

立法會
Legislative Council

LC Paper No. CB(1)1321/16-17
(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 second meeting on
Tuesday, 20 June 2017, at 8:30 am
in Conference Room 2A 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
Hon Christopher CHEUNG Wah-fung, SBS, JP

Members absent : Dr Hon KWOK Ka-ki
Hon Dennis KWOK Wing-hang

Public officers attending : Mr LAU James H. Jr., JP
Under Secretary for Financial Services and the
Treasury

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

Mr Eamonn WHITE
Head, Resolution Office
Hong Kong Monetary Authority

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

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

Ms Joyce LEUNG
Assistant Counsel, Legal Services
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

Admin

I Meeting with the Administration

Follow-up to the meeting on 2 June 2017

(LC Paper No. CB(1)1111/16-17(01) — List of follow-up actions
arising from the discussion at
the meeting on 2 June 2017

Action

LC Paper No. CB(1)1111/16-17(02) — Administration's response to issues raised at the meeting on 20 December 2016

LC Paper No. CB(1)1155/16-17(01) — Administration's response to questions raised by Hon James TO

Other relevant papers

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)

Discussion

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

Action

Follow-up actions to be taken by the Administration

2. The Administration was requested to undertake in writing that (a) a resolution authority, when resolving a failing bank, could only transfer the protected deposits to a bridge institution that was authorized under the Banking Ordinance (Cap. 155) and also a member of the Deposit Protection Scheme; and (b) the Government would review the relevant legislative provisions and introduce necessary amendments to clearly reflect its position as stated in (a) above in a future legislative exercise.

(Post meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)1184/16-17(01) on 21 June 2017.)

3. The Subcommittee further agreed that the Administration should give the above undertaking at the debate on the motion to take note of the relevant report of the House Committee on consideration of subsidiary legislation and other instruments pursuant to Rules 49E(1) of the Rules of Procedure at the Council meeting of 5 July 2017.

II Any other business

Legislative timetable

4. The Chairman said that the Subcommittee had completed scrutiny of the Financial Institutions (Resolution) (Protected Arrangements) Regulation and the Financial Institutions (Resolution) Ordinance (Commencement) Notice 2017 ("the two pieces of subsidiary legislation") and would not propose any amendment to them.

(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.)

5. The Subcommittee noted that the motion to extend the scrutiny period of the two pieces of subsidiary legislation to the Council meeting of 5 July 2017 was passed at the Council meeting of 7 June 2017. The Chairman would give a verbal report on the deliberations of the Subcommittee at the House Committee meeting on 23 June 2017. The deadline for giving notice of motion to amend the two pieces of subsidiary legislation would be 27 June 2017.

Action

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

Council Business Division 1
Legislative Council Secretariat
17 July 2017

**Proceedings of the second meeting of the
Subcommittee on Financial Institutions (Resolution)
(Protected Arrangements) Regulation and Financial Institutions
(Resolution) Ordinance (Commencement) Notice 2017
on Tuesday, 20 June 2017, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Meeting with the Administration			
000402 – 000601	Chairman	Introductory remarks	
000602 – 001524	Chairman Mr James TO Administration Clerk	<p>Mr TO explained his concerns regarding the protection of deposits under the resolution regime as follows:</p> <p>(a) in the event of a failure of an authorized institution ("AI"), protected deposits held by the failed AI would be protected by the Deposit Protection Scheme ("DPS") as provided in the Deposit Protection Scheme Ordinance (Cap. 581) ("DPSO");</p> <p>(b) under the resolution regime, when a resolution authority ("RA") resolved a within scope financial institution (i.e. the failed AI in this case), it might transfer the deposits held by the failed AI to a bridge institution ("BI");</p> <p>(c) the Financial Institution (Resolution) Ordinance (Cap. 628) ("FIRO") did not explicitly provide that a BI established to receive the deposits of a failed AI must also be an AI and hence a member of DPS; and</p> <p>(d) hence, it was necessary to provide legal certainty on the statutory protection of deposits transferred to a BI.</p> <p>Mr TO suggested that the Administration should consider:</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) incorporating explicit provisions in FIRO to stipulate that an RA could only transfer the failed AI's deposits to a BI that was authorized to carry out deposit-taking business under the Banking Ordinance (Cap. 155) ("BO") and hence a member of DPS; or</p> <p>(b) introducing legislative amendments deeming the deposits transferred to a BI as "protected deposit" under DPSO.</p> <p>The Chairman concurred that the deposits transferred to a BI should enjoy the same protection under DPSO.</p> <p>The Administration responded that:</p> <p>(a) section 12(1) of BO provided that no business of taking deposits should be carried on in Hong Kong except by an AI;</p> <p>(b) the Monetary Authority as an RA would not transfer a deposit-taking business to a BI unless it was an AI; and</p> <p>(c) it would be an offence under section 12(6) of BO if a BI took deposits without being authorized as an AI.</p>	
001525 – 004141	Chairman Mr James TO Mr WONG Ting-kwong Administration Hong Kong Monetary Authority ("HKMA")	<p>Mr TO was concerned that "transfer of protected deposits" was not the same as "taking of deposits", and hence section 12(1) and (6) of BO might not apply to the case he had mentioned. He considered it important to provide legal certainty that deposits transferred to a BI would continue to be protected under DPSO. He urged the Administration to review the relevant provisions to address his concerns in a future legislative exercise.</p> <p>The Administration explained that MA as an RA, acting responsibly and rationally in accordance with the resolution objective in section 8(1)(b) of FIRO, would not, and could not, transfer deposits to a BI that was</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>not an AI as this would be going blatantly against the restriction of section 12(1) of BO. Sections 12(1) and 12(6) of BO applied to the business of taking deposits, and this would cover deposits transferred by an RA under FIRO.</p> <p>HKMA supplemented that section 13(1) of BO provided that the Financial Secretary might exempt any person or class of persons from section 12(1) of BO. However, it was not the policy intention to request such an exemption be granted in a resolution case.</p> <p>The Administration undertook to conduct a review of FIRO in a separate legislative exercise to identify any statutory amendments which were necessary to address Mr TO's concerns and clearly reflect its position on the matter with greater statutory certainty.</p> <p>Mr WONG concurred that it was essential to protect the transferred deposits to achieve continuity in protection under DPSO. He considered that the Administration's response should be sufficient to address Mr TO's concerns.</p> <p>Mr TO suggested the Chairman, on behalf of the Subcommittee, to speak on the motion to take note of the House Committee report in relation to the two pieces of subsidiary legislation at the Council meeting of 5 July 2017. The Administration could then give the above undertaking and confirm its position at that Council meeting.</p> <p>The Administration agreed.</p> <p>The Chairman requested the Administration to provide its written response as soon as possible after the meeting.</p> <p>The Administration agreed to provide the written response by 21 June 2017.</p>	<p>The Administration to take action as per paragraph 2 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
004142 – 004542	Chairman Mr James TO Clerk	Legislative timetable and concluding remarks	

Council Business Division 1
Legislative Council Secretariat
17 July 2017