

立法會
Legislative Council

LC Paper No. CB(1)855/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/15/2

Bills Committee on Financial Institutions (Resolution) Bill

**Minutes of the third meeting on
Tuesday, 19 January 2016, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, 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
- Members absent** : Hon Albert HO Chun-yan
Hon Cyd HO Sau-lan, JP
- Public officers attending** : Mr James H. LAU Jr., JP
Under Secretary for Financial Services and the Treasury
- Ms Polly KWOK
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) International and
Mainland Affairs
- Miss Angora NGAI
Assistant Secretary for Financial Services and the
Treasury (Financial Services) International and
Mainland Affairs

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 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

**Attendance by
invitation** : **Deputations**

Allen & Overy

Ms Yvonne SIEW Ee Mun
Partner

Hong Kong Securities Association

Mr Benny MAU
Chairman

The Hong Kong Federation of Insurers

Mr David ALEXANDER
Member of Governing Committee

The Hong Kong Retirement Schemes Association

Mr FUNG Yu Kay, Stephen
Executive Committee Member

Clifford Chance

Ms Joanna CHARTER
Senior Associate

Hong Kong Association of Banks (HKAB)

Mr Guy ISHERWOOD
HKAB Representative from Standard Chartered Bank
(Hong Kong) Limited

Deutsche Bank AG Hong Kong Branch

Ms Vicki NOBLETT
Head of Regulatory Relationship, Asia Pacific

MetLife Limited

Ms FUNG Wai Lin
Head of Legal & Compliance

Freshfields Bruckhaus Deringer

Mr MILLER II Royce William
Partner

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

I Meeting with deputations and the Administration

Meeting with deputations

- (LC Paper No. CB(1)443/15-16(04) — Submission from Allen & Overy (English version only)
- LC Paper No. CB(1)443/15-16(05) — Submission from Deutsche Bank AG Hong Kong Branch (English version only)
- LC Paper No. CB(1)445/15-16(01) — Submission from The Hong Kong Federation of Insurers (English version only)
- LC Paper No. CB(1)463/15-16(01) — Submission from Freshfields Bruckhaus Deringer (English version only)
- LC Paper No. CB(1)463/15-16(02) — Submission from The Hong Kong Association of Banks (English version only)
- LC Paper No. CB(1)464/15-16(01) — Speaking Note of Ms Joanna CHARTER, Senior Associate of Clifford Chance (English version only)
- LC Paper No. CB(1)464/15-16(02) — Speaking Note of Mr MILLER II Royce William, Partner of Freshfields Bruckhaus Deringer (English version only))

Submissions/letters from organizations/individuals not attending the meeting

- (LC Paper No. CB(1)443/15-16(06) — Submission from UBS (English version only)
- LC Paper No. CB(1)443/15-16(07) — Submission from The DTC Association (English version only)

- LC Paper No. CB(1)443/15-16(08) — Submission from International Swaps and Derivatives Association, Inc (English version only)
- LC Paper No. CB(1)443/15-16(09) — Submission from Dr Ludmilla K ROBINSON of Western Sydney University (English version only)
- LC Paper No. CB(1)443/15-16(10) — Submission from AIA Group Limited (English version only)
- LC Paper No. CB(1)443/15-16(11) — Submission from Mr Peter LAKE (English version only)
- LC Paper No. CB(1)443/15-16(12) — Submission from CLS Bank International (English version only) (Restricted to members only)
- LC Paper No. CB(1)443/15-16(13) — Submission from Alternative Investment Management Association (English version only)
- LC Paper No. CB(1)443/15-16(14) — Submission from Consumer Council (English version only)
- LC Paper No. CB(1)463/15-16(03) — Submission from The Hong Kong Institute of Directors (English version only))

Matters arising from previous meeting

- (LC Paper No. CB(1)443/15-16(01) — List of follow-up actions arising from the discussion at the meeting on 5 January 2016
- LC Paper No. CB(1)443/15-16(02) — Administration's response to issues raised at the meeting on 5 January 2016
- LC Paper No. CB(1)443/15-16(03) — Letter dated 4 January 2016 from Legal Service Division to the Administration

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)

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their written submissions provided to the Bills Committee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Discussion

2. Mr Kenneth LEUNG declared that he was a senior consultant of Clifford Chance.

3. The Bills Committee received views from seven deputations attending the meeting, and noted the ten written submissions provided by organizations which had not attended the meeting (Index of proceedings attached at **Appendix**).

(Post meeting note: Three written submissions tabled at the meeting (English version only) were issued to members vide Lotus Notes e-mail on 19 January 2016.)

(Post-meeting note: The speaking notes of Ms Joanna CHARTER and Mr MILLER II Royce William (English version only) were issued to

members vide LC Paper Nos. CB(1)464/15-16(01) and (02) on 20 January 2016.)

4. The Administration was requested to provide written responses to the views expressed by deputations at the meeting and in the written submissions.

(Post meeting note: The Administration's consolidated written response was issued to members vide LC Paper Nos. CB(1)545/15-16(02) and CB(1)609/15-16(03) on 5 February 2016 and 26 February 2016 respectively.)

II Any other business

Date of next meeting

5. The Chairman reminded members that the next two meetings would be held on 15 February 2016 at 8:30 am, and 29 February 2016 at 10:45 am respectively.

6. There being no other business, the meeting ended at 10:22 am.

Council Business Division 1
Legislative Council Secretariat
27 April 2016

**Proceedings of the Bills Committee on Financial Institutions (Resolution) Bill
Third meeting on Tuesday, 19 January 2016, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000208 – 000608	Chairman	Introductory remarks	
Presentation of views by deputations and the Administration's initial responses			
000609 – 000948	Allen & Overy	Presentation of views [LC Paper No. CB(1)443/15-16(04)]	
000949 – 001447	The Hong Kong Federation of Insurers ("HKFI")	Presentation of views [LC Paper No. CB(1)445/15-16(01)]	
001448 – 001940	The Hong Kong Retirement Schemes Association ("HKRSA") Chairman	HKRSA expressed views and concerns regarding the proposed default investment strategy for the Mandatory Provident Fund system which was the subject matter of the Mandatory Provident Fund Schemes (Amendment) Bill 2015 and under scrutiny by another Bills Committee. The Chairman suggested that HKRSA should forward their views to the Bills Committee concerned.	
001941 – 002356	Clifford Chance	Presentation of views [LC Paper No. CB(1)464/15-16(01)]	
002357 – 002914	Hong Kong Association of Banks	Presentation of views [LC Paper No. CB(1)463/15-16(02)]	
002915 – 003231	Deutsche Bank AG Hong Kong Branch	Presentation of views [LC Paper No. CB(1)443/15-16(05)]	
003232 – 003803	Freshfields Bruckhaus Deringer ("FBD")	Presentation of views [LC Paper Nos. CB(1)463/15-16(01) and CB(1)464/15-16(02)]	
003804 – 004129	Chairman Administration	The Administration's initial responses to deputations' views as follows – (a) the views indicated a general support for the objectives and timely implementation of the proposed resolution regime;	

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		<p>(b) on cross-border resolution, the Administration was mindful of the need to strike a balance between protecting the financial stability and interests of Hong Kong and fulfilling its obligations in supporting overseas resolution actions (which could lead to better outcomes for both home and host authorities). A resolution authority ("RA") would have discretion to recognize all or part of an overseas resolution action. In the process, the RA would exercise due consideration of the potential impacts on Hong Kong, including the effect on Hong Kong's financial stability, as well as the impact on the local creditors, shareholders and customers of the financial institution ("FI") concerned;</p> <p>(c) certain points raised by depositions, including in relation to arrangements to be afforded certain protection in resolution and requirements for contractual recognition provisions to be included in certain contracts, would be set out in rules as provided for under the Bill, and the Administration intended to consult industry stakeholders and keep track of international developments when formulating the rules; and</p> <p>(d) regarding the insurance sector's views that insurers should not be covered in the proposed resolution regime, the Administration recognized the differences between the operation of insurance companies and other FIs, particularly with regard to their inter-connectedness and the associated contagion effect. It should be noted that only global systemically important insurers ("GSII") would be included in the regime from the outset, and resolution of an authorized insurer that was part of a GSII group would not be automatic and would only be triggered locally if the conditions for initiating resolution were met.</p>	

Time Marker	Speaker	Subject(s)	Action Required
004130 – 005102	Mr Kenneth LEUNG Administration	<p>Mr LEUNG's declaration of interest</p> <p><u>Cross-border resolution and resolution levy</u></p> <p>Mr LEUNG sought information on –</p> <p>(a) the extent to which an RA in Hong Kong could act independently in a group-wide resolution of a cross-border FI initiated by the FI's home jurisdiction;</p> <p>(b) in considering whether a group-wide resolution would cause any disadvantages to Hong Kong, whether the RA would take into account the overall stability of the Hong Kong economy, a particular financial sector, or the local branch/subsidiary of the cross-border FI concerned; and</p> <p>(c) the financial industry's views on the proposed resolution funding, and whether the industry supported imposing an ex post levy to recover the costs from within scope FIs operating in the same sector as the FI in resolution.</p> <p>The Administration advised that –</p> <p>(a) an RA in Hong Kong had the sole discretion in deciding whether to recognize a foreign resolution action;</p> <p>(b) an RA would take into consideration the conjunctive conditions before initiating local resolution action using its own powers under the Bill, including whether the FI concerned had ceased, or was likely to cease, to be viable, and whether the non-viability of FI would pose risks to the stability and effective working of the financial system of Hong Kong. The Administration would issue guidance notes, likely through the Code of Practice to be made under clause 194 of the Bill, to illustrate how an RA would determine whether these three conjunctive conditions were met;</p> <p>(c) the resolution regime was designed to minimize the use of public funds while</p>	

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		<p>stabilizing systemically important FIs should they become non-viable. The purpose and the intended usage of the resolution funds were different from the existing funding mechanisms in the financial services sector, e.g. the Policyholders' Protection Fund, for the protection of customers or investors concerned. Resolution would not disrupt these funding mechanisms, which would still be operable where the relevant conditions had been met;</p> <p>(d) taking into consideration the pros and cons of ex ante and ex post approaches to resolution funding, and the general support from respondents during previous public consultation exercises, the Administration considered that the ex post approach and sector-specific model was more appropriate for Hong Kong under which a levy would be imposed on the within scope FIs operating in the same sector as the FI in resolution after the completion of resolution, should losses to public funds resulting from resolution action need to be recovered,; and</p> <p>(e) the Financial Secretary would make regulations under clause 179 for the purpose of imposing the levy, and in doing so must consult the affected sector(s), the general public and each RA. The rate of the levy would ultimately be prescribed by a resolution of the Legislative Council ("LegCo") under clause 180.</p>	
005103 – 010427	<p>Chairman Mr Dennis KWOK HKFI FBD Office of the Commissioner of Insurance ("OCI") Hong Kong Monetary Authority ("HKMA")</p>	<p><u>The right to override contractual terms</u></p> <p>In response to Mr KWOK's enquiry, Mr ALEXANDER of HKFI said that the insurance sector had concerns about the proposed power for RA to alter/void the existing contracts under the resolution regime, and was of the view that the Bill should include explicit provisions stating that such actions should only be taken in exceptional circumstances and with high transparency.</p> <p>OCI added that empowering an RA to override contractual terms was one of the</p>	

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		<p>standards specified in the "Key Attributes of Effective Resolution Regimes for Financial Institutions" ("KAs") published by the Financial Stability Board ("FSB") insofar as necessary to effectively stabilize (by transfer or bail-in) a failing FI. The Administration would consult the industry before finalizing the operational details and would follow international practices in implementing KAs.</p> <p>In reply to Mr KWOK's question, Mr MILLER of FBD said that as an FI's home jurisdiction would examine if the cross-border resolution strategies could be operated smoothly in its key host jurisdictions, it was important for Hong Kong to adopt the standards set in KAs through timely enactment of the Bill. Otherwise, there would be risks that the cross-border FI would restructure its businesses and relocate its Hong Kong operations to other jurisdictions with KA-compliant resolution regimes in place. International consensus on some key standards, like total loss absorbing capacity, was yet to be reached, hence it would be appropriate for the Bill to provide for rule-making power of RA, so that after consultation with the industry stakeholders, RA could make rules prescribing the relevant requirements when such standards were finalized.</p> <p><u>Clawback of remuneration</u></p> <p>Referring to the practices of some overseas jurisdictions on the provisions to clawback the remuneration of officers/former officers of an FI who had contributed to the failure of the FI in resolution, Mr KWOK asked about the reasons for linking the clawback provisions to actions or omissions that had caused or materially contributed to the non-viability of the FI, instead of only taking into account any general misconduct/misbehaviour of the officers/former officers in performing their functions which had caused the FI to cease to be viable.</p>	

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		<p>HKMA explained that –</p> <p>(a) as the purpose of the Bill was to establish a regime for the orderly resolution of FIs when they had become, or were likely to become non-viable, it was considered appropriate to link the clawback provisions to actions or omissions which had caused or materially contributed to the non-viability of FIs. Indeed, the clawback provisions in some other jurisdictions, like the United Kingdom, were general rules for FIs to formulate their in-house remuneration policies, which were similar to that provided in the Supervisory Policy Manual ("SPM") module issued by the Monetary Authority ("MA");</p> <p>(b) the aforementioned SPM module, which reflected FSB's principles for sound compensation practices issued in 2009, focused upon the architecture and processes surrounding the remuneration structure of an authorized institution ("AI"). Although MA currently did not have direct power to intervene in clawback of remuneration, MA would take into account the potential risks that might arise from an AI's remuneration system as part of its supervisory process and results of the MA's supervisory assessment would feed through into its supervisory actions.</p>	
Meeting with the Administration			
010428 – 010456	Chairman Administration	<p>Letter from Legal Service Division to the Administration dated 4 January 2016 [LC Paper No. CB(1)443/15-16(03)]</p> <p>Members did not raise any questions.</p>	
010457 – 013148	Chairman HKMA	Briefing by HKMA on "Overview of the Bill" [LC Paper No. CB(1)382/15-16(03)]	
003149 – 014520	Chairman Mr Kenneth LEUNG Administration HKMA	<p><u>Resolvability Review Tribunal ("RRT") and Resolution Compensation Tribunal ("RCT")</u></p> <p>Mr LEUNG sought information on the composition and functions of RRT and RCT, and</p>	

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		<p>expressed concern about difficulties in identifying qualified chairpersons and members for the two tribunals.</p> <p>The Administration and HKMA advised that –</p> <ul style="list-style-type: none"> (a) firstly, under the proposed resolution regime, an RA was empowered to give directions to a within scope FI or its holding company for taking specified measures to remove or mitigate the effect of significant impediments to the orderly resolution of the FI or its holding company; (b) RRT was to be established to provide an avenue for the FI, or its holding company, to appeal against such directions of an RA; (c) secondly, according to the "no creditor worse off than in liquidation" ("NCWOL") safeguard of the proposed resolution regime, pre-resolution shareholders and creditors of an entity in resolution would be entitled to receive payment of compensation should it be assessed by an independent valuer that their outcome in resolution was worse than would have been the case had the entity otherwise entered into liquidation. RCT was to be established, amongst other things, to hear appeals against NCWOL valuation made by the independent valuer. RCT would provide shareholders and creditors with an avenue to challenge decisions regarding eligibility for compensation or the amount of compensation and be empowered to ultimately determine the valuation; (d) the Chief Executive, on the recommendation of the Chief Justice, would identify and appoint qualified persons as the chairpersons of the two tribunals to facilitate timely setting up of the tribunals. The Chief Executive alone would do the same for the "ordinary" members; and (e) according to the proposed Schedules 8 and 9 to the Bill, the chairpersons of the two tribunals could be a former Justice of Appeal of the Court of Appeal, a former judge, a 	

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		<p>former recorder or a former deputy judge of the Court, or a person eligible for appointment as a judge of the High Court. Hence the pool of eligible persons for appointment as the chairpersons would be sufficiently large. The "ordinary" members of the tribunals would be required to have relevant expertise and understanding of the regime (in the case of RRT) and expertise on valuation and understanding of the regime (in the case of RCT).</p> <p><u>Legislative procedure</u></p> <p>In response to Mr LEUNG's enquiry about implementation of the proposals in the Bill after its enactment, the Administration and HKMA said that –</p> <p>(a) the Bill sought to provide a legal framework for establishing a resolution regime in Hong Kong. The Bill would commence after the making of any relevant subsidiary legislation which were required for the regime to operate; and</p> <p>(b) the Administration was preparing the draft subsidiary legislation and would take into consideration the views and comments of industry stakeholders and the latest international developments before finalizing the same.</p> <p>Given the complexity of the subsidiary legislation, Mr LEUNG said that the Administration should conduct briefings for Members before introducing the subsidiary legislation into LegCo.</p>	
014521 – 014742	Chairman Mr SIN Chung-kai Mr Kenneth LEUNG	<p>Mr SIN requested the Administration to provide a summary of views expressed by deputations at the meeting and in the written submissions, and the Administration's written responses.</p> <p>Mr LEUNG further requested the Administration to prepare two papers, one for addressing deputations' views on policy issues and the other on drafting issues. The response paper on the policy issues should be submitted</p>	

Time Marker	Speaker	Subject(s)	Action Required
		before the clause-by-clause examination of the Bill.	
014743 – 015305	Chairman Mr Kenneth LEUNG HKMA	Briefing by the Administration on its response to the issues arising from the meeting held on 5 January 2016 [LC Paper No. CB(1)443/15-16(02)] <u>Offences and penalties</u> In response to Mr LEUNG's enquiry about sanctions under existing regulatory regimes for officers/former officers of FIs, HKMA clarified that while officers/former officers would be liable for offences if they breached certain requirements under the relevant ordinances, these offences were not specifically related to the resolution regime. The Bill would not increase the penalty for existing offences.	
015306 – 015330	Chairman	Date of next meetings	

Council Business Division 1
Legislative Council Secretariat
27 April 2016