

立法會
Legislative Council

LC Paper No. CB(1)296/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/16/1

**Bills Committee on Anti-Money Laundering and Counter-Terrorist
Financing (Financial Institutions) (Amendment) Bill 2017 and
Companies (Amendment) Bill 2017**

**Minutes of the first meeting on
Tuesday, 10 October 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon CHAN Kin-por, GBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Elizabeth QUAT, BBS, JP
Hon CHUNG Kwok-pan
Hon Holden CHOW Ho-ding
Hon CHAN Chun-ying
Hon Tanya CHAN

Members attending: Hon Alvin YEUNG
Hon YUNG Hoi-yan

Members absent : Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP

Public officers attending : Ms Mable CHAN, JP
Deputy Secretary for Financial Services and the Treasury (Financial Services)

Ms Eureka CHEUNG
Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)

Miss Helen KWAN
Assistant Secretary for Financial Services and the Treasury (Financial Services)

Mr Nelson LAM
Assistant Secretary for Financial Services and the Treasury (Financial Services)

Ms Ada CHUNG, JP
Registrar of Companies

Ms Ellen CHAN
Deputy Principal Solicitor (Company Law Reform)
Companies Registry

Mr Stewart MCGLYNN
Head (Anti-Money Laundering)
Hong Kong Monetary Authority

Mr Jason U
Deputy Head (Risk Assessment), Money Service Supervision Bureau (Acting)
Customs and Excise Department

Attendance by Invitation : Mr Raymond WONG
Director, Intermediaries Supervision, Intermediaries Securities and Futures Commission

Mr Dickson CHUI
Senior Manager
Insurance Authority

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

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Mr Bonny LOO
Assistant Legal Adviser 4

Mr Hugo CHIU
Senior Council Secretary (1)4

Miss Sharon LO
Senior Council Secretary (1)9

Ms Sharon CHAN
Legislative Assistant (1)4

Ms Vivian CHAN
Clerical Assistant (1)4

Admin

I Election of Chairman

Election of Chairman

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr WONG Ting-kwong was nominated by Mr Christopher CHEUNG and the nomination was seconded by Mr CHAN Chun-ying. Mr WONG accepted the nomination. Mr James TO called for other nominations. There being no other nomination, Mr TO declared that Mr WONG Ting-kwong was elected the Chairman of the Bills Committee. Mr WONG then took the chair.

3. Members agreed that there was no need to elect a Deputy Chairman.

Action

II Meeting with the Administration

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017

- (LC Paper No. CB(3)735/16-17 — The Bill
- File Ref: B&M/4/1/41C — Legislative Council Brief
- LC Paper No. LS88/16-17 — Legal Service Division Report
- LC Paper No. CB(1)1456/16-17(01) — Marked-up copy of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance and other legislation to be amended by the Bill prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(1)1456/16-17(02) — Letter dated 6 July 2017 from the Legal Service Division to the Administration (AMLO)
- LC Paper No. CB(1)1456/16-17(03) — Letter dated 12 July 2017 from the Legal Service Division to the Administration (AMLO)
- LC Paper No. CB(1)1456/16-17(04) — Administration's response dated 29 September 2017 to the Legal Service Division's letters dated 6 and 12 July 2017 regarding the Bill (AMLO))

Companies (Amendment) Bill 2017

- (LC Paper No. CB(3)736/16-17 — The Bill
- File Ref: B&M/4/1/43C — Legislative Council Brief

Action

- LC Paper No. LS89/16-17 — Legal Service Division Report
- LC Paper No. CB(1)1456/16-17(05) — Marked-up copy of the Companies Ordinance prepared by the Legal Service Division (Restricted to members only)
- LC Paper No. CB(1)1456/16-17(06) — Letter dated 21 July 2017 from the Legal Service Division to the Administration (CO)
- LC Paper No. CB(1)1456/16-17(07) — Administration's response dated 29 September 2017 to the Legal Service Division's letter dated 21 July 2017 regarding the Bill (CO)

Other paper

- (LC Paper No. CB(1)1456/16-17(08) — Background brief prepared by the Legislative Council Secretariat)

Discussion

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

III Any other business

Invitation of views

5. Members agreed to post a notice on the website of the Legislative Council ("LegCo") and write to the 18 District Councils ("DCs") and relevant organizations to invite views on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 and Companies (Amendment) Bill 2017; and to meet with deputations at the second meeting scheduled for 30 October 2017.

Action

(Post-meeting note: The notice was posted on LegCo website on 10 October 2017 and letters were sent to DCs and relevant organizations on 10 October 2017.)

Date of next meeting

6. Members agreed that the next meeting would be held on 30 October 2017 at 4:30 pm.

7. The Chairman said that he would work out the schedule of meetings with the Clerk and consulted members accordingly.

(Post-meeting note: Members were consulted on the tentative meeting schedule vide LC Paper No. CB(1)33/17-18 issued on 13 October 2017.)

8. There being no other business, the meeting ended at 10:07 am.

Council Business Division 1
Legislative Council Secretariat
30 November 2017

**Proceedings of the first meeting of the Bills Committee on
Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions)
(Amendment) Bill 2017 and Companies (Amendment) Bill 2017
on Tuesday, 10 October 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Election of Chairman			
000413 – 000612	Mr James TO Mr Christopher CHEUNG Mr CHAN Chun-ying Mr WONG Ting-kwong	Election of Chairman	
Agenda item II — Meeting with the Administration			
000613 – 002633	Chairman Administration	Briefing by the Administration on the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AMLO Bill") and the Companies (Amendment) Bill 2017 ("CO Bill")	
002634 – 004241	Chairman Mr Dennis KWOK Mr Jeffrey LAM Administration	Suggestion by Mr KWOK and Mr LAM for the Bills Committee to hold a public hearing to receive views on the two Bills. Mr LAM's enquiries about: (a) Hong Kong's situation in meeting international regulatory requirements on taxation and anti-money laundering and counter-terrorist financing ("AML/CTF") matters; (b) measures taken by the Administration and the Hong Kong Monetary Authority ("HKMA") to alleviate the difficulties encountered by certain entities in opening bank accounts due to increasingly stringent AML/CTF international regulatory requirements;	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) whether banks, in conducting customer due diligence ("CDD"), would be required to identify individuals and legal persons that had significant control over companies ("significant controllers") in an exhaustive manner, thus increasing the compliance cost of banks; and</p> <p>(d) details of the exemption from the new requirement on companies to identify significant controllers.</p> <p>The Government responded as follows:</p> <p>(a) Hong Kong participated actively in relevant international forums/organizations in the development of international standards on taxation and AML/CTF matters, and had put forward Hong Kong's views as appropriate;</p> <p>(b) HKMA were aware of the difficulties encountered by certain entities in opening bank accounts and had devoted considerable resources to address the issue. The problem was a global one; locally it was not an industry wide issue but one associated with one or two major banks which were usually the first port of call for many companies seeking to open a bank account. The standards set by HKMA were on a par with other jurisdictions. HKMA had reminded banks of the need to take reasonable steps in meeting AML/CTF regulatory requirements, and issued a circular to all banks in 2016 clarifying its expectation that banks should adopt a risk-based approach and refrain from practices which could result in financial exclusion. HKMA had also taken various initiatives to address the issue, including establishment of a dedicated web page and email account on opening of bank accounts for members of the public. The HKMA would continue to closely monitor the situation; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) listed companies would be exempt from the new requirements under CO Bill as they were subject to a more stringent disclosure regime on beneficial ownership under the Securities and Futures Ordinance (Cap. 571). Under CO Bill, the Financial Secretary (including the Secretary for Financial Services and the Treasury pursuant to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1)) was empowered to make regulation providing for exemption of a particular class of company (rather than individual companies) should such need arise in future. The Government would exercise this power prudently.</p>	
<p>004242 – 005201</p>	<p>Chairman Mr CHAN Chun-ying Administration</p>	<p>Mr CHAN's enquiries and views as follows:</p> <p>(a) why dealers in precious metals and stones ("DPMS") were not covered by AMLO Bill, whether the exclusion would lead to any regulatory loopholes, and whether the Administration would review the need to subject DPMS to regulation under AMLO in future;</p> <p>(b) reasons for proposing a less stringent licensing regime for trust or company service providers ("TCSPs") as compared to those of other jurisdictions; and</p> <p>(c) the rationale for relaxing the threshold of defining beneficial ownership from the current "not less than 10%" to "more than 25%" under AMLO, and whether banks which had been collecting information from customers applying the old threshold should continue doing so under the relaxed threshold.</p> <p>The Government responded as follows:</p> <p>(a) the Financial Action Task Force ("FATF") advocated that countries should apply a risk-based approach in implementing their AML/CTF regimes. AMLO Bill did not cover DPMS because :</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(i) cash transactions were not common among DPMS in Hong Kong;</p> <p>(ii) according to the Hong Kong Police Force ("Police"), there were very few money-laundering cases involving DPMS, thus DPMS did not pose insurmountable risks in the overall AML/CTF regime in Hong Kong requiring immediate mitigation; and</p> <p>(iii) currently, there was no authority with statutory power to regulate or oversee the business of DPMS. While it took time to prepare the sector for undertaking statutory AML responsibilities, the Government suggested covering those designated non-financial businesses and professions ("DNFBPs") sectors that were more ready in the current legislative exercise;</p> <p>(b) the Government had been stepping up education in the DPMS sector to raise their AML/CTF awareness and would continue to keep in view international developments and review the need to subject DPMS to regulation under AMLO as necessary;</p> <p>(c) the proposed licensing regime for TCSPs would involve a "fit-and-proper" test for applicants. While some respondents suggested during the consultation of AMLO Bill the introduction of entry requirements for TCSPs, others cautioned that the fit and proper test should not become a hurdle for market entry at the expense of small and medium enterprises. Considering that the TCSP licensing regime was introduced for the purpose of enforcing CDD and record-keeping requirements for the TCSP industry and not as a professional registration system for individual practitioners, the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Government considered it not necessary to raise the threshold or alter the nature of the fit and proper test ; and</p> <p>(d) the Government proposed to relax the threshold for defining beneficial ownership from the current "not less than 10%" to "more than 25%" under AMLO having regard to FATF requirement and the threshold adopted by other jurisdictions. The Hong Kong Association of Banks also suggested that the threshold should align with that adopted for the automatic exchange of tax information regime (i.e. more than 25%). The Government would continue to liaise with the banking industry on the matter.</p>	
005202 – 005322	Chairman Ms Tanya CHAN Administration	In response to Ms CHAN's enquiry, the Government advised that the FATF definition of DNFBPs covered casinos but did not cover mahjong parlours, thus AMLO Bill did not cover mahjong parlours.	
005323 – 011603	Chairman Mr YIU Si-wing Mr Kenneth LEUNG Mr Christopher CHEUNG Administration	<p><u>Regulation of online money laundering</u></p> <p>Mr YIU and Mr CHEUNG enquired about the Administration's plan to introduce legislation for regulation of online transactions involving virtual commodities (including Bitcoin) which might be used for money laundering.</p> <p>The Government responded as follows:</p> <p>(a) HKMA and the Securities and Futures Commission had issued guidelines for enhancing cyber security and cautioned on the risks involved in transactions of virtual commodities. The Government would strike a balance between regulating virtual commodities and facilitating the development of financial technologies; and</p> <p>(b) the Government had no plan at the moment to introduce a dedicated piece of legislation targeting virtual currency transactions, but would step up its work on</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>investor education.</p> <p><u>Proposed sanctions against non-compliance by designated non-financial businesses and professions</u></p> <p>Mr YIU enquired about the difference between the proposed sanctions against non-compliance by DNFBPs under AMLO Bill and those imposed in other jurisdictions including Singapore. Mr LEUNG asked if the proposed sanctions against non-compliance by solicitors, accountants and real estate agents were consistent with those against TCSPs.</p> <p>The Government responded as follows:</p> <p>(a) FATF required that effective and proportionate sanctions be applied to deal with non-compliance by DNFBPs. Having regard to the principle of professional self-regulation, AMLO Bill proposed that non-compliance by solicitors, foreign layers, accountants and estate agents would be handled in accordance with their respective statutory mechanisms governing professional misconduct including investigation, disciplinary and appeal. Similar arrangements were adopted in other jurisdictions including Singapore; and</p> <p>(b) the proposed sanctions against non-compliance by solicitors, foreign layers, accountants and real estate agents were consistent with those against TCSPs.</p> <p>Mr YIU enquired whether entities providing advice on the transfer of ownership of companies had to obtain licences under the proposed licensing regime for TCSPs. He was concerned that the operation of such entities would be adversely affected if stringent licensing requirements were set.</p> <p>The Government responded that AMLO Bill had set out the circumstances under which TCSPs were required to apply for licences</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>from the Companies Registry ("CR"). In general, an entity was required to obtain a licence if it provided, by way of business, trust or company services (as defined) in Hong Kong. CR would issue guidelines on operation of the licensing regime in consultation with key stakeholders.</p> <p>Mr LEUNG's enquiries as follows:</p> <ul style="list-style-type: none"> (a) why the Administration had not taken on board the suggestion from TCSPs (like chartered secretaries) that they should be subject to self-regulation in lieu of the proposed TCSPs licensing regime; and (b) CR's manpower requirement arising from the implementation of AMLO Bill and CO Bill. <p>The Government responded that:</p> <ul style="list-style-type: none"> (a) currently solicitors, foreign layers, accountants and real estate agents were already subject to professional self-regulation regimes by their respective regulatory bodies prescribed under the Legal Practitioners Ordinance (Cap. 159), the Professional Accountants Ordinance (Cap. 50) and the Estate Agents Ordinance (Cap. 511). There was no single authority with statutory power for regulating or overseeing TCSPs or assessing their suitability for carrying out trust or company service business. Thus, it was necessary to introduce a licensing regime for TCSPs under CR; and (b) it was envisaged that CR would need to create around 60 posts for discharging duties relating to the two Bills. CR would seek resources in accordance with the established mechanism. <p>Mr CHEUNG expressed concern about problems (e.g. difficulties in opening bank accounts and increasing compliance cost) encountered by enterprises in recent years due</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>to implementation of new international requirements relating to tax matters and AML/CTF regulatory regime. He enquired if the Administration had information indicating deterioration in the money laundering problem in Hong Kong which necessitated tightening the existing regulatory regime.</p> <p>The Government responded that:</p> <p>(a) it was aware of the impacts of new taxation and AML/CTF regulatory requirements on the business sector, and would endeavor to strike a balance between meeting international regulatory obligations and business facilitation; and</p> <p>(b) the number of suspicious transaction reports involving money laundering increased from some 20 000 in 2011 to around 76 000 in 2016. Law enforcement agencies had conducted investigations into suspicious cases which eventually led to prosecutions and convictions. It was observed that DNFBP's awareness against money laundering had been enhanced.</p>	
011604 – 012238	Chairman Mr CHAN Kin-por Administration	<p>Mr CHAN expressed support for the two Bills but stressed the need for the Administration to address the business sector's concern about surge in compliance costs of parties arising from implementation of the new requirements. He enquired about:</p> <p>(a) the refinements made to the two Bills taking into account the feedback received during the consultation exercises, and whether such refinements were aligned with international standards; and</p> <p>(b) whether there were views/suggestions received which the Administration had not taken on board and the reasons concerned.</p> <p>The Government highlighted the major refinements made to the two Bills as follows:</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) under CO Bill, companies were required to open their significant controller registers ("SCRs") for inspection by law enforcement agencies only for AML/CTF purposes, but not public inspection as previously proposed;</p> <p>(b) under CO Bill, a company had to take reasonable steps to identify and ascertain its significant controllers by giving notice to them. The notice addressees were confined to any person that the company knew or had reasonable cause to believe to be registrable, or that the company knew or had reasonable cause to believe to be a person who knew another person that was registrable; and</p> <p>(c) a deeming provision was added to AMLO Bill to the effect that a person carrying on a trust or company service business would be deemed to be granted with a licence. The transitional period had also been extended from 90 days to 120 days to facilitate existing TCSP operators' migration to the licensing regime.</p> <p>In respect of enhancing the transparency of beneficial ownership of companies, the Government pointed out that the present proposals in CO Bill were to implement the minimum requirements of FATF. It was noted that while there was no FATF requirement on public disclosure of SCRs, the United Kingdom had introduced a central register of significant controllers and the European Union was pursuing exchange of information in SCRs among member jurisdictions. The Government would need to keep in view disclosure arrangements of SCRs in light of development in international practices and standards in this area.</p>	
012239 – 012931	Chairman Mr Holden CHOW Administration	<p>Mr CHOW's enquiries as follows:</p> <p>(a) whether a registrable person was a natural person or an entity, or both;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) if the ultimate controller of an Hong Kong incorporated company was an offshore company, whether the SCR of the company could reflect such information including its complex ownership and control structures; and</p> <p>(c) a company had to enter into its SCR the particulars relating to a registrable person or a registrable legal entity within seven days. Whether the Administration would consider relaxing this requirement allowing more time for compliance by companies.</p> <p>The Government responded as follows:</p> <p>(a) having regard to FATF requirements, the significant controllers of a company under CO Bill were defined to consist of natural persons and legal persons. Under CO Bill, a company had to identify both registrable persons and registrable legal entities as its significant controllers;</p> <p>(b) the international community had already stepped up regulation on the transparency of beneficial ownership of offshore companies. Under CO Bill, an applicable company had to identify its significant controllers even if an offshore company was involved in the holding structure; and</p> <p>(c) it was not envisaged that companies would have difficulties in complying with the SCR-related requirements. A notice addressee would have one month to confirm or provide the required particulars to the company and the company would have seven days to enter the particulars in the SCR upon receipt of the particulars.</p>	
012932 – 013221	Chairman Mr WU Chi-wai Administration	Mr WU's enquiry about the meaning of "responsible person" in the proposed new section 653P(4) of the Companies Ordinance (Cap. 622) ("CO"), and whether the "specified form" referred to in the proposed new section 653M(3) of CO would be provided to	

Time Marker	Speaker	Subject(s)	Action Required
		<p>companies.</p> <p>The Government advised that:</p> <ul style="list-style-type: none"> (a) the term "responsible person" was defined in section 3 of CO; and (b) under the proposed new sections 653M and 653N of CO, a company was required to inform CR of the place at which its SCR was kept and any changes to such place using "specified form". CR would issue a guideline regarding the particulars to be entered in a SCR and the specified form to be used for notifying CR of the place where SCR was kept. CR was currently consulting the industry on the guideline. 	
013222 – 013745	Chairman Mr Kenneth LEUNG Administration	<p>Mr LEUNG enquired about the regulation under AMLO Bill over non-Hong Kong companies holding themselves out as providers of trust or company services in Hong Kong, in particular how the Administration could plug the possible loophole where such non-Hong Kong companies could promote their business in Hong Kong without obtaining a TCSP licence.</p> <p>The Government responded as follows:</p> <ul style="list-style-type: none"> (a) the definition of TCSP was provided in clause 25 of AMLO Bill. A TCSP (regardless of whether it was a company incorporated in Hong Kong) providing trust or company services in Hong Kong by way of business had to obtain a TCSP licence from CR; and (b) under the proposed section 53F of AMLO, it would be a criminal offence to carry on a trust or company service business without a licence, and law enforcement agencies would take enforcement actions as appropriate. 	

Time Marker	Speaker	Subject(s)	Action Required
Agenda item III — Any other business			
013746 – 014018	Chairman Administration	Invitation of views and date of next meeting	

Council Business Division 1
Legislative Council Secretariat
30 November 2017