

立法會
Legislative Council

LC Paper No. CB(1)1182/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/15/2

Bills Committee on Financial Institutions (Resolution) Bill

**Minutes of the eleventh meeting on
Monday, 9 May 2016, at 8:45 am
in Conference Room 3 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 Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon Albert HO Chun-yan
Hon NG Leung-sing, SBS, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
- Public officers attending** : Mr James H. LAU Jr., JP
Under Secretary for Financial Services & the Treasury
- Ms Polly KWOK
Principal Assistant Secretary for Financial Services &
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 Manuel NG
Senior Government Counsel, Law Drafting Division
Department of Justice

Ms Joyce LEUNG
Assistant Counsel, Legal Services
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 Vivian CHAN
Clerical Assistant (1)4

Action

I Meeting with the Administration

Clause-by-clause examination of the Bill

(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

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

Clause-by-clause examination of the Bill

2. The Bills Committee scrutinized clauses 174 to 239 of the Bill.

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 16 May 2016 at 8:45 am, and 17 May 2016 at 4:30 pm respectively.
4. There being no other business, the meeting ended at 10:03 am.

Council Business Division 1
Legislative Council Secretariat
26 August 2016

Proceedings of the Bills Committee on Financial Institutions (Resolution) Bill
Eleventh meeting on Monday, 9 May 2016, at 8:45 am
in Conference Room 3 of the Legislative Council Complex

Time Marker	Speaker	Subject(s)	Action Required
000121 – 000241	Chairman	Introductory remarks	
Clause-by-clause examination of the Bill			
000242 – 003350	Chairman Administration Mr Andrew LEUNG Mr Christopher CHEUNG Assistant Legal Adviser 8 ("ALA8")	<p><i>Part 12</i></p> <p><i>Resolution Funding Arrangements</i></p> <p><u>Clause 174 – Interpretation</u></p> <p><u>Clause 175 – Recovery of costs following application of stabilization option</u></p> <p><u>Clause 176 – Payment from resolution funding account</u></p> <p><u>Clause 177 – Repayment of resolution funds</u></p> <p><u>Clause 178 – Resolution levy</u></p> <p><u>Clause 179 – Regulations</u></p> <p><u>Clause 180 – Rate of levy</u></p> <p><u>Clause 181 – Recovery of levy</u></p> <p><u>Clause 182 – Distribution of surplus</u></p> <p><u>Clause 183 – Audit regulations</u></p> <p>Mr LEUNG sought information on how the resolution levy would be determined, in particular if consideration would be given to the scope and nature of businesses of the financial institutions ("FIs") concerned; and whether the securities industry would be required to bear the resolution levy if the entity in resolution was a recognized exchange company as there were only a few recognized exchange companies in Hong Kong.</p> <p>The Administration advised that —</p> <p>(a) all banks and global systemically important insurers in Hong Kong (no matter whether</p>	

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		<p>they were locally incorporated companies or branches of foreign FIs) were within the scope of the resolution regime and hence could be subject to a resolution levy, in the case that losses had been incurred by a resolution authority ("RA") in implementing a resolution, where the entity in resolution had operated in the banking or insurance sector respectively;</p> <p>(b) when assessing the amount of levy payable by a particular entity or class of entity, the Financial Secretary ("FS") would consider factors including the size or quantum of the activities of the entity and the risks posed to the stability and effective working of the financial system of Hong Kong by the non-viability of the entity, which factors were set out in the rule-making power under clause 179(2) of the Bill; and</p> <p>(c) if the entity in resolution was a recognized exchange company, a resolution levy could be imposed on the participants of, as well as the clients of the participants of, (i) the recognized exchange company; (ii) other recognized exchange companies and (iii) other financial market infrastructure that in each case were within scope FIs.</p> <p>Mr CHEUNG expressed concern about imposing a resolution levy on the participants of the recognized exchange companies (i.e. the securities firms), and enquired whether the amount of levy payable by the participants would be determined by their business turnover/trade volume and whether a cap would be set on the levy.</p> <p>The Administration explained that —</p> <p>(a) as provided in clause 179(2), FS would specify details for imposing the levy in a specific resolution case through making regulations, and clause 179(2)(c) further provided that the regulations would set out the methodology for the assessment of the amount of levy payable including the factors on which the methodology relied, e.g. the size or quantum of the activities of the entity and the risks posed to the stability and effective working of the financial system of Hong Kong</p>	

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		<p>by the non-viability of the entity;</p> <p>(b) as provided in clause 179(4), FS would be required to consult the relevant industry sector, each RA and the general public before making the regulations;</p> <p>(c) clause 180 provided that the rate of the levy would be, on the recommendation of FS, prescribed by resolution of the Legislative Council;</p> <p>(d) the Bill had not set any cap on the amount of levy that might be imposed as it was not possible to predict in advance the amount of public funds which might need to be deployed in a given resolution nor any amount which might not be recovered in the course of that resolution;</p> <p>(e) levies could be collected over a number of years to reduce the immediate impact on FIs;</p> <p>(f) an RA would seek to impose losses on the entity in resolution to the extent possible (e.g. through the written down and/or conversion of liabilities) and seek other private sector funding solutions before deploying any public funding to facilitate orderly resolution; and</p> <p>(g) it was expected that the likelihood and amount of public funding required to facilitate orderly resolution could be much lower than that required in some overseas jurisdictions during the financial crisis in 2007/2008 as a result of the various post-crisis reforms, including those to reduce the impact of failure (i.e. the introduction of resolution regimes consistent with the Financial Stability Board (FSB)'s Key Attributes, including the bail-in tool and loss-absorbing capacity requirements (e.g. FSB's Total Loss-absorbing Capacity standard)).</p> <p>ALA8 asked how the Administration could impose the resolution levy on an overseas incorporated holding company.</p> <p>The Administration said that a resolution levy would be imposed on within scope FIs with</p>	

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		<p>operations in Hong Kong, and therefore over which the authorities had a regulatory handle, but for firms not incorporated in Hong Kong, assistance from overseas RAs would be sought where necessary.</p>	
<p>003351 – 004100</p>	<p>Chairman Hong Kong Monetary Authority ("HKMA") ALA8</p>	<p><i>Part 13</i></p> <p><i>Non-Hong Kong Resolution Actions</i></p> <p><u>Clause 184 – Interpretation</u></p> <p><u>Clause 185 – Recognition of non-Hong Kong resolution actions</u></p> <p><u>Clause 186 – Effect of recognition of non-Hong Kong resolution actions</u></p> <p><u>Clause 187 – Compensation arrangements</u></p> <p><u>Clause 188 – Incidental provision etc.</u></p> <p><u>Clause 189 – Support measures</u></p> <p>In reply to ALA8's enquiry about the fiscal implications on Hong Kong to be considered by an RA in Hong Kong pursuant to clause 185(7) when deciding whether to recognize a non-Hong Kong resolution action, HKMA said that the RA would consider, amongst other things, any implications for public finances (e.g. any requirement of liquidity provision, potentially beyond what could be provided through the existing Lender of Last Resort facility, to secure the continued operation of an FI in Hong Kong as part of a recognition action).</p>	
<p>004101 – 005636</p>	<p>Chairman Administration HKMA ALA8</p>	<p><i>Part 14</i></p> <p><i>Miscellaneous</i></p> <p><u>Clause 190 – Notice of intention to present winding up petition to resolution authority</u></p> <p><u>Clause 191 – Restriction on commencement of winding up proceedings</u></p> <p><u>Clause 192 – Disapplication of certain provisions</u></p>	

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		<p><u>Clause 193 – Obstruction</u></p> <p><u>Clause 194 – Code of practice</u></p> <p><u>Clause 195 – Reasonable excuse</u></p> <p><u>Clause 196 – Prosecution of offences by resolution authority</u></p> <p><u>Clause 197 – Immunity from civil liability</u></p> <p><u>Clause 198 – Legal professional privilege</u></p> <p><u>Clause 199 – Certain instruments are not subsidiary legislation</u></p> <p><u>Clause 200 – Power of resolution authorities to specify forms</u></p> <p><u>Clause 201 – Amendment of Schedules</u></p> <p>HKMA remarked that a Committee Stage amendment would be moved to amend clause 190 with a view to ensuring that the presentation of a winding up petition against an FI would be made within a reasonable period (14 days) following the petitioner's notification to the RA pursuant to clause 190(1)(a) and then either (a) an RA's subsequent determination that the FI would not be placed into resolution; or (b) the expiry of the 7 day period afforded to an RA to determine whether resolution should be initiated following notification from the petitioner. The written notification requirements under clause 190(1)(a) would apply again if a petitioner wished to present a petition after the expiry of the 14 day period.</p> <p>ALA8 enquired if guidance in relation to declaration of interests and avoidance of conflicts of interest with respect to the members, employees or agents of an FI, bridge institution, asset management vehicle or temporary public ownership company would be included in the Code of Practice to be issued under clause 194. The Administration replied in the affirmative.</p> <p>In response to ALA8's enquiry regarding clause 195, the Administration advised that —</p>	

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		<p>(a) the reference to a reasonable excuse was to be construed as providing for a defence to a charge;</p> <p>(b) the defendant was only required to adduce sufficient evidence to raise an issue that he/she had such a reasonable excuse and it was for the prosecution to prove the contrary;</p> <p>(c) the prosecution was not required to prove whether the defendant had such a reasonable excuse before prosecuting the offence though according to the Prosecution Code issued by the Department of Justice ("DoJ"), the prosecution had to consider whether there was sufficient evidence before taking prosecution action; and</p> <p>(d) though an RA might prosecute an offence under the Financial Institutions (Resolution) Ordinance, it would not derogate from the powers of the Secretary of Justice in respect of the prosecution of criminal offences, and it was expected that an RA would seek advice from DoJ before taking prosecution action.</p>	
005637 – 010914	<p>Chairman Administration HKMA Office of the Commissioner of Insurance ("OCI") Securities and Futures Commission ("SFC") Mr Andrew LEUNG Mr Christopher CHEUNG</p>	<p>Part 15</p> <p><i>Related and Consequential Amendments</i></p> <p><i>Division 1 — Enactments Amended</i></p> <p><u>Clause 202 – Enactments amended</u></p> <p><i>Division 2 — Amendments to Specification of Public Offices Notice (Cap. 1 sub. leg. C)</i></p> <p><u>Clause 203 – Schedule amended (specification of public offices)</u></p> <p><i>Division 3 — Amendments to Insurance Companies Ordinance (Cap. 41)</i></p> <p><u>Clause 204 – Section 2 amended (interpretation)</u></p> <p><u>Clause 205 – Section 53A amended (secrecy)</u></p> <p><u>Clause 206 – Section 53B amended (disclosure of information)</u></p>	

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		<p><i>Division 4 — Amendments to Banking Ordinance (Cap. 155)</i></p> <p><u>Clause 207 – Section 2 amended (interpretation)</u></p> <p><u>Clause 208 – Section 120 amended (official secrecy)</u></p> <p><u>Clause 209 – Section 121 amended (disclosure of information relating to authorized institutions)</u></p> <p><i>Division 5 — Amendments to Banking (Capital) Rules (Cap. 155 sub. leg. L)</i></p> <p><u>Clause 210 – Schedule 4B amended (qualifying criteria to be met to be Additional Tier 1 capital)</u></p> <p><u>Clause 211 – Schedule 4C amended (qualifying criteria to be met to be Tier 2 capital)</u></p> <p><i>Division 6 — Amendment to Electronic Transactions Ordinance (Cap. 553)</i></p> <p><u>Clause 212 – Schedule 2 amended (proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance)</u></p> <p><i>Division 7 — Amendments to Securities and Futures Ordinance (Cap. 571)</i></p> <p><u>Clause 213 – Section 307B amended (requirement for listed corporations to disclose inside information)</u></p> <p><u>Clause 214 – Section 310 amended (duty of disclosure: cases in which it may arise)</u></p> <p><u>Clause 215 – Section 341 amended (duty of disclosure by director and chief executive)</u></p> <p><u>Clause 216 – Section 378 amended (preservation of secrecy, etc.)</u></p> <p><u>Clause 217 – Schedule 1, Part 1 amended (interpretation)</u></p>	

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		<p><u>Clause 218 – Schedule 2 amended (Securities and Futures Commission)</u></p> <p>Mr LEUNG, Mr CHEUNG and the Chairman enquired about the action to be taken by an RA if an FI (being a listed company) refused to disclose inside information for the purpose of resolution by claiming that the information was relating to the interests of national security.</p> <p>SFC replied that actions would be taken by SFC pursuant to Part XIVA of the Securities and Futures Ordinance (Cap. 571) ("SFO") relating to disclosure of inside information by listed companies. HKMA supplemented that listed companies should be well aware of their disclosure obligations. Disclosure of information pursuant to provisions of SFO and the listing rules could be deferred by an RA in the context of resolution under the Financial Institutions (Resolution) Ordinance if (a) it was reasonably likely that a listed entity, or its group company, would have a stabilization option applied to it; (b) the disclosure of the information would cause or contribute to the non-viability of the listed entity or its group company or impede an RA from achieving orderly resolution; and (c) the information was confidential and its confidentiality could be preserved.</p>	
010915 – 011735	Chairman HKMA OCI	<p><i>Division 8 – Amendments to Deposit Protection Scheme Ordinance (Cap. 581)</i></p> <p><u>Clause 219 – Section 2 amended (interpretation)</u></p> <p><u>Clause 220 – Section 46 amended (confidentiality)</u></p> <p><i>Division 9 – Amendments to Payment Systems and Stored Value Facilities Ordinance (Cap. 584)</i></p> <p><u>Clause 221 – Section 2 amended (interpretation)</u></p> <p><u>Clause 222 – Section 50 amended (confidentiality)</u></p>	

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		<p><u>Clause 223 – Section 55A added</u></p> <p>55A. <i>Saving provision</i></p> <p>Division 10 — Amendments to Insurance Companies (Amendment) Ordinance 2015 (12 of 2015)</p> <p><u>Clause 224 – Section 5 amended (section 2 amended (interpretation))</u></p> <p><u>Clause 225 – Section 90 amended (Schedules 1A to 1D added)</u></p> <p><u>Clause 226 – Section 99 amended (Schedule amended)</u></p> <p><u>Clause 227 – Part 3, Division 34 added</u></p> <p>Division 34 — Amendments to Financial Institutions (Resolution) Ordinance (of 2015)</p> <p>171. <i>Section 2 amended (interpretation)</i></p> <p>172. <i>Section 78 amended (deferral of requirements under section 8 of Insurance Companies Ordinance)</i></p> <p>173. <i>Section 171 amended (official secrecy)</i></p> <p>174. <i>Schedule 8 amended (Resolvability Review Tribunal)</i></p> <p>175. <i>Schedule 9 amended (Resolution Compensation Tribunal)</i></p> <p>176. <i>"保險業監管局" substituted for "保險業監督"</i></p> <p><u>Clause 228 – Schedule 1 amended (minor amendments to Insurance Ordinance relating to replacement of "Insurance Authority" by "Authority")</u></p> <p>Division 11 — Amendments to Financial Institutions (Resolution) Ordinance (of 2015)</p>	

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		<p><u>Clause 229 – Section 2 amended (interpretation)</u></p> <p><u>Clause 230 – Section 78 amended (deferral of requirements under section 8 of Insurance Companies Ordinance)</u></p> <p><u>Clause 231 – Section 171 amended (official secrecy)</u></p> <p><u>Clause 232 – Part 15, Division 3 heading amended (amendments to Insurance Companies Ordinance (Cap. 41))</u></p> <p><u>Clause 233 – Section 204A added</u></p> <p><i>204A. Section 2 amended (interpretation)</i></p> <p><u>Clause 234 – Section 205 amended (section 53A amended (secrecy))</u></p> <p><u>Clause 235 – Section 206 amended (section 53B amended (disclosure of information))</u></p> <p><u>Clause 236 – Section 206A added</u></p> <p><i>206A. Schedule 1D amended (non-delegable functions of Authority)</i></p> <p><u>Clause 237 – Schedule 8 amended (Resolvability Review Tribunal)</u></p> <p><u>Clause 238 – Schedule 9 amended (Resolution Compensation Tribunal)</u></p> <p><u>Clause 239 – "保險業監管局" substituted for "保險業監督"</u></p> <p>Members did not raise any questions on the above clauses.</p>	
011736 – 011814	Chairman	Date of next meeting	