

立法會
Legislative Council

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**Bills Committee on
Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Verbatim transcript of meeting
held on Wednesday, 18 July 2001, at 9:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, (Chairman)
Hon Margaret NG, (Deputy Chairman)
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, JP
Hon NG Leung-sing
Hon Bernard CHAN
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, JP
- Public officers attending** : Miss AU King-chi
Deputy Secretary for Financial Services
- Miss Vivian LAU
Principal Assistant Secretary for Financial Services
- Miss Emmy WONG
Assistant Secretary for Financial Services
- Mr David CARSE
Deputy Chief Executive, Hong Kong Monetary Authority

Mr Y K CHOI
Executive Director (Banking Supervision), Hong Kong
Monetary Authority

Mr Arthur YUEN
Division Head, Banking Supervision Department, Hong
Kong Monetary Authority

Ms Sherman CHAN
Senior Assistant Law Draftsman

Mr Michael LAM
Senior Government Counsel

Attendance by invitation : Mr Andrew PROCTER
Executive Director, Intermediaries and Investment
Products, Securities and Futures Commission

Mr Paul R BAILEY
Member of the Commission and Executive Director,
Securities and Futures Commission

Mr Leo LEE
Director, Licensing Department, Securities and Futures
Commission

Mr Eugene GOYNE
Associate Director, Enforcement, Securities and Futures
Commission

Mrs Mary AHERN
Legal Consultant, Securities and Futures Commission

Clerk in attendance : Mrs Florence LAM
Chief Assistant Secretary (1)4

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Connie SZETO
Senior Assistant Secretary (1)1

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1 **主席：**

2

3 各位同事，現在開始進行會議。我們昨天已完成審議第VIII部。今
4 天的審議工作應由第IX部第186條開始。政府昨天亦已向各位提交第IX部的
5 委員會審議階段修正案文件。有關的中文本現在on table，我們會把這份
6 中文本交給法律顧問研究。在我們開始進行審議之前，請法律顧問就研究
7 第VIII部的中文本的進展情況作出匯報。李先生。

8

9 **高級法律顧問李裕生先生：**

10

11 多謝主席。由於我們頗遲才收到第VIII部的中文本，所以昨天在會
12 議上討論第VIII部時，我們無法向議員作出匯報。我們在會後已就第VIII部
13 的中文本進行研究，發現只有3個不太重要的問題。我們亦已就這些問題在
14 會外和政府方面討論。這3個問題分別關於第172(2)、179(7)和180(2)(i)條。
15 這3項條款的修訂只涉及一、兩個字，並且是文書性的，或只是加入“某人”
16 等字眼，只涉及在行文上的問題而已。政府法律草擬專員亦已同意在日後
17 提出的CSA加入有關字眼。

18

19 **主席：**

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21 法律顧問沒有就這些問題提供文件，因為這些純粹是涉及中文本中
22 一、兩個字或技術性的修訂，Audrey。

23

24 **余若薇議員：**

25

26 我知道，但法律顧問解釋時，我們並沒有文件可作參考，因此他提
27 出有關條次也沒有意義。

28

29 **高級法律顧問李裕生先生：**

30

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1 主席，如果議員認為有需要，我們是很樂意把這3頁文件複印，供
2 議員參考的。我剛才只作出簡單匯報，因為這3點只涉及文書上的修訂，而
3 不是在法律上存有問題，所以我沒有勞煩委員會秘書複印。

4
5 **主席：**

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7 如有需要我們可稍後把文件複印，供各位參閱。胡經昌議員。

8
9 **胡經昌議員：**

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11 主席，當局昨天才把這份有關Part IX的文件交給我們。我過往也曾
12 提到，若當局這麼遲才把文件交給我們，包括現在提到有關Part VIII的中文
13 本，我們怎可進行研究呢？秘書處法律事務部研究有關的中文本亦很困
14 難，何況是我們呢？其實，我昨天晚上也嘗試研究有關資料，但直至零晨4
15 時便無法繼續了，我現在亦十分疲倦。況且，這條條例草案相當複雜，不
16 是代表有關業界的議員在研究這些文件時採取的方法可能跟我不同，但在
17 上次會議上我也曾提到，我需要就很多問題諮詢業界，而不希望只在會議
18 上參與討論。其實我在很多場合也曾就這個問題與很多官員溝通，我也不
19 希望在會議上一再提出，但每次政府也會提出很多理由，解釋為何這麼遲
20 才把文件交給我們。

21
22 其實，在上次會議上，我已沒有向政府提出質詢了。我曾就第VI
23 部提出一個問題，而區副局長曾答應稍後作出回應，政府亦曾答應就某些
24 條文作出回應。我們在3月9日已完成就第VI部進行的審議。既然政府答應
25 就有關問題作出研究，不應事隔數月亦尚未進行這麼簡單的工作。我在上
26 次會議上沒有提出很多問題，但轉眼間我們已討論了兩個多部分了。其實
27 有時候我們實在相當辛苦。主席。或許你昨天仍有時間參考有關資料，但
28 我實在沒有足夠時間。雖然我很不願意這樣做，但正如你在上次會議上向
29 我提出的建議，我已再次給政府機會。趁着今天沒有太多傳媒在場，相信
30 也不會有人大肆報導這件事情，主席，我今天實在不可能就這部進行審議，

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1 因為我實在太累了。

2

3 其實，就第VI和VII部，我還有很多問題希望提出，但我現在真的沒有精神
4 提出。我不希望大家誤會我針對銀行，因為我也認為，當局應提供公平的
5 競爭環境，所以我也避免就很多條文提出問題。其實，我相信我已受到很
6 多批評的了。但這不是最重要的問題，最重要的是我們有足夠時間作好準
7 備進行討論。

8

9 我相信其他議員也是很辛苦的。上次會議結束後，他們也曾表示他
10 們下星期極其限只可完成研究Part XII。我不知道大家今天會提出多少問
11 題，但我實在無法再提問下去，因為我實在提不起精神。如果一下子便完
12 成就這部的審議，是否算得上完成審議的工作呢？

13

14 我另一項擔憂，是有關在上次會議上討論的Part VIII。政府在6月初
15 提到賦權證監會調查銀行的前線工作人員。雖然政府提出這點，但卻沒有
16 提供有關的文件。大家可能認為，對整體而言，這些只是不太重要的細節，
17 但對於業界的公平競爭等方面，這些問題是很重要的。所以，如果我們現
18 在不就這些問題進行討論，待9月或10月復會時再作討論，我們可能需要重
19 新進行審議。對我來說，這種做法是很困難的。主席，所以今天我提出這
20 點後，便不會再逗留在這裏了。多謝主席。

21

22 **主席：**

23

24 接着請Margaret、李家祥議員及Audrey發言。

25

26 **副主席：**

27

28 主席，我希望提出一項建議。我認為胡經昌議員剛才提出的意見是
29 很重要的。我不是希望責怪任何一方，因為大家也很希望盡快完成條例草
30 案的審議工作。但有時實在是精神有限。我希望胡經昌議員暫且不要離開

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1 會議室。今次討論的文件，尤其是這部牽涉discipline，對業界有很直接的
2 影響。

3
4 如果議員沒有足夠的精神和時間進行審議，我認為不應勉強繼續審
5 議工作。因為審議的程序不是一個形式，我們也不希望趁着有人缺席，便
6 迅速地完成有關條文的審議工作。我相信大家也不是這個意思。就胡經昌
7 議員剛才提到關於調查方面，我們昨天也曾進行研究。我相信若我們有遺
8 漏的地方，主席將來也會提出。至於今天的會議，我的建議是不要在今天
9 進行這部的審議工作，但既然政府官員已經出席，我們可請他們藉這個機
10 會，簡介有關修訂及修訂的原因。我們可在下次會議上，讓胡經昌議員有
11 足夠的時間作好準備後，再進行審議工作。對於這項建議，大家能否接受？
12 多謝主席。

13
14 **主席：**

15
16 李家祥議員。

17
18 **李家祥議員：**

19
20 主席，其實我也不甚願意提出意見，但事實上，好幾位獨立議員也
21 有類似胡經昌議員的感受，認為要跟上審議的進度比較困難，尤其我們不
22 是業界人士。以現時的進度，我們在這裏花上大半天的時間出席會議，晚
23 上又要進行準備工作，實在令很多同事感到非常吃力。如果說我們很認真
24 地研究有關的內容，我認為這並不是真實的情況。我們實在有很多地方是
25 跟不上的，因為我們對法律的審議工作並不熟識。過往曾經有幾位議員要
26 求我反映他們的意見，表示舉行會議的次數過於頻密，令他們無法做好準
27 備功夫。

28
29 當然，這條條例草案對於一些議員來說，不會像對胡經昌議員一般
30 重要，所以我們也會盡可能協助委員會進行審議。若主席認為有需要舉行

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1 會議，我們也會盡可能配合。事實上，若一些同事無法出席會議，他們便
2 乾脆缺席，因為這條條例草案對他們沒有那麼直接的關係，但他們亦會盡
3 可能配合有關的審議工作。相信其他不太熟識技術性法例的同事，對胡經
4 昌議員的說法亦有同感。既然胡議員提出這點，我亦反映其他議員的意見。
5 這樣的做法實在不能達致我們對審議工作所要求的嚴謹程度。

6
7 **主席：**

8
9 Audrey。

10
11 **余若薇議員：**

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13 主席，第一，由於這條條例草案對胡經昌議員代表的界別影響很
14 大，如果他遇到困難，或協助他審議這條條例草案的人士也遇到困難，我
15 認為我們不應草率地完成審議工作，而不理會他面對的困難。主席，你剛
16 才所說的當然正確，他可以日後再提出問題作討論。但這種做法不是很理
17 想，因為他也應該在會議上有適當的參與。所以如果他認為有困難，我們
18 是應該體諒的。

19
20 第二，其實我昨晚收到有關第IX部的文件時，也覺得不甚妥當。我
21 不知道當局是透過email，還是透過特別的方法發出該份文件。跟過往收到
22 的文件比較，這份文件有點不同，既沒有標明修訂的地方，文字的編排也
23 出現錯誤，令我不明所以。秘書的解釋，是這份文件有點不妥當。她建議
24 我今天早上到達會議室時才參考印刷本。所以我昨晚只參考了舊的文件，
25 而沒有研究新的文件。

26
27 第三，我在審議這條條例草案時，一直也有一個憂慮。我們已搜集
28 得很多意見，不同的人士在不同的時間提出意見。主席，當你讀出有關條
29 文的條次時，如果過往曾有人就該項條文發表意見，委員會秘書或法律顧
30 問可否提醒我們？現在是沒有這種做法的。主席，現時的做法是，例如當

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1 你讀出第142條時，如果有議員提出問題，我們便會討論該問題。亦可能會
2 有人提出，過往曾否有人就第142條提出意見，但這個做法並不是很有系統
3 地進行的。

4
5 我昨晚參閱有關文件時，發現就很多我們已完成討論的部分，過往
6 亦曾有人提出意見，但政府沒有完全採納這些意見，或政府已因應這些意
7 見對有關條文作出修訂，但卻沒有再次在會議上提出。我認為這種方法不
8 太理想。我希望當你讀出條文的條次時，法律顧問或委員會秘書可以提醒
9 我們，是否有人曾就有關條文提出意見、政府有否採納該等意見，以及有
10 關的解釋為何。

11
12 最低限度，我們知道有關意見已經得到處理。可能我們過往曾經討
13 論一些問題，但其後還有其他發展，而我們卻沒有理會後來的發展。我察
14 覺到很多條文也有類似的情況。例如我昨晚參閱CB(1)1469/00-01號文件
15 時，發現文件載有一些建議，是我們在會議上沒有提到的。例如我們討論
16 第142和115條時，並沒有很詳細地討論有關的建議。主席，我認為這種做
17 法不是很理想。

18
19 **主席：**

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21 副局長。

22
23 **財經事務局副局長區璟智女士：**

24
25 多謝主席。首先我藉此多謝委員會主席、副主席和各位議員衷誠合
26 作。大家共同的心願，是希望盡快把這項工作做好。其實政府代表今天已
27 出席第40次會議，亦證明大家的工作量也很多。法案委員會在短短的大半
28 年時間內，已舉行了多次的會議。我們希望盡可能向議員提交議員們要求
29 的資料，以配合審議的進度。

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1 就業界而言，我們必需指出，其實我們早在1999年7月已經開始就
2 這些課題進行諮詢。首先是以政策文件的形式，接着是以《白紙條例草案》
3 的形式，然後在去年底藉發表《藍紙條例草案》的形式進行諮詢。所以供
4 各位研究有關課題的時間已相當長。當然，我也明白到，業界可能需要花
5 多一些時間進行研究，但這條《證券及期貨條例草案》的範圍不單局限於
6 業界，亦涵蓋有很多其他的市場使用者。當其他的國際金融中心已經進行
7 改革，或開始採用新的規管模式時，我們仍在討論應否修改有關模式的階
8 段，所以各位應該明白，審議工作是有迫切性的。

9
10 我也明白，各位認為工作量很大，所以我們也盡可能作出配合。例
11 如對於第IX部，我贊同副主席的建議，即我們今天就我們提出的建議作出
12 解釋。如果有議員提出問題，我們便會盡可能解答。議員亦可表示保留提
13 出意見的權利，容後再提出問題。這可能是個較為靈活的做法。

14
15 我亦希望提出，就第IX部，我們歸納了市場和議員在政策進行第一
16 輪討論時提出的意見，並已在5月28日向各位發出有關文件。該份文件提及
17 我們歸納了各位提出的意見後所建議的修訂。所以，各位可透過我們在5月
18 28日發出的文件，得知修訂的內容。

19
20 我們今次就第IX部發出的文件，是根據這些意見，詳細地在每項條
21 款的有關位置加入有關字眼。所以這份文件的內容不盡是新的。就我們在5
22 月28日發出的文件，我們已向業界，包括銀行界和證券界進行另一輪的諮
23 詢。業界亦清楚知道，我們如何在第IX部把銀行界和證券界的處分安排盡
24 量拉近。這是一些背景資料。

25
26 **副主席：**

27
28 主席，我必須作出回應。我對副局長的回應感到非常失望。

29
30 這份文件是當局很遲才提交的。對於我們剛才的說法，副局長就是

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1 連一聲道歉表示理解也沒有。副局長亦提到有關官員已出席40次會議。但
2 妳們是專責這方面的事情的，而我們除了審議這條條例草案外，還需要審
3 議很多其他條例草案，主動權在當局。

4
5 當局或許會說，過往的情況也是這樣。條文最終要落實的內容，而
6 當局還沒有把條文擬備妥當。例如我們昨天討論第175條時，妳們還沒有完
7 成該條的擬稿。或許當局會說，這些經修訂的條文與原來的擬稿沒有很大
8 的分別，只涉及一些技術性的修訂而已。議員必需自行研究有關修訂。他
9 們要進行獨立的審議，而不是全然接受政府認為是正確的修訂。即使政府
10 已進行一百次諮詢，到最後定案時，議員也要清楚地研究條文的每個字眼。

11
12 胡經昌議員只是表示他沒有足夠時間進行研究。他已研究有關文件
13 至零晨4時，亦不知道有關字眼是否正確，以及有否反映了有關的意思。他
14 只是表示他沒有機會這樣做。主席，這實在是我完全不能接受的。如果情
15 況是這樣，我便按章工作好了。我要求當局在向我們呈交每份文件後，讓
16 我們有足夠時間進行研究。如果我們沒有足夠時間研究有關文件，我們便
17 不舉行會議。我們取消下次會議好了。真是別無他法了，因為這條條例草
18 案涉及很繁重的工作。余若薇議員剛才提出的意見，我也是贊同的。

19
20 我每次出席會議時，也要參考這本資料，同時亦要參考就逐項條文
21 進行審議的有關文件。我當然有個人的看法，但對於一些我認為業界已發
22 表意見的地方，我便不一定會很重視。當我未必很重視有關問題時，我便
23 留待其他人發表意見，情況便是這樣。但這是否最好的做法呢？這並不是
24 最好的做法。我是應該仔細地進行研究的。

25
26 **財經事務局副局長區環智女士：**

27
28 主席、副主席，如果我剛才所說的話，令你們誤會，實在對不起。我的原
29 意是我同意妳的建議。有些議員表示來不及研究有關文件，亦有議員表示，
30 既然他們今天已出席這個會議，並且可能已經就有關文件進行研究，倒不

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1 如容許我們藉這個機會，就5月28日發出的政策文件的內容作出解釋，說明
2 我們如何把有關的內容，演繹在這些修正案內。如果大家即席提出意見，
3 我們會盡可能採納。如果大家來不及提出意見，日後再提出也可以，這便
4 是我的建議。

5

6 **副主席：**

7

8 主席，如果政府官員已出席了40次會議，議員們同樣是出席了40次
9 會議。這些會議不是單方面舉行的。況且胡經昌議員盡可能出席會議，是
10 我們大家也知道的。不是每位議員也這樣做，這也是我們知道的。但着緊
11 這條條例草案的議員這樣做，是大家也知道的。主席，我實在無法接受這
12 樣的意見。

13

14 **主席：**

15

16 請冷靜一點。事實上，各方的工作壓力也很大。

17

18 **副主席：**

19

20 主席，不是工作壓力的問題，也不是遷就胡經昌議員的問題。問題
21 是我們對消費者權益和業界向我們反映的意見，是同樣重視的。我們不可
22 以表示，既然胡經昌議員的進度較其他人慢，所以雖然他還沒有看完有關
23 文件，也不加理會，讓他日後有問題時再提出。

24

25 我們的討論是集體的討論。即使議員認為有關條文的草擬方式沒有
26 問題，但議員也希望知道業界就日常經驗而提出的意見。即使業界完全是
27 為本身的利益提出有關意見，我們亦希望聽取，然後才進行有意義的討論。

28

29 主席，所以我們不能以有問題便提出，如果現在沒有問題，便留待
30 下次會議才提出問題的方式進行討論。這種做法有甚麼意義呢？如果我們

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1 討論完畢後，仍然完全不知業界的意見，加上業界已表示沒有足夠時間進
2 行研究，你仍然堅持繼續討論，日後又從頭開始討論，這是否有意義的事
3 呢？

4

5 我們的態度是盡可能繼續討論，但如果有任何人表示真的跟不上，
6 而如果他的理由是合情合理的，我們是應該接受的。

7

8 **主席：**

9

10 胡經昌議員，我建議我們今天聽取政府解釋有關內容，但我承諾在
11 9月中旬舉行的第一次會議上再討論這部，好讓你有足夠的時間提出所有有
12 關的問題。你會有接近一個月的準備時間。這會否是個折衷的方法呢？

13

14 **胡經昌議員：**

15

16 主席，在較早的會議上也曾發生同類的情況，經你的勸諭，我已多
17 給他們一個機會。

18

19 **主席：**

20

21 我再次勸諭你.....

22

23 **胡經昌議員：**

24

25那時我已經很清楚地表明，我當時不會提問，只會出席會議。
26 但如果今次我再不做應該做的事情，我認為我會對自己失去信心。你建議
27 我留步聽取政府解釋這份文件的內容，我真的沒有精神聽下去。

28

29 其實我不單是昨晚，而是前晚、大前晚也要徹夜研究有關文件。主
30 席，我只是血肉之軀，不是機械人。我研究有關文件，直到凌晨4時，連眼

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1 睛也模糊了，只睡上一、兩個小時便要起床。我昨晚4時就寢時亦難以入睡，
2 盤算着今天應怎麼辦，就是睡也不安靈。

3
4 我在上次會議上已提出這個問題，主席亦勸諭我多給他們一次機
5 會。事實上，在上兩次會議上，我也沒有提出這個問題。但實際上，當局
6 亦不是很早便向我們提供有關文件，但我亦嘗試跟貼進度。我很贊同副主
7 席的意見，由於你們不是業界人士，你們不清楚業界一些實際的日常運作
8 情況。業界實在正面對一些問題，雖然現有的條文有明確訂明有關情況，
9 但並不表示條文訂明的做法便是正確的做法。

10
11 當我們發現存有問題時，便要指出來。我也曾提到，我對於Part VI、
12 VII和VIII也有不少問題，但我現在已感到十分混淆，不知從何問起。昨晚
13 我研究Part IX時，已經忘記了過往的討論內容。主席，我會尊重你的意見
14 和做法，但坦白說，我已不可能再繼續參與今次的討論，因為即使我呆坐
15 在這裏，我也聽不入耳。

16
17 **主席：**

18
19 我的建議是在我們開始第IX部的討論前，討論如何處理有關進度和
20 文件的問題。我們可藉這個機會，先處理這些問題。我希望聽取大家的意
21 見，其實這些實在是需要解決的問題。李家祥議員。

22
23 **李家祥議員：**

24
25 曾經有一段時間，立法會的內務委員會有一個看法，認為尤其是法
26 案委員會的會議與會議之間，應該相隔一段適當的時間。當時所指的適當
27 時間，是兩個星期。這是內務委員會在90年代中期提出的看法，理由是讓
28 政府有時間清楚地考慮議員提出的建議，然後才決定是否採納，亦讓有關
29 議員有機會跟業界反映有關意見。如果業界希望提出修訂，仍有商討的餘
30 地，然後才繼續舉行會議。當然，對於這條條例草案，我們可適當地作出

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1 彈性的處理。但如果每天舉行會議，我們實在完全沒有機會做到上述幾點。

2
3 所以在昨天的會議上，對於我們所討論的兩部，我只可就我較為熟
4 識的條文，詢問政府有沒有作出修訂。我是完全理解胡經昌議員的感受的。
5 尤其是提出某些問題時，我們不能即時作出決定，立法會議員需要先向業
6 界反映有關意見，業界更需要時間就這些意見開會討論。

7
8 主席，這個法案委員會連同主席共有14名議員，但現時只剩下5、6
9 名議員出席會議，缺席的有7、8位。其實，很多議員也無法跟上這個進度，
10 這便足以反映我們的進度是否太快，令議員們無法承受。對於討論的內容，
11 很坦白地說，我在最初審議條例草案的階段，只可把精力集中在我所熟識
12 的條文和對我代表的行業的影響較大的條文。至於其他部分，我只能理解
13 表面的情況。就逐項條文進行審議時，我當然希望投入更多時間和精力，
14 亦希望聽取業界人士的意見。但以現時的速度，根本是不可能的。

15
16 **主席：**

17
18 李家祥議員，你有沒有具體的建議？我們應該採用甚麼速度呢？

19
20 **李家祥議員：**

21
22 我認為每星期舉行兩次會議已經是極限。我今天下午還要出席PAC
23 的會議，所以昨天除了研究這份文件之外，我還要處理大量文件。立法會
24 不是只有這個委員會，我們還有很多其他的工作，所以我們不能與政府的
25 官員一樣，全職為一個法案委員會工作。所以，每星期舉行兩次會議已經
26 是極限了。若然不是這樣，我相信出席會議的人數便會越來越少。

27
28 **主席：**

29
30 胡經昌議員，你有沒有具體的建議？你可否提供一個方法，好讓我

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1 把大家的意見綜合起來，研究怎樣處理這個有關進度的問題？

2
3 **胡經昌議員：**

4
5 主席，我相信我在第一輪審議完畢後，已提出一項意見。但可能當
6 時議員們希望盡快完成審議工作，配合政府的工作吧。我不是不配合政府
7 的工作，但也要基於一些合理的情況，不致令我們過份辛勞。我當時的意
8 見是，政府可以就我們討論的內容擬備CSA，然後把整份文件交給我們，好
9 讓我們在暑假期間仔細研究。政府可以把文件逐一向我們提交，我們亦可
10 逐一研究。在暑假後復會時，我們便可一併討論。現在的情況，是政府斷
11 斷續地向我們提供文件。現在政府已完成了第XII部的文件，然後要待暑
12 假後才會向我們提供第XIII、XIV、XV、XVI和XVII部的文件。但較後部分
13 與較前部分是相關的，屆時我們便要再討論較前的部分，這是很困難的。
14 所以，當時我的建議，是政府首先完成所有CSA，然後向我們呈交，但我們
15 不應即時進行討論。在我的立場，我亦可透過這段時間跟業界商討。

16
17 現在政府向我們提供一份文件時，我提出的可能只是我的意見，而
18 政府亦可能表示，業界的看法並不是這樣。那麼我應該怎樣辦呢？究竟其
19 他委員應該相信我還是相信政府呢？但實際的情況是我根本尚未有機會跟
20 業界討論。

21
22 在現時的階段，我認為政府應盡快把所有的CSA呈交給我們，我們
23 可自行安排時間，在放假期間進行研究，在9月復會時再進行審議。我亦希
24 望就跟業界有密切關係的事項，與業界代表開會討論。我在上次會議上也
25 曾提到，我根本沒有可能和業界進行討論。就是連我自己也無法看完有關
26 文件，我怎能和業界討論呢？業界是沒有接獲這份文件的，他們只取得Blue
27 Bill而已。我還要把這份文件交給他們，而他們亦需要時間作出研究後，才
28 可召開有關工作小組的會議。業界亦需要把這份文件交給一些法律界人士
29 研究。我昨天晚上才接獲這份文件，就是我也未能看完，怎可交給他們研
30 究呢？我亦不可要求他們跟我一樣，徹夜進行研究。

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1

2 **主席：**

3

4 吳靄儀議員。

5

6 **副主席：**

7

8 主席，我希望提醒議員們一件很基本的事實：這個法案委員會是真
9 正審議這條條例草案的委員會，政府的責任是協助我們審議這條條例草
10 案，而不是我們協助政府通過這條條例草案。我們是擁有自主權的。並不
11 是我們不希望協助政府，而是我們做不到。我們應依照我們的方式行事，
12 政府也應協助我們。

13

14 我們無需遵從政府的時間表，要是他們認為進度太慢，他們大可向
15 立法會提出，政府是有這項權力的。在議事規則下，政府是有權隨時向立
16 法會提出，表示不理會法案委員會的意見，因為委員會的進度太慢。如果
17 政府有足夠的票數，亦可通過這條條例草案。他們大可採取這種態度。但
18 法案委員會是擁有本身的主權的，每名議員亦有權投票，決定審議工作應
19 如何進行。所以胡經昌議員無需感到委屈，我們所做的正是我們應該做的
20 事情。至於會議與會議間應該相隔多長的時間，我們亦可以決定。

21

22 胡經昌議員今天提到，他還沒有機會瞭解這些條文修訂後的情況。
23 可能所修訂的部分並不是很多，對他的影響亦不一定很大，因為經修訂的
24 條文和原本的沒有多大的分別。如果情況是這樣，他或可建議明天繼續舉
25 行會議，他便有足夠時間作好準備。所以，我們無需硬性規定每星期舉行
26 兩次或3次會議。如果我們認為不安心，並且需要多一點時間準備，我們便
27 可先研究有關文件，然後再繼續舉行會議。

28

29 主席，雖然我很憤怒，但我亦願意聽取政府官員解釋第IX部的情
30 況，我亦很希望胡經昌議員考慮繼續聽取政府的解釋，以對有關修訂有較

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1 清晰的理解。然後，我們再決定下一步應該怎樣做、在何時復會，我們需
2 要多少準備時間等。主席，我認為這個做法較為穩妥，而我們無需事先決
3 定兩個星期後再舉行會議。

4

5 **主席：**

6

7 好的，我希望聽取其他同事的意見。吳亮星議員。

8

9 **吳亮星議員：**

10

11 多謝主席。我的出席率是很高的，我一直亦有留心聽取政府多方面的
12 解釋。我認為最重要的，是證券及期貨市場今後的運作對有關業界和公
13 眾的影響。因為訂立這條法例的目的，是希望香港在證券和期貨方面的營
14 運更加完善。如果產生的後果，是可能會出現一些混亂，或導致業界的發
15 展更加困難，這並不是我們立法的目的。所以我很希望，即使有關理念仍
16 在修訂階段，而政府亦已把它們一一陳述，委員也會有較多時間就這些理
17 念進行研究。如果這樣便通過這條條例草案，恐怕有點草率。

18

19 政府可以解釋有關文件，我們亦會盡量聽取有關解釋，並參考有關
20 文件。我認為準備的時間實在不足夠。政府給予我們準備的時間實在太短
21 了。所以，希望我們可以有多一點準備時間，讓業界或議員可在政府作出
22 解釋後，有足夠時間詳細研究有關文件或進行諮詢。

23

24 **主席：**

25

26 好的，綜合各位的意見後，我決定容許政府今天繼續作出介紹，亦
27 使胡經昌議員有足夠時間諮詢業界。其實，我們完成今天和明天的會議後
28 便會休會。胡經昌議員可以在9月復會時，提出業界的問題或他本身提出的
29 問題。

30

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1 副局長也應聽取議員們的意見，由現在至9月前的任何時間，當政
2 府完成部分的草擬工作後，便可把文件呈交給委員會秘書。我希望政府可
3 在8月底或9月初完成所有草擬工作，讓我們有數個星期的時間各自徵詢顧
4 問的意見。

5
6 至於另一個問題，是9月份我們需要舉行多少次會議，李家祥議員
7 剛才也曾清楚提到這點。大家應已接獲一份有關的circular。

8
9 我亦聽取了余若薇議員的意見，我們亦要對她公平。我們現時是希
10 望逢星期一、三、五舉行會議，而余若薇議員逢星期二和星期四也要出席
11 公營房屋建築問題專責委員會的會議，這是較為吃力的。由於存有這個困
12 難，我建議在安排會議上寬鬆一點。我只是徵詢各位的意見而已，我建議
13 逢星期一和星期五舉行會議。

14
15 **副主席：**

16
17 主席，我認為無需這樣安排。因為忠堅分子是必定會出席會議的，
18 即使是李國寶議員，他每次也會出席會議，待討論的內容能讓他安心時，
19 他才離開。我們可以預定會議的日期，但不要勉強。雖然牽涉的文件可能
20 很多，但如果涉及的修訂很少，我們能很快完成審議工作，我們便可把會
21 議安排得較為頻密。但如果遇到很重要的部分，而議員認為當天不可繼續
22 討論，亦不可即時作出決定時，我們便可結束會議。我認為進度應該是這
23 樣的。

24
25 余若薇議員剛才提到，我們亦需要綜合所有有關文件一併研究。主
26 席，你可否考慮在讀出有關條文時，邀請委員會秘書或法律顧問就每項條
27 文提出特別需要注意的問題。可能很簡短地提出便已經足夠。

28
29 **主席：**

30

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1 我希望這種做法能解決各位的困難。換句話說，我們會按照實際情
2 況，如果發現進度太急速，或我們根本沒有時間照顧一些人士的意見，我
3 們便慢下來或停下來。

4
5 **余若薇議員：**

6
7 主席，明天有否安排舉行會議？因為你剛才提到，在這次會議後，
8 便要到9月份才舉行會議，但根據我的日記，我們安排了在明天下午2時30
9 分舉行會議。

10
11 **主席：**

12
13 是的，今天和明天舉行的會議便是暑假前最後的兩次會議。

14
15 **余若薇議員：**

16
17 你的意思是否明天會繼續舉行會議？我明天不能出席，因為我預先
18 約定了會晤申訴部。

19
20 **主席：**

21
22 根據schedule，我們是安排了明天舉行會議的，但我也會聽取大家
23 的意見。今天和明天的會議後，便要待9月份才會舉行會議。

24
25 表示明天會出席會議的議員有9位。表示不能出席的議員，包括李
26 家祥議員、李國寶議員、曾鈺成議員和胡經昌議員。而余若薇議員……妳是
27 表示將會出席的。

28
29 **李家祥議員：**

30

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1 這份回條是在較早時交回的，情況可能已有所改變。

2
3 **余若薇議員：**

4
5 我明天在同一時間約定了會晤申訴部。

6
7 **余若薇議員：**

8
9 主席，我們今天所討論有關第IX部的文件，是我昨天才透過cc mail
10 收到的，所以是沒有顯示修訂標記的，即有關修訂的部分是沒有顯示的。
11 另外，據我瞭解，第X部的文件還沒有整理完畢。除非胡經昌議員明天會就
12 第VI和VII部提出問題，否則我不知道在明天的會議上我們會討論甚麼議
13 題，但他已表示無法出席會議。

14
15 **李家祥議員：**

16
17 繼續舉行會議是沒有意義的。

18
19 **主席：**

20
21 我希望副局長明白同事的意見。我再次邀請胡經昌議員留步參與會
22 議，好嗎？請你留步聽取意見，待9月復會時我們才繼續討論這部的內容，
23 好嗎？正如副主席所說，我們會按實際的情況決定討論的進度。吳亮星議
24 員。

25
26 **吳亮星議員：**

27
28 明天的會議是否取消？我仍然認為時間過於短促。就我昨天的情況
29 而言，我需要出席兩個會議，不繼穿梭於會議室B和會議室C之間，所以聽
30 到的意見不多。我們需否現時決定，明天會否舉行會議？如果勉強舉行會

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1 議，而沒有實際的需要，明天便不一定要舉行會議。如果一些主要參與討
2 論的人士不能出席明天的會議，勉強舉行會議也是沒有意思的。

3
4 **主席：**

5
6 那麼我便按照你們的意見決定吧。我相信大家的意見是取消明天的
7 會議。現在開始聽取政府的解釋，好嗎？

8
9 **財經事務局副局長區璟智女士：**

10
11 多謝主席。

12
13 **主席：**

14
15 李先生，請講。

16
17 **高級法律顧問李裕生先生：**

18
19 主席，昨天討論第VIII部第180條時，委員會曾經指示我們，向委員
20 會提供英國《金融服務及市場法》的有關條文。我們今天已經請委員會秘
21 書向各位提供有關的條文，即有關的英國法例第174條，已經放在各議員的
22 桌上。主席，不知需否我們特別作出介紹，還是議員們已能掌握有關資料？

23
24 **主席：**

25
26 Margaret，需否作出介紹？

27
28 **副主席：**

29
30 主席，我本人沒有這個需要，但不知其他同事有否這個需要？

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1

2 **主席：**

3

4 我相信不需要了，謝謝你。我們現在討論第186條——Interpretation
5 of Part IX。

6

7 **財經事務局副局長區璟智女士：**

8

9 主席，我剛才也曾提到，這部的主要修訂，其實是演繹了我們在5
10 月底向各位提交的文件。換句話說，就處分制度，我們因應議員和市場提
11 出的意見，建議在某些地方作出一些修訂。我們先以3、4分鐘的時間作出
12 簡單的解釋，然後才開始討論這個部分。這個安排會否較為恰當？

13

14 **主席：**

15

16 好的。

17

18 **財經事務局副局長區璟智女士：**

19

20 請Mr CARSE向各位介紹那份文件主要的建議，以便各位研究有關
21 的修訂。

22

23 **主席：**

24

25 有關文件的編號是CB(1)1374/00-01，是嗎？

26

27 **余若薇議員：**

28

29 不是。

30

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1 **財經事務局副局長區璟智女士：**

2
3 政府的文件編號是8D/01，發出日期是5月28日，文件的標題是
4 “Disciplinary Sanctions and Appeal Mechanism for Exempt Authorized
5 Institutions and their staff”。

6
7 **秘書林葉慕菲女士：**

8
9 主席，立法會的文件編號是CD(1)1374/00-01。

10
11 **余若薇議員：**

12
13 這份文件並不是今天會議議程列出的文件。所以，區副局長剛才提
14 出的時候，我已經嘗試尋找，但卻找不到。

15
16 **秘書林葉慕菲女士：**

17
18 這份文件應該是有關第VIII部的文件。我現在正請同事為大家複
19 印，供各位議員參考。

20
21 **余若薇議員：**

22
23 主席，我提出的正是這些問題。我的憂慮是每次討論時，沒有人提
24 醒我們需帶備哪些文件，即使我們按照agenda帶備文件，亦可能會有所遺
25 漏。就如現在提及的文件，根本不是今天會議議程所載列的文件。

26
27 **Chairman:**

28
29 David.

30

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1 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

2
3 Thank you, Mr Chairman. If Members can find the paper I will just outline the
4 main features of it. The first thing to say is that there are a number of CSAs which relate to
5 Part IX, but I suppose the most important of them relate to the treatment of exempt authorized
6 institutions. This really goes back to comments that were made by Members at the meetings
7 on the 30th of March and the 27th of April, about the lack of consistency between the treatment
8 of exempt AIs and brokers so far as disciplinary sanctions were concerned.

9
10 I think probably it is best to start with what the current position is, as set out in the
11 Blue Bill. At the moment the sanction that is available under the Bill in relation to exempt
12 AIs is to revoke their exempt status, and that would be exercised by the SFC. Under the
13 Banking (Amendment) Bill in addition to that, the HKMA is also empowered to revoke the
14 approval of individuals who have been appointed as executive officers, and also to publicly or
15 privately reprimand an exempt AI. As I mentioned, members pointed out at the two
16 previous meetings that there was a lack of consistency here with the treatment of brokers.

17
18 In the light of those comments we thought again about this, and we have prepared a
19 set of proposals which have been discussed with the Hong Kong Association of Banks.
20 They have agreed, albeit reluctantly, to what we are proposing as set out in this paper. If you
21 go through the various sanctions that are available, starting first of all with revocation, as I
22 mentioned there is already the power in the SFC to revoke the status of exempt AIs. That
23 will continue. It is also the case that as at present under the Banking (Amendment) Bill, the
24 HKMA will have the power to revoke the approval given to executive officers.

25
26 Given that we are the people who approve executive officers, it was thought right
27 that we should also have the authority to take away that power. In addition to that, under the
28 Banking (Amendment) Bill, we are also proposing that we should have the power to remove
29 from the register the names of front-line staff. I will not go into detail on that, because that
30 is something that will be dealt with under the separate CSAs relating to the Banking

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1 (Amendment) Bill.

2
3 Another sanction which is available to the SFC at the moment, in only a limited
4 form, in relation to exempt AIs, is the power of suspension. It is proposed that that should
5 be extended to give the SFC the power to suspend the exemption of an exempt AI on grounds
6 of misconduct and/or fitness and properness. That would be the same as applies to the
7 brokers.

8
9 We are also proposing that the power of suspension should be extended to cover
10 executive officers. That would be provided for in the Banking (Amendment) Bill. In
11 relation to reprimand, we are proposing that the power of reprimand should be passed to the
12 SFC. In other words, it should be taken out of the Banking (Amendment) Bill and given to
13 the SFC, and should be extended not only to exempt AIs but also to their staff. That would
14 include the front-line staff who are conducting securities business and whose names are
15 placed on the register, as well as other staff who are involved in the management of securities
16 business. It is felt that that is appropriate on grounds of consistency. There is no power of
17 reprimand in the Banking Ordinance as it stands at the moment, so it would be a new power if
18 the HKMA were to exercise it. It is felt that on the grounds of consistency this should be
19 passed to the SFC. The power would be exercised by the SFC after consultation with the
20 HKMA.

21
22 An additional sanction which is in neither the Banking (Amendment) Bill at the
23 moment, or in the Securities and Futures Bill is the ability to issue a prohibition order. It is
24 proposed that that power should be passed to the SFC, again after consultation with the
25 HKMA. That would apply both to exempt AIs and to their staff.

26
27 There is also a question of fines. There is presently no provision either in the
28 Banking (Amendment) Bill or in the Securities and Futures Bill for pecuniary fines to be
29 applied to exempt AIs. It is proposed that that fining power should pass to the SFC and
30 should be exercised both in relation to exempt AIs themselves and also to their staff engaged

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1 in securities business. Again, this power would be exercised by the SFC after consultation
2 with the HKMA.

3
4 That is the gist of the proposals which are embodied in the CSAs which have been
5 presented to you. The basic philosophy is that under these revised proposals exempt AIs and
6 their securities staff would be subject to the same range of sanctions as apply to the brokers.
7 That would include revocation, suspension, prohibition orders, public and private reprimand,
8 and fines. The majority of those sanctions would be exercised by the SFC under Part IX of
9 the Bill, and there would be some further powers that would be exercisable by the HKMA
10 under the Banking (Amendment) Bill.

11
12 Thank you, Mr Chairman.

13
14 **主席：**

15
16 就這些介紹，各位同事有沒有問題？

17
18 **Deputy Chairman:**

19
20 Mr Chairman, can I just confirm the general procedure, the flow of the whole thing
21 from the point of view of the exempt institutions? So the standards – the disclosure
22 requirements and so on – will all be set by HKMA, but having consulted the SFC. Would
23 that be correct?

24
25 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

26
27 It is rather the other way around. The standards would be set by the SFC and they
28 would be applied by the HKMA in its capacity as a front-line regulator. We are carrying out
29 the day-to-day supervision, but it is according to standards which have been set by the SFC.

30

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1 *Deputy Chairman:*

2

3 All right.

4

5 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

6

7 If there is a problem which may give rise to a disciplinary offence, we would pass
8 the information to the SFC. They might then conduct their own investigation of the exempt
9 AI, and they would have the powers to do so under Part VIII. They may then come to the
10 conclusion that disciplinary procedures were warranted. They would exercise those powers
11 after consultation with the HKMA. That would include the powers, as I said, of revocation,
12 of suspension of exempt status, fining or reprimand. Those powers would be exercised, and
13 certainly the fining powers would be exercised on the basis of guidelines that would be
14 published by the SFC. The only powers of a disciplinary nature that would rest with the
15 HKMA would be the power to revoke an approval given to an executive officer, which we
16 feel is right, because we are the people who approve them in the first place.

17

18 Secondly, the power to remove an individual from the register or to suspend that
19 individual from the register: that latter power is taken in response to comments from
20 members. Previously the thinking was that if we thought an individual had behaved in a
21 way which indicated misconduct or lack of fitness and properness, we would expect the
22 institution itself to take the necessary action to remove that individual's name from the
23 register, so that they can no longer carry on securities business on behalf of the AI. In the
24 light of the comments that were made, we decided it is right that the HKMA should have a
25 power to remove that individual's name from the register. That incidentally will give that
26 individual a right of appeal. Really, the second leg of the amendments which are set out in
27 the paper dated the 28th of May is that that appeal should then be to the Securities and Futures
28 Appeals Tribunal. So all these disciplinary powers which are exercised either by the
29 HKMA or by the SFC will be appealable to the SFAT, which should ensure consistency of
30 approach, which was a point that was made by the Committee earlier.

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1

2 ***Deputy Chairman:***

3

4 Mr Chairman, so in other words the day-to-day monitoring is done by HKMA.

5

6 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

7

8 Yes.

9

10 ***Deputy Chairman:***

11

12 But when they see something which may lead to a breach, then they would call in
13 the SFC to do the investigation.

14

15 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

16

17 Yes.

18

19 ***Deputy Chairman:***

20

21 At the end of the investigation does the SFC then report to the HKMA, or do they
22 go ahead with discipline?

23

24 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

25

26 The decision would be a decision to be taken by the SFC, and they must have the
27 discretion to take that decision; but there will be powers for mutual consultation, because
28 obviously any decision they take – for example, to publicly reprimand an exempt AI – could
29 have further ramifications for that bank. It could conceivably damage confidence in the
30 bank. So I think it is right that there should be consultation between the two parties, but at

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1 the end of the day it is a decision that they have to make.

2

3 ***Deputy Chairman:***

4

5 Yes. The decision is made by the SFC at the end of the investigation.

6

7 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

8

9 Yes.

10

11 ***Deputy Chairman:***

12

13 And then it depends on what the penalty is going to be. Certain penalties would
14 be administered by the HKMA.

15

16 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

17

18 Yes.

19

20 ***Deputy Chairman:***

21

22 Other penalties would be administered by the SFC, and the affected person will
23 have a right of appeal to the same tribunal.

24

25 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

26

27 That is correct. I think the other point is that there will be a power of the SFC and
28 the HKMA to make recommendations to one another, so that if the SFC conducts its
29 investigation and concludes that an individual has been guilty of misconduct, they will be able
30 to make a recommendation to the HKMA which could presumably be that that individual's

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1 status or approved status should be revoked. The decision would still be our decision. We
2 have to, at the end of the day, have the right to exercise our own discretion, but it could be on
3 the basis of information provided by the SFC, taking into account recommendations by the
4 SFC, and on the basis of consultation with the SFC.

5
6 The same thing would happen the other way around. We would have the ability to
7 make recommendations to the SFC, but again at the end of the day it has to be their decision,
8 whether they decide to impose a fine or a reprimand.

9
10 ***Deputy Chairman:***

11
12 Right. So the investigation is set off basically by the HKMA?

13
14 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

15
16 Yes. That would be one trigger. Of course there could be information that comes
17 into possession of the SFC other than through our day-to-day supervision. The SFC can rely
18 on a wide range of information, but normally if an abuse of one kind or another was spotted
19 or came to light, it would normally come to light through our regular on-site examination of
20 the exempt AI, or through the receipt of some other information by the HKMA.

21
22 ***Deputy Chairman:***

23
24 Mr Chairman, may I just comment preliminarily at this point that I tend to feel that
25 generally it is in the right direction, although exactly how it works out, whether I would have
26 other questions – I think I would need time to think about that, because that changes the
27 system quite a bit.

28
29 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

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1 It does not change the system that radically, because in a sense it is something that
2 normally happens at the moment. I mean, we do come across cases in relation to our
3 supervision of AIs, either exempt AIs or their subsidiaries, which may indicate that some
4 form of abuse has occurred. Even now we would pass that information to the SFC, using the
5 existing gateway under the Banking Ordinance. That gateway does have certain constraints
6 at the moment, because there are provisions which say that we can pass the information to the
7 SFC provided it is not contrary to the interests of depositors. In order to have a seamless
8 flow of information between ourselves and the SFC in the future, it is proposed that that
9 constraint should be dropped so that we will have a straightforward right to pass information
10 to the SFC without taking into account any other factors, when we are dealing with issues
11 relating to regulated activities.

12
13 The other point is that, as we have discussed previously, the MOU at the moment,
14 which we have with the SFC, does set down to some extent the rights and responsibilities of
15 the two parties; but we think it has to be expanded to deal in more specific detail with what
16 exactly the SFC would expect of us in terms of carrying out the day-to-day supervision, but
17 also in terms of passing of information. When, for example, would they like the information
18 to be disclosed? Do we wait until our next monthly meeting, or do we tell them immediately?
19 Do we distinguish between the seriousness of the matter which has come to our attention?
20 These are the sorts of issues that I think we will have to hammer out in the MOU, but in
21 substance the cooperation between ourselves and the SFC already exists, insofar as if we
22 come across a problem which relates to their area of responsibility, we would pass it to them
23 at the moment.

24
25 ***Deputy Chairman:***

26
27 But, Mr Chairman, if clause 175 will not change the direction you have indicated,
28 could it not have been under the original bill that the responsibility for investigation be on the
29 SFC.

30

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1 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

2
3 I think as between ourselves and the SFC, it has always been understood that the
4 SFC would have the power of investigation. The redrafting may not quite capture that at the
5 moment, but the distinction has always been there in our minds, between the power to carry
6 out day-to-day supervision – I can't remember which provision that is under 172 – and the
7 power to carry out investigation. There has always been that distinction, and if the drafting
8 of the Blue Bill does not capture it at the moment, that has been inadvertent. It should give
9 the SFC the clear power to carry out these formal investigations.

10
11 **Deputy Chairman:**

12
13 So all along we have had the SFC to investigate.

14
15 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

16
17 Yes. That has always been the policy intent.

18
19 **Deputy Chairman:**

20
21 Thank you.

22
23 **主席：**

24
25 各位同事，這是政府在5月份就政策上作出的較大改變。我們需要
26 研究有關條文能否達致這個目標。我們現時討論的是第186條——第IX部的
27 釋義或 Interpretation of Part IX。

28
29 **余若薇議員：**

**Bills Committee on
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1 主席，我們是否要恢復就逐項條文進行審議的工作？

2

3 **主席：**

4

5 不是，政府只是作出解釋而已。事實上，這條涉及的轉變較大，與
6 原本的Blue Bill的分別亦較大。

7

8 **余若薇議員：**

9

10 除了Mr CARSE剛才所提出的轉變之外，我們也曾提及其他的問
11 題，例如，我們曾就第186條提出一些意見，但政府並沒有因應有關意見作
12 出修訂。我們是否待胡經昌議員出席會議時才進行討論？

13

14 **主席：**

15

16 我認為我們應該先讓政府作出解釋，如果胡經昌議員在9月份舉行
17 的會議上希望瞭解有關問題，他也可以再次提問。我們剛才的意見也是這
18 樣，對嗎？我們先讓政府作出解釋，正如第191條也有較多修訂，使我們可
19 以研究現時的草擬方式能否反映有關的政策。

20

21 **余若薇議員：**

22

23 主席，由於你剛才讀出第186條的條次，好像是我們恢復就逐項條
24 文進行審議的程序一樣，所以我便不知道，是否若我們希望就第186條提
25 問，便應該舉手表示，還是我們應讓Mr CARSE或政府就逐項條文解釋有關
26 的修訂。

27

28 **主席：**

29

30 我的建議是當我讀出每項條文的條次時，政府便就該項條文解釋有

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1 關的轉變，以及轉變的原因，好嗎？我相信這個方法便可滿足同事的要求。
2 第186條。

3

4 **財經事務局副局長區璟智女士：**

5

6 主席先生，第186條的主要轉變，Mr CARSE剛才已經提到，即把處
7 分制度伸延至銀行證券部的工作人員，因此我們需要在釋義的部分加入有
8 關的條款。

9

10 **主席：**

11

12 好的。第187(1)條的修訂是技術性的，對嗎？

13

14 **Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:**

15

16 You are right, Chairman. It is certainly a technical amendment.

17

18 **主席：**

19

20 政府能否解釋有關的政府文件第5頁第187(1)(iv)條下的第(A)、
21 (B)、(C)和(D)節的意思？即證監會現時是否……

22

23 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,
24 Securities and Futures Commission:**

25

26 This is a new type of power, this prohibition power, and it is essentially a power
27 that will enable us to act in a protective way, to prevent someone about whom we have
28 concerns even making an application to be licensed or approved to carry on certain conduct.
29 These amendments to this provision are not substantive changes. What they do is, in effect,
30 make it clear that the way in which we impose that protective order can be across the industry.

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1 It is not simply limited to the previous form of conduct or activity that they undertook. It
2 just means that we can give proper coverage to any protective order we make.

3
4 We see, for example in (D), that it now picks up the notion of someone who was
5 previously one of our licensees, for example, who might in future seek to be placed on the
6 register as one of the exempt persons. It just says we can prevent that happening as well.
7 So they do not get around our banning order in that sense.

8
9 **Chairman:**

10
11 OK? Subclause (2).

12
13 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
14 **Securities and Futures Commission:**

15
16 I think, Chairman, what this states, particularly in (2)(b), that the key defined term
17 is “regulated person”. To better match the second part of the clause to the first part, it just
18 repeats the notion of “regulated person” rather than listing out the people who actually fall
19 within the class of “regulated person”. So again it is an amendment for clarification.

20
21 “Regulated person” is defined in subclause (9) on page 8.

22
23 **Chairman:**

24
25 Subclause (3)? Subclause (4)?

26
27 **Mr Eugene GOYNE, Associate Director, Enforcement, Securities and Futures**
28 **Commission:**

29
30 Subclause (4) is to take into account members’ concerns expressed earlier, and also

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1 during consultation in relation to the unusual position in relation to a disciplinary fine. A
2 disciplinary fine took effect 30 days after a decision to impose that fine, and that fine was not
3 stayed by appeal to the SFAT. The changes there are to make the fine payable 30 days after
4 the time it would be payable under the SFAT appeal provisions. So fines are now stayed by
5 an appeal to the SFAT, and the time for the fine is determined under the SFAT appeal
6 provisions, in line with other decisions that are appealable to the SFAT.

7
8 **Chairman:**

9
10 政府並沒有就第(5)和(6)款作出修訂，why is subclause (7) deleted?

11
12 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
13 **Securities and Futures Commission:**

14
15 When the Bills Committee previously discussed this question of finding guidelines,
16 it was thought that although the full extent of the guidelines and relevant issues need not
17 necessarily be set out in the legislation, there should be some greater articulation of some key
18 relevant issues, and so when we come to clause 191(A), which is a new section which in
19 effect combines these subclauses and two earlier sections on procedural requirements, you
20 will see that there is some greater spelling out of what needs to be taken into account when
21 exercising fining powers, and what the fining guidelines should address. It does not change
22 the policy at all.

23
24 **Chairman:**

25
26 OK. Subclause (9)?

27
28 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
29 **Securities and Futures Commission:**

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1 They are really just technical amendments for clarification, particularly the one in
2 respect of relevant time.

3
4 **Chairman:**

5
6 188, subclause (1).

7
8 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
9 **Securities and Futures Commission:**

10
11 I think it is really (1)(a)(iii) in respect of the mental incapacity of a licensed person.
12 This actually is a change that occurs several times throughout these sections. In previous
13 discussions there was some anxiety expressed, particularly from industry members, about the
14 possibility that mental incapacity or a finding of mental incapacity might automatically trigger
15 some disciplinary response. So the additional words really just make clear what had always
16 been the policy intent, that nothing should necessarily follow unless it in fact had an impact
17 on the fitness and properness of the licensed person. As we come to it, you will see the same
18 is reflected in respect of the fitness and properness of responsible officers and representatives.

19
20 **Chairman:**

21
22 Subclause (2); subclause (3); subclause (4); subclauses (5), (6) and (7): they have
23 not been changed.

24
25 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
26 **Securities and Futures Commission:**

27
28 No.

29
30 **Chairman:**

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O.K. Clause 189 has been deleted.

*Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,
Securities and Futures Commission:*

Yes. This is not a deletion so much but a relocation and combination of the procedural requirements, in several respects. The first two are ones we have already touched on, the fining guidelines. There previously had been two sections dealing with procedural requirements, one in respect of action taken against SFC registrants, and one in respect of exempt persons. That was 190, and it is now combined as 191.

Chairman:

Clause 189?

*Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,
Securities and Futures Commission:*

Sorry. It had previously been 191 – my apologies – and it is now combined as the new 191.

Chairman:

189A – Disciplinary action in respect of exempt persons, etc.

*Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,
Securities and Futures Commission:*

This is really the substance of the amendments that Mr CARSE has already

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1 introduced.

2

3 *Deputy Chairman:*

4

5 So this is wholly new?

6

7 *Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,*
8 *Securities and Futures Commission:*

9

10 Yes. If you follow it through you see that it picks up each of the points that Mr
11 CARSE has made. Again, the key terminology is “regulated person”, which is defined in
12 subclause (8) in a different way to the previous provision of “regulated persons”, so it
13 includes exempt persons, their executive officers, those involved in management, and those
14 who are named on the register kept by the Monetary Authority – employees undertaking the
15 exempt activity.

16

17 If you follow it through, you see that in what is – it is a bit hard to see how they
18 have numbered these – 1(i)A there are the references to a regulated person who is an exempt
19 person. That is the principal. That is the authorized institution, in effect. It deals with
20 revocation and in B, suspension. What it does not deal with, of course, is regulated persons
21 who are not the principal exempt person, and Mr CARSE has explained revocation or
22 suspension, or the effect of equivalence dealt with under the Banking Amendment Bill,
23 because they are powers that would be exercised by the HKMA.

24

25 When you follow it through, you see that in respect of public and private
26 reprimands and prohibitions, that is a more general power that applies to the whole class of
27 regulated persons, and so in respect of those other powers, it is the SFC that exercises the
28 power. Then if you follow on to the next page, you see that in addition to those powers, the
29 SFC - that is the Commission – in respect of a whole class of regulated persons again, has a
30 power to impose pecuniary penalties. Those provisions are the same as the pecuniary penalty

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1 provisions that you have already become familiar with in respect of SFC registrants.

2
3 **Chairman:**

4
5 This is appealable?

6
7 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
8 **Securities and Futures Commission:**

9
10 Yes. In fact what changes, and what we will see when it comes to Part XI, is that
11 all these decisions taken by the SFC under this ordinance, or indeed those that would be taken
12 by the HKMA, would all now go on appeal to the appeals tribunal. There was previously a
13 difference of approach on appeal, where some decisions went to the Chief Executive in
14 Council. That is done away with. It all goes to the tribunal now.

15
16 **主席：**

17
18 第189A(2)(b)(i)條所訂，有關證監會可處以罰款\$10,000,000的權
19 力，仍然是無須經court批准的，對嗎？

20
21 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
22 **Securities and Futures Commission:**

23
24 Under this provision it would be the SFC, as it would also be the SFC in respect of
25 fines against our own licensees.

26
27 **主席：**

28
29 請各位參考subclause (1)。BAB也要作出相應的修訂，而證監會原
30 本在Blue Bill下獲賦予的權力也可能需要取消，對嗎？

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1

2 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

3

4 That is right, Mr Chairman.

5

6 ***Chairman:***

7

8 Can you just highlight that to us in the paper tabled? Just highlight which part,
9 so that we can compare.

10

11 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

12

13 In the Banking (Amendment) Bill?

14

15 ***Chairman:***

16

17 Yes.

18

19 ***Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:***

20

21 In relation to executive officers, we have deleted the previous section 58A in the
22 BAB, which was a reprimand in respect of exempt authorized institutions. We have
23 substituted that with a new 58A which deals with the removal of the particulars of relevant
24 individuals, which are basically front-line staff, from the register. That would be on two
25 grounds. One is that the relevant individual has been guilty of misconduct, which would be
26 defined as in the Securities and Futures Bill; or if the MA is of the opinion that the relevant
27 individual is no longer a fit and proper person, we would exercise this power after
28 consultation with the Securities and Futures Commission. We would have the power not
29 simply to remove the individuals' particulars from the register, but also to suspend those
30 particulars from the register.

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1

2 *Chairman:*

3

4 O.K. Thanks.

5

6 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

7

8 We can do that on the basis of information received from the SFC, including
9 information which is derived from an investigation under section 175. That deals with front-
10 line staff, and then in relation to executive officers we have amended section 71C to bring it
11 more into line with the structure of the equivalent provisions in Part IX, and also to make
12 some other fairly minor consequential amendments.

13

14 If you look at the revised 71C you will see that it does try to mirror as much as
15 possible the language of the CSAs to the Blue Bill.

16

17 *Chairman:*

18

19 O.K.

20

21 *Mr David CARSE, Deputy Chief Executive, Hong Kong Monetary Authority:*

22

23 Then, as I have said, all the appeal provisions related to sanctions taken against
24 individuals – executive officers or front-line staff – under the BAB - - all those appeals will be
25 to the SFAT. We have got provisions in the Banking (Amendment) Bill to cater for that,
26 which again tried to duplicate as much as possible the language that is in the Securities and
27 Future Bill.

28

29 *主席:*

30

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1 就第190條，政府會否作出介紹？

2
3 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
4 **Securities and Futures Commission:**

5
6 Chairman, I intend to stay on (3), (4), (5), (6), (7) and (8). Basically they replicate
7 the corresponding provisions in respect of SFC registrants, word for word, with the exception
8 of the definition and changes for “regulated person”. In 190 there are two things that
9 happen. One is a substantive change, so that you see in subclause (1) the additional words
10 “or suspend an exempt person”. That is the substantive change. It is a power, as Mr
11 CARSE has explained, that has been added to the SFC’s armoury – revocation or suspension
12 of exempt status. The other changes, although they seem to be significant, are in fact just
13 reshuffling of parts to better fit the new arrangements, so that (a) to (c) – and this is clear from
14 the footnotes – become part of a new subclause; and over the page, what were subclauses (2)
15 and (4) also move to a later part of the Bill, in order that parts can be consolidated, now that
16 the SFC’s powers in respect of both our registrants and exempt persons are effectively co-
17 extensive.

18
19 We see the same for 191; exactly the same thing happens. It all then gets
20 subsumed into the new 191, which are the general procedural requirements. Those
21 procedural requirements in the new 191 are effectively what had been the procedural
22 requirements in respect of our registrants. They now apply more generally to exempt
23 persons and to a wider range of decisions in respect to exempt persons and their staff.

24
25 **Chairman:**

26
27 191A.

28
29 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
30 **Securities and Futures Commission:**

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1
2 Two things again happen here. First, the section has just been moved from earlier
3 subsections, and I noted those in passing, as we went through. Also you have a new
4 subclause (2). You will see it is an inclusive one. It says: "...without prejudice to the
5 inclusion of other factors". It does set out some things in subclauses (a), (b), (c) and (d),
6 which must be included as relevant factors in the fining guidelines. The first is as to the
7 nature of the conduct. The second is as to the damage to the market. The third is, in effect,
8 the outcome or the effect of the conduct in respect of other persons; and firstly, whether or not
9 some benefit accrued to the person – the key things that anyone would take into account,
10 whether it was a sentencing court or a regulator, in deciding upon appropriate disciplinary
11 response. It is all about the proportionality of the response, and it looks very similar to the
12 corresponding provision in the Financial Services and Markets Act. It is not the same, but it
13 is very similar.

14
15 ***Deputy Chairman:***

16
17 We did raise this point, Mr Chairman, I think. We wanted it to be clear.

18
19 ***主席：***

20
21 Yes，接着是第192條。

22
23 ***Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,***
24 ***Securities and Futures Commission:***

25
26 I do not think there is anything, Chairman.

27
28 ***Chairman:***

29
30 Yes, only some categorical meaning. 接着是第193條。

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1

2 *Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,*
3 *Securities and Futures Commission:*

4

5 Again I think it just picks up changes to section numbers, and in some respects,
6 some slightly extended powers.

7

8 **主席：**

9

10 第194和195條並沒有甚麼改變。Margaret。

11

12 **Deputy Chairman:**

13

14 Mr Chairman, it is very clear that the amendments to this part some of these are
15 quite major and need quite a bit of study. They are there to implement the policy. We are
16 told they implement the policy which is explained in the paper on the 28th of May. So,
17 Mr Chairman, I am not in the slightest surprise that people want to discuss things and consult.
18 May I also ask whether the legal adviser can help us? Because this is a major change
19 introduced in the middle of the Bill, I would like to see if the Legal Adviser could read the
20 amendments with a view to considering whether the earlier parts of the Bill may be affected
21 in ways which are not picked up. I am not saying that there are. I am saying that when
22 there are changes of this sort you want the Bill to hang together, and from that point of view,
23 the Legal Adviser might like to see the Bill from the beginning, to see whether the other parts
24 - - I hope the Administration has already done the same, and if not, to do it, to see if there are
25 any inconsistencies or disjointedness.

26

27 **Chairman:**

28

29 Legal Adviser, is it difficult to do so?

30

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1 **高級法律顧問李裕生先生：**

2
3 主席，我們會在下次會議前備妥一份文件，向議員解釋這些修訂與
4 條例草案的其他部分會否出現矛盾或其他問題吧。我們會以書面的方式提
5 交有關資料。

6
7 **主席：**

8
9 好的。

10
11 **Deputy Chairman:**

12
13 Other than that, Mr Chairman, I am not prepared to make any comments.

14
15 **主席：**

16
17 我們今天的會議到此為止。我希望提醒各位，我會透過委員會秘
18 書，向各位發出一份文件，文件編號是CB(1)1796/00-01，讓各位表明能否
19 出席9月份的會議。

20
21 李家祥議員，請你原諒我提出這項時間安排。我只是希望政府可以
22 趁着暑假，完成有關文件的擬備工作，供我們在9月初參考。如果待10月份
23 才舉行會議，屆時我們需要同時出席其他會議，便會更加辛苦。所以我們
24 可趁着其他會議在9月份還未舉行，多做一點工夫，要不然我們在10月和11
25 月便會更加辛苦。這是我安排這個時間表的理據，希望你能體諒。李家祥
26 議員。

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28 **李家祥議員：**

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30 我比很多議員幸運，因為事實上，就條例草案中有關會計的條文，

**Bills Committee on
Securities and Futures Bill and Banking (Amendment) Bill 2000
《證券及期貨條例草案》及
《2000年銀行業(修訂)條例草案》委員會**

1 我已透過會計師公會，和政府有很多溝通。今天討論的部分和提出的意見，
2 我們業界已曾在證監會的諮詢委員會會議上進行討論，所以我的準備工夫
3 較很多其他同事充足。我剛才提出的意見，主要是照顧整個委員會的需要，
4 而不是我個人的看法。對不起，我剛才也曾提到，我在9月初不會在香港。

5

6 **主席：**

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8 復會的時間不是9月初，而是9月中旬。

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10 **李家祥議員：**

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12 即使是9月中旬，我也可能不能出席首兩個會議。如果10月份舉行
13 會議的頻密程度，是每星期只舉行兩次會議，或最多舉行3次會議，我會盡
14 可能出席。但一但PAC的會議開始，我便完全不能出席法案委員會的會議，
15 因為PAC的會議是逢星期一、星期三、和星期五的上午舉行的。主席，我希
16 望你明白，屆時我要主持那個會議，我便完全不能出席法案委員會的會議
17 了。我要預先講明這點。

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19 **主席：**

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21 副主席。

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23 **副主席：**

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25 主席，我們在9月份的會議日期，只是我們的良好願望。我們在上
26 次會議上，亦表示希望署方在暑假期間向我們呈交有關文件，待我們作出
27 研究，並完成所有思考或諮詢的程序後，才可迅速進行審議工作。所以，
28 有關的會議日期是基於這項假設的。主席，我們可以在9月份復會後，再考
29 慮實際的情況。

30

**Bills Committee on
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1 **主席：**

2

3 最後，祝各位有個愉快的暑假。

4

5 7月19日和27日的會議已經取消。下次會議的日期是9月10日，我們
6 將會就第IX部進行討論。多謝各位。

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