

立法會
Legislative Council

LC Paper No. CB(1)818/17-18
(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 sixth meeting on
Thursday, 21 December 2017, at 8:30 am
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 Christopher CHEUNG Wah-fung, SBS, JP
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Hon Holden CHOW Ho-ding
Hon CHAN Chun-ying

Members absent : Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Dr Hon Elizabeth QUAT, BBS, JP
Dr Hon Junius HO Kwan-yiu, 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

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 : Ms Irene POU
Associate 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 : 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 Meeting with the Administration

Matters arising from the previous meeting

(LC Paper No. CB(1)375/17-18(01) — List of follow-up actions arising from the discussion at the meeting on 11 December 2017

LC Paper No. CB(1)375/17-18(02) — Administration's response to issues raised at the meeting on 11 December 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

File Ref: B&M/4/1/41C — Legislative Council Brief

Action

- 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
- 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)

Action

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**).

(At 9:13 am, the Chairman ordered the meeting be suspended for three minutes to enable members of the Bills Committee who were also members of the Bills Committee on Travel Industry Bill to attend the meeting of that Bills Committee which was concurrently holding a meeting in Conference Room 3. The meeting resumed at 9:14 am.)

(At 10:41 am, the Chairman ordered that the meeting be suspended for a break of five minutes. The meeting resumed at 10:46 am.)

Follow-up actions to be taken by the Administration

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

2. The Administration was requested to re-consider a member's suggestion of reducing the record-keeping requirement in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") from six years to five years so as to align with the corresponding requirement of the Financial Action Task Force ("FATF").

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3. The proposed new section 5A(4) of AMLO provided that an AML/CTF requirement that applied to a designated non-financial business or profession ("DNFBP") who was an estate agent only applied when the estate agent was involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client (as defined by section 2(1) of the Estate Agents Ordinance (Cap. 511)). The Administration was requested to clarify whether the section covered a transaction with real estate located outside Hong Kong.

4. The proposed new section 39A of AMLO required a licensed money service provider to display the original of the licence in a conspicuous place at the licensed premises. The Administration was requested to explain the rationale of adding this section, and consider whether licensed trust or company service providers ("TCSPs") should be subject to the same requirement under the proposed licensing regime under the proposed new Part 5A.

Power of authorized persons and investigators under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance

5. Section 9 of AMLO set out the power of authorized persons to enter business premises etc. for routine inspection. The Administration was requested to review the drafting of the proposed new section 9(15)(i) to address members' concern that:

- (a) the section might allow authorized persons to enter the residential premises of a TCSP if the TCSP operated in the form of home-office; and
- (b) the section might not be able to cater for the situation where TCSPs conducted their businesses through mobile operations.

6. According to the Administration, section 12 of AMLO provided for the power of investigators to require production of records or documents from a licensed TCSP, and the proposed section 53ZF related to the application for a Magistrate's warrant to enter the premises of a suspected unlicensed TCSP and seize the records or documents therein. The Administration was requested to consider members' suggestion to require investigators under section 12 to obtain a Magistrate's warrant in discharging their duties under certain scenarios (e.g. when carrying out inspections of non-domestic premises).

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Regulation of trust or company service providers

7. The proposed new section 53B(2) of AMLO provided that the Secretary for Financial Services and the Treasury might by regulation prescribe a class or description of persons that could be exempt from the proposed licensing regime for TCSPs. According to the Administration, the regulation would be subject to the negative vetting procedure of the Legislative Council ("LegCo"). The Administration was requested to explain the rationale of providing section 53B(2), and consider a member's suggestion of deleting the section or subjecting the regulation to positive vetting of LegCo.

8. Under the proposed new section 53I(b)(iii) of AMLO, the Registrar of Companies ("Registrar"), in determining whether a person was a fit and proper person for granting a TCSP licence, must have regard to, among other things, whether the person had a conviction in a place outside Hong Kong for an offence for which it was found that the person had acted fraudulently, corruptly or dishonestly. The Administration was requested to address a member's concern about the extensive scope of section 53I(b)(iii) which might cover relatively minor offences convicted outside Hong Kong.

9. The proposed new section 53J of AMLO provided that the Registrar might, on granting a TCSP licence, impose any condition that the Registrar considered appropriate. The Administration was requested to set out the conditions that might be imposed by the Registrar which were (a) necessary; and (b) optional under FATF recommendations; and consider the need of specifying such conditions in the AMLO Bill.

10. The proposed new section 53Q(1)(b) provided that the Registrar might, in a situation specified in subsection (2), suspend a licensee's licence for a period specified by the Registrar or until the occurrence of an event specified by the Registrar. The Administration was requested to review the drafting to enhance the clarity of the section (e.g. specifying the timeframe of the Registrar's action). The Administration was also requested to review the corresponding section for money service operators (i.e. the existing section 34 of AMLO).

11. Under the proposed new section 53X of AMLO, a TCSP licensee had to notify the Registrar of the cessation of business before the intended date of cessation. The Administration was requested to: (a) explain the policy objective of the provision; (b) consider specifying the required notification period for the TCSP licensee to inform the Registrar of the intended cessation of business; (c) consider whether there should be requirement for the TCSP licensee to inform its clients before it ceased its business, and the relevant

Action

notification period required; (d) whether there should be restrictions on the TCSP licensee's business after it had notified the Registrar of its intended cessation of business; and (e) explain the measures to ensure the compliance of TCSP licensees with the notification requirement and the business restriction requirement (if any).

Transitional arrangements of the proposed licensing regime for trust or company service providers

12. Under the transitional arrangements for TCSPs in the proposed new section 53ZQ of AMLO, a provider carrying on a trust or company service business was deemed to have been granted a licence ("a deemed licensee"), and had to apply for a TCSP licence within 120 days from the commencement of the AMLO Bill if it wished to continue with the business. The Administration had explained that the deemed licence would cease if the application of the deemed licensee was rejected by the Registrar. The Administration was requested to consider a member's suggestion of allowing the deemed licensee to continue carrying on the TCSP business until its appeal against the Registrar's decision (if any) had been determined.

(Post meeting note: The Administration's written responses were issued to members vide LC Paper No. CB(1)413/17-18(02) on 3 January 2018.)

II Any other business

Legislative timetable

13. The Chairman said that if the Bills Committee could complete scrutiny of the two Bills at the next meeting scheduled for 4 January 2018, the Second Reading debate on the Bills would be resumed at the Council meeting of 24 January 2018 at the earliest. He would report the Bills Committee's deliberations to the House Committee on 12 January 2018. If the Bills Committee could not complete scrutiny of the two Bills at the next meeting, an additional meeting would be held on 9 January 2018. If so, the Second Reading debate on the Bills would be resumed at the Council meeting of 31 January 2018. He would report the Bills Committee's deliberations to the House Committee on 19 January 2018.

(Post-meeting note: Members were informed of the meeting arrangements for the meetings on 4 and 9 January 2018 vide LC Paper No. CB(1)391/17-18 issued on 22 December 2017.)

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Date of next meeting

14. The Chairman reminded members that the next meeting would be held on 4 January 2018 at 8:30 am.

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

Council Business Division 1
Legislative Council Secretariat
17 April 2018

**Proceedings of the sixth meeting of the Bills Committee on
Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions)
(Amendment) Bill 2017 and Companies (Amendment) Bill 2017
on Thursday, 21 December 2017, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Meeting with the Administration			
000654 – 001610	Chairman Administration Mr James TO	<p>Briefing by the Administration on its response to issues raised at the meeting on 11 December 2017 [LC Paper No. CB(1)375/17-18(02)]</p> <p>Mr TO reiterated his earlier suggestion that the Administration should reduce the record-keeping requirement in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") from six years to five years so as to align with the corresponding requirement of the Financial Action Task Force ("FATF").</p> <p>In response to Mr TO's enquiry, the Government confirmed that it would introduce amendments to allow designated non-financial businesses and professions ("DNFBPs") to rely on other qualified DNFBPs as intermediaries to carry out customer due diligence ("CDD") measures.</p>	The Administration to take action as per paragraph 2 of the minutes
Clause-by-clause examination of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017			
001611 – 002552	Chairman Mr James TO Administration Assistant Legal Adviser 4 ("ALA4")	<p>Part 2</p> <p>Amendments to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)</p> <p><u>Clause 5 – Section 4 amended (immunity)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr TO's enquiries as follows:</p> <ul style="list-style-type: none">(a) whether there were provisions similar to the proposed new section 4(1A) of AMLO in other legislation;(b) the reasons for not including a mechanism (similar to that set out in the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)) ("UNATMO") for DNFBPs to claim losses arising from the mistakes of the regulatory bodies of DNFBPs; and(c) whether the scope of immunity set out in the proposed new section 4(1A) of AMLO was confined to the promulgation of guidelines by the regulatory bodies of DNFBPs in relation to the operation of anti-money laundering and counter-terrorist financing ("AML/CTF") requirements under AMLO. <p>The Government responded as follows:</p> <ul style="list-style-type: none">(a) the Professional Accountants Ordinance (Cap. 50) and the Estate Agents Ordinance (Cap. 511) ("EAO") contained provisions similar to the proposed new section 4(1A) of AMLO;(b) regulatory authorities including the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority already enjoyed immunity under section 4(1) of AMLO. The same immunity was proposed to be extended to the regulatory bodies of DNFBPs through the proposed new section 4(1A) of AMLO. The immunity would only apply to the promulgation of AML/CTF guidelines by the regulatory bodies; and(c) as an entity mistakenly specified as a terrorist by the relevant authority could	

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		<p>face serious consequences, there were safeguard provisions under UNATMO to protect the interests of entities. No similar safeguard provisions were included in the AMLO Bill as the actions taken by the regulatory bodies of DNFBP on non-compliance with the AML/CTF requirements was not expected to have very significant impact on DNFBPs.</p>	
002553 – 010156	<p>Chairman Administration ALA4 Mr James TO</p>	<p><u>Clause 6 – Section 5 amended (Schedule 2 has effect with respect to financial institutions)</u></p> <p><u>Clause 7 – Section 5A added</u></p> <p>5A. <i>Schedule 2 has effect in relation to DNFBPs</i></p> <p>ALA4 enquired about what would constitute "prepares for ...a client a transaction" ("為客戶擬備交易") in the proposed new section 5A(3) of AMLO if the transaction involved overseas clients or clients referred by other DNFBPs, or involved assets/services outside Hong Kong.</p> <p>Mr TO's views that the Administration should consider imposing less stringent CDD requirements on DNFBPs if they only "prepared for" (rather than "carried out") a transaction for a client, in particular for overseas clients as they involved higher compliance cost with regard to the conduct of CDD measures.</p> <p>The Government responded as follows:</p> <p>(a) the relevant AML/CTF requirements would apply when, by way of business, a DNFBP prepared for or carried out a specified transaction in Hong Kong. An indication of business being conducted was that the DNFBP received fees for the work;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) DNFBPs were required to carry out reasonable CDD measures (like recording basic information of their clients). It was not intended that they would substitute the role of law enforcement agencies to conduct investigations into their clients' background. Regulatory bodies of respective DNFBPs would issue guidelines to assist DNFBPs in complying with the AML/CTF requirements under AMLO.</p> <p>The proposed new section 5A(4) of AMLO provided that an AML/CTF requirement that applied to a DNFBP who was an estate agent only applied when the estate agent was involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client (as defined by section 2(1) of EAO). At the request of Mr TO, the Government was required to clarify whether the section covered a transaction with real estate located outside Hong Kong.</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>
<p>010157 – 011427</p>	<p>Chairman Administration Mr James TO ALA4</p>	<p><u>Clause 8 – Section 7 amended (relevant authority may publish guidelines)</u></p> <p>In response to ALA4's enquiry, the Government advised that it would consider introducing amendments to the Chinese text of the proposed new section 7(5A)(b) of AMLO to change the words "提供指引" to "提供導引" (i.e. "provide guidance") to ensure consistency in the drafting within section 7.</p> <p>Mr TO enquired about why the proposed new section 7(5A) of AMLO only covered legal professionals, and whether there would be inconsistency between the guidelines issued by The Law Society of Hong Kong ("LSHK") under the amended section 7(1) and the proposed new section 7(5A).</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Government responded that the proposed new section 7(5A) was included in the AMLO Bill having regard to LSHK's views that there should be provisions to underline that LSHK, as the sole authority for enforcing the AML/CTF requirements under AMLO for legal professionals, had the absolute discretion to promulgate appropriate guidelines for the operation of AML/CTF requirements set forth in Schedule 2 to AMLO. At the same time, LSHK could have regard to or take into account any practice direction that it had issued (including Practice Direction P ("PDP")) in providing guidance on the statutory CDD and record-keeping requirements. It was not envisaged that LSHK would issue any new guidelines under section 7(1) which might contradict any practice direction it had issued.</p>	
011428 – 015221	<p>Chairman Administration Mr James TO Mr Holden CHOW ALA4</p>	<p><u>Clause 9 – Section 9 amended (power to enter business premises etc. for routine inspection)</u></p> <p>Section 9 of AMLO set out the power of authorized persons to enter business premises etc. for routine inspection. The Government was requested to review the drafting of the proposed new section 9(15)(i) to address members' concerns that:</p> <p>(a) the section might allow authorized persons (e.g. staff of the Companies Registry ("CR")) to enter the residential premises of a trust or company service provider ("TCSP") if the latter operated in the form of home-office; and</p> <p>(b) how the proposed new section could cater for the situation where TCSPs conducted their businesses through mobile operations.</p>	<p>The Administration to take action as per paragraph 5 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr TO's enquiries as follows:</p> <ul style="list-style-type: none"> (a) how CR would conduct inspection on TCSPs, and whether it would issue a code of practice for staff members carrying out the inspection; and (b) when conducting inspection on TCSPs, how CR would protect the legal professional privilege ("LPP") of a law firm if it also operated a trust or company service business in the same premises. <p>The Government responded that:</p> <ul style="list-style-type: none"> (a) the purposes of conducting inspection on TCSPs were to ensure they (i) had obtained TCSP licences; and (ii) had complied with the statutory CDD and record-keeping requirements; (b) the inspection on TCSP licensees would be similar to that of licensed money service operators ("MSOs"). CR would require TCSPs to provide the relevant information, and inspect the business premises of TCSPs if the latter failed to provide the required information. CR would first notify the TCSP licensee in writing about an inspection including the time and scope of the inspection. Only information relating to the TCSP's compliance with the CDD and record-keeping requirements set out in Schedule 2 to AMLO would be subject to CR's inspection; and (c) the protection of LPP was provided in section 81 of AMLO. 	
015222 – 021520	Chairman Administration Mr James TO Mr Holden CHOW ALA4	<u>Clause 10 – Section 10 amended (offences for non-compliance with requirements imposed under section 9)</u>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 11 – Section 11 amended (relevant authorities may appoint investigators)</u></p> <p><u>Clause 12 – Section 12 amended (powers of investigators to require production of records or documents etc.)</u></p> <p><u>Clause 13 – Section 13 amended (offences for non-compliance with requirements imposed under section 12)</u></p> <p>In response to Mr TO's enquiry, the Government advised that it would be a criminal offence for an entity to operate TCSP business without a licence. Non-compliance with the AML/CTF requirements under AMLO by TCSPs would not result in criminal sanctions.</p> <p>According to the Administration, section 12 of AMLO provided for the power of investigators to require production of records or documents from a licensed TCSP, and the proposed section 53ZF related to the application of a Magistrate's warrant to enter the premises of a suspected unlicensed TCSP and seize the records or documents therein. In order to enhance the protection for human rights, the Government was requested to consider members' suggestion to require investigators under section 12 to obtain a Magistrate's warrant in discharging their duties under certain scenarios (e.g. when carrying out inspections of non-domestic premises).</p> <p><u>Clause 14 – Section 24 amended (interpretation of Part 5)</u></p> <p><u>Clause 15 – Section 30 amended (grant of licence)</u></p> <p>In response to Mr TO's enquiry about the reason for lowering the threshold of defining an ultimate owner from the current "not less than 10%" to "more than 25%" under the amended section 24 of AMLO, the</p>	<p>The Administration to take action as per paragraph 6 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Government responded that:</p> <p>(a) the proposed amendment on the definition of "ultimate owner" had taken into account the prevailing FATF standard and international practice. The proposed threshold was also consistent with that to be adopted in the Companies (Amendment) Bill 2017; and</p> <p>(b) while FATF recommendations had not specified a precise percentage figure for the threshold, it was observed that the proposed threshold of "more than 25%" had already been adopted by a number of jurisdictions.</p>	
021521 – 022017	Break		
022018 – 023225	<p>Chairman Administration Mr James TO ALA4</p>	<p><u>Clause 16 – Section 39A added</u></p> <p><i>39A. Licensee's duty to display original of licence</i></p> <p><u>Clause 17 – Section 43 amended (Commissioner may take disciplinary actions)</u></p> <p>The proposed new section 39A of AMLO required a licensed MSO to display the original of the licence in a conspicuous place at the licensed premises. At Mr TO's request, the Government was required to explain the rationale of adding this section, and consider whether TCSPs should be subject to the same requirement under the proposed licensing regime under the proposed new Part 5A of AMLO.</p>	<p>The Administration to take action as per paragraph 4 of the minutes</p>
023226 – 025012	<p>Chairman Administration Mr James TO ALA4 Mr Holden CHOW</p>	<p><u>Clause 18 – Part 5A added</u></p> <p><i>Part 5A — Regulation of Trust or Company Service Providers</i></p> <p><i>Division 1 — Preliminary</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Subdivision 1 — Interpretation and Disapplication of this Part</i></p> <p>53A. <i>Interpretation of Part 5A</i></p> <p>53B. <i>Disapplication</i></p> <p>The proposed new section 53B(2) of AMLO provided that the Secretary for Financial Services and the Treasury might by regulation prescribe a class or description of persons that would be exempt from the proposed licensing regime for TCSPs. According to the Administration, the regulation was subject to negative vetting by the Legislative Council ("LegCo"). Mr TO requested the Administration to explain the rationale of providing section 53B(2), and consider deleting the section or subjecting the regulation made to positive vetting of LegCo.</p> <p>ALA4 pointed out that there was no exemption provision similar to the proposed new section 53B(2) of AMLO in the licensing regime for MSOs under Part 5 of AMLO.</p> <p>The Government advised that the proposed new section 53B(2) of AMLO was added in response to views received during the stakeholder consultation that the Government should be provided with flexibility to amend the scope of parties that could be exempt from the TCSP licensing regime. The Government did not have any plan to exercise the power at present.</p>	<p>The Administration to take action as per paragraph 7 of the minutes</p>
025013 – 032601	<p>Chairman Administration ALA4 Mr James TO Mr CHUNG Kwok-pan Mr Holden CHOW</p>	<p><i>Subdivision 2 — Delegation by Registrar of Companies and Register of Licensees</i></p> <p>53C. <i>Delegation of functions</i></p> <p>53D. <i>Registrar to maintain register of licensees</i></p> <p>53E. <i>Certified copies and their evidential value</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Division 2 — Licensing of Trust or Company Service Providers</i></p> <p><i>Subdivision 1 — Restriction on Carrying on Trust or Company Service Business</i></p> <p><i>53F. Offence of carrying on trust or company service business without licence</i></p> <p><i>Subdivision 2 — Application for, Grant and Renewal of, Licence</i></p> <p><i>53G. Application for and grant of licence</i></p> <p><i>53H. Licence granted only if fit and proper test satisfied</i></p> <p><i>53I. Fit and proper test</i></p> <p><i>53J. Conditions when granting licence</i></p> <p><i>53K. Renewal of licence</i></p> <p><i>53L. Conditions when renewing licence</i></p> <p><i>53M. Amendment of conditions of licence</i></p> <p><i>Subdivision 3 — Form and Validity Period of Licence</i></p> <p><i>53N. Form of licence</i></p> <p><i>53O. Validity period of licence</i></p> <p><i>53P. Cessation of validity when certain events happen</i></p> <p>Under the proposed new section 53I(b)(iii) of AMLO, the Registrar of Companies ("the Registrar"), in determining whether a person was a fit and proper person for granting a TCSP licence, must have regard to, among other things, whether the person had a conviction in a place outside Hong Kong for an offence for which it was found that the person had acted fraudulently, corruptly or</p>	<p>The Administration to take action as per paragraph 8 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>dishonestly. The Government was requested to address Mr TO's concern about the extensive scope of section 53I(b)(iii) which might cover relatively minor offences convicted outside Hong Kong.</p> <p>ALA4 pointed out that a provision similar to the proposed new section 53I of AMLO was present in Part 5 of AMLO (i.e. provisions on the licensing regime for MSOs).</p> <p>The Government advised that it would not be feasible to list all relevant legislation of other jurisdictions in the proposed new section 53I of AMLO. If a person had been convicted in a place outside Hong Kong, the Registrar would consider the nature of the offence concerned. The Registrar would exercise the power prudently.</p> <p>The proposed new section 53J of AMLO provided that the Registrar might, on granting a TCSP licence, impose any condition that the Registrar considered appropriate. Mr TO was concerned that the provision would provide wide power to the Registrar in imposing conditions, and suggested that the Administration should set out the conditions that might be imposed by the Registrar which were (a) necessary; and (b) optional under FATF recommendations, and consider the need of specifying such conditions in the AMLO Bill.</p> <p>The Government responded as follows:</p> <p>(a) the Registrar would exercise the power prudently, and must inform the TCSP licensee through written notice on the conditions to be imposed on the licence. Such notice must specify (i) the reasons for imposing the conditions; and (ii) that the licensee could appeal to the Anti-Money Laundering and Counter-Terrorist Financing Review Tribunal ("the Tribunal") for a review of</p>	<p>The Administration to take action as per paragraph 9 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>the decision; and</p> <p>(b) in general, the Registrar would make reference to FATF recommendations and the licensing regime for MSOs in exercising the power under the proposed new section 53J of AMLO.</p> <p>On ALA4's enquiry regarding the proposed new section 53P of AMLO, the Government advised that if a TCSP licensee was an individual and went bankrupt, the Registrar would take the matter into account when considering the renewal of the licence. If necessary, the Registrar could also revoke or suspend the licence under the proposed new section 53Q of AMLO.</p> <p><i>Subdivision 4 — Revocation or Suspension of Licence</i></p> <p><i>53Q. When licence may be revoked or suspended</i></p> <p><i>53R. Procedure for revoking or suspending licence</i></p> <p><i>Division 3 — Approvals by Registrar</i></p> <p><i>53S. Approval required to become ultimate owner of licensee</i></p> <p><i>53T. Approval required to become partner of licensee</i></p> <p><i>53U. Approval required to become director of licensee</i></p> <p>ALA4 pointed out that it would be a criminal offence to breach the proposed new sections 53S(1), 53T(1) and 53U(1) of AMLO. However, the proposed sections only provided that without the written approval of the Registrar, a person "must not become" an ultimate owner of a licensee, a partner of a licensee that was a partnership, and a director of a licensee that was a</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>corporation. There seemed to be no prohibition against a person acting (or purporting to act) as an ultimate owner, partner or director of a licensee without the prior approval of the Registrar. He enquired if the Administration would review the formulation of "must not become" and consider substituting it by "must not become or act as" making reference to similar provisions in other legislation (including section 8ZZV of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584)).</p> <p>The Chairman and Mr TO were concerned whether the underlying controller or ultimate owner of a licensed TCSP would be subject to regulation under AMLO if he/she was not the holder of a TCSP licence.</p> <p>The Government advised that the Registrar would take the issues raised by the Chairman, Mr TO and ALA4 into account in considering TCSP licence applications.</p> <p>The proposed new section 53Q(1)(b) provided that the Registrar might, in a situation specified in subsection (2), suspend a licensee's licence for a period specified by the Registrar; or until the occurrence of an event specified by the Registrar. Mr CHUNG enquired about the meaning of "until the occurrence of an event specified by the Registrar". He opined that the current formulation of the provision was unclear and invited the Administration to review the provision.</p> <p>The Government responded as follow:</p> <p>(a) in appropriate circumstances, the Registrar might suspend a TCSP licence if the licensee breached certain licensing conditions. The Registrar would require the licensee to take remedial actions as specified before considering whether to resume the suspended</p>	

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		<p>licence. The phrase "occurrence of an event specified by the Registrar" referred to the carrying out of remedial actions by the TCSP licensee; and</p> <p>(b) in drafting the provision, reference had been made to the corresponding provision for MSOs (i.e. section 34 of AMLO).</p> <p>At the request of members, the Government was required to review the drafting to enhance the clarity of the proposed new section 53Q(1)(b)(ii) of AMLO (e.g. specifying the timeframe of the Registrar's action). The Government was also required to review the existing section 34 of AMLO.</p>	<p>The Administration to take action as per paragraph 10 of the minutes</p>
<p>032602 – 035939</p>	<p>Chairman Administration ALA4 Mr James TO Mr Holden CHOW Mr CHUNG Kwok-pan</p>	<p><i>53V. How to apply for approval</i></p> <p><i>Division 4 — Notifications to Registrar</i></p> <p><i>53W. Notification of changes in particulars</i></p> <p><i>53X. Notification of cessation of business</i></p> <p><i>53Y. How to give notifications</i></p> <p>In response to Mr TO's enquiry, the Government advised that a TCSP licensee was required under the proposed new section 53W(1) of AMLO to notify the Registrar of all changes in its particulars within one month beginning on the date on which the changes took place.</p> <p><u>Transitional arrangements of the proposed licensing regime for trust or company service providers</u></p> <p>Under the transitional arrangements for TCSPs in the proposed new section 53ZQ of AMLO, a provider carrying on trust or company service and holding a valid business registration certificate was deemed</p>	

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		<p>to have been granted a licence ("a deemed licensee"), and was required to apply for a TCSP licence within 120 days from the commencement of the AMLO Bill if it wished to continue with the business. Mr TO was concerned that the deemed licence could cease if the application was rejected by the Registrar. The Government was required to consider Mr TO's suggestion that in order to minimize disturbance to the industry, the deemed licensee should be allowed to continue carrying on its trust or company service business until its appeal (if any) against the Registrar's decision to reject granting the licence had been determined by the Tribunal.</p> <p>The Chairman and Mr TO asked if a deemed licensee of which the application for a TCSP licence was rejected would be allowed to operate for a certain period so that it could have time to wind up its business.</p> <p>The Government advised that the TCSP concerned could continue to operate for a certain period for the purpose of winding up its business. However, it would be a criminal offence for the TCSP to continue providing trust or company service to existing clients or solicit new clients.</p> <p><u>Issues relating to cessation of business of trust or company service providers</u></p> <p>Under the proposed new section 53X of AMLO, a TCSP licensee planning to cease business had to notify the Registrar of the intention before the intended date of cessation. The Registrar would cancel the licence with effect from the date of cessation.</p> <p>Mr CHOW enquired whether there would be provisions specifying the notification period for a TCSP licensee to inform the Registrar of its intended cessation of business, and how CR could ensure that the licensee</p>	<p>The Administration to take action as per paragraph 12 of the minutes</p>

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		<p>would inform its clients of the intention to cease business within an appropriate time.</p> <p>The Chairman pointed out that when a TCSP licensee encountered difficulties in its business, the licensee would try all means to save the business. If the licensee was required to inform the Registrar of the intension of cessation of business too early, this might jeopardize the efforts in saving the company. He also enquired about how CR would ensure that a TCSP licensee would not provide service to clients after cancellation of the licence.</p> <p>Mr TO's views that it would be more important to require a licensed TCSP to inform its clients (rather than the Registrar) of its intention to cease business. CR should consider whether such a requirement should be included in the guidelines for TCSPs.</p> <p>Mr CHUNG considered it necessary to allow a licensed TCSP to settle business with its existing clients after cancellation of the licence by the Registrar.</p> <p>The Government responded as follow:</p> <p>(a) the purpose of the proposed new section 53X of AMLO was to facilitate administration of the TCSP licensing regime and updating of the Register of TCSPs, which would be accessible to the public. For protection of public interest, it was important for the Register on TCSPs to be kept updated. In order to minimize compliance cost of the industry, the proposed new section 53X(1) had not specified any time limit;</p> <p>(b) while a TCSP was allowed to operate for a certain period after cancellation of its licence so that it could wind up its business, it would be a criminal offence for such TCSP to continue providing</p>	

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		<p>trust and company services. CR would take enforcement actions against any such TCSPs.</p> <p>At the request of members, the Government was required to:</p> <p>(a) explain the policy objective of the proposed new section 53X of AMLO;</p> <p>(b) consider specifying the required notification period for a TCSP licensee to inform the Registrar of the intended cessation of business;</p> <p>(c) consider whether there should be requirement for the TCSP licensee to inform its clients before it ceased its business, and the relevant notification period required;</p> <p>(d) whether there should be restrictions on the TCSP licensee's business after it had notified the Registrar of its intended cessation of business; and</p> <p>(e) explain the measures to ensure the compliance of TCSP licensees with the notification requirement and the business restriction requirement (if any).</p>	<p>The Administration to take action as per paragraph 11 of the minutes</p>
Agenda item II — Any other business			
035940 – 040428	Chairman Mr James TO Clerk	Legislative timetable and meeting arrangements	