

立法會
Legislative Council

LC Paper No. CB(2)1537/16-17
(These minutes have been seen
by the Administration)

Ref : CB2/BC/3/16

**Bills Committee on Cross-boundary Movement of Physical Currency and
Bearer Negotiable Instruments Bill**

**Minutes of meeting
held on Monday, 24 April 2017, at 4:45 pm
in Conference Room 2 of the Legislative Council Complex**

Members present : Dr Hon Elizabeth QUAT, JP (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing, BBS
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Hon CHAN Chun-ying

Members absent : Hon James TO Kun-sun
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Dr Hon YIU Chung-yim

Public Officers attending : Item I

Ms Manda CHAN
Commissioner for Narcotics

Mr Kevin LAI
Assistant Secretary (Narcotics)
Security Bureau

Miss Selina LAU
Senior Assistant Law Draftsman (Acting)
Department of Justice

Ms Louise HO Pui-shan
Assistant Commissioner
(Intelligence and Investigation)
Customs and Excise Department

Mr CHONG Man-kai
Superintendent (Special Project Team)
Customs and Excise Department

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Ms Mina CHAN
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin

2. Members of the Bills Committee requested the Administration to:
- (a) consider deleting the first "的" from the heading of clause 14 and clause 14(1) of the Chinese text of the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Bill ("the Bill") to facilitate easier reading of the provisions;
 - (b) advise in writing that should the Secretary for Security propose in future to amend the amount of currency and bearer negotiable instruments ("CBNIs") specified in Schedule 4 to the Bill (i.e. the designated threshold of HK\$120,000 for declaration or disclosure), such amendment would be necessitated by the Financial Action Task Force's adjustment to the threshold; and

Action

- (c) consider the necessity of item 7 in Part 2 of Schedule 2 to the Bill to require a traveller who was not the owner of CBNIs to provide in a declaration the name and address of the owner of CBNIs.

Invitation of public views

3. Members noted that pursuant to the decision made at the meeting on 28 March 2017, the Secretariat had posted a notice on the Legislative Council website and written to the 18 District Councils to invite written submissions from the public on the Bill. The Secretariat had not received any written submissions nor requests for making oral representations to the Bills Committee.

Clause-by-clause examination of the Bill

4. Members had completed the clause-by-clause examination of the Bill. Members agreed that the Administration's response to issues raised at the meeting would be circulated to members for consideration.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(2)1325/16-17 on 4 May 2017. As members had not made any comments on the Administration's response, the Chairman directed that the next meeting originally scheduled for 9 May 2017 be cancelled.)

II. Any other business

5. There being no other business, the meeting ended at 6:38 pm.

**Proceedings of meeting of the
Bills Committee on Cross-boundary Movement of Physical Currency and
Bearer Negotiable Instruments Bill
held on Monday, 24 April 2017, at 4:45 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000000 - 000309	Chairman	Opening remarks	
000310 - 001024	Chairman Admin	The Administration's response to the issues raised at the meeting on 28 March 2017. [LC Paper No. CB(2)1249/16-17(02)]	
001025 - 001345	Chairman Mr Kenneth LEUNG Admin	Mr Kenneth LEUNG expressed concern that terrorists or other criminals could evade the declaration and disclosure requirements by transporting currency and bearer negotiable instruments ("CBNIs") less than \$120,000 on each occasion. In response, the Administration advised that authorized officers would be empowered under the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments Bill ("the Bill") to seize and detain CBNIs that were reasonably suspected to be crime proceeds or terrorist property, even though the value of such CBNIs did not exceed the designated threshold of HK\$120,000. The Administration also advised that apart from the declaration and disclosure system proposed under the Bill, measures for combating money laundering and terrorist financing were set out in other existing legislation, including the Organized and Serious Crimes Ordinance ("OSCO") (Cap. 455) and the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO") (Cap. 575).	
001346 - 001507	Chairman	The Administration's reply to the letter dated 27 March 2017 from the legal adviser to the Bills Committee ("ALA1"). [LC Paper No. CB(2)1249/16-17(03)] Response to the Bills Committee's invitation for written submission.	

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001508 - 001651	Chairman Admin	<p>Commencement of clause-by-clause examination of the Bill</p> <p><u>Long title and clause 1</u></p> <p>Members raised no question.</p>	
001652 - 003228	Chairman Admin Mr Kenneth LEUNG ALA1 Mr CHAN Chun-ying	<p><u>Clause 2</u></p> <p>Mr Kenneth LEUNG's enquiry and the Administration's response regarding whether a signed cheque without specifying the payee's name and amount would be within the meaning of CBNI under clause 2(1) of the Bill.</p> <p>ALA1 sought clarification as to whether the examples in the definition of CBNI under clause 2(1) of the Bill were exhaustive and whether these examples had legislative effect. Mr Kenneth LEUNG and Mr CHAN Chun-ying raised similar concern. The Administration's response was set out in paragraphs 1 to 3 of LC Paper No. CB(2)1249/16-17(03). The Administration also advised that these examples were not exhaustive.</p> <p>In response to Mr CHAN Chun-ying's enquiry about whether the term CBNI was used in other existing ordinances. The Administration advised that the term CBNI was first defined in the Bill, taking reference from the advice of the Financial Action Task Force ("FATF") as well as relevant terms as defined in other existing legislation, including the Legal Tender Notes Issue Ordinance (Cap. 65), the Coinage Ordinance (Cap. 454) and the Bills of Exchange Ordinance (Cap. 19).</p> <p>Mr Kenneth LEUNG was concerned that the exclusion of precious metals and stones from the definition of CBNI under the Bill might give rise to possible loophole for criminals to circumvent the declaration and disclosure requirements by transporting, say, large amounts of Franklin gold coins, which could be traded at spot price.</p> <p>The Administration explained that Franklin gold coins would not be covered by the definition of CBNI if they were not legal tender in Hong Kong or other places. Meanwhile, using precious metals for money laundering or terrorist financing purposes</p>	

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		would constitute an offence under OSCO and UNATMO.	
003229 - 003421	Chairman Admin Mr Kenneth LEUNG	<p><u>Clause 3</u></p> <p>Mr Kenneth LEUNG asked whether the declaration and disclosure requirements under the Bill were applicable to travellers who were denied entry into Hong Kong. The Administration advised that travellers who were denied entry into Hong Kong were still required to undergo Customs clearance in general.</p>	
003422 - 004039	Chairman Admin ALA1 Mr Kenneth LEUNG	<p><u>Clause 4</u></p> <p>ALA1's enquiry and the Administration's advice that a young person who committed an offence under clause 4(5) of the Bill would be subject to the age of criminal responsibility stipulated in the Juvenile Offenders Ordinance (Cap. 226).</p> <p>Mr Kenneth LEUNG's enquiry and the Administration's advice that the penalty specified in clause 4(8) of the Bill was the maximum level.</p>	
004040 - 004705	Chairman Admin	<p><u>Clauses 5 to 7</u></p> <p>Members raised no question.</p>	
004706 - 005038	Admin Chairman Mr CHAN Chun-ying	<p><u>Clause 8</u></p> <p>Mr CHAN Chun-ying asked whether the Administration would consider the need to include vehicles in clause 8(b) of the Bill, having regard to the cross-boundary transportation of goods following the commissioning of the Hong Kong-Zhuhai-Macao Bridge.</p> <p>The Administration envisaged that in line with the relevant Customs clearance arrangements, a declaration on CBNI's imported or exported as a cargo on a cross-boundary vehicle via a land boundary control point would need to be made on each occasion as appropriate. That said, the Administration would keep in view the relevant developments to consider if any adjustment would be necessary.</p>	

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005039 - 005440	Chairman Admin	<u>Clause 9 and 10</u> Members raised no question.	
005441 - 005839	Admin Chairman Mr Kenneth LEUNG	<u>Clause 11</u> Mr Kenneth LEUNG asked whether it would be an offence if a person was unable to provide a reference number generated by the designated information system in accordance with the declaration requirement under clause 11 of the Bill. The Administration advised that the Customs and Excise Department ("C&ED") would seek to ascertain if a declaration had actually been made for the CBNIs concerned under the designated electronic system and look at other available information as to why the person concerned was unable to provide the reference number.	
005840 - 010317	Chairman Admin ALA1	<u>Clause 9</u> ALA1's enquiry about the declaration requirement for importers and exporters of CBNIs. The Administration's response was detailed in paragraphs 7 and 8 of LC Paper No. CB(2)1249/16-17(03). <u>Clause 12</u> Members raised no question.	
010318 - 011013	Chairman Admin Mr Kenneth LEUNG	<u>Clause 13</u> Mr Kenneth LEUNG asked whether the written notice about not instituting criminal proceedings on payment as set out in clause 13 of the Bill would be issued immediately to the offender at the scene. The Administration replied in the affirmative. Mr LEUNG further enquired how and when the payment of the specified amount of HK\$2,000 should be settled in case the travellers concerned were not Hong Kong residents. The Administration advised that the travellers concerned, irrespective of whether they were Hong Kong residents, would need to make the payment on the spot.	

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		<p>Responding to Mr LEUNG's further enquiry, the Administration advised that the payment collected by C&ED would be credited to the Government general revenue account.</p>	
011014 - 011423	<p>Chairman Admin Mr CHAN Chun-ying Mr Kenneth LEUNG</p>	<p><u>Clause 14</u></p> <p>Mr CHAN Chun-ying considered that the first "的" in the heading of clause 14 and the first "的" in clause 14(1) of the Chinese text of the Bill were unnecessary. The Administration agreed to consider Mr CHAN's view and provide a response after the meeting.</p> <p>Mr Kenneth LEUNG's enquiry and the Administration's advice that authorized officers at control points would have access to the register of records of persons having paid the specified amount referred to in clause 14.</p>	<p>Admin</p>
011424 - 011706	<p>Chairman Admin Mr Kenneth LEUNG</p>	<p><u>Clause 16</u></p> <p>Mr Kenneth LEUNG asked whether the powers to stop and search exercised by authorized officers under clause 16 of the Bill included body searches on travellers, and further, whether there were internal guidelines put in place by C&ED in this respect.</p> <p>The Administration advised that under the Bill, authorized officers would be provided with the necessary enforcement powers to stop and search travellers, which would include conducting body searches. C&ED had existing internal guidelines on searching travellers and examination of things in travellers' possession. Similar guidelines would apply to the Bill.</p>	
011707 - 012744	<p>Chairman Admin</p>	<p><u>Clauses 17 to 24</u></p> <p>Members raised no question.</p>	
012745 - 012955	<p>Admin Chairman Mr Kenneth LEUNG</p>	<p><u>Clause 25</u></p> <p>In response to Mr Kenneth LEUNG's enquiry, the Administration advised that under clause 25 of the Bill, an arrested person reasonably suspected to have contravened the provisions of the Bill must not be detained for more than 48 hours without being charged and brought before a magistrate. The</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>person might first be taken to an office of C&ED for further enquiries if necessary and then to a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232). In response to Mr LEUNG's further enquiry, the Administration advised that there were detention facilities in the Customs Headquarters Building.</p>	
012956 - 013537	Chairman Admin	<p><u>Clauses 26 to 32</u></p> <p>Members raised no question.</p>	
013538 - 013925	Admin Chairman Mr Kenneth LEUNG ALA1	<p><u>Clause 33</u></p> <p>Mr Kenneth LEUNG enquired why it was proposed under clause 33(2) of the Bill that the Secretary for Security might by notice published in the Gazette amend Schedule 4 to the Bill (which specified the amount as a large quantity of CBNIs for the purpose of clause 2(3), i.e. HK\$120,000), instead of by resolution of the Legislative Council ("LegCo").</p> <p>The Administration advised that an order to amend Schedule 4 to the Bill would be subsidiary legislation subject to negative vetting by LegCo. It was envisaged that such amendment would be necessitated by FATF's adjustments to the designated threshold for declaration or disclosure. Mr LEUNG requested and the Administration agreed to provide the information in writing.</p> <p>Mr LEUNG's enquiry and ALA1's advice and the Administration's confirmation that variation of the amount specified in column 3 of Schedule 5 to the Bill would be subject to the approval of LegCo by resolution, i.e. positive vetting.</p>	Admin
013926 - 013955	Chairman Admin	<p><u>Schedule 1</u></p> <p>Members raised no question.</p>	
013956 - 014447	Admin Chairman Mr Paul TSE	<p><u>Schedule 2</u></p> <p>Mr Paul TSE queried the necessity of item 7 in Part 2 of Schedule 2 to the Bill which required a traveller who was not the owner of the CBNIs to provide in a declaration the name and address of the owner of the CBNIs.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>The Administration advised that the information required to be provided in a traveller's declaration as set out in Part 2 of Schedule 2 to the Bill was based on FATF's advice. The Administration agreed to consider Mr TSE's views on item 7 and provide a response after the meeting.</p>	<p>Admin</p>
<p>014448 - 015010</p>	<p>Chairman Mr Paul TSE Admin</p>	<p><u>Schedules 3 to 5</u></p> <p>Mr Paul TSE noted with concern that Part 2 of Schedule 3 to the Bill, which set out the information to be included in a declaration on cargoes, did not require the provision of the information about the cargo owner. He queried the inconsistency between the information to be provided in a declaration made by travellers under Schedule 2 and that in respect of cargoes under Schedule 3.</p> <p>The Administration advised that as contrasted with the case of travellers, the import or export of CBNIs in cargoes would commonly involve a number of parties, including customers, forwarders and carriers as defined in clause 10 of the Bill, and such parties as forwarders and carriers might not readily have information on the owners of the CBNIs. Therefore, item 7 in Part 2 of Schedule 3 required the provision of the name and address of the recipient of the CBNIs.</p>	
<p>015011 - 015037</p>	<p>Chairman Admin</p>	<p><u>Schedule 6</u></p> <p>Members raised no question.</p>	
<p>015038 - 015247</p>	<p>Chairman</p>	<p>Follow-up actions required of the Administration arising from the discussion at the meeting.</p> <p>Completion of clause-by-clause examination of the Bill.</p> <p>Members agreed that the Administration's response to the issues raised at the meeting would be circulated to members for consideration.</p>	