during a cross-border group resolution;</p> <p>(b) whether the Hong Kong FI, which remained financially sound and viable, would be required to go into compulsory liquidation if</p>	The Administration to take action as

Time Marker	Speaker	Subject(s)	Action Required
		<p>its parent company, being a cross-border group, entered into liquidation. Under such circumstances, whether RA would initiate the proposed resolution regime to protect the interest of the creditors, shareholders, and customers of the Hong Kong FI concerned even if the conditions for initiating resolution were not met; and</p> <p>(c) the factors RA in Hong Kong would consider in assessing whether the conjunctive conditions for initiating resolution were met.</p> <p>The Administration and HKMA replied that –</p> <p>(a) lessons from the global financial crisis revealed that jurisdictions lacked powers that would enable the orderly resolution of failed SIFIs, particularly in the cross-border context. Consensus had since developed that in most cases a group-wide resolution planned for, and carried out, in a coordinated and co-operative manner by home and host jurisdictions was likely the most effective means to stabilize distressed cross-border FIs. KAs therefore set a number of standards in relation to cross-border resolution;</p> <p>(b) RAs of host jurisdictions of a distressed cross-border FI would take part in and coordinate the group-wide resolution plan, though it was possible that the resolution tools (e.g. a bail-in) would only be applied to the FI in the home jurisdiction;</p> <p>(c) in the event that the overseas parent company of an FI incorporated in Hong Kong went into liquidation, it was anticipated that the liquidator appointed to the parent company would try to identify a purchaser with a view to disposing of the assets of the overseas parent, including its shareholding in the Hong Kong incorporated FI; and</p> <p>(d) however, the liquidation of the overseas parent company in this example would very likely see contagion risks crystallise, which might result in the Hong Kong incorporated FI also ceasing to be viable itself, and hence gave rise to the prospect that the local</p>	<p>paragraph 4 (c) of the minutes</p>

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		<p>resolution regime might be triggered. Precedent, such as the Bank of Credit and Commerce International case in the 1990s, showed that such contagion risks could crystallise very quickly.</p> <p>The Chairman was of the view that the proposed resolution regime should provide flexibility for an RA in Hong Kong to act independently if the conjunctive conditions for initiation of resolution locally were met.</p>	
011455 – 012512	Mr Kenneth LEUNG Chairman Office of the Commissioner of Insurance ("OCI")	<p>In response to Mr LEUNG's enquiry, the Chairman advised that a public hearing had been scheduled for 19 January 2016 to meet with deputations.</p> <p><u>Cross-border resolution</u></p> <p>Mr LEUNG said that he was a client of AIA. He referred to the spin-off of AIA from AIG during the financial crisis and asked –</p> <p>(a) under the proposed resolution regime, whether the subsidiaries of a cross-border group could undergo re-structuring as the case of AIA when the parent company became non-viable;</p> <p>(b) whether the re-structuring would be initiated by regulator/liquidator/trustee of the parent company, the senior management of the subsidiary or RA; and</p> <p>(c) whether it would be more appropriate for the senior management of the distressed FI to lead the re-structuring instead of RA.</p> <p>OCI said that under the proposed resolution regime, IA would still be able to deploy the existing regulatory powers of ring-fencing assets attributable to insurance business. In addition, the resolution regime would provide that there would be cross-border coordination among the regulators of the group as well as pre-resolution planning to devise suitable strategies and operational procedures for orderly resolution. Impediments to those resolution strategies and plans arising from insurers' structure and practices would be removed during the planning</p>	

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		<p>process. A host RA would seek to ensure that, in the case of a cross-border insurer, the group resolution plan would enable the local insurer to continue to provide critical financial services, even if other businesses of the group company became non-viable. A host RA could intervene and use its own powers independently, including if one or more of the conditions for refusal of recognition of foreign resolution action under clause 185(6) were met and the insurer had met the three conjunctive conditions for initiating resolution action locally (as set out under clause 25).</p>	
<p>012513 – 012943</p>	<p>Mr Christopher CHEUNG SFC</p>	<p><u>Cross-border resolution</u></p> <p>Mr CHEUNG expressed concern on the possible impact on an FI in Hong Kong if its parent company, being a cross-border group, went into liquidation. During the process the assets of the Hong Kong FI might be frozen and its transactions (e.g. securities trading and settlement) might be suspended. He asked how the proposed resolution regime could protect the interests of the local investors and securities industry.</p> <p>Mr CHEUNG expressed concern about including the securities industry in the proposed resolution regime which might impose burden on the industry. He urged the Administration to pay heed to the interest of investors and consult the securities industry before finalizing the implementation details.</p> <p>SFC emphasized that the purpose of the proposed resolution regime was to protect financial stability and public interest and secure the continuity of the systemically important functions of the Hong Kong FI if non-viability of that FI would jeopardize the financial stability of Hong Kong.</p>	
<p>012944 – 014024</p>	<p>Mr Dennis KWOK Administration HKMA SFC</p>	<p><u>Clawback of remuneration</u></p> <p>Mr KWOK noted that the clawback period for any misconduct/misbehavior of an officer/former officer leading to financial loss of FI was 10 years in the United Kingdom as provided in the guidelines of the Financial Conduct Authority.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>He enquired about the reasons for –</p> <ul style="list-style-type: none"> (a) setting the clawback period at 3 years in the proposed resolution regime (extendable by a further 3 years in cases of dishonesty) and; (b) setting high threshold for triggering the clawback provisions, i.e. the acts or omission of acts of the officer/former officer were made intentionally, recklessly or negligently, and had materially contributed to the ceasing of the FI or its non-viability. <p>The Administration, HKMA and SFC responded that when developing the clawback provisions, reference was made to the practices of overseas jurisdictions, and the current proposal had adopted a "middle ground" approach. Given that the focus of the proposed resolution regime was to secure financial stability and continued provision of critical financial services to the public, the triggers for clawback were proposed to link to acts or omission of acts that had caused or materially contributed to the FI ceasing to be viable. In addition to the resolution regime, the regulators in Hong Kong could also impose disciplinary sanctions against the misconduct/misbehavior of the officer/former officer concerned as appropriate, under their existing regulatory/supervisory powers.</p> <p>In response to Mr KWOK's further enquiry, SFC advised that the existing regulatory regimes in Hong Kong did not provide regulators with a clawback power. While the regulators might have powers to impose fines/sanctions in respect of any misconduct/misbehavior of the officer/former officer concerned, those powers were not explicitly linked to the acts, or omissions, of a person specifically contributing to the non-viability of an FI.</p> <p>Mr KWOK requested the Administration to provide supplementary information –</p> <ul style="list-style-type: none"> (a) comparing the clawback provisions on the remuneration of officers/former officers of a within scope FI under the proposed resolution regime with those proposed/implemented by other FSB member jurisdictions, including the 	<p>The Administration to take action as paragraph 3 of the minutes</p>

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		<p>items of remuneration to be subject to clawback, the controlled period, the matters/conditions to be taken into account by the court in determining the application of a clawback, and exemption of a clawback; and</p> <p>(b) the sanctions under the existing regulatory regimes for officers/former officers of an FI who had caused the FI to cease to be viable due to their misconduct/misbehaviour in the performance of their functions.</p>	
014025 – 014446	Mr CHAN Kin-por Administration OCI Chairman	<p><u>Protection of assets of local FIs under cross-border resolution</u></p> <p>Mr CHAN's enquiry about –</p> <p>(a) whether the ring-fence mechanism (i.e. the regulator could ring-fence the assets of the Hong Kong FI to prevent the assets from being transferred to the parent company or other branches in overseas jurisdictions) available under the existing regulatory regimes would still be applicable with implementation of the proposed resolution regime; and</p> <p>(b) the party responsible for compensating the creditors and shareholders of a failed FI under the "no creditor worse off than in liquidation" ("NCWOL") situation if it was assessed that the outcome for the creditors and shareholders in resolution was worse than that when the FI entered into liquidation.</p> <p>The Administration and OCI replied that –</p> <p>(a) the proposed resolution regime aimed at providing necessary powers to RAs as required by KAs. It would not remove or constrain any of the supervisory intervention powers currently available to the regulators (including any powers of direction with regard to asset transfer);</p> <p>(b) under the current regulatory regime of the insurance sector, all life insurers were required to maintain sufficient assets in a separate account to cover their liabilities attributable to life business. IA was</p>	The Administration to take action as paragraph 4(a) of the minutes

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		<p>empowered to intervene such that authorized insurers were not allowed to transfer funds to their related companies, and this regulatory tool on ring fencing of assets would continue to exist under the existing regulatory regime even after the establishment of the proposed resolution regime;</p> <p>(c) any excess resolution costs that could not be imposed on or met by the failed FI, including compensation paid under the NCWOL mechanism, if any, would be temporarily financed by the public fund and recouped by an ex post levy to be imposed on the within scope FIs operating in the same sector as the failed, within scope FI. The rate of levy would be subject to a resolution by the Legislative Council.</p>	
014447 – 015313	Mr Kenneth LEUNG Administration HKMA	<p><u>Resolution levy</u></p> <p>In response to Mr LEUNG's enquiry, the Administration advised that although the regime was designed to enable the costs of failure to be imposed on the shareholders and creditors of a failed FI, there might nevertheless be a need to deploy some temporary public funding to support orderly resolution. However, should any losses be incurred as a result of the provision of such temporary public funding, the proposed regime provided for these to be recovered from within scope FIs operating in the same sector as the FI in resolution in the form of an ex post levy. Only FIs whose distress or disorderly failure, because of their size, complexity and systemic interconnectedness, could cause significant disruption to the wider financial system and economic activity would be designated as within scope FIs. The scope of the regime was established ex ante through the definitions of banking sector entity, insurance sector entity and securities and futures sector entity under clause 2(1) of the Bill. The Financial Secretary might also designate FIs, or classes of FI, as within scope under clause 6 of the Bill. The Administration would prepare a list of within scope FIs for public information upon the implementation of the resolution regime.</p>	

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		<p><u>Clawback of remuneration</u></p> <p>Mr LEUNG asked whether officers of FIs complying with the requirements on disclosure of remuneration as set out in the Supervisory Policy Manual (i.e. guideline on a sound remuneration system) issued by MA could be exempt from the provisions on clawback of remuneration.</p> <p>HKMA responded that –</p> <p>(a) an FI's compliance with the Supervisory Policy Manual ("SPM") module cited by Mr LEUNG did not prevent the court from making a clawback order under the provisions of the Bill. The SPM module provided guidance to authorized institutions ("AIs") on the key elements of a sound remuneration system whilst the clawback provisions were specifically designed to extend to persons whose conduct had caused, or materially contributed to failure of an AI; and</p> <p>(b) in all cases, including those that were not solely related to resolution, if MA was of the view that an AI did not have a sound remuneration system in place, including in line with the guidance provided in the SPM module, MA might take supervisory action to sanction the FI accordingly.</p>	
015314 – 015828	Mr Christopher CHEUNG Administration Mr Albert HO	<p><u>Stabilization options</u></p> <p>Mr CHEUNG enquired about the funding for the temporary public ownership ("TPO") stabilization option, and whether Government expenditure would be adversely affected.</p> <p>The Administration said that in the event of TPO, one potential source of funding would be from the Exchange Fund given the correlation between the objectives of resolution and the conditions for use of the Fund, and in this case Government expenditure from the General Revenue would not be affected.</p> <p><u>Cross-border resolution</u></p> <p>Mr CHEUNG and Mr HO enquired about the resolution arrangement for a cross-border group if</p>	

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		<p>its home jurisdiction did not have a resolution regime in place.</p> <p>The Administration said that the home jurisdictions (including the Mainland) of all global SIFIs with a presence in Hong Kong had established or had indicated plans to establish a resolution regime meeting the requirements of KAs. In developing local resolution plans, an RA in Hong Kong would seek to work in a coordinated and cooperative manner with non-Hong Kong jurisdictions, which were home or host to members of a cross-border group with operations in Hong Kong, in order to identify strategies and develop resolution plans and operational procedures for achieving orderly resolution.</p>	
015829 – 015925	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
27 April 2016