

立法會
Legislative Council

LC Paper No. CB(1)1320/16-17
(These minutes have been seen
by the Administration)

Ref : CB1/SS/12/16/1

**Subcommittee on Financial Institutions (Resolution)
(Protected Arrangements) Regulation and Financial Institutions
(Resolution) Ordinance (Commencement) Notice 2017**

**Minutes of the first meeting on
Friday, 2 June 2017, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon CHAN Chun-ying (Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Kin-por, BBS, JP
Hon YIU Si-wing, BBS
Dr Hon KWOK Ka-ki
Hon Christopher CHEUNG Wah-fung, SBS, JP

Member absent : Hon Dennis KWOK Wing-hang

Public officers attending : Ms Polly KWOK
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) International and
Mainland Affairs

Mr Michael LAM
Senior Assistant Law Draftsman, Law Drafting
Division
Department of Justice

Mr Eamonn WHITE
Head, Resolution Office
Hong Kong Monetary Authority

Mr Ben PLANT
Senior Manager, Resolution Office
Hong Kong Monetary Authority

Ms Lisa CHEN
Deputy Chief Counsel, Legal Services
Securities and Futures Commission

Ms TAN Poh Hiang
Associate Director, Supervision of Markets
Securities and Futures Commission

Mr Tony CHAN
Acting Assistant Commissioner of Insurance (Policy
and Development)
Office of the Commissioner of Insurance

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Miss Sharon LO
Senior Council Secretary (1)9

Ms Sharon CHAN
Legislative Assistant (1)4

Ms Vivian CHAN
Clerical Assistant (1)4

Action

I Election of Chairman

Election of Chairman

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr CHAN Chun-ying was nominated by Mr CHAN Kin-por and the nomination was seconded by Mr WONG Ting-kwong. Mr CHAN Chun-ying accepted the nomination. There being no other nomination, Mr CHAN Chun-ying was declared Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a deputy chairman for the Subcommittee.

II Meeting with the Administration

(L.N. 76 of 2017	— Financial Institutions (Resolution) (Protected Arrangements) Regulation
L.N. 77 of 2017	— Financial Institutions (Resolution) Ordinance (Commencement) Notice 2017
	— Legislative Council Brief on Financial Institutions (Resolution) (Protected Arrangements) Regulation and Financial Institutions (Resolution) Ordinance (Commencement) Notice 2017
LC Paper No. LS67/16-17	— Legal Service Division Report
LC Paper No. CB(1)1039/16-17(01)	— Background brief prepared by the Legislative Council Secretariat)

Action

Discussion

4. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

5. According to the Financial Institutions (Resolution) Ordinance (Cap. 628) ("FIRO"), there are five stabilization options that a resolution authority may apply to a within scope financial institution in resolving the institution. These options are transfer to a purchaser, transfer to a bridge institution, transfer to an asset management vehicle, bail-in, and transfer to a temporary public ownership company. The Administration was requested to provide supplementary information on:

- (a) how deposits, in particular the protected deposits as defined under section 2(1) of the Deposit Protection Scheme Ordinance (Cap. 581) ("DPSO"), would be protected under the resolution regime, including whether the deposits, after transferring to a bridge institution, an asset management vehicle or a temporary public ownership company could still be protected by DPSO (the Administration was requested to provide the relevant provisions in FIRO and DPSO in its response); and
- (b) the Administration's response to members' views on the need to introduce amendments to DPSO to explicitly provide for the protection of deposits maintained by a bridge institution, an asset management vehicle or a temporary public ownership company, when such companies became non-viable.

(Post meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)1111/16-17(02) on 9 June 2017.)

III Any other business

Invitation of views

6. Members considered it not necessary for the Subcommittee to meet with deputations to receive views on the Financial Institutions (Resolution) (Protected Arrangements) Regulation and the Financial Institutions (Resolution)

Action

Ordinance (Commencement) Notice 2017 ("the two pieces of subsidiary legislation").

Legislative timetable and way forward

7. The Chairman said that the Subcommittee had completed examination of the provisions of the two pieces of subsidiary legislation and would not propose any amendment to them. The Administration would provide written response as requested above as soon as possible. If members did not have views on the written response, no further meeting would be held.

(Post meeting note: Members were informed vide LC Paper No. CB(1)1184/16-17 issued on 21 June 2017 that the Subcommittee had completed scrutiny of the two pieces of subsidiary legislation.)

8. The Subcommittee noted that the scrutiny period of the two pieces of subsidiary legislation would expire at the Council meeting of 14 June 2017. To allow sufficient time for the Subcommittee to report its deliberations to the House Committee, members agreed that the Chairman would move a motion at the Council meeting of 7 June 2017 to extend the scrutiny period to the Council meeting of 5 July 2017. Members noted that, upon extension of the scrutiny period, the deadline for giving notice of motion to amend the two pieces of subsidiary legislation would be 27 June 2017. The Chairman would report the deliberations of the Subcommittee to the House Committee at its meeting on 23 June 2017.

(Post meeting note: At the Council meeting of 7 June 2017, the motion to extend the scrutiny period of the two pieces of subsidiary legislation was passed.)

9. There being no other business, the meeting ended at 11:45 am.

Council Business Division 1
Legislative Council Secretariat
17 July 2017

**Proceedings of the first meeting of the
Subcommittee on Financial Institutions (Resolution)
(Protected Arrangements) Regulation and Financial Institutions
(Resolution) Ordinance (Commencement) Notice 2017
on Friday, 2 June 2017, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Election of Chairman			
000200 – 000256	Mr James TO Mr CHAN Kin-por Mr WONG Ting-kwong Mr CHAN Chun-ying	Election of Chairman	
Agenda item II — Meeting with the Administration			
000257 – 001328	Chairman Administration Hong Kong Monetary Authority ("HKMA")	Briefing by the Administration and HKMA on the Financial Institutions (Resolution) (Protected Arrangements) Regulation ("PAR") and the Financial Institutions (Resolution) Ordinance (Commencement) Notice 2017 ("FIRO (Commencement) Notice 2017") [LC Paper No. CB(1)1065/16-17(01) powerpoint material issued after the meeting]	
001329 – 003109	Mr James TO Administration Chairman HKMA	Mr TO noted that PAR set out how a resolution authority should treat the six types of financial arrangements that were defined as "protected arrangements" under FIRO when resolving a within scope financial institution ("FI"). He expressed concern about the treatment of deposits during resolution and enquired how deposits, in particular those defined as "protected deposit" in section 2(1) of the Deposit Protection Scheme Ordinance (Cap. 581) ("DPSO"), would be protected under the resolution regime. He requested the Administration to provide a written response in this regard, including the relevant provisions in FIRO and DPSO.	The Administration to take action as per paragraph 5(a) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration and HKMA explained that:</p> <ul style="list-style-type: none"> (a) one of the objectives of the resolution regime was to secure continued performance of critical financial functions of systematically important FIs, including deposit-taking; (b) the deposit-taking function of the non-viable systemically important FIs could be transferred to a commercial purchaser or a bridge institution during resolution to ensure depositors' continued access to the deposits; and (c) all deposits falling within the definition of "protected deposit" under DPSO would be excluded from bail-in and fully protected upon application of the bail-in stabilization option. <p>Mr TO enquired how the deposits, after transferring to a bridge institution could be protected under DPSO, when the bridge institution became non-viable.</p> <p>HKMA advised that:</p> <ul style="list-style-type: none"> (a) the bridge institution to which deposits were transferred would need to be an authorized institution ("AI") as defined in section 2(1) of the Banking Ordinance (Cap. 155) and would be subject to the relevant statutory and regulatory obligations, as well as the minimum capital and funding requirements applicable to an AI; and (b) the deposits, after transferring to the bridge institution would enjoy at least the same protection under DPSO in place prior to the initiation of resolution. <p>Mr TO considered that the Administration should review whether DPSO should be amended to explicitly provide for the protection of deposits maintained by a bridge institution when the bridge institution became non-viable.</p>	<p>The Administration to take action as per paragraph 5(b) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
003110 – 003323	Chairman Administration Mr CHAN Kin-por HKMA Office of the Commissioner of Insurance ("OCI")	<p>Mr CHAN noted that a two-month public consultation had been conducted on the proposed PAR and asked whether respondents, in particular those from the insurance sector, had made comments or suggestions to the proposals of which the Government had not taken on board in finalizing PAR, and if so, the reasons concerned.</p> <p>HKMA and OCI advised that:</p> <ul style="list-style-type: none"> (a) respondents generally agreed with the proposed approach to PAR; (b) most of the comments received were relating to the definitions of the terms used (e.g. financial contracts) and the scope of protection under the proposed PAR; and (c) no special views were received from the insurance sector. <p>In response to Mr CHAN's further enquiry, the Administration said that subsequent to the completion of the consultation the financial industry did not have negative feedback regarding the proposed PAR and did not envisage any practical difficulties in implementation.</p>	
Clause-by-clause examination of the subsidiary legislations			
003324 – 005904	Chairman Administration HKMA	<p>Financial Institutions (Resolution) Ordinance (Commencement) Notice 2017 (L.N. 77 of 2017)</p> <p>Financial Institutions (Resolution) (Protected Arrangements) Regulation (L.N. 76 of 2017)</p> <p>Part 1</p> <p>Preliminary</p> <p><u>Section 1 – Commencement</u></p> <p><u>Section 2 – Interpretation</u></p> <p><u>Section 3 – Interpretation: protected clearing and settlement systems arrangement</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Section 4 – Interpretation: protected structured finance arrangement</u></p> <p>Part 2</p> <p>Protections on Partial Property Transfer</p> <p><u>Section 5 – Set-off arrangement, netting arrangement and title transfer arrangement</u></p> <p><u>Section 6 – Secured arrangement</u></p> <p><u>Section 7 – Protected structured finance arrangement</u></p> <p><u>Section 8 – Protected clearing and settlement systems arrangement</u></p> <p><u>Section 9 – Non-Hong Kong property</u></p> <p><u>Section 10 – Consequence (set-off arrangement, netting arrangement or title transfer arrangement)</u></p> <p><u>Section 11 – Consequence (secured arrangement or protected structured finance arrangement)</u></p> <p><u>Section 12 – Consequence (protected clearing and settlement systems arrangement)</u></p> <p>Part 3</p> <p>Protections on Bail-in</p> <p><u>Section 13 – Interpretation</u></p> <p><u>Section 14 – Set-off arrangement, netting arrangement and title transfer arrangement</u></p> <p><u>Section 15 – Consequence (bail-in provision)</u></p> <p><i>Schedule Financial Contracts</i></p> <p>Members did not raise any questions on the provisions of PAR and FIRO (Commencement) Notice 2017.</p>	

Time Marker	Speaker	Subject(s)	Action Required
005905 – 010124	Chairman Administration Mr CHAN Kin-por	Legislative timetable, meeting arrangement and concluding remarks	

Council Business Division 1
Legislative Council Secretariat
17 July 2017