

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 Friday, 26 October 2001, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, (Chairman)
Hon Margaret NG, (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon James TO Kun-sun
Hon Bernard CHAN
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Henry WU King-cheong, BBS
- 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 Frank TSANG
Assistant Secretary for Financial Services
- Ms Sherman CHAN
Senior Assistant Law Draftsman

Ms Fanny IP
Senior Assistant Law Draftsman

Miss Betty CHEUNG
Senior Government Counsel

Mr Michael LAM
Senior Government Counsel

Ms Franscoise LAM
Government Counsel

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

Mrs Alexa LAM
Executive Director and Chief Counsel, Securities and
Futures Commission

Mr Joe KENNY
Consultant, Securities and Futures Commission

Mr Andrew YOUNG
Legal Consultant, Securities and Futures Commission

Clerk in attendance : Ms Connie SZETO
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 Rosalind MA
Senior Assistant Secretary (1)3

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1 **主席：**

2
3 各位同事，現在會議開始，請政府的代表進入會議室，多謝政府代
4 表出席今天的會議。

5
6 對於第XVII部，我希望這樣處理：先請副局長就第XVII部及附表9
7 的整體安排及政府制訂有關部分背後的理據作出解釋，同時特別解釋
8 consequential amendments的部分，然後請法律顧問作出評論後，我們才開
9 始進行審議。副局長，請講。

10
11 **財經事務局副局長區璟智女士：**

12
13 多謝主席。在我們較早時討論政策背景時，我曾提交一份文件給各
14 位。由於該份文件已簡單解釋擬議第XVII部背後的理據，所以我不會再在
15 此詳細解釋每段的內容。

16
17 簡單來說，第XVII部只有4項條款。我主要請各位參閱附表9的內
18 容。附表9主要分為兩個部分。第1部解釋本條例的逐個部分，即如果本條
19 例獲得通過，在條例生效後，每部對現有的市場活動、市場中介人的認可，
20 或市場產品的批核有哪些影響。

21
22 例如第IV部提到投資要約。如果有關投資要約在條例生效前已獲批核，
23 在條例生效後，有關投資要約將會繼續按照舊的條款生效。又例如第III部
24 提到，如果有關交易所和結算公司的活動已獲現行條例批准繼續進行，在
25 新的條例生效後將會繼續獲准進行。由於發牌制度可能比較重要，我稍候
26 會請Mr. PROCTER再簡單解釋。就這方面，我們屬意提供兩年的適應期或
27 寬限期，使現時的註冊人士可在這兩年的期限內繼續按照舊有的註冊制度
28 運作。在兩年期限屆滿後，有關註冊人士必須根據這條條例的要求，向證
29 監會申領新的牌照。對於類似的安排，附表9第1部已按照本條例的逐個部
30 分，詳細解釋在過渡期間的情況。

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1
2 至於附表9第2部，則是有關香港在過往多年來通過，並涉及證券及
3 期貨市場的其他條例，例如涉及稅務、遺產稅、交易徵費，即stamp duty等
4 的其他條例。這些條例所採用的一些字眼，可能會由於這條條例生效而需
5 要作出修改。因此，我們便作出了一些相應的修訂。所以在附表9第2部，
6 大家也可以見到有關的其他條例將會如何修訂。但所有這些修訂也不是政
7 策上的修訂，而只是因應這條條例而在字眼上作出的修訂。就這個問題，
8 律政司的專家稍候或可就個別條款向各位詳細解釋。

9
10 主席，請問你希望我們現在就逐項條款解釋，還是請Mr. PROCTER
11 簡單地解釋發牌制度的過渡性安排？

12
13 **副主席：**

14
15 請法律顧問解釋，整體而言，這些過渡性條文和這些consequential
16 的修訂，嚴格來說是否屬於consequential amendment，以及這些transitional
17 arrangement與過往的做法是否相同。這樣便可省去我們很多工作。

18
19 **主席：**

20
21 顧先生，請講。

22
23 **助理法律顧問顧建華先生：**

24
25 多謝主席。似乎Mr. PROCTER會對有關問題作出解釋。讓他解釋後
26 我再作補充，是否較為合適的做法呢？

27
28 **主席：**

29
30 好吧。Mr. PROCTER, will you start first?

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1

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

4

5 Chairman, there is not very much to add to what the deputy secretary has already
6 said. It seems like we are going around in a circle but in brief there is a fairly high degree of
7 mapping across for the licensing types but, as you know, under the new arrangements there
8 will be one licence with endorsements and there are nine types of endorsement. So what the
9 Schedule 9 does in respect of licence categories is to identify an existing category and show
10 how that should map across into the nine licence types, and where there is a more or less close
11 correlation it says that someone who has the existing licence type can continue to carry on
12 business of that sort for another 2 years.

13

14 There are a couple of places where it does not quite map across and, in particular, in
15 the area of collective investments, there is a wider definition of collective investments or
16 investment arrangements under the new legislation so some people who are not presently
17 required to be licensed would be required to have a licence under the new legislation. So in
18 that situation the transitional provisions divide the world into two categories, those who have
19 a licence now and those who do not have a licence now but would need one under the new
20 legislation.

21

22 The first category similarly has 2 years to take out one of the new licence types.
23 The second category has 6 months and the reasoning for that is that if we think it is worth
24 licensing those people we should get on and do it. We should give them a reasonable time –
25 6 months we think is long enough – but we should not allow them the full 2-year period.

26

27 There is a very similar arrangement in respect of one limited class of people who at
28 the moment do not need a commodities trading licence, a commodities dealing licence,
29 because they only deal with people overseas or in other jurisdictions. Under the new
30 legislation they would need a licence and the difference really is the difference between an

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1 understanding and appreciation of the need for reciprocal co-operation as compared to when
2 the Commodities Trading Ordinance was passed. So those people who deal only with
3 overseas clients would need a licence under the new regime and, again, the transitional
4 provisions divide the world into two, people who already have a licence – typically, a
5 securities dealer – will have 2 years to get the second type of endorsement on their licence in
6 respect of commodities trading. Those who do not at the present have any type of licence
7 would again have 6 months to get a licence. They would need a licence with a commodities
8 dealer endorsement and, again, the judgment is that if we think they need a licence, then 6
9 months is long enough for them to get that licence. So that is, in general terms, how the
10 licensing arrangements operate.

11

12 So far as conduct which is under way in respect of disciplinary action is concerned,
13 the arrangement is essentially that things can continue under the new regime as if they were
14 being carried out under the old regime, particularly in respect of penalties so people do not
15 become liable to new types of penalty by reason of the commencement of this legislation
16 which is the usual provision, of course, in respect of statutes. They do not have retrospective
17 effect in substantive areas. Procedurally some things are done under the new legislation.
18 But in the substantive areas of the penalties, it is not retrospective and that applies not only to
19 matters commenced under the old legislation but also conduct that took place at the time in
20 which the old legislation was in effect so, again, just carrying across the usual arrangement in
21 respect of not making legislation retrospective on substantive matters.

22

23 As the deputy secretary has said, there are other types of authorization of approval
24 in the collective investments area, particularly the approval of products for public offering and
25 the approval of advertising in respect of those products. That is deemed to carry through and
26 to have effect as though it were given under the new legislation and the same is true in respect
27 of what will become approvals in Part III but at the moment are approvals under the various
28 pieces of legislation covering the exchange and the clearing houses. So again those
29 approvals which have been given for the operation of a clearing house, the operation of a
30 stock market, and the approval of senior executives in those organizations carries through

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1 under the new legislation as though it was given under the new legislation. These are really
2 all I want to touch on, chairman.

3

4 **Chairman:**

5

6 Mr KAU?

7

8 **助理法律顧問顧建華先生：**

9

10 多謝主席。我認為這些過渡性的條文存有頗多草擬上的問題。由於
11 有關條文涉及實際的操作情況，我們或需較深入瞭解條文的細節。

12

13 就一般性的情況，我希望提出兩點。第一，有關過渡性條文使原有
14 的實體、組織或事實繼續，而這些條文採用的草擬方式，是把原本法例下
15 所訂的事物，視為新法例下的事物，但carry over的組織或事物並不是完全
16 以新法例作為基礎。我認為理論上當局可以作出一個平衡。雖然這些條款
17 是根據舊有的法例而制訂的過渡性條文，但並沒有法例禁止我們在新訂的
18 法例下再次設立相同的措施。如果當局把舊有法例內的事物過渡至新訂的
19 法例，有關人士在使用有關條款時，便需要參考舊有的法例，才可判斷有
20 關事物是否根據舊有法例而設立或成立。例如證監會在一段時間內，甚至
21 在一段長時間內，亦可能需要參考舊有法例。這是否最好的設計呢？希望
22 各位議員考慮這點。

23

24 另一個一般性情況，是有關一些被視為在新法例下發出的牌照。似
25 乎有關的視為欠缺了一些必須的限制，而把牌照的有效期硬性規定為兩
26 年，使證監會在期間無法吊銷有關牌照。整體來說，這些過渡性條文是十
27 分複雜的，希望議員能夠多花時間瞭解有關情況。

28

29 至於有關的相應修訂，大部分也純粹是技術性的修訂。較為特別
30 的，是就Exchanges (Special levy) Ordinance作出的修訂。有關修訂不是根

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1 據逐項條文作出，而是透過一條特別的條文，以一籃子的方式作出。我不
2 清楚是否這個緣故，使該條例的附屬法例無須作出相應的修訂。

3
4 雖然有關內容較為瑣碎，但我們已向議員提供標明修訂事項的文
5 本，希望各位議員可花點時間研究。這附表亦存有一些不一致的地方，例
6 如一些條文提到證券，但卻沒有提到期貨合約。要很概括地提出這些地方，
7 我感到有點困難，或許在討論有關條文時，我才指出詳細的情況吧。政府
8 這樣做或許也有其他原因。這些便是我主要的意見。

9
10 **主席：**

11
12 請問副局長有沒有回應？

13
14 **財經事務局副局長區璟智女士：**

15
16 顧先生剛才提到，附表9第1部的過渡性條文可能會引起憂慮。例如
17 證監會在兩年的過渡期間，有否辦法撤銷某些有問題的註冊或新發出的牌
18 照，以及證監會可能在一段很長的過渡時間內，也需要參照舊有法例行事。
19 請Mr. PROCTER就這兩點簡單地作出回應。

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

23
24 Chairman, I do not think we have any doubt that we could take disciplinary action
25 under the new legislation in respect of conduct which occurs after the legislation comes into
26 effect and in respect of those licences which are deemed to have been carried through to the
27 new regime. So we are quite confident that the Part IX and X arrangements would be
28 sufficiently broad for us to take that action and we do not think there is a gap in that respect.

29
30 Though 2-year transitional period is a long time, there are several reasons for that.

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1 They have to do with the fact that there are some types of licence holder now who will not be
2 entitled to hold a licence in the future; in particular sole proprietors and partnerships but also a
3 number of those who currently enjoy exempt status who in future will not be entitled to do so.
4 That is everyone, in effect, who is not a bank or an authorized institution and currently has
5 exempt status. So there is a need for some transition for those companies, those operations,
6 those sole proprietorships and partnerships to transfer not only their licence type, but also
7 their mode of doing business. So far as having regard to things done under the old
8 legislation is concerned, I think in some areas that will continue for several years, even
9 beyond the 2 years, particularly in the area of collective investments where products have
10 been authorized under the Securities Ordinance or advertising has been approved under the
11 Protection of Investors Ordinance. That product or advertisement may continue, in effect,
12 for a number of years to come but I do not think we find that a particularly troubling matter.
13 We think it is relatively straightforward, given that we have such a broad discretion now and
14 given that the criteria upon which those approvals are given are similar to the criteria that
15 would be used in future. We do not see that as a troubling matter.

16

17 **主席：**

18

19 我希望提出一些比較簡單的問題。相對來說，這個情況較為複雜。
20 對於受影響的持牌人，當局在哪些時間才會為他們舉行簡報會或**briefing**之
21 類的會議？事實上，在公眾作出的回應中，我們接獲公眾就這部分作出的
22 **comment**似乎比較少，不知道這是由於大部分人也不理解有關情況，還是另
23 有原因。

24

25 **財經事務局副局長區璟智女士：**

26

27 我請Mr. PROCTER稍後就這點作出解釋。我們得到的印象，是業界
28 是瞭解有關情況的，因為早在《白紙條例草案》尚未發出之前，證監會在
29 1999年6月已經就新的“單一牌照制度”首先諮詢業界。而就兩年過渡安排
30 的概念，我們亦已在1999年年中公開諮詢市場人士。業界最關心的，是當局

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1 有否提供足夠的過渡期，讓他們適應新的發牌要求。由於我們早在1999年6
2 月已提出這個概念，我們相信大家已有足夠的心理準備。另外，如果業界
3 需要在業務運作上作出安排，其實由1999年6月至今，已經有超過兩年的時
4 間。正如你所說，如果業界遇到甚麼困難或有甚麼不滿，亦應已向證監會
5 提出。至於由現在至條例落實期間，我們怎樣繼續跟業界保持溝通，請Mr.
6 PROCTER作出解釋。

7

8 **主席：**

9

10 我希望再提出一個問題。你們在最初得出新發牌制度的概念時，有
11 關的成本結構或cost structure是怎樣的呢？我相信業界最着緊這方面的情
12 況。我擔憂在實施新發牌制度後成本結構出現某些改變時，業界才提出很
13 多意見。Mr. PROCTER，請講。

14

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

17

18 Perhaps I can start at that final point on costs structure. We are about to publish
19 the consultations and draft fees rolls which will outline what the costs structure will be under
20 the new regime but, in simple terms, there will be fewer licences, fewer applications that need
21 to be made so the costs will, in fact, decline. They will fall and at worst they will stay the
22 same. So what we have carefully tried to do is to avoid a cost increase and, because there
23 are, in fact, fewer applications, there will be fewer items for which a cost is charged.

24

25 I think the position is that the industry does understand broadly what the new
26 arrangements will involve. I think they like the fact that they will have fewer licences and,
27 therefore, fewer registrations and less paperwork so they are quite relaxed and comfortable
28 about that. Our challenge will be to make sure that as many of them as possible make
29 applications early in the 2-year period so we do not have a flood of applications at the end of
30 the period. So we have to promote to them the new arrangements on the basis that it will

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1 involve simplified administration, a reduction in fees, fewer filings, fewer returns and get as
2 many of them as possible to file an application for an early transfer in the 2-year transition
3 period.

4
5 There will also be an advantage when it comes to new representatives because one
6 of the great difficulties at the moment is that it takes a while to get a licence because of the
7 vetting process, because we have to go to outside parties and ask for information about
8 applicants. So what the new licensing arrangements do is to provide for a class of
9 provisional licence where you are allowed to carry on business subject to supervisory
10 arrangements and before the vetting process is fully complete. In most cases that will save a
11 couple of months of waiting time, so people, I think, will be enthusiastic about that and will
12 want to move into the new licensing regime earlier. The challenge will be to get them to do
13 that, to get them to understand the benefits in terms of simplified administration and cost
14 savings. The fees rules, I would imagine, would be available for consultation in November
15 2002.

16
17 **Chairman:**

18
19 In November 2002?

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

23
24 Yes.

25
26 **Chairman:**

27
28 Any questions from members?

29
30 **Deputy Chairman:**

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1
2 Mr Chairman, actually, consequential and transitional provisions are the most
3 difficult but sometimes they are also the most problematic because people do not realize it,
4 especially when you are looking at quite a long transition. It is not as if you have a couple of
5 dates which is fairly near and you advertise it all the time and people keep it in mind but this
6 seems to be – you are doing it in a number of different ways. The first kind is that there is a
7 cut-off date, for example, about licensing. The second is a kind of transition by principle;
8 namely, no retrospectivity. That is also well understood. I think the third one, which is a
9 kind of continuity provision really more than a transitional provision, is more difficult to
10 understand. When we go to the actual provision, I would like those to be pointed out to me
11 so that I can look at them more carefully.

12
13 I am just concerned that – I mean, it is not for me to tell the Administration what to
14 do but I would like to be reassured by the Administration from time to time as to how it is
15 going. I am not saying that you must have. I am just asking a question as a matter of fact.
16 Do you have a clear vision of when the transition would be completed from the old regime to
17 the new regime, I mean with respect to the various areas? How do you see the transition?
18 When do you see it actually complete or do you think that part of it will not be completed for
19 some time and do we have some sense of the time process? I am not demanding anything,
20 just to understand.

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

24
25 There will be some things, in a sense, that will never complete, those that are
26 carried through approvals, for instance, for collective investments. They would just continue
27 until someone ceased to offer that product but, particularly in terms of licensing. My
28 expectation would be that however hard we try, there will be some who hold out to the end of
29 the 2-year period. They have to make their applications within the 2-year period, otherwise,
30 they lose their licences but, having made the application, their licences continue until the

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1 applications are finally disposed of.

2
3 Let us assume that someone makes an application 1 day short of the 2 years.
4 There will be a period of vetting. If we were, in theory, to refuse the application there would
5 then be an appeal period. I would guess that that would take maybe 6 months so that it
6 would be about 2 years and 6 months before the licensing was fully transferred. That is the
7 main part of it. I think the others in terms of conduct issues, once you are 2 years from the
8 commencement of the legislation, it is pretty unlikely you would be taking disciplinary action
9 in respect of conduct that goes back 2 years.

10
11 Even for collective investments, people tend to renew and refresh their product
12 types on a fairly regular basis and so, again, although as I have said, in theory they could get
13 an approval under the old arrangements before this legislation commences and continue to use
14 that and promote that product for several years, in practice it is not likely. It would be a
15 couple of years, I think, again before they would have migrated to new product types, new
16 incentives, and new fee structures and so on and would have sought new approval.

17
18 **主席：**

19
20 根據Mr. PROCTER剛才所說，這種做法是依賴持牌人士重新作出申
21 請。就原有條例作出過渡安排，而無須持牌人士重新申請，是否較為簡單
22 的做法呢？

23
24 **財經事務局副局長區環智女士：**

25
26 主席，其實持牌人是無須即時作出申請的。在現有的註冊制度下，
27 持牌人是需要定期向證監會續牌的。持牌人大可在續牌時提出申請。

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

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1
2 Not quite, actually. What they do is, not to renew their licence. They pay an
3 annual licence fee. What we can do and, in fact, we are building a system now that will
4 allow us to combine the process, as it were. What they do when they pay their annual
5 licence fee is that they provide us with updates of information. So they have to tell us any
6 material matter has changed in respect of their licences. That would be one way of doing it
7 and encouraging people to do it at the same time and say, “Has anything changed? Are all
8 the material matters the same?” and actually ask them what licence type endorsements they
9 are seeking and try to minimize their paperwork and minimize the number of dealings they
10 have with the commission.

11
12 The best example of that is, if someone is a registered securities dealer now, they
13 are also entitled to give investment advice on securities. In the future they would get two
14 endorsements, a dealer’s endorsement and an adviser’s endorsement. As part of the annual
15 fee process, we can say, “Has anything changed about your circumstances?” and “What
16 endorsement would you like under the new licensing regime?” and they would presumably
17 say – I cannot remember what the types are but those two types and we could deal with it on a
18 relatively straightforward basis. We would not need to retest, for example. We would not
19 need to go through a checking with the police or anything like that because we have done that
20 already. So it would be a relatively painless process.

21
22 That is what we need to do. From our perspective, we need to get this out of the
23 way as soon as possible because not only does it reduce the administrative burden on the
24 register but also on us as well. There are many fewer applications that we have to deal with
25 and process so we need to get them transitions through as quickly as possible.

26
27 **主席：**

28
29 我希望提出另一個問題。證監會有否制訂財政年度，或每名持牌人
30 士有否本身的持牌年度？例如證監會會否要求持牌人士在每年1月1日

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1 renew牌照，還是每名持牌人士本身也有renew牌照的日期呢？會否出現數
2 百名或很多持牌人士在同一時間遞交application的情況？特別是你剛才提
3 到，最壞的情況是所需的費用與現時的費用相同。如果實施單一牌照制度
4 後牌費會減少，有些人可能會認為即時提出申請會對他們有利。在這個情
5 況下，證監會會否容許持牌人士在現時的牌照到期前提出申請呢？有關的
6 安排又會是怎樣的呢？

7

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

10

11 It is not quite either of the two possibilities you describe. What we have is that
12 people pay their annual fee when it becomes due and that is not on a fixed date. It is not on
13 the same date for everyone. It depends on when their licence was first granted but within a
14 firm, of course they have a number of representatives who also have a licence. What we
15 have done is to create a common anniversary date for the firm so that the firm and all its staff
16 have a common anniversary date so that if the first anniversary date for an individual comes
17 up 9 months after they first became registered, they get the benefit of that. They do not have
18 to pay an annual fee until 21 months afterwards, the next anniversary date.

19

20 In fact, we plan to do the same under these arrangements so if they make an
21 application ahead of their common anniversary date, they will get the benefit of it. They will
22 not have to pay a pro rata annual fee. In fact, it will go through to the following year. We
23 would actually take some loss on that, obviously, but it is a marginal cost. It is actually, from
24 our perspective, better to have them apply early so that the arrangement and the proposal is,
25 and this will be in the fees rules that they would get the benefit of an early application.

26

27 **何俊仁議員：**

28

29 我不是很明白這點。有關續牌方面，是否由於新、舊制度在這兩年的
30 的過渡期間同時運作，使牌照已到期的持牌人士，可選擇申請新的牌照或

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1 舊的牌照呢？

2

3 **主席：**

4 他們必須申請新的牌照。

5

6 **何俊仁議員：**

7

8 即不管他們有否理由希望申請舊的牌照，當他們的牌照到期時，他
9 們是不可選擇申請舊的牌照的，對嗎？

10

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

13

14 If you have a licence now of a particular type, that type of licence will more or less
15 map across to a type under the new regime and immediately upon the legislation coming into
16 effect you will be deemed to have migrated to that new licence type. In fact, it may be a
17 couple of types. For example, if you are a securities dealer, as I have said, you would be
18 entitled to deal and advise. You would be deemed to have a licence with two endorsements,
19 a dealer's and adviser's endorsements under the new regime but that deeming only applies for
20 2 years. Within that 2-year period, in effect what you do is, you apply for confirmation of
21 that deeming arrangement. That would be one way of looking at it so everyone has 2 years
22 to apply under the new regime for confirmation of his new type of licence. Everyone is
23 under the new regime. Some people are deemed to be under it. Some people have
24 formalized that by making an application and having the deeming arrangement confirmed.

25

26 There will be a third category, of course, of people who enter the industry for the
27 first time after the legislation comes into effect. They, of course, go straight into the new
28 regime and, again, just so you are absolutely clear about it, if you had a dealer's licence now
29 and you were deemed to have a dealer's and adviser's endorsement under the new regime,
30 you might not actually want that. You might say, "I don't want the adviser's endorsement"

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1 or “I don’t want the dealer’s endorsement”, so you may apply to us and say, “In fact, in future,
2 I only want to be an investment adviser”, so you would get a licence with that type of
3 endorsement and not the dealer’s endorsement. So you would actually apply for a narrowing
4 of your licence. There are a whole lot of permutations and possibilities. It is a combination
5 of deeming and application.

6

7 ***Hon Albert HO Chun-yan:***

8

9 In other words, there is no question of dealing with any application under the old
10 regime during the transitional period.

11

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

14

15 That is right. In fact, the effect of the provisions is that if an application has been
16 made before the commencement of the legislation, it would have to be dealt with and
17 considered under the new legislation. That is not really a problem in terms of the substance
18 of the application because the criteria for approval are very similar in terms of being fit and
19 proper. There are actually some differences in deemed licence conditions and so on but,
20 certainly, applications made before would continue and be considered under the new regime.

21

22 ***Hon Albert HO Chun-yan:***

23

24 What about disciplinary offences? Would there be any question of prosecuting
25 offences under the old regime during the transition period?

26

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

29

30 In fact, the penalty for disciplinary cases for conduct, which took place before the

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1 commencement of the legislation or in matters where a disciplinary inquiry has commenced,
2 in fact, I do not need to add that. The conduct that occurred before the new legislation came
3 into effect and the available range of penalties is the range under the old legislation.

4
5 **Deputy Chairman:**

6
7 Is it expressly provided, the principle of retrospective additional penalty?

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

11
12 The particular issues there have to do with a fine because that is the key new
13 penalty but there are some other issues to do with reprimands for certain categories of people.

14
15 **Deputy Chairman:**

16
17 Mr Chairman, is there any example where you get a lighter penalty under the new
18 regime?

19
20 **Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,**
21 **Securities and Futures Commission:**

22
23 Do you mean where a penalty would not be available under the new regime that
24 was under the old?

25
26 **Deputy Chairman:**

27
28 Under the old regime, because there are only two kinds of penalties, under the new
29 regime there are three kinds, the third kind being the lighter penalty, which was not available
30 under the old regime. Do you have any example of this kind, the same conduct?

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

4

5 No, I do not think so. Under the old regime, it should be reprimands, public or
6 private, and you have suspensions or revocations. Under the new regime you have public
7 and private reprimands, suspension or revocation and fines but in the area of suspension and
8 revocation, you can have partial suspension and partial revocation under the new regime. So
9 instead of suspending or revoking the whole of a business, you could suspend or revoke only
10 part of a business. It is much more targeted to the misconduct or concerns in that sense it is
11 a lighter penalty under the new regime.

12

13 *Deputy Chairman:*

14

15 I am a bit woolly on this but something tells me that, as a general principle, you
16 may be able to take advantage of new provisions of this kind. Do you mind looking that up
17 and see whether you have a demonstration?

18

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

21

22 I think you are probably right but I think I am right in saying that we do not take
23 advantage of it at the moment. From our perspective, we think that partial suspension and
24 revocation is a good idea so the more generally it is available the better and obviously I think
25 the industry would agree with that as well.

26

27 *Hon Albert HO Chun-yan:*

28

29 It applies the lighter but not a heavier sentence?

30

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1 **Deputy Chairman:**

2

3 Because it is not symmetrical. The principle is not symmetrical. You cannot
4 punish – add penalty. If the maximum sentence under the old regime at the time the conduct
5 took place was, say, 10 years' imprisonment and under the new regime it is 15 years, then the
6 15 years cannot be applied but if, under the new regime, you have a lighter penalty, then there
7 is some principle that the lighter penalty may apply to the earlier conduct.

8

9 **主席：**

10

11 讓我們就逐項條文進行審議吧。雖然附表9十分複雜，但這部的條
12 文較為簡單。我們同時審議條文的中、英文本，好嗎？首先討論第392條
13 —— Repeals, 即廢除。如果各位沒有問題，接着是討論第393條 —— Savings,
14 transitional, consequential and related provisions, etc., 即保留、過渡性、相
15 應及有關條文等。如果各位沒有問題，現在討論第394條 —— Provisions of
16 Part XVII, etc, not to derogate from section 23 of Interpretation and General
17 Clauses Ordinance。

18

19 如果各位沒有問題，接着是討論第395條。這條是關於附屬法例的
20 修訂。若當局日後需要就這項條文作出修訂，也須經立法會作出，對嗎？
21 Okay.

22

23 **副主席：**

24

25 主席，請稍等。可否請法律顧問解釋，section 23 of Cap. 1是甚麼？

26

27 **高級助理法律顧問李裕生先生：**

28

29 主席，香港法例第1章第23條是提到一般情況下廢除的效果。或許
30 我把條文讀出，讓向各議員參考吧。第23條訂明，“凡條例將另一條條例全

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1 部或部分廢除，不得因此而(a)恢復任何在該項廢除生效時並無施行或並不
2 存在的事情；(b)影響該已廢除條例的過往實施，或影響根據該已廢除條例
3 而經適當作出或容許的事情；(c)影響根據該已廢除條例而獲取、產生或引
4 致的權利、特權、義務或責任；(d)影響因犯該已廢除條例內的罪項或引致
5 的刑罰、沒收或懲罰；或(e)影響上述權利、特權、義務、責任、刑罰、沒
6 收或懲罰有關的調查、法律程序或補救事宜.....”。這條基本上的意思，是
7 在廢除某條例的情況下，根據舊有條例所做的事情並不會受到影響。

8
9 **Deputy Chairman:**

10
11 Mr. Chairman, I am remember this section now. Thank you.

12
13 **主席：**

14
15 現在討論附表9。我們有否就這部分的討論作出建議？這部分共有
16 數百頁。

17
18 **副主席：**

19
20 主席，就剛才提到的第3類過渡情況，可否請署方或Mr Procter就每
21 項舉出一些例子？由於我在研究有關部分時，並沒有從這個角度作出考
22 慮，所以我今天不會就這類情況提出特別的問題，而寧願在會後把這部分
23 重新研究一次，遇到特別問題時才提出。

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

27
28 Clause 2 and clause 5 are the main ones, I think.

29
30 **Chairman:**

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2 Clause 2 and clause 5?

3

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

6

7 They are people or committees appointed under the old legislation that continues
8 through.

9

10 ***Deputy Chairman:***

11

12 Mr CHAIRMAN, perhaps MR PROCTOR would not mind just taking us through
13 this in large sections, and reminding us what it is all about.

14

15 ***Chairman:***

16

17 Yes, please.

18

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

21

22 I will do my best. Part II is in effect with respect to the governance of the
23 Commission. So it deals with things the Commission has done under the old legislation,
24 people appointed to the Commission as Chairman, Deputy Chairman, Executive Director, and
25 so on, committees of the commission, people on the Advisory Committee, and people
26 employed or engaged by the Commission. They continue in employment and their
27 appointment continues to be of effect under the new legislation.

28

29 Part III then picks up the provisions relating to the Exchange Clearing Houses and
30 Investor Compensation Companies. In clause 5, you have the exchange companies

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1 themselves and the Chief Executives of the two exchange companies who have been
2 appointed before the commencement of legislation. In effect, the rules of those exchange
3 companies continue as though they were approved under this ordinance.

4
5 Clause 7 is a very similar clause in respect of things done by the Commission.
6 There are also provisions in this part, which is Part 3 that relates to directions that the
7 Commission may have given before the commencement of the legislation. So I guess in
8 summary it is the approval of a clearing house or exchange company, the appointment of
9 particular officers, the approval of rules and any directions given by the Commission.

10
11 Clause 13 is an example of that, where the Commission may have given approval
12 for a recognized exchange controller, and rules made by it. That continues, in effect, after
13 the new legislation comes into effect. Clause 13(e) is slightly different, though, because that
14 is a committee of the exchange holding company, the Risk Management Committee, which
15 consists of people appointed under the current legislation, the Exchanges and Clearing Houses
16 (Mergers) Ordinance. External people, in fact, the chairman of the SFC are a member, and
17 so is the Chief Executive of the Monetary Authority.

18
19 ***Deputy Chairman:***

20
21 Mr Chairman, just pausing there with clause 13(e), it reads that the Risk
22 Management Committee established under section 9, that is the old Risk Management
23 Committee, in fact will continue as if it has been established under section 65 of the new
24 ordinance. If you compare a Risk Management Committee appointed under the old regime
25 and a Risk Management Committee appointed under the new regime, what are the
26 differences?

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

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1 I do not think there are any differences.

2

3 *Deputy Chairman:*

4

5 All right.

6

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

9

10 Clause 14 refers to restriction notices. Section 50 of the repealed Securities and
11 Futures Ordinance is a power for the SFC to issue restriction notices in respect of exchanges.
12 Section 51 is a power to suspend an exchange board or its committees, and again the
13 arrangement is that those directions or restrictions or suspensions continue as if they had been
14 made under the equivalent provisions of this legislation.

15

16 In that respect there are some differences, I think, in terms of the procedures that
17 are laid out in the two ordinances. There may be some differences as to rights to be heard,
18 rights of audience, but there are not differences that are picked up in the transitional
19 provisions.

20

21 The next part, Part 4, relates to offers of investments, and essentially this is carrying
22 through approvals given either under section 15 of the Securities Ordinance (SO) or under the
23 Protection of Investors Ordinance (PIO) for unit trusts, mutual funds or advertisements in
24 respect of unit trusts and mutual funds. For the most part, as I have said, the approvals
25 continue, in effect, as though they had been given under Part IV of this ordinance, and in
26 particular section 103, which brings together the powers under the PIO and SO. There is one
27 difference, and we see that in clause 18. The structure of the managed funds industry in
28 Hong Kong is such that there a lot of approved fund managers who are domiciled overseas,
29 and they have representatives in Hong Kong. So there is a requirement under this ordinance,
30 sections 103 and 104 of these ordinance, for representatives to be nominated for the purpose

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1 of service and dealings with the fund managers whose approval is granted under Part IV.

2
3 That is not a requirement in either the PIO or SO. So here is one of those
4 categories of 6 months to do something, because this is a completely new type of requirement.
5 We are saying we think it is a good idea that the sooner we get to that stage the better, we
6 think that 6 months is a reasonable time for people to get their house in order and make the
7 requisite application. You see that in clauses 18 and 19.

8
9 Clause 20 is very similar in fact to clause 16, but it picks up the SO approvals.
10 Part V is the licensing section, and what you see in clause 22, sub-clauses (a) to (f) is that
11 mapping process. So it says that if you have a securities dealer's licence, this is in (a), then
12 you are deemed to have type 1, type 4, type 6 and type 9 endorsements in the new regime.
13 That does not mean you will have those endorsements in perpetuity. It means you are
14 deemed to have them for 2 years, but you have to make your application within that 2-year
15 period. You will see a similar mapping for investment advisers, margin financiers,
16 commodities dealers and so on, down through (f).

17
18 Clause 23 is a similar mapping exercise but it relates to directors of corporations,
19 and clause 24 is the same mapping exercise for the employees of current licence holders.
20 When you get to clauses 25 to 31, there you have clauses that deal with situations which do
21 not quite map across into the new regime.

22
23 Clauses 25 and 26 deal with exempt persons, and as you know, only banks or
24 authorized institutions can be exempted in the future. So the mapping reflects that. The
25 difference between 25(a) and 25(b) is that (a) deals with authorized institutions, and (b) deals
26 with non-authorized institutions who are presently exempt.

27
28 There is also a requirement for two responsible officers, in the new legislation.
29 That does not apply in the old legislation, but that is one where we have allowed for the 2-
30 year transitional period.

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2 *Deputy Chairman:*

3

4 Mr Chairman, pausing there, what does that actually mean? You do not have
5 these persons at the moment. Do you mean that within these 2 years you do not have to have
6 such a person, or what?

7

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

10

11 That is right. In fact, the practical reality is that they will, because the Monetary
12 Authority will insist on certain senior executives being in place. That is why, in effect, this
13 provision reflects the pragmatic situation that it is not a risk issue. This could have been one
14 where you said "This is new, so we should give you only 6 months", but pragmatically we
15 know that they are already required by the Monetary Authority to have senior executives
16 nominated to carry out these responsibilities.

17

18 Clause 26 deals with the staff of authorized institutions. Clauses 27 to 29 deal
19 with partnerships. The mapping of the partnership arrangements is a little more complicated.
20 Clause 27 is the straightforward mapping if you have a partnership with a certain type of
21 licence. In future you are deemed to have a licence for certain endorsements. But when it
22 comes to Clauses 28 and 29 there is, of course, a difference because the new legislation only
23 accommodates corporations. So partners of a partnership are, in effect, to be treated as
24 directors in the 2-year grace period. That is slightly awkward, but in fact there is only one
25 partnership registered in Hong Kong. So these clauses deal with one particular partnership
26 in which there are two partners and six employees. Although it is a slightly awkward
27 mapping across, I do not think it is going to make a big difference.

28

29 Sole proprietors are a more problematic category, though, because they will not be
30 permitted in future, so again in clauses 30 and 31 you see the mapping process for sole

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1 proprietors. Sole proprietors will have 2 years to do two things. If they want to continue to
2 carry on in business they will need to incorporate and make an application.

3
4 Clauses 32 and 33, under the heading Licensed Banks, deals with an anomaly. At
5 the moment “investment adviser” is defined to exclude banks. We cannot see any logical
6 reason for that. So under the new legislation the definition of “investment adviser” does not
7 have a carve-out for banks. What we have said in the transitional arrangement is that banks
8 that are exempt can have 2-year grace period, but then they have to apply for a type of
9 endorsement that would allow them to carry on investment advisory business.

10
11 Clauses 34 to 37 deal with the new category of automated trading services, and the
12 mapping here is slightly more complex because an automated trading service is a new
13 category, but it does at the moment map most closely to securities dealing. So that is the
14 way the mapping works, but you see that because there are three types of securities dealers at
15 the moment – corporations, partnerships and individuals – it has to be mapped against all
16 three.

17
18 Now, clauses 38 to 41 deals with one aspect of collective investments which is
19 wider under the new legislation. There are certain kinds of collective investments which
20 would require authorization under the new legislation, but not the case under the old
21 legislation. So there is the possibility that there are people who are presently offering that
22 type of collective investment to the public, who are not licensed.

23
24 Clause 38 deals with a situation where the product that is being offered is regulated
25 under the new legislation, but not under the old legislation. It is being offered by someone
26 who is licensed. In that situation, because we have a licensing and regulatory hold over the
27 person, they have 2 years to get things sorted out and to get the requisite approvals for the
28 product.

29
30 Clause 41. That is a situation where if the product is regulated under the new

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1 legislation, but the person is not currently licensed, we think 6 months is long enough for
2 them to seek an appropriate registration.

3
4 Similar provisions related to advertising in respect of collective investments can be
5 found in clauses 42 to 44. Clauses 45 to 49 is in a different area, but it is the same sort of
6 situation. At the moment, as I have said before, if you deal only with overseas people and
7 you deal in commodities products, you do not need a licence, but you will need a licence
8 under the new legislation. The industry, I think, accepts that. I think that the current
9 exception is a rather extraordinary one. What we have done is again to divide the world into
10 two categories, those who have a licence and those who do not currently. Again we have
11 some regulatory hold over them. They have 2 years to get things sorted out.

12
13 Clause 50 relates to asset management type 9 regulated activity. Under the
14 existing licence types, the mapping across to asset management is not very precise. So you
15 could be a securities dealer or a commodities dealer under the existing legislation, and want to
16 manage assets under the new legislation. What clauses 50 and 51 say is that if you currently
17 have a securities dealer's licence and you want to manage assets in the future, the deeming
18 will allow you to manage securities assets, and similarly if you have a commodities dealer's
19 licence and you want to manage assets in the future, then the deeming provision will
20 effectively allow you to manage commodities in the future, but not the wider range of assets.
21 That is an example, I suppose, of a partial mapping across.

22
23 Clause 52 is the provision that says that you have to make your applications within
24 2 years, and if you do that then the deeming continues in effect until the Commission's final
25 decision in respect of that application. I think that is a fair description, even though it is a
26 very long section. What it does is pick all that up for the different licence categories, and for
27 individuals and for exempt persons.

28
29 Clause 53 relates to a situation where a securities margin financier is not given a
30 licence under the new regime and is closing down their business. Effectively it says that

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1 securities margin financier can continue to collect interest and principal on debts outstanding,
2 and that will not be deemed to be a breach of the registration requirements. It would only be
3 if they offered new financial accommodation that they would need a licence under what
4 would become type 8.

5
6 Clause 54 is a provision that says if your licence is subject to conditions under the
7 old regime, it is subject to the same conditions under the new regime. Clause 55 has the
8 same sort of provision in respect of approval of premises. They are deemed to be approved
9 under the new regime. Clause 56 relates to subordinated loans approved for the purposes of
10 financial resources rules. They are deemed to be approved under the new regime. Clause
11 57 relates to the approval of substantial shareholders under the old regime. They are deemed
12 to be approved under the new regime. Clause 58 relates to what are called “inquiries” under
13 the old legislation into disciplinary action. They are deemed to be inquiries commenced
14 under the new legislation, but as I have said, that does not follow through to the penalties that
15 can be imposed. That is just the process for arriving at a determination. In fact, members
16 may recall that it will build in additional safeguards for those who are the subject of those
17 inquiries, even though it removes the formal notion of an inquiry.

18
19 Clause 59 relates to applications, and you may recall that an application pending at
20 the commencement of the ordinance is treated as an application under the new ordinance.
21 What this table does is to map the type of application against the deemed type of application
22 under the new ordinance. If we go to clause 60, that relates to appointments of auditors
23 under the old legislation. There are two types of auditors, namely the statutory auditor and
24 the auditor appointed by the Commission to conduct an inquiry.

25
26 Clause 62 is similar to clause 58, but it relates to investigative powers. Section
27 62(a)(i) is basically the compulsory power that the Commission has under the existing
28 legislation. Section 29(a) relates to companies’ inspections. Sections 30, 31, 33 and 36
29 relate to supervisory and investigative powers. In effect, the exercise of powers under those
30 old pieces of legislation continue to have force and effect under the new legislation.

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1
2 Clause 63 then relates to disciplinary powers, and as we have already discussed,
3 there is no increase in the range of sanctions that can be imposed under the new legislation,
4 but we do need to go back and see whether or not we should allow for partial revocations and
5 suspensions. Part X, which comprises clauses 66 and 67, relates to restriction notices and
6 winding-up applications that have been brought or commenced under the old legislation.
7 Again, they continue to have effect under the new legislation, except that under clause 67 the
8 appeal process is through to the new tribunal rather than to the old Securities and Futures
9 Appeals Panel.

10
11 Basically Clauses 68 and 69 are concerned that appeals would be passed to the new
12 tribunal, rather than a continuation of the old panel arrangements.

13
14 ***Chairman:***

15
16 Compensation?

17
18 ***Mr Andrew PROCTER, Executive Director, Intermediaries and Investment Products,***
19 ***Securities and Futures Commission:***

20
21 Yes. I actually might let Vivian deal with this one. It is not my strong suit.

22
23 ***Miss Vivian LAU, Principal Assistant Secretary for Financial Services:***

24
25 We discussed that before.

26
27 ***Deputy Chairman:***

28
29 Yes. I remember that.

30

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

3

4 That is a relief to me.

5

6 *Deputy Chairman:*

7

8 Yes. We can, I think, go all the way to the end of those things.

9

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

12

13 Yes, and then you get a schedule at the end of various consequential amendments in
14 respect of other legislation which I do not propose taking you through that.

15

16 *Deputy Chairman:*

17

18 Part XIII of that.

19

20 *Chairman:*

21

22 Market Misconduct Tribunal (MMT).

23

24 *Deputy Chairman:*

25

26 Yes. There is nothing to do with compensation.

27

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

30

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1 That is right. I thought we had already been dealt with as well, in discussion. In
2 a nutshell, what it says is that the Insider Dealing Tribunal is replaced by the MMT, and
3 disclosure obligations that arose under the old legislation remain as they were under the old
4 legislation. It is only when a fresh disclosure obligation arises after the commencement of
5 this legislation that you are obliged to make disclosure under Part XV.

6
7 **Deputy Chairman:**

8
9 Thank you very much indeed. That was extremely helpful.

10
11 **主席:**

12
13 請參考法律顧問剛才提及的marked-up copy，即有關consequential
14 amendments的文件。該份文件是立法會CB(1)131/01-02(01)號文件。法律顧
15 問，請講。

16
17 **助理法律顧問顧建華先生:**

18
19 主席，我們可否再討論有關過渡性條文的問題？

20
21 **主席:**

22
23 可以。

24
25 **助理法律顧問顧建華先生:**

26
27 主席，我希望請各位議員參考第C2487頁第10條。

28
29 **主席:**

30

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1 這條有甚麼問題呢？

2
3 **助理法律顧問顧建華先生：**

4
5 關於港交所的地位，香港法例第555章第19條提到，港交所須當作
6 已得到書面通知，並獲認可為交易所控制人一樣。此條文的效果，是使港
7 交所日後的地位一直追溯至香港法例第555章。但第555章將會在新法例獲
8 得通過後被廢除。因此，我不是很明白當局為甚麼會採取這種草擬方式。
9 為何當局不直接地訂明，把港交所當作已獲得新條例下所訂的通知呢？

10
11 **財經事務局副局長區璟智女士：**

12
13 請法律草擬專員稍後作出解釋。我明白法律顧問所指的，其實不是
14 內容的問題，而是效果的問題。他的問題是由於第555章將會被廢除，這種
15 寫法是否有效。我請陳律師作出解釋。

16
17 **高級助理法律草擬專員陳子敏女士：**

18
19 我相信有關條文希望表達的意思，是當局已把一項通知送達有關人
20 士。我相信最終的目標是將該人當作新訂條例下的認可機構。至於草擬方
21 式可否作出改善的問題，我們可在會議後再作考慮。

22
23 **主席：**

24
25 好的。

26
27 **助理法律顧問顧建華先生：**

28
29 主席，請容許我再提出有關草擬方面的問題。關於第22條、第24至
30 27條、第29至32條、第39至40條、第42、43、46和47條，鑒於這些條文的

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1 草擬方式，所有有關持牌人士，會當作是持有牌照的。因為證監會在過渡
2 期間不會向他們發出新的牌照，或許是因為他們未能符合新牌照的發牌條
3 件，所以證監會在新條例下亦把他們當作是持牌人士。由於這項“當作”為
4 期兩年，並且沒有任何限制，故此根據這些條文，在該兩年內，有關牌照
5 是不可被撤銷的。雖然持牌人士可以受到證監會的其他制裁，或他們須受
6 到其他有關持牌人士的法例所約束，但撤銷或暫時吊銷牌照則却是不可行
7 的。

8
9 **主席：**

10
11 葉小姐，請講。

12
13 **高級助理法律草擬專員葉鳳瓊女士：**

14
15 其實此處是提及證監會把有關人士當作是持牌人士的問題。我們在
16 載於第C2512頁附表9第52條第4款中亦有訂明，“凡任何人根據(這些)條文視
17 為就某類受規管活動獲發牌或獲豁免……”，但現時我們已改用“獲註冊”的
18 字眼，“……該人在進行該類活動時，須遵守本條例適用於就該類活動獲發
19 牌或獲豁免的人的條文……”。因此，一旦有關人視為獲發牌人士或註冊人
20 士，他便須遵守此條例下所有有關條文的規定，包括有關紀律、懲罰、制
21 裁等的條文的規定。

22
23 **助理法律顧問顧建華先生：**

24
25 我對於這點沒有異議。但我希望指出的，不是有關人士無須遵守這
26 些規定，而是這項條文的效果，是證監會不能撤銷或暫時吊銷有關人士的
27 牌照，即是說他的牌照會仍然有效。當然，證監會可以採取在這條條例下
28 獲賦權採取的行動，但這兩項行動並不在這範圍以內。

29
30 **高級助理法律草擬專員葉鳳瓊女士：**

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1
2 我希望作出補充。有關紀律處分的條文主要載於第IX部。有關人士
3 須要遵守與他有關的條文的規定。若他不遵守這些規定，事實上證監會是
4 可以採取適當行動的。

5
6 **助理法律顧問顧建華先生：**

7
8 對於制裁方面，我是沒有異議的。我只是希望指出，似乎是由於有
9 關條文的草擬方式，使證監會不能行使暫時吊銷及撤銷牌照的權力。

10
11 **主席：**

12
13 我不明白法律顧問所提出的問題。

14
15 **財經事務局副局長區璟智女士：**

16
17 法律顧問的問題，是否指由於條文前部分採用“deeming”的寫法，
18 使有關制裁難以完全生效，是這個意思嗎？

19
20 **助理法律顧問顧建華先生：**

21
22 不是，我的意思是由於把有關人士視為持牌人士的做法為期兩年，
23 使這項條文失去原本的效力，即撤銷及暫時吊銷牌照的權力，而證監會是
24 可以行使其他制裁的。根據我的理解，由於這項條文的寫法，並沒有就把
25 有關人士視為持牌人士的情況施加任何限制，所以使持牌人士的牌照在兩
26 年內亦視為有效。

27
28 **副主席：**

29
30 法律顧問，你的意思是否指既然有關人士的牌照在第10條下視為有

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1 效，並且沒有其他情況可令該牌照無效？即是說有關人士可能會受到制
2 裁，但無論如何，他會繼續視為持牌人士，因為第10條已訂明如此。這項
3 條文會否有這個效果呢？

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

7
8 Chairman, I believe that certainly even on the legal adviser's interpretation that
9 would only apply to revocation and not suspension but clause 64 says, "Where exercise of the
10 power under section 63 results in the revocation or suspension of any registration or licence
11 and the registration or licence has by virtue of sections 22 to 37 been regarded as a licence
12 under this ordinance, the licence shall, notwithstanding sections 22 to 37, be regarded as
13 having been revoked or suspended on the same terms". So I think that covers it as well.
14 The legislation is clearly intended to allow for certain sanctions to be available. I think
15 clause 64 confirms that.

16
17 **財經事務局副局長區璟智女士：**

18
19 其實，第22條也有訂明，有關人士是否視為持牌人士，須視乎他是
20 否符合第52條下的規定。換句話說，第22條提到把有關人士視為一個繼續
21 生效的註冊人士或持牌人士，但這項視為安排或deeming的安排並不是沒有
22 條件的，因為第22條亦提到，須視乎有關人士是否符合第52條的規定。這
23 點是否已經解決了這個憂慮呢？

24
25 **副主席：**

26
27 主席，我會再次研究這個問題。但我聽取雙方的意見後，認為這個
28 問題不會很大。

29
30 **助理法律顧問顧建華先生：**

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1
2 主席，我希望詢問有關未正式獲發牌人士的情況。因為在現行的條
3 例下，持牌人士須要作出登記，即證監會是備有一個register的，將來的新
4 持牌人士亦須要這樣進行登記。但在過渡期間，當舊有法例已被廢除，而
5 有關人士亦未在新法例下正式領有牌照時，情況會怎樣？因為根據新的法
6 例，獲發牌人士的名字須要記錄在紀錄冊內。我認為過渡性條文不清晰的
7 地方，是證監會會否為這些在過渡期間視為持有牌照的人士備存別冊，還
8 是他們會當作已獲發新的牌照，因而會登記在持牌人士的新紀錄冊內。

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

12
13 I do not know whether I fully understood that question. Everyone, whether they
14 are people who are registered for the first time after the commencement of the legislation or
15 people who are transitioned across under the clauses we have just been discussing will be on
16 the new register.

17
18 **Chairman:**

19
20 That was the only one register stating whether they had the licence under the new
21 legislation.

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

25
26 They all have. That is the point. That was what I was saying in addressing to
27 Mr KAU's question. They all have the new licence. It is just that some of them have it
28 for 2 years and some of them have it because of an application made after the commencement
29 of the legislation.

30

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1 **Mr KAU Kin-wah, Assistant Legal Adviser:**

2

3 Before they have been granted a new licence, they were only being regarded as
4 having the new licence. Would they also be registered?

5

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

8

9 Yes. Not only are they regarded as having it but they have it. They have it by
10 virtue of the deeming provisions.

11

12 **Mr KAU Kin-wah, Assistants Legal Adviser:**

13

14 And in respect of the dealers, investment advisers, commodities advisers, why are
15 those advisers deemed to have included a licence to carry out a matter which is asset
16 management?

17

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

20

21 This is an area where I think we have discussed in the context of Part V where the
22 new licence types do not map across. Under the existing arrangements, a dealer or
23 investment adviser gets a very general agreement to give investment advice. That is the
24 broad form of the licence. They can advise on corporate finance matters. They can advise
25 on personal finance portfolios, on collective investments and so on. Under the new
26 arrangements, we think that because those different types of advisory services require
27 different skills, they should also have different endorsements. So a corporate finance adviser,
28 an asset manager and a pure dealer should have different skill sets and that should be reflected
29 in different endorsements but at the moment it is not. It is just one lumpy investment
30 adviser's licence to which we sometimes attach conditions. For example, if someone says to

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1 us that their business plan is to do corporate finance work, they get an investment adviser's
2 licence but quite often they get a condition on their licence that says they cannot be the sole
3 adviser in a corporate finance transaction. So we deal with it by conditions.

4
5 In future, we will deal with it by licence endorsement types but for the transition
6 period, until we have assessed people, until we have found out exactly what kind of business
7 model they want to pursue, we will inherit people who got investment advisers' licences 10
8 years ago and who in theory are permitted to do the whole range of advisory business. That
9 is why, they are transitioned across into those different types of licence endorsements.

10
11 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

12
13 My point is, why dealers should be allowed to manage a trust fund.

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

17
18 Because dealers, under the current licensing arrangement, are permitted to do
19 investment advisory business and investment advisory business is for mapping for asset
20 management. There is no asset management category under the existing law. So the dealer
21 under the existing law gets mapped across as a dealer and as an adviser in the wider range of
22 category types, including asset management. It is actually one of those areas where, on the
23 face of it, it looks like it opens up a risk. In fact, most dealers are not doing asset
24 management. We know that and we know who the asset managers are. There is also a
25 safety net for asset managers because anyone who wants to offer to the public has to get a
26 separate approval under the existing SO or PIO and, remember, there is a separate transitional
27 provision for those approvals so there are not going to be dealers who are suddenly permitted
28 to offer to the public under the new arrangement. They will have to come to us under Part
29 IV for approval as well, but it is one of those examples where the mapping does not work
30 particularly well and under the new regime we want to be more precise and particular about

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1 our expectations than we can be under the old legislation.

2
3 *Deputy Chairman:*

4
5 This old situation will phase out after a while.

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

9
10 The lumpiness, as I described it, relates to the principal licence categories. We
11 make it less risky by the conditions we impose on licences and, of course, those conditions
12 transit across as well.

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

16
17 I am afraid I have to leave for doing a presentation to our process review panel.

18
19 *Deputy Chairman:*

20
21 Perhaps, Mr Chairman, before Mr PROCTER goes, I suggest that can we ask the
22 legal adviser to present his views in a sort of list to Mr PROCTER for consideration.

23
24 *Mr KAU Kin-wah, Assistant Legal Adviser 6:*

25
26 Well, we have already asked but we have not received an answer, or a satisfactory
27 answer. Perhaps members could discuss it among yourselves and come back. I have no
28 objection to that.

29
30 *高級助理法律顧問李裕生先生 :*

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1
2 主席，現時的情況是這樣的。我們已把顧先生剛才提出的問題事先
3 提交政府，但我們尚未接獲政府就某些問題作出的回應。因此，在討論有
4 關部分時，我們希望委員會可以留意有關的情況。我們亦樂意在會議結束
5 後再與Mr. PROCTER或政府其他代表進行討論，如果遇有無法解決的問
6 題，我們再通知委員會吧。

7
8 **副主席：**

9
10 主席，可否請法律顧問說出，尚未收到署方答覆的問題，是關於哪
11 些條款的問題，以便我們記錄下來？

12
13 **Mr KAU Kin-wah, Assistant Legal Adviser:**

14
15 Sections 28, 49, 52, 54, 59 items 1(b), 2(b), 5(b) and 6(b), 68, 69, 70, 72, 73 and 74.
16 That is it.

17
18 **主席：**

19
20 或許請你把向政府提出的問題的副本交給我們，待政府回答時……

21
22 **財經事務局副局長區環智女士：**

23
24 真對不起，我的同事剛才告訴我，顧先生在早前已把有關清單交給
25 我們，而我們正徵詢證監會同事的意見。雖然我們剛才已經以口頭形式回
26 答了很多問題，但我認為我們應以書面形式，把整體的答案交給顧先生，
27 待他看看有否特別的疑問。如果有的話，或許要再次跟各位討論。我們盡
28 可能在下星期完成這項工作吧。

29
30 **主席：**

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1
2 好的，就這樣處理吧。請法律顧問向我們提供一份副本，好讓我們
3 參考後再行處理。我們現在需否研究 consequential amendments？法律顧
4 問，我們已完成這部分的討論，對嗎？

5
6 **助理法律顧問顧建華先生：**

7
8 對。

9
10 **主席：**

11
12 我們現在討論立法會CB(1)131/01-02號文件。法律顧問，請你解釋
13 我們需要跟進哪些issues。

14
15 **助理法律顧問顧建華先生：**

16
17 主席，請議員們翻開文件的英文本第23頁，即這份marked up copy
18 的第23頁，即文件左面寫着Cap 32第84頁的部分。

19
20 **主席：**

21
22 是哪份文件？

23
24 **助理法律顧問顧建華先生：**

25
26 即很久前已發給各位的那份文件。

27
28 **主席：**

29
30 即立法會CB(1)335/01-02號文件。

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1

2 **助理法律顧問顧建華先生：**

3

4 這份文件第23頁共有兩項修訂。關於第一項修訂，即以箭嘴標明的
5 修訂，並沒有提到期權合約，即futures contracts，不知是甚麼原因。但根
6 據附表6，這部分是應該包括advising on securities、advising on futures
7 contracts及advising on corporate finance的。

8

9 **主席：**

10

11 有關文件是立法會CB(1)335/01-02號文件。

12

13 **財經事務局副局長區璟智女士：**

14

15 是不是我們發出的文件？

16

17 **副主席：**

18

19 不是，這是我們的標明文本，其實是有關就Companies Ordinance作
20 出的修訂。

21

22 **財經事務局副局長區璟智女士：**

23

24 是不是C2541的部分？

25

26 **主席：**

27

28 即文件的Page 23，有關《公司條例》Cap 32的第84頁。

29

30 **財經事務局副局長區璟智女士：**

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即我們剛收到的文件第23頁，對嗎？

助理法律顧問顧建華先生：

對。這頁中以箭嘴標明的修訂提到，“...person licensed or exempt to carry on a business in advising on securities or advising on corporate finance...”。我提出的問題是為何這裏沒有提到 advising on futures contracts。不知是當局特別不提還是有所遺漏？

財經事務局副局長區璟智女士：

對於這個問題，我也要請陳律師或張律師解釋。

高級政府律師張月華女士：

主席，對於這個問題，我們可參考根據舊有條例跟新訂條例作出 mapping 的情況。舊有的 Securities Ordinance 主要是針對 securities 的 investment advisors 的，而不是針對 futures 的 advisors。有關 futures 的情況應該是由另一條 ordinance 來處理的，即 Commodities Trading Ordinance。我們並沒有把舊有條例的範圍擴大，有關條例原先涵蓋的範圍包括證券，所以新訂條例的涵蓋範圍依然是證券，而沒有擴大至期貨。

助理法律顧問顧建華先生：

關於第2個修訂方面，純粹是草擬上的問題。這項修訂結尾的第2行提到“the recognized exchange company”，但似乎上下文並沒有提到一間特定的認可證券公司。

主席：

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你是否指以三角符號標明的那項修訂？

助理法律顧問顧建華先生：

對，以三角符號標明的那部分。

主席：

但這裏已指明“...published in the Gazette”。

副主席：

是否只有一間 recognized exchange company published in the Gazette？

財經事務局副局長區璟智女士：

請張律師作出解釋。

高級政府律師張月華女士：

主席，第49BA條是有關在個別證券市場上市的公司於購買自己的股票時所受到的限制。第49BA條的上文訂明，一些公司在某些證券市場購買自己的股票時，須要受到哪些限制。而第(9)款所訂的定義，提到有關公司在哪個證券市場購買自己的股票，有關限制便針對在該證券市場營運的認可交易所。所以，如果是針對某個證券市場，這裏所指的，便是相應的認可交易所，而不是任何一間交易所。

副主席：

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1
2 主席，我不是很明白這點。採用“The recognized exchange company”
3 的草擬方式的意思，是否指針對有關情況而言，只有一間相應的recognized
4 exchange company？

5
6 **高級政府律師張月華女士：**

7
8 其實，“the recognized exchange company”是針對上文提到的the
9 recognized stock market，所以應只有一間。

10
11 **副主席：**

12
13 問題出現在第(9)款。如果我們純粹參閱第(9)款提到有關“approved
14 stock exchange”的定義，我們會否自然知道the recognized exchange company
15 是指哪間recognized exchange呢？因為這裏並沒有上文，只是一項定義，而
16 這項定義是stand alone的。

17
18 **高級政府律師張月華女士：**

19
20 Companies Ordinance的第49BA條第(2)款，即這份文件的第22頁第
21 (2)款。這款的修訂提到“a recognized stock market”。我剛才提到的“the
22 recognized exchange company”，便是針對上文提到的“a recognized stock
23 market”。

24
25 **副主席：**

26
27 好的。那麼應否同時在這部分指明這點呢？如果不在定義內指明這
28 點，我們能否知道這定義所提到的the recognized exchange company，是有
29 關第(2)款所訂的“A listed company shall not make a general offer under...”，
30 以及第(b)款所訂的“purchase any of its shares on a recognized stock market

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1 or on an approved stock exchange under subsection(1)(b), unless the proposed
2 purchase is authorized by the company...”呢？換句話說，如果我不太熟悉這
3 項條文，單憑這項定義，我不會知道the recognized exchange company所指
4 的，是第(2)款提及的這間recognized exchange company，反而會望文生義，
5 把“the recognized exchange company by notice published in the Gazette”的意
6 思誤會，以為在Gazette內只publish了一間recognized exchange company，而
7 這定義所指的便是這間company。其中一個解決辦法，是在定義內加入類似
8 “mentioned in or referred to in subsection (2)”的字眼，讓人們知道所指的
9 recognized exchange company，是第(2)款訂明的company。不知法律顧問是
10 否贊同？

11

12 **助理法律顧問顧建華先生：**

13

14 我贊同副主席的意見。

15

16 **副主席：**

17

18 請政府再作研究吧。因為這只是一項定義，人們未必可以明白這裏
19 所指的意思。

20

21 **主席：**

22

23 法律顧問是否有問題要提出？

24

25 **助理法律顧問顧建華先生：**

26

27 主席，我希望詢問有關屬附法例的問題，即 Companies
28 Ordinance(Exemption of Companies and Prospectuses from Compliance with
29 Provisions) Notice.

30

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1 **主席：**

2

3 Sorry，請你稍等。Audrey，請講。

4

5 **余若薇議員：**

6

7 主席，就剛才法律顧問提出的問題，他是否認為把定義內的“the”
8 字改為“a”字，便可解決他提出的問題呢？他的意思是否這樣呢？

9

10 **助理法律顧問顧建華先生：**

11

12 我其實並沒有特別的意思，我只是覺得採用“the”的字眼有點特別，
13 意思亦不太清晰。但如果採用“a”的字眼，則意思似乎跟原意有所分別。

14

15 **余若薇議員：**

16

17 但第(9)款本身只是一個定義，目的是解釋甚麼是“核准證券交易
18 所”。解釋這個定義的方法是只要我們參閱Gazette，便可知道哪間交易所是
19 recognized，亦即是approved了。

20

21 **助理法律顧問顧建華先生：**

22

23 我同意。

24

25 **余若薇議員：**

26

27 那麼，是否無需詳細提到第49BA條第(2)款，而只採用“a”字，便可以
28 解決這個問題呢？

29

30 **副主席：**

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主席，由於這個問題涉及有關條文多方面的情況，或許我們請署方跟法律顧問再作研究吧。如果只是把字眼稍加修訂便可解決問題，當然無需再提及不必要的東西。但如果情況不是這樣，而是需要加入其他的內容，便由他們決定吧。如果我們沒有清楚研究其他條文便作決定，我擔心會出錯。

主席：

有沒有其他問題？

助理法律顧問顧建華先生：

主席，關於 Companies Ordinance(Exemption of Companies and Prospectuses from Compliance with Provisions) Notice.....

主席：

是哪份文件？

助理法律顧問顧建華先生：

這份文件是沒有發給各位議員的。我的問題是因為這條附屬法例已經無效，或由於它的時限性而將來不會生效，以致雖然在這個notice內有refer to unified exchange，亦無須作出修改呢？我現在提到的是Cap 32的subsidiary legislation。或許政府可以先作研究，然後再答覆我們吧。另一個問題是關於第87頁。

主席：

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1 你是指同一份文件嗎？

2

3 **助理法律顧問顧建華先生：**

4

5 對，同一份文件第87頁。這純粹是草擬上的問題。我只是希望政府
6 澄清，為何在第2行結尾採用“any list of that market”的字眼。現時市場通常
7 也採用“the main board”或其他board的字眼，而不再採用“list”的字眼。政府
8 是否因為要達致consistency而採用這個字眼呢？

9

10 **高級政府律師張月華女士：**

11

12 主席，舊有的文本也是採用“list of that exchange”的字眼的，因此我
13 們並沒有作出字眼上的修改。

14

15 **主席：**

16

17 還有其他問題嗎？

18

19 **助理法律顧問顧建華先生：**

20

21 第105頁。

22

23 **高級政府律師張月華女士：**

24

25 主席，對不起，對於法律顧問剛才提出的第2條問題，就Companies
26 Ordinance (Exemption of Companies and Prospectuses from Compliance with
27 Provisions) Notice，我們在本月20日已提交了一份文件，提出有關這部分的
28 修訂。

29

30 **主席：**

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1
2 好的。接着是討論第105頁。

3
4 **助理法律顧問顧建華先生：**

5
6 問題在於第105頁有關definition of “mutual fund”的部分，這亦是草
7 擬上的問題。這裏提到“...corporation which is or hold itself out as being
8 engaged primarily in the business...”。據我的理解，這部分不應該採用被動
9 的句式。

10
11 **Chairman:**

12
13 Frank.

14
15 **財經事務局助理局長曾俊文先生：**

16
17 多謝主席。我們作出這項修訂，是因為原有的《稅務條例》提述到，
18 這個定義載於舊有的《證券條例》內，但現時的Securities and Futures Bill
19 (SFB)已沒有作出這個定義。我們跟稅務局磋商後，他們決定不採用舊有的
20 方法，即不會再提述這個定義載於SFB內，而會在《稅務條例》內明文列明
21 何為互惠基金。他們認為這個做法已經可以達到目的。而現時這個定義是
22 以原本載於《證券條例》內的定義的草擬方式為文本的，所以我們並沒有
23 改變這個定義在實際運用上的效果。

24
25 **副主席：**

26
27 主席，這個寫法是否純粹是搬字過紙，並且是源自一條法例？

28
29 **財經事務局助理局長曾俊文先生：**

30

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1 對，這定義源自舊有的《證券條例》。

2

3 **副主席：**

4

5 如果現時的條例草案獲得通過，這條舊有的《證券條例》便會被廢
6 除，對嗎？

7

8 **財經事務局助理局長曾俊文先生：**

9

10 對。

11

12 **副主席：**

13

14 亦再不會有這個定義存在，對嗎？

15

16 **財經事務局助理局長曾俊文先生：**

17

18 對。

19

20 **副主席：**

21

22 那麼我們便無須受到它的約束了。如果只是涉及採用被動句式，即
23 採用 active 還是 passive 句式的問題，你大可考慮法律顧問提出的意見，即
24 “being engaged in” 是否可以寫為 “engaging in”。我相信你在這方面是有自由
25 度的，而無須過分受到約束。如果這是並沒有作出修改的原因，署方可以
26 再作考慮。

27

28 **財經事務局助理局長曾俊文先生：**

29

30 我們再作考慮吧。

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1

2 **助理法律顧問顧建華先生：**

3

4 主席，我不再提出其他細節上的問題了，但我希望各位參考第138
5 頁，這裏採用了一籃子的方式來作出修訂。對於這項修訂，我沒有特別的
6 問題要提出，但我希望政府澄清，是否由於這項修訂，使第351章的附屬法
7 例，即Exchanges (Special Levy) Rules無須再作修訂呢？

8

9 **副主席：**

10

11 法律顧問，你可否再說一遍？

12

13 **助理法律顧問顧建華先生：**

14

15 第138頁是一個較為特殊的例子。政府是以一籃子的方式來草擬修
16 訂條文，以修訂有關條例內一些舊有法例下的提述。請議員們研究這個方
17 式是否適當。對於效果方面，我沒有特別的意見。

18

19 **副主席：**

20

21 法律顧問的意思，是指政府制定這條原則性的條款，而再沒有就逐
22 項條款作出修訂，而所造成的效果，是如果有關人希望知道這條條例的某
23 部分有否修訂或廢除，便需參考這部分才會知道。即如果他不知道存有這
24 項條文，便不會留意到某些部分已經修改。這是否法律顧問的意思呢？

25

26 **助理法律顧問顧建華先生：**

27

28 在意義上，有關部分已作出相應的修訂，但這些修訂不會在條文本
29 身而會在這項條文反映出來。

30

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1 **副主席：**

2

3 例如是涉及甚麼的修訂呢？

4

5 **助理法律顧問顧建華先生：**

6

7 例如就舊有法例的提述所作出的修訂。

8

9 **副主席：**

10

11 即提述的方式？

12

13 **助理法律顧問顧建華先生：**

14

15 對。

16

17 **高級政府律師張月華女士：**

18

19 主席，請容許我稍作解釋。第351章的處理方法跟其他條例不同，
20 是因為它存有特殊的情況。對於其他條例，我們作出相應修訂時，一般是
21 以新訂條例內的字眼取代舊有的提述的。但第351章的處理方法不同，因為
22 這章是針對在87年徵收的一項special levy。我們從證監會得知，證監會現
23 時已再沒有徵收這項special levy。除非我們認為將來需要根據新的法例行
24 使這項徵費的權力，否則便沒有需要以新法例內的字眼取代有關條文的字
25 眼。既然我們無須再行使這項權力，我們便無須把舊有的提述以新法例的
26 提述取代。所以第351章可以說是已經過時的條例。我們選擇不廢除這條條
27 例，是因為根據這條條例徵收了的費用，可能目前仍需處理。所以，我們
28 需要保留這條條例，但證監會認為已再沒有需要繼續行使在這條條例下獲
29 賦予的權力了。

30

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1 **副主席：**

2
3 主席，我希望再研究這個問題。我們暫時不作決定，好嗎？

4
5 **主席：**

6
7 我們稍後再作研究吧。如果法律顧問對於 Consequential Amendment
8 仍有問題，可以書面形式提出。

9
10 現在距離會議結束的時間尚有2至3分鐘，請各位參考立法會
11 CB(1)152/01-02號文件，即有關法案委員會隨後需要進行的工作的文件。我
12 們基本上已經完成整體上的審議工作。當然，各位仍可以各自再行研究一
13 些細節上的問題。但政府亦曾提到，他們考慮在11月5日至30日這幾個星期
14 之內，向我們提交條例草案的最後文本，不論他們是否接受我們在委員會
15 審議階段提出的建議。我已跟政府進行商討，並已與秘書處研究時間上的
16 安排。這份文件的第2及3頁已載有一份工作計劃。

17
18 政府表示大約會在11月7日備妥第1批委員會審議階段修正案，所以
19 我們大約會有4個星期的時間進行詳細審議。而對於最後一批的修正案，各
20 位大約會有兩至3個星期的時間審議。不知各位認為在工作時間的安排上有
21 沒有困難？我們會在12月4及6日舉行會議，希望能夠完成就第I至VII部及相
22 應附表的審議工作。第2批修正案是就第VIII至XII部及有關附表所作的修正
23 案，篇幅較短。我們會在12月10日舉行的會議上作出討論。第3批是就其他
24 所有部分作出的修正案。我們會在12月11及14日的會議上討論，如有需要，
25 我們亦會在17日舉行會議，完成所有審議工作。

26
27 審議完畢後，各位同事應可瞭解政府會接受哪些修訂。如果各位同
28 事希望自行提出修訂建議，請各位在聖誕假期期間備妥有關修訂。我們會
29 在1月初安排各位陳述你們提出的委員會審議階段修正案，或如政府有任何
30 意見，亦可屆時提出。根據現時的安排，我們接受政府恢復條例草案二讀

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1 辯論的最早時間是2月6日。否則，條例草案便要在2月27日或3月13日才可
2 恢復二讀辯論。我已把有關的時間向各位陳述，請問各位有沒有意見？

3
4 **副主席：**

5
6 主席，有關就Banking (Amendment) Bill 2000進行討論的上次會議，
7 雖然我沒有參加初段的討論，但我事後跟秘書瞭解情況後，知道當時沒有
8 討論一件事情，不知道議員們會否討論這件事。這件事關於《銀行業(修訂)
9 條例草案》內有關Functions of the monetary authority的部分，即就《銀行業
10 條例》第7條作出的修訂。這項修訂擴大了HKMA的職權。這做法是我可以
11 理解的，因為HKMA須要監管exempted persons，所以便需要更多職權。但
12 事實上，擴大HKMA的職權造成的改變非常重大，其實這個做法是把金融
13 管理局的角色和職能大幅擴大。我們需否就這個問題進行討論呢？

14
15 第7(2)(g)條列明，將會在金管局的職能中加入一項，即“take all
16 reasonable steps to ensure that any banking business, any business of taking
17 deposits or any other businesses...”，請各位留意，“any other businesses”的
18 涵蓋範圍是很廣泛的；“...carried on by an authorized institution is carried on
19 (i) with integrity, prudence and the appropriate degree of professional
20 competence and (ii), in a manner which is not detrimental, or likely to be
21 detrimental, to the interests of depositors or potential depositors.”。這項修訂
22 把金管局的prudential regulation function和一些有關保障投資者的職能正式
23 提出，所以對金管局的角色及相應的人手、權力等會有所影響。不知大家
24 認為需否就此作出討論？如果各位在上次會議上沒有提出這個問題，是因
25 為大家認為這項修訂沒有問題，那麼我便不會堅持在這次會議上討論這
26 點，而會在會議後跟署方商討。

27
28 **主席：**

29
30 副主席曾向我提出這點，或許各位同事現在沒有機會詳細考慮，但

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1 請各位在會議後研究這個問題。我贊同副主席的看法，這項修訂把金管局
2 的職權擴大。據我們的理解，當局修訂《銀行業條例》，是為了容許銀行監
3 管本身的證券業務。所以，當局應修訂《銀行業條例》，以擴大金管局的職
4 權，使銀行在管理或監管銀行本身從事的證券業務時，須要作出一些
5 compliance，即這些修訂需要ensure銀行作出compliance，而compliance的條
6 件是set by證監會的。當然，或許當局亦希望作出現時這項修訂，但這項修
7 訂不應在這條條例下作出，而是待當局全面修訂《銀行業條例》時再行處
8 理。

9
10 **財經事務局副局長區璟智女士：**

11
12 對於這個問題，我們會跟金管局再作研究。我們亦要視乎銀行現時
13 提供一站式服務的情況。你的意見可能是對的，我們或許應同時考慮關乎
14 證券及期貨的條例以外的其他因素，例如銀行從事的保險、強積金或其他
15 產品的業務。

16
17 **主席：**

18
19 我明白修訂《銀行業條例》的最主要原因，是當局須就《證券及期
20 貨條例草案》作出相應的修訂，所以有關修訂應只牽涉證券的情況。那麼，
21 倒不如在《銀行業條例》下訂明，金管局須要進行《證券及期貨條例》賦
22 予的工作，並可能須要set一些standard及comply with證監會的規定等。如果
23 採取這種草擬方式，把金管局的職權範圍略為收窄，可能會較好。請其他
24 同事發表意見。

25
26 **副主席：**

27
28 主席，有關就《銀行業條例》作出的修訂的標明文本，是否已經發
29 給議員？那麼請各位參考該份文件，便可作出比較。

30

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1 **主席：**

2
3 希望各位在就這些修訂進行第3次討論時，可以作出研究，亦請政
4 府研究這個問題。簡單來說，副主席提出的情況是，現在新賦予金管局的
5 職能，較原先計劃賦予該局的職能廣泛得多。

6
7 請問各位對工作時間表有沒有意見？大致上的安排是各位可以在
8 11月稍作休息，在12月便需要出席一連串的會議。如果政府及各位議員希
9 望提出修訂，可在聖誕假期期間先行作出準備，然後在1月初把所有修訂提
10 出來討論。

11
12 **副主席：**

13
14 主席，我亦曾研究這個工作時間表，我認為時間安排過於緊迫，但
15 我亦明白作出這個安排的原因。或許你希望在1月8日，即農曆新年之前完
16 成有關的討論。否則，便要待1月27日才可完成。那麼，時間便會很緊迫了。
17 這是我可以明白的，但最重要的，是政府要準時提交有關文件。

18
19 **主席：**

20
21 我明白你的意思。其實，這個工作時間表已具有很大的靈活性。根
22 據這個時間表，條例草案最早可在2月6日恢復二讀辯論，最遲亦可在3月13
23 日恢復二讀辯論，其實時間已頗為充裕。現在便要視乎政府能否準時提交
24 有關文件了。

25
26 **財經事務局副局長區環智女士：**

27
28 我們會在11月的第2至第4個星期，把有關文件逐一交給各位研究。

29
30 **主席：**

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1

2

好的，多謝各位。下次會議的日期是12月4日。

3

4

5

6

7

8 m3529