

**立法會**  
**Legislative Council**

LC Paper No. CB(1)820/17-18  
(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 eighth meeting on  
Tuesday, 9 January 2018, at 8:30 am  
in Conference Room 2 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  
Dr Hon Elizabeth QUAT, BBS, JP  
Hon CHUNG Kwok-pan  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying

**Members absent** : Hon Charles Peter MOK, JP  
Hon Kenneth LEUNG  
Hon Dennis KWOK Wing-hang  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHU Hoi-dick  
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)

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

**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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Action

**I Meeting with the Administration**

Matters arising from the previous meeting

(LC Paper No. CB(1)442/17-18(01) — Administration's response to issues raised at the meeting on 4 January 2018)

Draft amendments proposed by the Administration

(LC Paper No. CB(1)442/17-18(02) — Draft Committee Stage amendments proposed by the Administration)

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)

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)

Action

*(B) Papers relating to 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))

*(C) Paper relating to the two Bills*

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

Action

Discussion

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

**II Any other business**

Legislative timetable

2. The Chairman concluded that the Bills Committee had completed the scrutiny of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 and the Companies (Amendment) Bill 2017.

3. Members noted that the Administration planned to resume the Second Reading debate on the two Bills at the Council meeting of 24 January 2018. The Chairman said that he would make a verbal report on the Bills Committee's deliberations at the House Committee meeting on 12 January 2018. The deadline for giving notice of amendments to the Bills was 15 January 2018.

4. There being no other business, the meeting ended at 9:38 am.

Council Business Division 1  
Legislative Council Secretariat  
17 April 2018

**Proceedings of the eighth 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, 9 January 2018, at 8:30 am  
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
<b>Agenda item I — Meeting with the Administration</b>			
000443 – 002453	Chairman Administration Mr James TO Clerk Assistant Legal Adviser 4 ("ALA4")	<p>Briefing by the Administration on its response to issues raised at the meeting on 4 January 2018 [LC Paper No. CB(1)442/17-18(01)]</p> <p>In relation to the Administration's proposed amendments to add the new section 5A(5A) to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") (with the purpose to put beyond doubt that it was immaterial whether the subject matter of a transaction referred to in the proposed new section 5A(3), (4) or (5) of AMLO was in Hong Kong or elsewhere), Mr TO expressed concern whether the AMLO Bill would have the effect of empowering the Estate Agents Authority ("EAA") to enforce anti-money laundering and counter-terrorist financing ("AML/CTF") requirements under AMLO on estate agents in Hong Kong when they engaged in transactions involving overseas real estate. He pointed out that currently EAA was not empowered under the Estate Agents Ordinance (Cap. 511) ("EAO") to regulate such transactions.</p> <p>The Government responded as follows:</p> <p>(a) the AMLO Bill proposed to empower EAA to enforce the AML/CTF requirements under AMLO in respect of estate agents licensed under EAO;</p> <p>(b) the AMLO Bill required estate agents in Hong Kong to conduct customer due diligence ("CDD") measures set out in</p>	

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		<p>Schedule 2 to AMLO when they were involved in transactions concerning the buying or selling of real estate which took place in Hong Kong. The geographical location of the real estate was immaterial. The Administration's proposed amendment sought to clarify beyond doubt this policy intent; and</p> <p>(c) the term "land" in EAO covered properties outside Hong Kong.</p>	
002454 – 002813	Chairman Administration Mr James TO	The proposed new Schedule 3A to AMLO set out fees in relation to the proposed licensing regime for trust or company service providers ("TCSPs"). In response to Mr TO's enquiry, the Government confirmed that the fees prescribed in the Schedule had taken into account the resources for increasing the manpower of the Companies Registry ("CR") for administering the TCSP licensing regime.	
002814 – 003054	Chairman Administration Mr James TO	Under the proposed new section 53ZO of AMLO, proceedings might be instituted for an offence under Part 5A of AMLO, except for an indictable offence, within 12 months after the offence was discovered by, or came to the notice of, the Registrar of Companies ("the Registrar"), rather than after the commission of the offence. Mr TO reiterated his concern about uncertainty of the proposed arrangement, and considered that the arrangement might be onerous for minor offences. He said that he would consider moving amendments to state a time limit for prosecution adopting the formulation of "after the commission of the offence".	
003055 – 003238	Administration Chairman Mr James TO	According to the Government, the policy intent of the proposed new section 80(1A)(e) of AMLO was to provide an option for a licensed TCSP to receive the notices of the Registrar by electronic means. In response to Mr TO's enquiry, the Government confirmed that an application for TCSP licence would not be affected if the applicant did not provide any email address.	

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003239 – 004304	Chairman Administration Mr James TO ALA4	<p>Noting that the Administration would not move amendments to exclude the mere provision of post box service from the proposed definition of "trust or company service" in Schedule 1 to AMLO, Mr TO asked:</p> <p>(a) whether the Administration had consulted entities which might be required to obtain TCSP licences; and</p> <p>(b) whether CR would consider waiving licensing fees for non-commercial organizations which provided post box service to their associated bodies/societies.</p> <p>The Chairman shared Mr TO's views.</p> <p>The Government responded as follows:</p> <p>(a) the definition of "trust of company service" followed closely the recommendation of the Financial Action Task Force ("FATF"). The Government had consulted stakeholders including trade associations on the AMLO Bill and had not received objection to the proposed coverage;</p> <p>(b) CR would implement publicity for the TSCP licensing regime; and</p> <p>(c) a TCSP licence would only be required for providing company services "by way of business", and hence non-commercial entities providing post box service to their associated bodies/societies without charging a business fee would not be covered by the proposed definition of "trust or company service".</p>	
004305 – 005041	Chairman Administration Mr James TO ALA4	<p>In respect of the phrase "causes or allows" in the proposed new section 34(1)(a)(xiv)(A) and (xv)(A) of the Professional Accountants Ordinance (Cap. 50), Mr TO reiterated his view that the more common formulation of "with the consent or connivance" should be adopted.</p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p>The Government responded as follows:</p> <p>(a) reflecting the policy intent, the phrase "causes or allows" required a higher evidential threshold than "with the consent or connivance"; and</p> <p>(b) the phrase "causes or allows" was adopted in a number of legislation including the Financial Reporting Council Ordinance (Cap. 588), the Waste Disposal Ordinance (Cap. 354), the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Securities and Futures Ordinance (Cap. 571) and the Companies Ordinance (Cap. 622).</p>	
005042 – 010343	Chairman Administration Mr Holden CHOW Mr James TO ALA4	<p>In response to enquiries regarding appointment of intermediaries by designated non-financial businesses and professions ("DNFBPs") for carrying out customer due diligence ("CDD") measures, the Government advised that:</p> <p>(a) while a DNFBP could appoint a local or overseas intermediary to carry out CDD measures on its behalf, the liability rested with the DNFBP concerned. Thus, the DNFBP should ensure whether the intermediary was a qualified intermediary; and</p> <p>(b) under FATF recommendations, a DNFBP could appoint an intermediary in another jurisdiction to conduct CDD if (i) the jurisdiction had in place AML/CTF regulation comparable with the requirements of FATF; and (ii) the intermediary was subject to the regulation of such regulation.</p>	
<b>Consideration of amendments proposed by the Administration</b>			
010344 – 011011	Chairman Administration Mr James TO	Briefing by the Administration on its proposed amendments to the AMLO Bill [LC Paper No. CB(1)442/17-18(02)]	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
<b>Agenda item II — Any other business</b>			
011012 – 011236	Chairman Mr James TO	Legislative timetable and concluding remarks	

Council Business Division 1  
Legislative Council Secretariat  
17 April 2018