

**立法會**  
**Legislative Council**

LC Paper No. CB(1)636/17-18  
(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 fifth meeting on  
Monday, 11 December 2017, at 9:00 am  
in Conference Room 2B 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  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying

**Members absent** : Dr Hon Elizabeth QUAT, BBS, JP  
Hon CHUNG Kwok-pan  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
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 Ivan WAN  
Senior Manager, 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 :** Mr Bonny LOO  
Assistant Legal Adviser 4

Mr Hugo CHIU  
Senior Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

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**I Confirmation of minutes**

(LC Paper No. CB(1)296/17-18 — Minutes of the meeting on  
10 October 2017)

The minutes of the meeting held on 10 October 2017 were confirmed.

**II Meeting with the Administration**

Matters arising from the previous meeting

(LC Paper No. CB(1)331/17-18(01) — List of follow-up actions  
arising from the discussion at  
the meeting on 28 November  
2017

LC Paper No. CB(1)331/17-18(02) — Administration's response to  
issues raised at the meeting on  
28 November 2017)

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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
- 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

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- 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)

*(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

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

Follow-up actions to be taken by the Administration

*Approach in applying statutory customer due diligence and record-keeping requirements to the legal professionals*

3. Under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AMLO Bill"), The Law Society of Hong Kong ("LSHK") was entrusted with statutory supervisory oversight to ensure compliance by legal professionals with the statutory customer due diligence ("CDD") and record-keeping requirements in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO"). According to the Administration, LSHK would have the discretion to promulgate guidelines to

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provide guidance for the legal professionals in implementing the statutory CDD and record-keeping requirements taking into account any practice direction (including Practice Direction P) it had issued. The Administration was requested to consider members' suggestion to set out the above arrangements in the AMLO Bill clearly by introducing relevant Committee Stage amendments if necessary.

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

4. The Administration was requested to provide a comparison of the requirements in Schedule 2 to AMLO with those in the respective draft anti-money laundering and counter-terrorist financing guidelines to be issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and the Estate Agents Authority ("EAA"), and highlight the requirements in Schedule 2 to AMLO that were not covered by the draft guidelines concerned or vice versa.

5. The Administration was requested to consider a member's suggestion of reducing the record-keeping requirement in AMLO from six years to five years so as to align with the corresponding requirement of the Financial Action Task Force.

6. The Administration was requested to provide for members' reference the draft guidelines prepared by the Registrar of Companies for trust or company service providers ("TCSPs"), including (a) explanation on when persons/companies providing trust or company service in Hong Kong were required to obtain licences; and (b) guidance for licensed TCSPs in implementing the statutory CDD and record-keeping requirements.

7. The Administration was requested to further elaborate on paragraph 8 of its response paper (LC Paper No. CB(1)331/17-18(02)) on the licensing regime for TCSPs, including (a) providing examples to illustrate the circumstances when a person acting as the trustee for a trust or a trust contained in a will would be regarded as providing the services "by way of business", thus requiring a TCSP licence; and (b) clarifying that one-off service provided by a person and which did not involve commercial gain for a trust set up by a friend/under a family arrangement would not be caught by the licensing regime.

8. The Administration was requested to consider members' suggestion of allowing designated non-financial businesses and professions ("DNFBPs"), particularly estate agents and TCSPs, to rely on other qualified DNFBPs as

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intermediaries to conduct CDD on their behalf. It was noted that similar arrangements had been incorporated in the regulatory regimes on DNFBPs of other jurisdictions.

*Immunity for regulatory bodies of designated non-financial businesses and professions*

9. Under the amended section 4(1A) of AMLO, the regulatory bodies of DNFBPs (i.e. LSHK, HKICPA and EAA) would be given immunity from civil liability in respect of the performance of statutory functions under AMLO. The Administration was requested to consider a member's suggestion of establishing a mechanism for DNFBPs to claim losses arising from the mistakes of the regulatory bodies making reference to the relevant arrangements set out in the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

*(Post meeting note: The Administration's written responses were issued to members vide LC Paper No. CB(1)375/17-18(02) on 20 December 2017.)*

**III Any other business**

Date of next meeting

10. The Chairman reminded members that the next meeting would be held on 21 December 2017 at 8:30 am.

11. There being no other business, the meeting ended at 11:00 am.

Council Business Division 1  
Legislative Council Secretariat  
27 February 2018

**Proceedings of the fifth 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, 11 December 2017, at 9:00 am  
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
<b>Agenda item I — Confirmation of minutes</b>			
000635 – 000811	Chairman	Confirmation of minutes [LC Paper No. CB(1)296/17-18]	
<b>Agenda item II — Meeting with the Administration</b>			
000812 – 001307	Chairman Administration Mr James TO	Briefing by the Administration on its response to issues raised at the meeting on 28 November 2017 ("the response paper") [LC Paper No. CB(1)331/17-18(02)]	
001308 – 004452	Chairman Mr James TO Mr Dennis KWOK Administration	Under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("AMLO Bill"), The Law Society of Hong Kong ("LSHK") was entrusted with statutory supervisory oversight to ensure compliance by legal professionals with the statutory customer due diligence ("CDD") and record-keeping requirements in Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO"). According to the Administration, LSHK would have the discretion to promulgate guidelines to provide guidance for legal professionals in implementing the statutory CDD and record-keeping requirements taking into account any practice direction (including Practice Direction P) it had issued. At the request of Mr KWOK and Mr TO, the Administration was required to consider their suggestions to set out the above arrangements in the AMLO Bill clearly by introducing relevant Committee Stage amendments if necessary.	The Administration to take action as per paragraph 3 of the minutes



Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr TO's views and enquiries as follows:</p> <ul style="list-style-type: none"> <li>(a) the Administration's involvement in the development of the draft anti-money laundering and counter-terrorist financing ("AML/CTF") guidelines to be issued by the respective regulatory bodies of designated non-financial businesses and professions ("DNFBPs") (i.e. LSHK, the Hong Kong Institute of Certified Public Accountants ("HKICPA") and the Estate Agents Authority ("EAA")) ("regulatory bodies of DNFBPs"), including whether the Administration would provide advice to the regulatory bodies on the details to be included in the guidelines;</li> <li>(b) whether there would be criminal sanctions on DNFBPs for non-compliances with the AML/CTF requirements;</li> <li>(c) whether requirements stipulated in Schedule 2 to AMLO were consistent with the corresponding requirements of the Financial Action Task Force ("FATF");</li> <li>(d) the Administration's follow-up action if the guidelines issued by the regulatory bodies of DNFBPs were found to be inconsistent with the AML/CTF requirements of FATF and/or the requirements set out in Schedule 2 to AMLO; and</li> <li>(e) the Administration should consider reducing the record-keeping requirement in AMLO from six years to five years so as to align with the corresponding requirement of FATF (i.e. not less than five years).</li> </ul> <p>The Government responded as follows:</p> <ul style="list-style-type: none"> <li>(a) the regulatory bodies of DNFBPs would be empowered under the AMLO Bill as the sole authorities to promulgate guidelines in relation to the operation of the requirements in Schedule 2 to AMLO and to ensure compliance by the respective professions with the requirements. The Government</li> </ul>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>would not interfere with the autonomy of the regulatory bodies in this regard, or promulgate any separate AML/CTF guidelines for legal professionals, accounting professionals and estate agents;</p> <p>(b) the AMLO Bill had adopted a risk-based approach and would not impose criminal sanctions on DNFBPs for non-compliances with the AML/CTF requirements under AMLO taking into account the lesser risks concerning DNFBPs when compared with financial institutions ("FIs");</p> <p>(c) the guidelines to be promulgated by the regulatory bodies of DNFBPs had to be in line with the AML/CTF requirements set out in Schedule 2 to AMLO which provided the legal basis for the statutory obligations. It was envisaged that the regulatory bodies would follow this principle in drafting their respective guidelines;</p> <p>(d) the Government followed closely FATF recommendations in drafting the AMLO Bill; and</p> <p>(e) the Government had consulted stakeholders on the proposed six-year record-keeping requirement for DNFBPs and obtained general support. Given that the existing record-keeping requirement applicable to FIs in AMLO had been in force for some years, the Government did not consider it necessary to reduce the requirement from six to five years at the moment lest this might cause confusion to FIs.</p> <p>In response to the Chairman's enquiries, the Government confirmed that LSHK, HKICPA and EAA (instead of the Government) would be entrusted under the AMLO Bill to enforce the statutory CDD and record-keeping requirements under AMLO for their respective professions. Non-compliance with guidelines issued by the regulatory bodies, while not a criminal offence under AMLO, would be</p>	<p>The Administration to take action as per paragraph 5 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>handled in accordance with the prevailing mechanisms under the relevant regulatory Ordinances.</p>	
004453 – 005234	<p>Chairman Mr Christopher CHEUNG Administration</p>	<p>Mr CHEUNG's views and enquiries as follows:</p> <ul style="list-style-type: none"> <li>(a) there should be clearer guidelines on how FIs should carry out CDD measures;</li> <li>(b) FIs had encountered difficulties in tracing the source of fund in transactions involving online transfer, which was becoming more common; and</li> <li>(c) whether FIs had to report their transactions with money service operators, which mainly involved cash transactions.</li> </ul> <p>The Government responded as follows:</p> <ul style="list-style-type: none"> <li>(a) the existing AML/CTF regulatory regime for FIs had been in force for some years. Relevant regulators including the Hong Kong Monetary Authority ("HKMA"), the Securities and Futures Commission and the Insurance Authority had issued guidelines on the implementation of requirements set out in Schedule 2 to AMLO. As observed, the regulatory regime had been operating smoothly;</li> <li>(b) the main objective of conducting CDD was to "know the customer" that FIs were dealing with. In general, FIs were required to record the basic information of their clients, and take enhanced CDD measures for higher-risk transactions, including if they noticed complex and unusual changes in the transaction patterns of their clients;</li> <li>(c) FIs (including securities firms) were required to file suspicious transaction reports under various Ordinances but not to investigate any suspicious transaction which was the responsibility of law enforcement agencies. For a transaction</li> </ul>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>involving online transfer, the bank concerned would need to keep the transfer record and the Hong Kong Police Force would request information from the bank during the investigation process in the case of suspected money laundering/terrorist financing activities.</p>	
005235 – 005956	Chairman Mr Jeffrey LAM Administration	<p>Mr LAM's views and enquiries as follows:</p> <p>(a) some banks had been taking overly stringent CDD measures (like seeking unnecessary information from their clients), which had caused great inconvenience to the public and the business sector; and</p> <p>(b) the Administration and HKMA should step up their efforts in tackling the issue, including issuing clearer guidelines to banks on how they should carry out CDD measures.</p> <p>Sharing Mr LAM's concern, the Chairman pointed out that some banks also took overly stringent CDD measures on politically exposed persons.</p> <p>The Government responded that it was inherent in AMLO that FIs should use a risk-based approach and take reasonable measures in conducting CDD. HKMA had issued circulars to banks clarifying its stance that banks should refrain from adopting a de-risking approach that could result in financial exclusion. HKMA would continue to liaise with the banking industry on the matter.</p>	
005957 – 010515	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN's enquiries as follows:</p> <p>(a) whether the Companies Registry ("CR") had the expertise and relevant experience in administering the proposed licensing regime for trust or company service providers ("TCSPs"); and</p> <p>(b) if the Administration had any plan to establish a regulatory body for the TCSP</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>sector in the long-run so as to enhance the professional development of TCSPs.</p> <p>The Government responded as follows:</p> <p>(a) CR had been making preparation for the proposed TCSP licensing regime including drafting the relevant guidelines. CR had also established an inspection team for the implementation of various requirements of the Companies Ordinance (Cap. 622). CR had been liaising with the TCSP sector and relevant Government departments on the matter; and</p> <p>(b) the Government would listen to views and continue the dialogue with the relevant stakeholders on the long-term professional development of the TCSP sector.</p>	
010516 – 011006	Chairman Mr Holden CHOW Administration	<p>Mr CHOW's views and enquiries as follows:</p> <p>(a) some banks took overly stringent CDD measures in the absence of sanctions on banks; and</p> <p>(b) measures to be taken by the Administration to prevent DNFBPs from taking overly stringent CDD measures.</p> <p>The Government responded that DNFBPs would be encouraged to adopt CDD measures commensurate with the risks of the respective sectors in accordance with the risk-based approach. It was believed that the regulatory bodies of DNFBPs would exercise prudence in promulgating sector-specific guidelines.</p>	
011007 – 014055	Chairman Mr James TO Mr Kenneth LEUNG Mr Holden CHOW Administration	<p>Mr TO's views as follows:</p> <p>(a) the Administration should provide for members' reference the draft guidelines prepared by CR for TCSPs, including (i) explanation on when persons/companies providing trust or company services in Hong Kong were required to obtain licences; and (ii) guidance for licensed</p>	The Administration to take action as per paragraphs 6 and 7 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>TCSPs in implementing the statutory CDD and record-keeping requirements; and</p> <p>(b) the Administration should further elaborate on paragraph 8 of the response paper on the licensing regime for TCSPs, including (i) providing examples to illustrate the circumstances when a person acting as the trustee for a trust or a trust contained in a will would be regarded as providing the services "by way of business", thus requiring a TCSP licence; and (ii) clarifying that one-off service provided by a person and which did not involve commercial gain for a trust set up by a friend/under a family arrangement would not be caught by the licensing regime.</p> <p>Mr LEUNG's views and enquiries as follows:</p> <p>(a) the Administration might examine how the issue of "carrying on business" was addressed in other legislation; and</p> <p>(b) when CR would conduct inspections on TCSPs.</p> <p>Mr CHOW agreed that there should be clear explanation regarding when a person/company agreeing to act as the trustee/executor of a will should obtain a TCSP licence. Otherwise, people might be discouraged from acting as the trustee/executor of a will.</p> <p>The Government responded as follows:</p> <p>(a) in general, an entity had to apply for a TCSP licence if it provided trust or company service "by way of business" in Hong Kong. There was relevant case laws on what constituted carrying on an activity "by way of business";</p> <p>(b) in examining whether a TCSP licence was necessary, CR would determine, among other things, whether the fee received by the person/company was a gift or remuneration. Generally, a TCSP licence</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>would only be necessary for the latter. However, all the facts of the case would need to be taken into account in deciding the issue; and</p> <p>(c) CR would conduct routine inspections on TCSPs and upon receipt of complaints.</p> <p>Mr TO suggested that the Administration should provide a comparison of the requirements in Schedule 2 to AMLO with those in the respective draft AML/CTF guidelines to be issued by HKICPA and EAA, and highlight the requirements in Schedule 2 to AMLO that were not covered by the draft guidelines concerned or vice versa.</p>	<p>The Administration to take action as per paragraph 4 of the minutes</p>
<p>014056 – 015225</p>	<p>Chairman Assistant Legal Adviser 4 ("ALA4") Administration Mr James TO Mr Holden CHOW</p>	<p>ALA4 pointed out that:</p> <p>(a) the record-keeping requirement in the relevant subsidiary legislation of the United Kingdom ("the UK") (for DNFBPs) (i.e. regulation 40 of the <i>Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017</i>) and Singapore (for legal professionals) (i.e. rule 19 of the <i>Legal Profession (Prevention of Money Laundering and Financing of Terrorism) Rules 2015</i>) was at least five years; and</p> <p>(b) the aforesaid subsidiary legislation of the UK (regulation 39) and Singapore (rule 17) also allowed DNFBPs to rely on third parties to conduct CDD under certain circumstances.</p> <p>Mr TO suggested that the Administration should consider allowing DNFBPs, particularly real estate agents and TCSPs, to rely on other qualified DNFBPs as intermediaries to conduct CDD measures on their behalf.</p> <p>The Chairman and Mr CHOW shared Mr TO's view.</p>	<p>The Administration to take action as per paragraph 8 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Government responded as follows:</p> <p>(a) FATF would conduct the fourth round mutual evaluation on the UK in 2018 and assess whether its legislative framework would meet the international AML/CTF standards;</p> <p>(b) while Singapore was put under an "enhanced follow-up" process after completion of its recent mutual evaluation, the FATF did not produce an exhaustive list setting out the deficiencies of Singapore's AML/CTF regulatory regime;</p> <p>(c) the Government would review the need of introducing legislative amendments to allow DNFBPs to rely on third parties to carry out CDD measures; and</p> <p>(d) under AMLO, while FIs might appoint third parties to carry out CDD measures on their behalf, they would remain liable for a failure to carry out those CDD measures.</p>	
<p><b>Clause-by-clause examination of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017</b></p>			
<p>015226 – 020342</p>	<p>Chairman Administration Mr Holden CHOW ALA4 Mr James TO</p>	<p><b>Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017</b></p> <p><b>Part 1</b></p> <p><b>Preliminary</b></p> <p><u>Clause 1 – Short title and commencement</u></p> <p><u>Clause 2 – Enactments amended</u></p> <p><b>Part 2</b></p> <p><b>Amendments to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)</b></p> <p><u>Clause 3 – Long title amended</u></p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 4 – Section 1 amended (short title)</u></p> <p>In response to Mr TO's enquiry, the Government responded that it had no intention at the moment to expand the scope of DNFBPs to include other non-financial businesses such as jewelers or auctioneers.</p> <p><u>Clause 5 – Section 4 amended (immunity)</u></p> <p>In response to Mr CHOW's enquiry, the Government advised that the term "regulatory body" covered LSHK, HKICPA and EAA.</p> <p>ALA4 pointed out that the term "regulatory body" was defined in the amended Schedule 1 to AMLO (see clause 25(8) of the AMLO Bill).</p> <p>Under the amended section 4(1A) of AMLO, the regulatory bodies of DNFBPs would be immune from civil liability in respect of the performance of statutory functions under AMLO. At Mr TO's suggestion, the Government was required to consider establishing a mechanism for DNFBPs to claim losses arising from the mistakes of the regulatory bodies making reference to the relevant arrangements set out in the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).</p>	<p>The Administration to take action as per paragraph 9 of the minutes</p>
<b>Agenda item III — Any other business</b>			
020343 – 020406	Chairman	Date of next meeting	