

立法會
Legislative Council

LC Paper No. CB(1)1184/15-16
(These minutes have been seen
by the Administration)

Ref : CB1/BC/5/15/2

Bills Committee on Financial Institutions (Resolution) Bill

**Minutes of the thirteenth meeting on
Tuesday, 17 May 2016, at 4:30 pm
in Conference Room 2A 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 & 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 Sharon CHAN
Legislative Assistant (1)4

Action

I Meeting with the Administration

Consideration of Committee Stage amendments proposed by the Administration

(LC Paper No. CB(1)909/15-16(04) — First batch of draft Committee Stage Amendments proposed by the Administration)

LC Paper No. CB(1)924/15-16(01) — Second batch of draft Committee Stage Amendments proposed by the Administration)

Discussion

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

Consideration of Committee Stage amendments proposed by the Administration

2. The Bills Committee completed scrutiny of the first and second batches of Committee Stage amendments ("CSAs") proposed by the Administration.

II Any other business

Legislative timetable and way forward

3. The Chairman said that the Administration might consider resuming the Second Reading debate on the Bill at the Council meeting of 22 or 29 June 2016. If the Second Reading debate was to be resumed at the Council meeting of 22 June 2016, the Bills Committee would report its deliberations to the House Committee on 10 June 2016 and the deadline for giving notice of CSAs to the Bill was 13 June 2016. If the Second Reading debate was to be resumed at the Council meeting of 29 June 2016, the Bills Committee would report its deliberations to the House Committee on 17 June 2016 and the deadline for giving notice of CSAs to the Bill was 20 June 2016.

Date of next meeting

4. The Chairman reminded members that the next two meetings would be held on 24 May 2016 at 8:45 am, and 30 May 2016 at 8:45 am respectively.

Action

(Post-meeting note: Members were informed vide LC Paper No. CB(1)971/15-16 issued on 26 May 2016 that the meeting scheduled for 30 May 2016 would not be held.)

5. There being no other business, the meeting ended at 5:24 pm.

Council Business Division 1
Legislative Council Secretariat
26 August 2016

Proceedings of the Bills Committee on Financial Institutions (Resolution) Bill
Thirteenth meeting on Tuesday, 17 May 2016, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex

Time Marker	Speaker	Subject(s)	Action Required
000208 – 000307	Chairman	Introductory remarks	
Consideration of Committee Stage amendments proposed by the Administration			
000308 – 002910	Chairman Administration Hong Kong Monetary Authority ("HKMA") Assistant Legal Adviser 8 ("ALA8") Mr Kenneth LEUNG	<p>Briefing by the Administration on its first batch of proposed Committee Stage amendments ("CSAs") [LC Paper No. CB(1)909/15-16(04)]</p> <p>In response to the Chairman's enquiry, the Administration explained that the sentences starting with the word "凡" and the word "則" in the proposed amended clause 19 represented respectively the condition and result of committing the offence. The drafting was consistent with other legislation.</p> <p>In reply to ALA8, the Administration and HKMA explained that clause 91 referred to the situation where a counterparty to a qualifying contract exercised a termination right under the contract. The words "rights" and "liabilities" rather than "assets" and "liabilities" would better reflect the nature of a contract under which a party would have rights to receive something (e.g. an asset) or liabilities to perform. In general, the word "rights" would also cover the meaning of "assets".</p> <p>With regard to ALA8's enquiry on the proposed amendments to clause 102, HKMA said that the CSA aimed to clarify the position that pre-resolution shareholders' and creditors' actual treatment in resolution was to be assessed against the hypothetical scenario that the winding-up of the entity in question would have commenced immediately before the initiation of resolution. This was as opposed to the initial drafting which could be interpreted such that an independent valuer should assume that a winding-up of the entity would have commenced and been completed immediately before the initiation of resolution, which could result in an unrealistically low hypothetical valuation of the winding up</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>treatment (if immediate "fire sales" had to be assumed) and thus be detrimental to the interests of pre-resolution shareholders and creditors.</p> <p>ALA8 referred to the proposed new clause 190(1)(c) and enquired about the procedure to be taken by the petitioner if the 14-day period expired before a petition could be filed with the Court. The Administration advised that in such a case the petitioner would need to give a new written notice to the resolution authority ("RA") pursuant to clause 190(1)(a).</p> <p>In response to Mr LEUNG, the Administration explained that the proposed amendments to section 4(3) of Schedule 3 were designed to ensure that requirements for consent/approval that would need to be observed in a transfer of business in the usual course would not prevent an RA from effectively applying a stabilization option promptly and decisively, given the urgent nature of resolution. Hence a securities transfer instrument would take effect despite any restriction arising under contract or legislation or in any other way.</p>	
002911 – 003418	<p>Chairman Administration Securities and Futures Commission ("SFC") Mr SIN Chung-kai Mr Kenneth LEUNG ALA8</p>	<p>Briefing by the Administration on its second batch of proposed CSAs [LC Paper No. CB(1)924/15-16(01)]</p> <p>In reply to Mr SIN and Mr LEUNG, the Administration clarified that the notice mentioned in the proposed new clause 95(3A) referred to the notice of the appointment of an appointing person to be published in the Gazette.</p> <p>In response to Mr LEUNG's enquiry, the Administration advised that the clauses in the Bill would be re-numbered when the Bill was enacted and published as an Ordinance in the Gazette.</p> <p>ALA8 enquired for the reason of replacing the word "就" with the word "應" in the proposed amended clause 123(3). The Administration said that the word "應" would better reflect the situation where the Court of Appeal, on an appeal from a determination of the Resolvability Review Tribunal ("RRT"), allowed the appeal under clause 123(1)(a) or varied or set aside the determination of RRT under clause 123(1)(c).</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Court of Appeal, on an appeal, might also by an order direct that there was to be included in any costs to be paid by the respondent to the appellant, the costs reasonably incurred by the appellant in relation to the RRT proceedings and in relation to the application for review.</p> <p>In response to Mr LEUNG, the Administration said that the agreement as mentioned in the proposed new clause 144(1A) referred to all or a specified part of any fixed or variable remuneration that the financial institution ("FI") had agreed during the controlled period to give, but had not yet given, to the officer. The CSA aimed to provide explicitly that a clawback order made under the Bill would terminate any liability of the FI under an agreement to give to the officer the remuneration covered by the order, otherwise the clause might be ineffective in cancelling an FI's obligation to pay deferred remuneration that was subject to a clawback order.</p> <p>The Chairman asked whether "倚據" or "依據" should be used as the Chinese rendition for the English expression "in reliance on" in the proposed amended clause 172(6). The Administration said that the Chinese rendition "倚據" would be used for English expressions such as "rely on", "in reliance on", etc. The drafting was consistent with other legislation.</p> <p>In reply to ALA8, SFC advised that a function delegated to the chief executive officer of SFC under the proposed new section 10(2AA) of the Securities and Futures Ordinance (Cap. 571) would not be further delegated.</p>	
004844 – 005219	Chairman Administration Mr SIN Chung-kai Mr Kenneth LEUNG	<p>The Chairman asked if the Administration would move further CSAs and whether members would propose CSAs for the consideration of the Bills Committee.</p> <p>The Administration said that it might submit further CSAs for the consideration of the Bills Committee at the meeting on 24 May 2016 to address the concerns and issues raised by members at the meeting on 16 May 2016.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr SIN said that he was considering to move a CSA to the definition of "controlled period" to lengthen the period from three years to five years.</p> <p>The Chairman requested the Administration and members to provide their draft CSAs, if any, to the Secretariat on or before 20 May 2016 to facilitate necessary arrangements.</p> <p>In reply to Mr LEUNG, the Administration said that the Bill would not come into operation immediately after its enactment. The Bill would commence on a date to be specified by the Secretary for Financial Services and the Treasury, after the completion of negative vetting by the Legislative Council and the subsequent coming into force of certain regulations to be made as subsidiary legislation under the Bill. The Bill also provided for other rules, regulations and codes of practice to be made, some of which were dependent on the further development of relevant principles and guidance at the international level.</p>	
005220 – 005442	Chairman	<p>Legislative timetable and concluding remarks</p> <p>Date of next meeting</p>	