

立法會
Legislative Council

LC Paper No. CB(1)462/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/16/2

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

**Minutes of the second meeting on
Monday, 30 October 2017, at 4:30 pm
in Conference Room 1 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 CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon CHAN Chun-ying
Hon Tanya CHAN

Member attending : Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Public officers attending : Mr Chris SUN, 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

Mr Francis MOK
Senior 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 : Ms Irene POU
Associate Director, Intermediaries Supervision, Intermediaries Securities and Futures Commission

Mr Dickson CHUI
Senior Manager
Insurance Authority

Deputations

Hatari Express Limited

Mr GUNSON David
Director

Federation of Hong Kong Industries

Prof YIM Eric
Deputy Chairman

The Hong Kong Institute of Chartered Secretaries

Mr DATWANI Mohan
Senior Director and Head of Technical and Research

Individual

Ms LAM Lau-mei

Oxfam

Miss WONG Shek-hung
Hong Kong Program Manager

Ernst & Young Advisory Services Limited

Mr HEILICZER Joshua-daniel
Executive Director

The Law Society of Hong Kong

Mr DEANE Simon-richard
Member of the Anti-Money Laundering Committee

Mr LINNING Alan-hugh
Member of the Anti-Money Laundering Committee

Hong Kong Trustees' Association

Mr SHUE Michael
Chairman

Ms LAU Ka-shi
Vice Chairman

Clifford Chance

Mrs WACKER Donna
Partner

Tricor Services Limited

Ms SENG SZE Ka-mee Natalia
CEO - China & Hong Kong

Estate Agents Authority

Ms LEUNG Tak-lai Juliet
Legal Counsel

Hong Kong Chinese Importers' and Exporters'
Association

Mr PANG Chor-fu
Vice Honorary Secretary & Chairman of Industrial and
Commercial Affairs Committee

STEP HK Ltd

Mr NG Clifford
Executive Committee Member

Individual

Mr ROGERS Anthony

Victon Registrations Limited

Mr CHU Yiu-kwong
Director

The Hong Kong Association of Banks

Mr HO Ka-chuen Clement
Chairperson, AML Committee

Ms DRAY Lauren-michelle
Senior Associate (King & Wood Mallesons)

A-Swiss Corporate Services Limited

Miss YEUNG Yuen-kei Doris
Director

Hong Kong Institute of Certified Public Accountants

Mr DING Raphael
Chief Executive & Registrar

Mr TISMAN Peter
Director

Acota Limited

Mr CHAN Kin-ping
Director

Thomson Reuters

Mr SO Thomas
Solution Sales Director (Risk)

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

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I Meeting with the Administration and deputations

Meeting with deputations/individuals and the Administration

Submissions from deputations/individuals attending the meeting

- (LC Paper No. CB(1)116/17-18(01) — Submission from Hatari Express Limited (English version only)
- LC Paper No. CB(1)116/17-18(03) — Submission from A-Swiss Corporate Services Limited (English version only)
- LC Paper No. CB(1)116/17-18(04) — Submission from Oxfam (Chinese version only)
- LC Paper No. CB(1)116/17-18(05) — Submission from The Law Society of Hong Kong (English version only)
- LC Paper No. CB(1)116/17-18(09) — Submission from Victon Registrations Limited (Chinese version only)
- LC Paper No. CB(1)116/17-18(10) — Submission from Hong Kong Institute of Certified Public Accountants (English version only)

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- LC Paper No. CB(1)116/17-18(11) — Submission from Acota Limited (Chinese version only) (Restricted to members only)
- LC Paper No. CB(1)116/17-18(12) — Submission from Thomson Reuters (English version only)
- LC Paper No. CB(1)116/17-18(13) — Submission from The Hong Kong Association of Banks (English version only)
- LC Paper No. CB(1)116/17-18(15) — Submission from Mr ROGERS Anthony (English version only)
- LC Paper No. CB(1)116/17-18(16) — Submission from The Hong Kong Institute of Chartered Secretaries (English version only)
- LC Paper No. CB(1)158/17-18(02) — Submission from Federation of Hong Kong Industries (Chinese version only)
- LC Paper No. CB(1)158/17-18(03) — Speaking note of Mr DATWANI Mohan, Senior Director and Head of Technical and Research of The Hong Kong Institute of Chartered Secretaries (English version only)
- LC Paper No. CB(1)158/17-18(04) — Speaking note of Mr PANG Chor-fu, Vice Honorary Secretary & Chairman of Industrial and commercial affairs committee of Hong Kong Chinese Importers' and Exporters' Association (Chinese version only)

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- LC Paper No. CB(1)158/17-18(05) — Speaking note of Mr DING Raphael, Chief Executive & Registrar of Hong Kong Institute of Certified Public Accountants (English version only)
- LC Paper No. CB(1)158/17-18(06) — Speaking note of Ms LEUNG Tak-lai Juliet, Legal Counsel of Estate Agents Authority (Chinese version only)
- LC Paper No. CB(1)158/17-18(07) — Speaking note of Ms LAU Ka-shi, Vice Chairman of Hong Kong Trustees' Association (English version only))

Submissions from deputations/individuals not attending the meeting

- (LC Paper No. CB(1)116/17-18(02) — Submission from an individual, 鄭俊鴻先生 (Chinese version only)
- LC Paper No. CB(1)116/17-18(06) — Submission from The Chinese Manufacturers' Association of Hong Kong (Chinese version only)
- LC Paper No. CB(1)116/17-18(07) — Submission from an individual, Mr CHIU Ling-cheong Anthony (English version only)
- LC Paper No. CB(1)116/17-18(08) — Submission from Hong Kong General Chamber of Commerce (English version only)
- LC Paper No. CB(1)116/17-18(14) — Submission from The Hong Kong General Chamber of Small and Medium Business (Chinese version only)

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LC Paper No. CB(1)116/17-18(17) — Submission from Hong Kong Investment Funds Association (English version only)

LC Paper No. CB(1)158/17-18(01) — Submission from Hong Kong Society of Notaries (English version only))

Other relevant papers

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

(A) 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)

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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))

(B) Companies (Amendment) Bill 2017

(LC Paper No. CB(3)736/16-17 — The Bill

File Ref: B&M/4/1/43C — Legislative Council Brief

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))

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

3. The Bills Committee received views from 20 deputations/individuals attending the meeting, and noted the 7 written submissions provided by

Action

organizations/individuals which/who had not attended the meeting (Index of proceedings attached at **Appendix**)

Follow-up actions to be taken by the Administration

4. The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 applied statutory customer due diligence ("CDD") and record-keeping requirements to, inter alia, legal professionals (covering solicitors and foreign lawyers) when they engaged in specified transactions by extending the coverage of CDD and record-keeping requirements in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") to them. At the same time, the Law Society of Hong Kong had issued Practice Direction P ("PDP") setting out requirements relating to anti-money laundering for all law firms, solicitors and foreign lawyers practicing in Hong Kong. The Administration was requested to provide a comparison between PDP and Schedule 2 to AMLO, and highlight the requirements provided in Schedule 2 to AMLO that were not covered by PDP.
5. The Administration was requested to provide written responses on views raised and submissions made by deputations.

(Post meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)205/17-18(02) on 13 November 2017.)

II Any other business

Date of next meeting

6. The Chairman reminded members that the next meeting would be held on 14 November 2017 at 10:45 am. He said that the Bills Committee would commence clause-by-clause examination of the two Bills after dealing with the Administration's response to issues raised at this meeting. As proposed by the Administration, the Bills Committee would start examining the clauses of the Companies (Amendment) Bill 2017 first.

(Post meeting note: Members were informed of the arrangements for the meeting on 14 November 2017 vide LC Paper No. CB(1)174/17-18 issued on 2 November 2017.)

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7. There being no other business, the meeting ended at 6:24 pm.

Council Business Division 1
Legislative Council Secretariat
10 January 2018

**Proceedings of the second meeting of the Bills Committee on
Anti-Money Laundering and Counter-Terrorist Financing
(Financial Institutions) (Amendment) Bill 2017 and
Companies (Amendment) Bill 2017
on Monday, 30 October 2017, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Meeting with the Administration and deputations			
Presentation of views by deputations/individuals and the Administration's responses			
000845 – 001322	Chairman	Introductory remarks	
001323 – 001639	Chairman Hatari Express Limited	Presentation of views [LC Paper No. CB(1)116/17-18(01)]	
001640 – 001958	Chairman Federation of Hong Kong Industries	Presentation of views [LC Paper No. CB(1)158/17-18(02)]	
001959 – 002316	Chairman The Hong Kong Institute of Chartered Secretaries	Presentation of views [LC Paper No. CB(1)116/17-18(16) and LC Paper No. CB(1)158/17-18(03)]	
002317 – 002519	Chairman Ms LAM Lau-mei	Presentation of views as highlighted below – (a) the Administration should address trust or company service providers' ("TCSPs") concern about the possible surge in compliance costs arising from the implementation of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 and the Companies (Amendment) Bill 2017 ("the two Bills"); and (b) the proposed transitional period of 120 days should be extended to facilitate migration of existing TCSPs to the new licensing regime.	

Time Marker	Speaker	Subject(s)	Action Required
002520 – 002800	Chairman Oxfam	Presentation of views [LC Paper No. CB(1)116/17-18(04)]	
002801 – 002918	Chairman Ernst & Young Advisory Services Limited	The Ernst & Young Advisory Services Limited supported the overall direction of the two Bills and welcomed the proposed relaxation of the threshold of defining beneficial ownership from the current "not less than 10%" to "more than 25%".	
002919 – 003228	Chairman The Law Society of Hong Kong ("LSHK")	Presentation of views [LC Paper No. CB(1)116/17-18(05)]	
003229 – 003624	Chairman Hong Kong Trustees' Association	Presentation of views [LC Paper No. CB(1)158/17-18(07)]	
003625 – 003830	Chairman Clifford Chance	Clifford Chance supported the overall direction of the two Bills and suggested that the Administration should examine the feasibility of exempting: (a) Hong Kong incorporated companies registered as trust companies under the Trustee Ordinance (Cap. 29); and (b) trustees having registered with the Securities and Futures Commission, from the proposed licensing regime for TCSPs.	
003831 – 004039	Chairman Tricor Services Limited	Presentation of views as highlighted below – (a) Tricor Services Limited supported the overall direction of the two Bills; and (b) the Administration should consider introducing professional requirements on TCSPs under the proposed licensing regime for TCSPs in future so as to enhance professional development of the TCSP sector.	
004040 – 004403	Chairman Estate Agents Authority ("EAA")	Presentation of views [LC Paper No. CB(1)158/17-18(06)]	
004404 – 004700	Chairman Hong Kong Chinese Importers' and Exporters' Association	Presentation of views [LC Paper No. CB(1)158/17-18(04)]	

Time Marker	Speaker	Subject(s)	Action Required
004701 – 004958	Chairman STEP HK Ltd	Presentation of views as highlighted below – (a) STEP HK Ltd supported the overall direction of the two Bills and the Administration's decision of not pursuing a centralized significant controllers register ("SCR"); and (b) the Government should carefully prepare guidelines on the implementation of the two Bills to ensure consistency with the existing guidelines set out in the Companies Ordinance (Cap. 622).	
004959 – 005314	Chairman Mr ROGERS Anthony	Presentation of views [LC Paper No. CB(1)116/17-18(15)]	
005315 – 005600	Chairman Victon Registrations Limited	Presentation of views [LC Paper No. CB(1)116/17-18(09)]	
005601 – 005943	Chairman The Hong Kong Association of Banks	Presentation of views [LC Paper No. CB(1)116/17-18(13)]	
005944 – 010238	Chairman A-Swiss Corporate Services Limited	Presentation of views [LC Paper No. CB(1)116/17-18(03)]	
010239 – 010628	Chairman Hong Kong Institute of Certified Public Accountants ("HKICPA")	Presentation of views [LC Paper No. CB(1)116/17-18(10) and LC Paper No. CB(1)158/17-18(05)]	
010629 – 010827	Chairman Acota Limited	Presentation of views [LC Paper No. CB(1)116/17-18(11)]	
010828 – 011042	Chairman Thomson Reuters	Presentation of views [LC Paper No. CB(1)116/17-18(12)]	
011043 – 011616	Chairman Administration	The Government's initial responses to deputations' views as follows: (a) the main objectives of the two Bills were to fulfill Hong Kong's international obligations under the Financial Action Task Force ("FATF") in combating money laundering and terrorist financing	

Time Marker	Speaker	Subject(s)	Action Required
		<p>("AML/CTF"). The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AMLO Bill") sought to address the absence of statutory customer due diligence ("CDD") and record-keeping requirements in Hong Kong for designated non-financial businesses and professions ("DNFBPs") when they engaged in specified transactions;</p> <p>(b) in preparing the legislative proposals, the Government had adopted views received during the public consultation of the two Bills where possible;</p> <p>(c) the Government welcomed the support of the majority of deputations on the overall direction and principles of the two Bills, and was aware of the concern on a number of implementation issues which would be taken into account as appropriate when preparing the relevant guidelines on the two Bills;</p> <p>(d) SCRs kept by companies would only be inspected by eligible law enforcement officers upon demand made to the companies;</p> <p>(e) the threshold of defining beneficial ownership was determined having regard to the prevailing FATF standard and international practice;</p> <p>(f) the licensing regime for TCSPs was introduced for the purpose of enforcing CDD and record-keeping requirements for the industry and not as a professional registration system for individual practitioners; and</p> <p>(g) the Government would provide written responses to views raised and submissions made by deputations.</p>	<p>The Administration to take action as per paragraph 5 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
011617 – 015044	Chairman Mr Dennis KWOK Mr Kenneth LEUNG Dr Junius HO Mr CHAN Chun-ying Mr James TO Administration	<p>Mr TO declared that he was a member of LSHK.</p> <p><u>Approach in applying statutory customer due diligence and record-keeping requirements to designated non-financial businesses and professions</u></p> <p>Mr KWOK's views and enquiries as follows:</p> <p>(a) the Administration should not apply the same set of CDD and record-keeping requirements to the four sectors of DNFBPs in a broad-brush manner, and should minimize the compliance costs of parties affected by the AMLO Bill;</p> <p>(b) LSHK had issued Practice Direction P ("PDP") setting out comprehensive requirements relating to AML/CTF matters for all law firms, solicitors and foreign lawyers practicing in Hong Kong. Certain requirements in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") were irrelevant to the legal professionals. The Administration should allow LSHK to update its PDP having regard to the relevant requirements of FATF instead of extending Schedule 2 to AMLO to the legal professionals; and</p> <p>(c) the Administration should provide a comparison between PDP and Schedule 2 to AMLO, and highlight the requirements provided in Schedule 2 to AMLO that were not covered by PDP.</p> <p>Mr TO concurred with Mr KWOK's view that the existing approach adopted in the AMLO Bill might result in imposing non-essential CDD and record-keeping requirements on DNFBPs. He called on the Administration to adopt a risk-based approach in implementing FATF requirements as suggested in LSHK's submission, and address the concern about increased compliance costs for DNFBPs.</p>	<p>The Administration to take action as per paragraph 4 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr LEUNG shared the concern about possible surge in compliance costs. He pointed out that HKICPA had prepared code of ethics to facilitate accountants in carrying out AML/CTF-related CDD and record keeping requirements with reference to the requirements in Schedule 2 to AMLO. He also questioned why the Administration had claimed that the AMLO Bill had only reiterated AML requirements already adopted by lawyers, accountants and real estate agents. He understood that the legal profession had strong views on the Bill.</p> <p>In response to Mr LEUNG's enquiry, HKICPA confirmed that it did not receive strong views from its members on the two Bills.</p> <p>Mr HO's views as follows:</p> <p>(a) some recommended requirements in PDP were mandatory in Schedule 2 to AMLO. The Administration should explain why such requirements must be made mandatory for the legal professionals given that PDP had been operating smoothly; and</p> <p>(b) the Administration should provide information on jurisdictions which had included the CDD and record-keeping requirements on DNFBPs into their statutes and the respective ratings of these jurisdictions in the recent mutual evaluations conducted by FATF.</p> <p>The Government responded as follows:</p> <p>(a) the Government was mindful of the need to strike a proper balance between meeting FATF requirements and minimizing the compliance costs incurred by parties affected by the two Bills;</p> <p>(b) CDD and record-keeping requirements stipulated in Schedule 2 to AMLO had been imposed on financial institutions for some years. Given that LSHK had</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>already put in place a mechanism for subjecting solicitors and foreign lawyers to CDD and record-keeping requirements, it was not envisaged that extending the relevant requirements in Schedule 2 to AMLO to the legal professionals would significantly increase their compliance costs;</p> <p>(c) with due respect to the principle of professional self-regulation, the Government proposed from the outset leveraging on the existing regulatory regimes applicable to legal and accounting professionals and estate agents to enforce Schedule 2 CDD and record-keeping requirements under the AMLO Bill. LSHK, HKICPA and EAA would be entrusted as regulatory bodies under the AMLO Bill to issue sector-specific guidelines and oversee compliance of the relevant professions with AMLO requirements.</p> <p>(d) financial institutions aside, FATF also required its member jurisdictions to impose statutory CDD and record-keeping requirements on DNFBPs and would assess the effectiveness of such regulatory regime in a mutual evaluation;</p> <p>(e) comparable jurisdiction such as Singapore received unfavourable ratings in the mutual evaluation for their DNFBPs regime notwithstanding the presence of guidelines issued by relevant regulatory bodies on CDD and record-keeping requirements. The assessors specifically pointed out that those CDD requirements were only set out in circulars but not in law as required by FATF recommendations. There was concern that if Hong Kong did not impose statutory CDD and record-keeping requirements on DNFBPs, it would be unlikely that Hong Kong could stand up to scrutiny in the upcoming FATF mutual evaluation, and as a consequence Hong Kong would face "enhanced</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>follow-up" action by FATF;</p> <p>(f) other comparable jurisdictions including the United Kingdom and Malaysia had already imposed statutory CDD and record-keeping requirements on their legal professionals; and</p> <p>(g) the major differences between the requirements in PDP and those in Schedule 2 to AMLO were as follows:</p> <p>(i) PDP had set out the general principles and concepts while Schedule 2 to AMLO had specified detailed CDD and record-keeping requirements;</p> <p>(ii) a number of requirements in PDP were only recommended measures, whereas in contrast, all requirements in Schedule 2 to AMLO were mandatory; and</p> <p>(iii) certain matters contained in Schedule 2 to AMLO (e.g. the threshold of defining beneficial ownership) were not covered in PDP.</p> <p>Mr CHAN referred to Hong Kong Institute of Chartered Secretaries' submission, and asked if the Administration had plans to review the licensing regime for TCSPs (e.g. examining the feasibility of introducing professional requirements) in the next phase of the legislative exercise with a view to enhancing professional development of the TCSP sector.</p> <p>The Government reiterated that the licensing regime for TCSPs was introduced for the purpose of enforcing CDD and record-keeping requirements for the industry and not as a professional registration system for individual practitioners. The Government did not plan to enhance professional development of the TCSP sector in the current legislative exercise.</p>	

Time Marker	Speaker	Subject(s)	Action Required
Agenda item II — Any other business			
015045 – 015231	Chairman Mr James TO	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
10 January 2018