

立法會
Legislative Council

LC Paper No. CB(1)635/17-18
(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 fourth meeting on
Tuesday, 28 November 2017, at 10:45 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 Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Elizabeth QUAT, BBS, JP
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon CHAN Chun-ying

Members absent : Hon Dennis KWOK Wing-hang
Hon CHUNG Kwok-pan
Hon Tanya CHAN

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

Ms Nilmini DISSANAYAKE, BBS
Consultant Counsel
Department of Justice

Ms Rayne CHAI
Senior Assistant Law Draftsman
Department of Justice

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

Ms Sharon CHAN
Legislative Assistant (1)4

Action

I Meeting with the Administration

Matters arising from the previous meeting

(LC Paper No. CB(1)282/17-18(01) — List of follow-up actions arising from the discussion at the meeting on 14 November 2017

LC Paper No. CB(1)282/17-18(02) — Administration's response to issues raised at the meeting on 14 November 2017)

Clause-by-clause examination of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017

(LC Paper No. CB(3)735/16-17 — The Bill

Action

- 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)

Other relevant paper

(A) *Papers relating to the 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

Action

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)

(B) Paper relating to the two Bills

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

Discussion

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

Follow-up actions to be taken by the Administration

Hong Kong's situation in implementing the requirements of the Financial Action Task Force

2. The Administration was requested to provide a comparison between the existing sanctions on financial institutions ("FIs") for non-compliance with requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") and the proposed sanctions for non-compliance by designated non-financial businesses and professions ("DNFBPs") under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AMLO Bill").

Action

3. The Administration was requested to set out the anti-money laundering and counter-terrorist financing ("AML/CTF") requirements in the AMLO Bill that went beyond the requirements of the Financial Action Task Force ("FATF"), and explain the rationale of implementing such requirements in Hong Kong.

4. The Administration was requested to provide a comparison between the requirements in Schedule 2 to AMLO and those in the respective AML/CTF guidelines issued by the Law Society of Hong Kong ("LSHK") (i.e. Practice Direction P), the Hong Kong Institute of Certified Public Accountants and the Estate Agents Authority, and highlight the requirements in Schedule 2 to AMLO that were not covered by the guidelines concerned or vice versa.

Other jurisdictions' situations in implementing the requirements of the Financial Action Task Force

5. The Administration was requested to provide information of other jurisdictions in implementing FATF's customer due diligence ("CDD") and record-keeping requirements on DNFBPs, including through legislative means (e.g. the United Kingdom), and non-legislative means (e.g. Singapore).

6. According to the Administration, Singapore had received adverse ratings in the recent mutual evaluation by FATF for their DNFBP regime as Singapore had implemented the CDD and record-keeping requirements on DNFBPs through the issuance of guidelines. The Administration was requested to provide the relevant extract of FATF's mutual evaluation report on Singapore.

Issues relating to the implementation of requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017

7. The Administration was requested to address a member's concern that while under the AMLO Bill FIs would be allowed to rely on legal professionals, accounting professionals, licensed trust or company service providers ("TCSPs") and other FIs (including a foreign FI in the same parent group) as intermediaries to carry out the CDD measures, local legal professionals were not allowed to rely on qualified legal professionals of overseas jurisdictions to conduct CDD measures on their behalf for their overseas clients.

8. The Administration was requested to explain why Practice Direction P issued by LSHK could not be regarded as an "enforceable means" for implementing the relevant CDD and record keeping requirements under FATF's recommendations.

Action

9. The Administration was requested to clarify whether a person/company had to obtain a TCSP licence in the following scenario:

- (a) The person/company had agreed to act as the trustee/executor of a trust set up by a relative/friend under a will which contained a charging clause by the person/company; and
- (b) If the person/company in the above scenario was required to obtain a TCSP licence, whether the person/company should obtain the licence before taking up the role of trustee and executor.

(Post meeting note: The Administration's written responses were issued to members vide LC Paper No. CB(1)331/17-18(02) on 8 December 2017.)

II Any other business

Date of next meeting

10. The Chairman remarked that the next meeting would be held on 11 December 2017 from 8:30 am to 10:30 am.

(Post-meeting note: On the instruction of the Chairman, the meeting on 11 December 2017 was to be held from 9:00 am to 11:00 am. Members were informed of the meeting arrangement vide LC Paper No. CB(1)302/17-18 on 30 November 2017.)

11. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
27 February 2018

**Proceedings of the fourth 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, 28 November 2017, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Meeting with the Administration			
000606 – 001303	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 14 November 2017 [LC Paper No. CB(1)282/17-18(02)]	
001304 – 002523	Chairman Mr James TO Administration Assistant Legal Adviser 4 ("ALA4")	Mr TO declared that he was a lawyer. His enquiries and views as follows: (a) whether The Law Society of Hong Kong ("LSHK") would be the sole authority to enforce compliance of the legal professionals with the requirements under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") as amended by the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AMLO Bill"); (b) whether the anti-money laundering and counter-terrorist financing ("AML/CTF") requirements in Schedule 2 to AMLO went beyond the minimum requirements of the Financial Action Task Force ("FATF"); (c) why the Administration considered that Practice Direction P ("PDP") issued by LSHK did not have the force of law given that LSHK was empowered under the Legal Practitioners Ordinance (Cap. 159) ("LPO") to (i) issue guidelines; and (ii) take disciplinary actions against non-compliance with such guidelines; (d) whether there were cases where jurisdictions had failed the mutual evaluation of FATF due to the absence of	

Time Marker	Speaker	Subject(s)	Action Required
		<p>statutory customer due diligence ("CDD") and record-keeping requirements on designated non-financial businesses and professions ("DNFBPs") in their respective statutes; and</p> <p>(e) why the statutory CDD and record-keeping requirements for legal professionals had to be enforced through Schedule 2 to AMLO instead of PDP.</p> <p>The Government responded as follows:</p> <p>(a) LSHK, the Hong Kong Institute of Certified Public Accountants ("HKICPA") and the Estate Agents Authority ("EAA") would each be the sole regulatory body to enforce the AMLO requirements for legal professionals, accounting professionals and real estate agents respectively;</p> <p>(b) the AML/CTF requirements in Schedule 2 to AMLO were consistent with the relevant recommendations of FATF;</p> <p>(c) although LSHK could handle complaints against non-compliance with PDP by taking investigations and disciplinary actions, the requirements therein were not provided by way of primary or secondary legislation. For reference, paragraph 11 of PDP expressly stated that it did not have the force of law and should not be interpreted as such; and</p> <p>(d) FATF required its member jurisdictions to set out in law CDD and record-keeping requirements applicable to financial institutions ("FIs") and DNFBPs. For instance, lawyers in Singapore were subject to statutory CDD and record-keeping requirements, whereas estate agents and accountants were only subject to administrative guidelines issued by the respective self-regulatory bodies. Singapore received unfavourable ratings in its recent mutual evaluation for their DNFBP regime. The assessors specifically pointed out that, for estate</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>agents and accountants, the CDD requirements were only set out in circular or code of ethics but not in law as required by the FATF recommendations.</p> <p>ALA4 pointed out that PDP was not a rule made by the Council of LSHK under section 73 of LPO or a piece of subsidiary legislation. Paragraph 2 of the Interpretive Note to Recommendations 22 and 23 of FATF (which covered DNFBPs) stated that "The Interpretive Notes that apply to financial institutions are also relevant to DNFBPs, where applicable. To comply with Recommendations 22 and 23, countries do not need to issue laws or enforceable means that relate exclusively to lawyers, notaries, accountants and the other designated non-financial businesses and professions, so long as these businesses or professions are included in laws or enforceable means covering the underlying activities". The Administration should explain whether PDP could be regarded as an "enforceable means" for implementing the relevant CDD and record keeping requirements recommended by FATF.</p>	
002524 – 004318	Chairman Mr Kenneth LEUNG Administration Mr James TO	<p>Mr LEUNG's enquiries as follows:</p> <p>(a) whether the Administration had conducted a gap analysis between the existing AML/CTF guidelines issued by the regulatory bodies of DNFBPs (i.e. LSHK, HKICPA and EAA) ("regulatory bodies of DNFBPs") and Schedule 2 to AMLO; and</p> <p>(b) whether there would be sanctions on DNFBPs for non-compliance with the AML/CTF requirements included in the guidelines promulgated by the regulatory bodies of DNFBPs which went beyond the requirements set out in Schedule 2 to AMLO.</p> <p>The Government responded as follows:</p> <p>(a) the AML/CTF requirements set out in Schedule 2 to AMLO were in line with those recommended by FATF;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) the regulatory bodies of DNFBPs could issue guidelines to facilitate compliance of the respective professions with the AMLO requirements. The Government would continue to liaise with the regulatory bodies on the drafting of guidelines;</p> <p>(c) DNFBPs would be subject to sanctions for non-compliance with the requirements in Schedule 2 to AMLO. While the guidelines to be issued by the regulatory bodies of DNFBPs could contain good practices that might go beyond the requirements in Schedule 2, it would not be mandatory for DNFBPs to comply with such good practices and breach of the requirements in the guidelines would not constitute a criminal offence. Besides, the regulatory bodies would consult their members when drafting their respective guidelines; and</p> <p>(d) the self-regulatory regimes of the legal professionals, accounting professionals and estate agents had put in place respective appeal mechanisms. If these professionals considered that they were subject to sanctions for non-compliance with the AML/CTF requirements beyond those stipulated in Schedule 2 to AMLO, they could appeal to the regulatory bodies concerned.</p>	
004319 – 012441	<p>Chairman Mr James TO Mr Kenneth LEUNG Mr CHAN Chun-ying ALA4 Administration</p>	<p><u>Approach in applying statutory customer due diligence and record-keeping requirements to the designated non-financial businesses and professions</u></p> <p>Mr TO's enquiries and views as follows:</p> <p>(a) the reasons for setting six years as the record-keeping requirement for DNFBPs under the AMLO Bill, which was beyond the requirement of at least five years recommended by FATF; and</p> <p>(b) the Administration should, as in the case of FIs, adopt a risk-based approach ("RBA") in applying the AML/CTF requirements to</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>DNFBPs, and should therefore make reference to PDP in allowing the legal professionals to vary the record keeping period within a range of three to 15 years.</p> <p>The Government responded as follows:</p> <p>(a) the six-year requirement now applicable to FIs under AMLO was imposed having regard to FATF recommendations, similar requirements in other legislations and the outcome of consultation in 2009. During the stakeholder consultation for the AMLO Bill, there was general support for extension of the six-year record-keeping requirement to DNFBPs. Balancing all views and with RBA in mind, it was appropriate to maintain the original proposal of applying a six-year requirement to DNFBPs, in line with that observed by FIs under AMLO; and</p> <p>(b) the record-keeping requirements under the Inland Revenue Ordinance (Cap. 112) and the Companies Ordinance (Cap. 622) were seven and ten years respectively. The proposed six-year record-keeping requirement for DNFBPs was not unreasonable.</p> <p>At Mr TO's request, the Government was required to set out the AML/CTF requirements in the AMLO Bill that went beyond the requirements of FATF, and explain the rationale of implementing such requirements in Hong Kong.</p> <p>Mr TO's views and enquiries as follows:</p> <p>(a) whether the Administration had considered the option of providing statutory backing to PDP by introducing amendments to LPO to empower LSHK to enforce compliance by the legal professionals with PDP; and</p> <p>(b) the Administration should discuss with LSHK on the option in (a) if it did not breach FATF's requirement.</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr LEUNG's enquiries as follows:</p> <p>(a) whether the Administration had examined and discussed with the regulatory bodies of DNFBPs on the alternative of amending LPO, the Professional Accountants Ordinance (Cap. 50) and the Estate Agents Ordinance (Cap. 511) in order to implement FATF's AML/CTF requirements on the respective professions; and</p> <p>(b) whether the regulatory bodies of DNFBPs supported the approach of the AMLO Bill in enforcing FATF's relevant requirements.</p> <p>The Government responded as follows:</p> <p>(a) the Government had considered various legislative means (including the option proposed by Mr James TO) to meet FATF's requirements, and the current legislative proposal (i.e. extending CDD and record-keeping requirements in Schedule 2 to AMLO to cover DNFBPs) was considered the most appropriate. It was necessary to maintain consistency among the regulatory arrangements for DNFBPs;</p> <p>(b) the Government had discussed with LSHK on the enforcement of AML/CTF requirements on the legal professionals and would continue the dialogue in future; and</p> <p>(c) the Government had conducted a stakeholder consultation on the legislative proposal of amending AMLO in the first quarter of 2017 to seek views from the affected sectors. A majority of the respondents indicated support for the overall direction, principles and the broad framework of the legislative proposal.</p> <p><u>Reliance on third parties in conducting customer due diligence measures</u></p> <p>Clause 26(102) of the AMLO Bill sought to remove the sunset clause in section 18(5) of Schedule 2 to AMLO and continued to allow FIs to rely on legal professionals, accounting</p>	<p>The Administration to take action as per paragraph 7 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>professionals, licensed trust or company service providers ("TCSPs") as well as other FIs (including a foreign FI in the same parent group) as intermediaries in carrying out CDD measures. However, under AMLO Bill local legal professionals would not be allowed to rely on qualified legal professionals of overseas jurisdictions to conduct CDD measures on their behalf for their overseas clients. At Mr TO's request, the Government was required to explain why the arrangements for FIs and legal professionals were different.</p> <p>The Administration advised that :</p> <p>(a) FATF had recommended that member jurisdictions should put in place effective mechanisms ensuring the proper implementation of CDD measures; and</p> <p>(b) when AMLO was enacted in 2012, it contained the sunset clause for consideration that DNFBPs were not subject to AMLO requirements then. The clause was proposed to be removed under the AMLO Bill as legal professionals, accounting professionals and TCSP licensees would now be subject to statutory CDD and record-keeping requirements.</p> <p>ALA4 noted that appropriate amendments to the AMLO Bill and/or section 18 of Schedule 2 to AMLO would be required in order to enable local legal professionals to rely on their overseas counterparts to conduct CDD on their behalf.</p> <p>Mr CHAN remarked that staff members of FIs regardless of their ranks and experience were subject to the same penalties. At Mr CHAN's request, the Government was required to provide a comparison between the existing sanctions on FIs for non-compliance with requirements under AMLO and the proposed sanctions for non-compliance by DNFBPs under the AMLO Bill.</p>	<p>The Administration to take action as per paragraph 2 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
012442 – 013152	Chairman Mr James TO Administration	In response to Mr TO's enquiries, the Government confirmed that (a) legal professionals had to terminate business relationship with their clients if they could not carry out CDD measures on them as required; and (b) the threshold of defining beneficial ownership at "more than 25%" was considered appropriate having regard to the latest FATF requirement and the prevailing practice of other jurisdictions. The Government also advised that while all requirements in Schedule 2 to AMLO were mandatory, a number of requirements in PDP were only recommended measures.	
013153 – 013747	Chairman Dr Junius HO Mr James TO Administration	<p>Dr HO remarked that LSHK was a self-regulatory body and stressed the need to respect the guidelines issued by the regulatory bodies of DNFBPs. He asked if PDP might become redundant after the enactment of the AMLO Bill.</p> <p>The Government responded that Schedule 2 to AMLO followed closely FATF recommendations in setting out the statutory CDD and record-keeping requirements. LSHK, HKICPA, EAA and the Registrar of Companies could issue guidelines in future to facilitate compliance by respective DNFBPs. It was not envisaged that the guidelines concerned would deviate materially from the requirements in Schedule 2 to AMLO.</p> <p>At the request of Dr HO and Mr TO, the Government was required to provide a comparison between the requirements in Schedule 2 to AMLO and those of the respective AML/CTF guidelines issued by LSHK (i.e. PDP), HKICPA and EAA, and highlight the requirements in Schedule 2 to AMLO that were not covered by the guidelines concerned or vice versa.</p>	The Administration to take action as per paragraph 4 of the minutes
013748 – 014125	Chairman Mr Holden CHOW Administration ALA4	Mr CHOW suggested that the Administration should provide information of other jurisdictions in implementing FATF's CDD and record-keeping requirements on DNFBPs, including through legislative means (e.g. the	The Administration to take action as per paragraph 5 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>United Kingdom), and non-legislative means (e.g. Singapore).</p> <p>ALA4 referred to the Government's remark that Singapore had received adverse ratings in the recent mutual evaluation by FATF because it had implemented the CDD and record-keeping requirements on certain DNFBPs through the issuance of guidelines rather than legislation. At his suggestion, the Government undertook to:</p> <ul style="list-style-type: none"> (a) provide the relevant extract of FATF's mutual evaluation report on Singapore; and (b) explain why PDP issued by LSHK could not be regarded as an "enforceable means" for implementing the relevant CDD and record keeping requirements under FATF's recommendations. 	<p>The Administration to take action as per paragraphs 6 and 8 of the minutes</p>
<p>014126 – 014800</p>	<p>Chairman Mr James TO Administration</p>	<p>In response to Mr TO's enquiry, the Government advised that at present there was no statutory regulatory regime to regulate or oversee the business of TCSPs or assess their suitability for carrying on a trust or company service business. A licensing regime for TCSPs was thus introduced under the AMLO Bill to enforce the proposed statutory CDD and record-keeping requirements applicable to TCSPs. It should be noted that money service operators were already subject to licensing and AML/CTF requirements under Part 5 of AMLO on which the proposed licensing regime for TCSPs (new Part 5A) was modelled.</p> <p>The Government was requested to clarify whether a person/company had to obtain a TCSP licence in the following scenario:</p> <ul style="list-style-type: none"> (a) the person/company had agreed to act as the trustee/executor of a trust set up by a relative/friend under a will which contained a charging clause by the person/company; and (b) if the person/company in the above scenario was required to obtain a TCSP licence, whether the person/company should obtain 	<p>The Administration to take action as per paragraph 9 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		the licence before taking up the role of trustee and executor.	
Agenda item II — Any other business			
014801 – 014906	Chairman Mr James TO	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
27 February 2018