

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 1477/01-02  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/4/00/2

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

**Minutes of meeting  
held on Monday, 14 January 2002, 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 NG Leung-sing, JP  
Hon Bernard CHAN  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Jasper TSANG Yok-sing, JP  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Henry WU King-cheong, BBS  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Eric LI Ka-cheung, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Hon James TO Kun-sun  
Hon Abraham SHEK Lai-him, 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 Frank TSANG  
Assistant Secretary for Financial Services

Mr Howard YAM  
Assistant Secretary for Financial Services

Mr David CARSE  
Deputy Chief Executive, Hong Kong Monetary  
Authority

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

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

Mr Gilbert MO  
Deputy Law Draftsman

Ms Sherman CHAN  
Senior Assistant Law Draftsman

Mr K F CHENG  
Senior Assistant Law Draftsman

Ms Phyllis KO  
Senior Assistant Law Draftsman

Ms Beverly YAN  
Senior Government Counsel

**Attendance by  
invitation**

: Mrs Alexa LAM  
Executive Director, Intermediaries and Investment  
Products, Securities and Futures Commission

Mr Alan LINNNG  
Executive Director, Enforcement, Securities and Futures  
Commission

Mr Andrew YOUNG  
Chief Counsel, Securities and Futures Commission

Mr Gerald D GREINER  
Senior Director, Supervision of Markets, Securities and  
Futures Commission

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

Mr CHUNG Hing-hing  
Associate Director, Licensing Department, Securities and  
Futures Commission

Mr Joe KENNY  
Consultant, Securities and Futures Commission

Mr Anthony WOOD  
Senior Counsel, Securities and Futures Commission

Mrs Mary AHERN  
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 1

Mr KAU Kin-wah  
Assistant Legal Adviser 6

Mr S C TSANG  
Senior Assistant Secretary (1)7

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**I. Consideration of Committee Stage Amendments (CSAs) to the Securities and Futures Bill (SFB) and Banking (Amendments) Bill 2000 (BAB) proposed by the Administration**

(A) Outstanding CSAs from the Administration

- (LC Paper No. CB(1) 741/01-02(01) -- Supplementary notes to CSA papers in respect of Parts II to V, VIII, X and XII of SFB and BAB
- LC Paper No. CB(1) 707/01-02(01) -- Supplementary notes to CSA papers in respect of Parts VII, IX & XVI of and Schedules 2, 6, 7 & 8 to SFB
- LC Paper No. CB(1) 757/01-02(01) -- Supplementary notes to CSA papers in respect of Parts XI & XIII of and Schedules 1 & 9 to SFB
- LC Paper No. CB(1) 741/01-02(02) -- Supplementary notes to CSA paper in respect of Part XV of SFB
- LC Paper No. CB(1) 707/01-02(02) -- Proposed amendments to the Banking Ordinance concerning the functions of the Monetary Authority
- LC Paper No. CB(1) 789/01-02(01) -- The Administration's response to members' other comments raised at the meetings in December 2001

Action

Members agreed that the Bills Committee would scrutinize the English version of CSAs proposed by the Administration. The LegCo Legal Service Division (LSD) was requested to examine the Chinese version of CSAs and follow up with the Law Draftsmen on drafting and other technical matters. In the event that there were unresolved issues, LSD would raise them at meetings.

2. The Bills Committee deliberated (Index of proceedings attached at the **Annex**).

Admin 3. The Administration undertook to take follow-up actions in respect of SFB and BAB as follows:

- (a) to provide examples illustrating the use of clauses 106(3)(a)(iv) and 107(7)(c)(iv);
- (b) to consider adding in clause 106(3)(a)(iv) the mental element that any intentional/reckless omission should be for the purpose of misleading or deceiving the misrepresentee;
- (c) to replace "ground" with "excuse" in clause 178(1)(a);
- (d) in connection with clause 178(1)(b) to provide examples in existing law where non-compliance with statutory requirements could be treated in the same manner as if the person had been guilty of contempt of court;

- (e) to continue discussion with the LegCo Legal Service Division regarding technical and drafting matters in respect of transitional provisions in Schedule 9;
- (f) to reassure during the resumption of Second Reading debate on SFB and BAB that clause 3 of BAB is not intended to expand the power of Hong Kong Monetary Authority (HKMA);
- (g) to provide further information comparing the penalties and offences of those provisions in existing law set out by the Administration (paragraph 9 of LC Paper No. CB(1) 789/01-02(01)) which are similar to clause 172(13); and
- (h) to follow up with the Judiciary Administrator regarding the suggestion of appointing administratively one of the Chairmen to oversee the operation of the Securities and Futures Appeals Tribunal (SFAT) in cases where additional tribunals are established (paragraph 14 of LC Paper No. CB(1) 789/01-02(01))

(B) CSAs to be moved by Members

4. Ms Margaret NG indicated that she would propose to the Council to oppose the inclusion of clause 11, which provides the Chief Executive with the power to give written directions to SFC regarding the performance of its functions, in SFB. Mr Henry WU said that he was still considering whether he would move CSAs on the bills.

## II. Any other business

### Outstanding CSAs from the Administration

5. The Administration undertook to provide new CSAs or written responses to address members' concerns before 25 January 2002. Members agreed that if the new CSAs or written responses were acceptable to members, the Bills Committee would conclude its work.

(Post-meeting note : The outstanding CSAs provided by the Administration had been issued to members vide LC Paper Nos. CB(1) 971/01-02 and 1042/01-02 on 30 January and 7 February 2002 respectively.)

6. As the Administration intended to resume the Second Reading debate on the two Bills at the Council meeting on 13 March 2002, members agreed that the Bills Committee would submit its report to the House Committee on 22 February 2002. In view that a large number of subsidiary legislation which would be subject to negative

vetting of the Council would be made under the Securities and Futures Ordinance for implementation of the Ordinance, members also agreed to make recommendation for forming a subcommittee under the House Committee to allow members sufficient time in scrutinizing them.

7. The meeting ended at 11:30 am.

Legislative Council Secretariat

11 April 2002

**Proceedings of the meeting of the  
Bills Committee on Securities and Futures Bill and  
Banking (Amendment) Bill 2000  
on Monday, 14 January 2002 at 8:30 am  
in the Chamber of the Legislative Council Building**

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
0000-0409	Chairman	Opening remarks Clauses 5, 87 & 106	
0410-0507	Ms Margaret NG	Clause 106(3)(a)(iv) -  (a) request for examples illustrating the use of the provision and;  (b) to consider adding the mental element to the effect that the maker of misrepresentation must intentionally omit a material fact with the purpose of deceiving and inducing another person to invest money	Admin
0508-0611	Administration	ditto	
0612-0637	Ms Margaret NG	ditto	
0638-0647	Administration	ditto	
0648-0741	Ms Margaret NG	ditto	
0742-0817	Administration	ditto	
0818-0954	Mr Henry WU	ditto	
0955-1022	Ms Audrey EU	ditto	
1023-1115	Administration	ditto	
1116-1131	Chairman	ditto	
1132-1135	Ms Margaret NG	ditto	
1136-1440	Administration	ditto	
1441-1532	Ms Margaret NG	ditto	
1533-1750	Administration	ditto	
1751-1823	Ms Margaret NG	ditto	
1824-1924	Mr Henry WU	ditto	
1925-2003	Chairman	ditto	
2004-2225	Ms Margaret NG	ditto	
2226-2304	Administration	ditto	
2305-2431	Ms Audrey EU	ditto	
2432-2547	Ms Margaret NG	ditto	
2548-2557	Mr Henry WU	ditto	
2558-2618	Chairman	ditto	
2619-2705	Administration	ditto	
2706-2810	Ms Margaret NG	ditto	
2811-2853	Chairman	Clause 107	
2854-2919	Mr Henry WU	Clause 107(7)(c)(iv) - request for examples illustrating the use of the	Admin

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		provision	
2920-2931	Chairman	ditto	
2932-2938	Ms Margaret NG	ditto	
2939-2951	Chairman	Clauses 114A, 115, 116, 120 & 128	
2952-3034	Mr Henry WU	ditto	
3035-3125	Administration	ditto	
3126-3203	Chairman	ditto	
3204-3409	Mr Henry WU	ditto	
3410-3626	Chairman	Clauses 130B, 167, 173 & 178	
3627-3751	Mr Henry WU	ditto	
3752-3919	Administration	ditto	
3920-4022	Mr Henry WU	ditto	
4023-4109	Administration	ditto	
4110-4209	Ms Margaret NG	Clause 178(1)(b) - clarification on the bases for contempt of court	
4210-4230	Administration	ditto	
4231-4245	Ms Margaret NG	ditto	
4246-4409	Administration	ditto	
4410-4455	Ms Margaret NG	Clause 178(1)(b) - request for examples under the existing law where non-compliance with statutory requirements could be treated in the same manner as if the person had been guilty of contempt of court	Admin
4456-4505	Administration	ditto	
4506-4545	Ms Audrey EU	Clause 178(1)(a) - replacement of the term "reasonable ground" by "reasonable excuse"	Admin
4546-4655	Administration	ditto	
4656-4702	Ms Audrey EU	ditto	
4703-4709	Administration	ditto	
4710-4944	Chairman	Clauses 188, 190, 204 & 229	
4945-5245	ALA6	Clause 235 - concern on  (a) the bases of claims under the compensation fund; and  (b) the date for the compensation fund to take effect	
5246-5317	Administration	ditto	
5318-5327	Chairman	ditto	
5328-5530	ALA6	ditto	
5531-5543	Chairman	ditto	
5544-5702	Administration	ditto	
5703-5756	Ms Margaret NG	ditto	
5757-5946	Chairman	ditto	
5947-10108	Administration	ditto	



<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
10109-10136	ALA6	ditto	
10137-10157	Mr Henry WU	ditto	
10158-10204	Administration	ditto	
10205-10820	Chairman	Clauses 236, 210 to 214, 220A, 221, 222, 243 to 245, 249, 250, 252, 253, 256A, 257 to 259, 272 & 299	
10821-10916	ALA6	Clause 300 - appropriateness of the term "on-line medium"	
10917-10933	Administration	ditto	
10934-10948	Chairman	ditto	
10949-11022	ALA6	Clause 304 - clarification on the notification requirements where the duty of disclosure arises	
11023-11105	Administration	ditto	
11106-11324	ALA6	ditto	
11325-11427	Administration	ditto	
11428-11440	ALA6	ditto	
11441-11519	Ms Margaret NG	ditto	
11520-11535	Administration	ditto	
11536-11549	Chairman	Clauses 313 to 315, 332, 338, 340, 347, 352, 361 & 363	
11550-11600	Ms Margaret NG	ditto	
11601-11738	Chairman	ditto	
11739-11807	Mr Henry WU	ditto	
11808-11836	Administration	ditto	
11837-11846	Mr Henry WU	Clause 365A - concern on the requirement to consult the public on rules to be made by SFC	
11847-12039	Chairman	Clauses 368 & 388 Schedule 1	
12040-12156	ALA6	Schedule 1 - definition of "dealing"	
12157-12611	Administration	ditto	
12612-12627	ALA6	ditto	
12628-13030	Chairman	Schedules 2, 6, 7, 8 & 9	
13031-13059	Mr Henry WU	Schedule 9 - concern on the difference in the legal effect of the use of the terms "as if", "deemed" and "regarded"	
13100-13114	Administration	ditto	
13115-13158	Ms Margaret NG	ditto	
13159-13428	Chairman	ditto	
13429-13559	ALA6	Schedule 9 - concern on the technical and drafting matters in respect of the transitional provisions in Schedule 9	Admin
13600-13608	Ms Margaret NG	ditto	
13609-13729	ALA6	ditto	
13730-13808	Administration	ditto	
13809-13818	Ms Margaret NG	ditto	
13819-13911	Chairman	ditto	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
13912-13947	Mr Henry WU	ditto	
13948-14043	Administration	ditto	
14044-14054	Mr Henry WU	ditto	
14055-14115	Administration	ditto	
14116-14207	Chairman	BAB	
14208-14448	Ms Margaret NG	Clause 3 of BAB - suggestion for the Administration to reassure that the clause is not intended to expand the power of HKMA	Admin
14449-14631	Chairman	ditto	
14632-14717	Administration	ditto	
14718-14756	ALA6	Clause 4(bb) of BAB - appropriateness of the term "on-line record"	
14757-14807	Chairman	ditto	
14808-14841	Administration	ditto	
14842-14934	Chairman	ditto	
14935-15102	Administration	ditto	
15103-15117	Chairman	ditto	
15118-15205	Administration	ditto	
15206-15222	Chairman	ditto	
15223-15253	Administration	ditto	
15254-15434	Chairman	Administration's response to Members' comments raised at the meetings in December 2001 (LC Paper No. CB(1) 789/01-02(01))	
15435-15453	Ms Margaret NG	ditto	
15454-15553	Chairman	ditto	
15554-15648	Ms Margaret NG	ditto	
15649-15652	Administration	Paragraph 9 of LC Paper No. CB(1) 789/01-02(01) - comparison on the penalties and offences of provisions under the existing law on non-compliance with requirements of regulatory authority similar to clause 172(13)	Admin
15653-15700	Ms Margaret NG	ditto	
15701-15717	Chairman	ditto	
15718-15733	Mr Henry WU	ditto	
15734-15739	Administration	ditto	
15740-15839	Ms Margaret NG	ditto	
15840-15854	Chairman	ditto	
15855-15906	Ms Margaret NG	Paragraph 14 of LC Paper No. CB(1) 789/01-02(01) - Follow up with the Judiciary Administrator regarding the suggestion of appointing administratively one of the Chairmen to oversee the operation of the Securities and Futures Appeals Tribunal where additional tribunals are established	Admin
15907-20050	Chairman	ditto	

<b>Time</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
20051-20038	Ms Margaret NG	ditto	
20139-20201	Chairman	CSAs to be moved by Members	
20202-20207	Ms Margaret NG	ditto	
20208-20247	Mr Henry WU	ditto	
20248-20323	Chairman	Completion of scrutiny of SFB & BAB; Legislative timetable	
20324-20437	Administration	ditto	
20438-20552	Ms Margaret NG	ditto	
20553-20601	Administration	ditto	
20602-20605	Chairman	ditto	
20606-20821	SALA1	ditto	
20822-20828	Ms Margaret NG	ditto	
20829-20905	SALA1	ditto	
20906-20923	Chairman	ditto	
20924-21005	Administration	ditto	
21006-21012	Chairman	ditto	
21013-21041	SALA1	ditto	
21042-21049	Administration	ditto	
21050-21114	Chairman	ditto	
21115-21158	Mr Henry WU	ditto	
21159-21257	Chairman	ditto	
21258-21303	Administration	ditto	
21304-21325	Chairman	ditto	
21326-21412	Ms Margaret NG	ditto	
21413-21432	Chairman	ditto	
21433-21738	Administration	ditto	
21739-21745	Chairman	Subsidiary legislation to be made under the Securities and Futures Ordinance & formation of a subcommittee to study them	
21746-21802	Administration	ditto	
21803-21843	SALA1	ditto	
21844-22003	Ms Margaret NG	ditto	
22004-22030	Administration	ditto	
22031-22059	Ms Margaret NG	ditto	
22100-22105	Chairman	ditto	
22106-22126	Mr Henry WU	ditto	
22127-22134	Administration	ditto	
22135-22234	Chairman	ditto	
22235-22355	Ms Margaret NG	ditto	

**Note: The audio records of the above proceedings are kept at the Legislative Council Library**

Legislative Council Secretariat  
11 April 2002