

**立法會**  
**Legislative Council**

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(These minutes have been seen  
by the Administration)

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

**Minutes of meeting  
held on Friday, 5 January 2001 at 10:45 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 James TO Kun-sun  
Hon Bernard CHAN  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Jasper TSANG Yok-sing, JP  
Hon Henry WU King-cheong, BBS  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan  
Hon Ambrose LAU Hon-chuen, JP  
Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Miss AU King-chi, JP  
Deputy Secretary for Financial Services
- Miss Vivian LAU  
Principal Assistant Secretary for Financial Services
- Miss Emmy WONG  
Assistant Secretary for Financial Services
- Ms Sherman CHAN  
Senior Assistant Law Draftsman

Ms Beverly YAN  
Senior Government Counsel

Mr Michael LAM  
Senior Government Counsel

**Attendance by invitation** : Securities and Futures Commission

Mr Andrew PROCTOR  
Executive Director  
Intermediaries and Investment Products

Mrs Alexa LAM  
Chief Counsel

Mr Joe KENNY  
Consultant

Mr Andrew YOUNG  
Legal Consultant

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

**Staff in attendance** : Ms Pauline NG  
Assistant Secretary General 1

Mr LEE Yu-sung  
Senior Assistant Legal Adviser

Ms Eva LIU  
Head, Research & Library Services Division

Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Connie SZETO  
Senior Assistant Secretary (1)1

Mr Jackie WU  
Research Officer 1

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The Chairman informed members that the membership of the Bills Committee had increased to 14, as Hon Audrey EU Yuet-mee had joined the Committee.

## **I Matters arising from the last meeting**

### Duty visit to London and New York

2. The Chairman informed members that the House Committee decided at the meeting on 15 December 2000 to form a subcommittee to consider the arrangements for overseas duty visits conducted by LegCo Panels and Bills Committees. In the light of this development, he asked members to confirm their interest in participating in an overseas duty visit to study the regulatory framework and legislative reforms in the leading financial centres including London and New York, so that a proposal could be submitted to the House Committee for consideration. The Clerk would issue a circular after the meeting to invite individual members to indicate their interest.

*(Post-meeting note: The circular was issued under LC Paper No. CB(1) 412/00-01 on 8 January 2001.)*

### Invitation of submissions

3. In respect of the invitation of submissions from deputations, the Chairman informed members that Celestial Asia Securities Holdings Limited, Hong Kong Association of Banks and Hong Kong Federation of Women Lawyers had acknowledged receipt of the Bills Committee's invitation. The first two organizations had also indicated that they would attend the meeting to be held on 3 February 2001. The Chairman urged members to remind their constituents of the relevant trades and professions to make their submissions before the deadline i.e. 27 January 2001. Mr Henry WU proposed and members agreed to put an advertisement in one Chinese newspaper and one English newspaper to invite submissions from the public.

*(Post-meeting note: An advertisement was placed in Hong Kong Economic Journal and South China Morning Post on 9 January 2001 to invite submissions from the public.)*

## II Meeting with the Administration

Briefing by the Administration on the latest developments and reforms in the regulatory framework of global securities and futures markets (LC Paper No. CB(1) 374/00-01(01))

4. Mrs Alexa LAM, Chief Counsel, Securities and Futures Commission (SFC), took members through the paper on "International regulatory reform comparison". The paper summarized the securities and futures related regulatory and legislative reforms in leading international or regional financial centres including the United States and the United Kingdom (UK), Singapore, Japan and Australia.

5. Referring to paragraphs 10, 26, 43, 67, 78 of the paper, Mr Henry WU asked the Administration to explain why information on the number and origin of regulated securities and futures intermediaries was not available. The Deputy Secretary for Financial Services (DS/FS), said that the Administration had considered such information when the Securities and Futures Bill (SFB) was drafted. As this was not the key factor to be considered, the Administration had not included the latest figures in the paper. The Administration would provide this information after the meeting.

*(Post-meeting note: Information on the number of intermediaries in overseas securities and futures market was circulated to members under LC Paper No. CB(1) 479/00-01 on 17 January 2001.)*

6. Mr James TO asked whether the Administration, when drafting the SFB, had made references to regulatory reforms undertaken by other small and medium-sized markets in the wake of the Asian Financial Crisis. DS/FS said that the advance of globalization and economic integration had made it difficult for financial regulators around the world to regulate every activity in the market. More emphasis had therefore been placed on increasing the transparency of the markets and enhancing co-operation among jurisdictions. Smaller jurisdictions such as Hong Kong and Singapore, which had a relatively small market size but a high degree of openness, were seeking to further consolidate their regulation and supervisory practices to enhance competitiveness. Under the present regulatory reform, Singapore would consolidate its legislation and move towards adopting a licensing scheme flexible enough to allow intermediaries to undertake different types of financial activity under a single licence.

7. In response to the same question, Mr Andrew PROCTOR, Executive Director, Intermediaries and Investment Products, SFC, said that the securities business was very heterogeneous and reflected the legal tradition and the state of market development of a particular jurisdiction. Hence, it was very difficult to make comparisons. Every model had its own advantages and disadvantages.

As a market of comparable size, Australia provided the best model for regulatory reform. Reference had been made to the UK model in terms of legislation. However, as the environment and the problems of the UK market were different, the UK's single regulator model was not applicable to Hong Kong. Moreover, the UK regulation was undergoing changes as it was being compelled to adopt generic European standards through the European Union directives.

8. Miss Margaret NG asked how the legislative proposals under the SFB could help Hong Kong position itself to meet the challenges posed by the globalization of the financial market and to increase Hong Kong's competitiveness. DS/ES replied that in the process of drafting the SFB, references had been made to the regulatory regimes of various jurisdictions with a view to formulating the legislative proposals most suitable to Hong Kong and to bringing Hong Kong in line with international standards. The introduction of the single licensing system was aimed at reducing the cost of compliance by intermediaries, thereby enhancing their competitiveness. The provisions relating to the regulation of market misconduct were aimed at maintaining the order of the financial market, promoting fairness among market participants and enhancing investor protection. The SFB also sought to enhance market transparency by promoting timely and accurate disclosure of information to assist investors in making informed investment decisions.

9. At the request of Mr Henry WU, DS/ES undertook to provide more information on the regulatory framework in other jurisdictions for banks conducting securities business when Parts V to VII of the SFB and the corresponding provisions in the Banking (Amendment) Bill 2000 (BAB) were discussed.

*(Post-meeting note: Further information on the regulatory framework in other jurisdictions for banks conducting securities business was issued under LC Paper No. CB(1) 569/00-01(01) on 12 February 2001.)*

#### Part II and Schedule 2 of the Securities and Futures Bill

(LC Paper No. CB(1) 360/00-01(01) and LC Paper No. CB(1) 382/00-01(01))

10. DS/ES briefed members on the paper (LC Paper No. CB(1) 360/00-01(01)) which outlined the major elements of Part II of, and Schedule 2 to, the SFB. This part of the Bill primarily dealt with constitutional matters relating to the SFC. The majority of the provisions replicated the existing law contained in Part II of, and the Schedule to, the Securities and Futures Commission Ordinance (Cap. 24). A table showing the derivation of the relevant provisions was provided at the Annex to the paper.

11. The Chairman noted that financial regulators in other jurisdictions were moving towards the direction of taking over the regulation of listing corporations. He also noted that the UK had adopted a "super-regulator" model

under the regulatory reform, and that the role of London Stock Exchange as the listing authority was transferred to the new Financial Services Authority which was charged with the responsibility to tackle overlaps and inconsistencies in regulation of different market sectors. Referring to the Administration's earlier comments that the spirit of the SFB was in line with that of the financial regulation in the UK, he asked whether the SFC would follow the UK model and take on the role of listing authority from the Hong Kong Exchanges and Clearing Limited (HKEx).

12. DS/FS pointed out that under Part III of the SFB, the SFC was empowered to regulate the activities of listed corporations. However, some flexibility was provided in that Part of the Bill to enable the SFC to delegate this power to the HKEx, and to resume this power when necessary. Mr Andrew PROCTOR explained that the main reason for the UK's move was a requirement by the European Union that each member could only have one statutory listing authority. In the case of Hong Kong, the HKEx would remain a frontline regulator to handle day-to-day listing matters such as admissions to the Stock Exchange and the granting of waivers. However, there were safeguards against its power. There were regular meetings between the SFC and the HKEx pursuant to a Memorandum of Understanding in respect of listing matters and the way the HKEx exercised its power. The present arrangements for the division of responsibility gave no cause for concern. However, there was provision in the proposed legislative framework for the SFC to make judgements on whether any changes were necessary.

13. Noting that the SFC would be given more powers under the SFB, Miss Margaret NG considered that adequate checks and balances should be provided in the proposed regime to safeguard its independence. She expressed concern about the power vested in the Chief Executive under clause 11 of the SFB to give directions to the SFC regarding the performance of its functions. She was worried that the independence of the SFC would be compromised by this provision of the Bill.

14. Miss NG was similarly concerned about the new provisions relating to the regulatory objectives of the SFC, one of which stipulated that the SFC would assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry (clause 4(f)). She questioned the justifications for including this regulatory objective in the SFB. Miss NG also noted with concern that the SFC was required under clause 12 of the SFB to furnish information to the Financial Secretary. In the light of the role played by the Government during the Asian Financial Crisis, she requested the Administration to clarify the extent to which the SFC was obliged to furnish information to the Financial Secretary and the nature of such information.

15. Mr James TO was concerned that the provision under clause 12 would enable the Government to access private information on individuals, as much of

this information would be obtained from the extended supervisory and investigative powers given to the SFC.

16. DS/FS informed members that the powers as stipulated in clauses 11 and 12 of the SFB were already provided to the Chief Executive and the Financial Secretary under the existing law. The power under clause 11 would only be exercised in "the public interest". The Chief Executive's power was a reserve power to ensure that the regulatory body would perform its functions in line with the public interest. The Chief Executive was also required to consult the Chairman of the SFC prior to giving directions to the SFC. Mrs Alexa LAM clarified that under clause 12 of the SFB, the Financial Secretary could require the SFC to furnish him with information on the principles, practices and policy the SFC was pursuing or adopting in furthering its regulatory objectives or performing its functions and this would not normally include information on an individual. As regards information furnished to the Financial Secretary by the SFC pursuant to clause 366 of the SFB, the SFC must be satisfied that disclosure of such information would be in the public interest, and the Financial Secretary would be subject the secrecy provisions specified therein. DS/FS pointed out that this issue would be further considered in the context of the SFC's statutory obligation to preserve secrecy of information under Part XVI of the SFB. At the request of members, she undertook to provide further information on the circumstances under which the Chief Executive could give directions to the SFC.

*(Post-meeting note: Further information has been provided to members as requested vide LC Paper No. CB(1) 1174/00-01(01).)*

17. In respect of clause 13(2) of the SFB which stipulated that the annual estimates of the SFC's income and expenditure were submitted to the Chief Executive for approval, Mr James TO asked whether this provision should be amended to bring it in line with the current practice that government expenditure was subject to the approval of the Legislative Council. DS/FS pointed out that the SFC had been able to finance its operation from revenues generated from its services, and had not requested the Government to make an appropriation to fund its operation since 1993. If the SFC required a recurrent Government grant, this would be submitted in the context of the draft Estimates. In addition, any proposed revision of levies for funding SFC operation would be submitted in the form of subsidiary legislation subject to negative vetting by the Legislative Council.

18. On the issue regarding the granting of exempt status to authorized institutions (AIs) and the Hong Kong Monetary Authority (HKMA)'s role as the frontline regulator of exempt AIs, Mr Henry WU expressed concern that licensed corporations and exempt AIs would be subject to two different regulatory regimes. He also questioned the effectiveness of the Memorandum of Understanding (MOU), which had no statutory effect, in ensuring that the HKMA would adopt a consistent approach as that of the SFC in the regulation of exempt AIs, minimizing regulatory overlap between SFC and HKMA, protecting the investors. DS/FS said that the proposed regulatory regime was



aimed at providing a level playing field for licensed corporations and exempt AIs. It was expressly stated in the SFB and BAB that AIs would be regulated according to the same standards adopted by the SFC in the regulation of licensed corporations. The role of the HKMA as the frontline regulator would be strengthened under the proposed provisions in the BAB.

19. Mr Andrew PROCTOR also said that the MOU, signed between the SFC and the HKMA in the regulation of exempt persons, provided a mechanism for information sharing about regulatory issues and particular individual entities or groups of companies. Although it was not a statutory document, it set out the framework under which the statutory powers were exercised. It was also an expression of goodwill between the two regulatory bodies. The MOU would be updated to take into account the new provisions and to reflect the fact that under the new Ordinance, the test of admission to exempt status would be the same as the test for licensing i.e. the "fit and proper" criteria would be the same. Arrangements would be put in place for the SFC to obtain information from the HKMA to ensure that the exempt AIs remained "fit and proper". The MOU also provided for consultation between the SFC and the HKMA on statutory rules, codes and guidelines that affected the exempt persons.

20. In reply to Mr Henry WU's enquiry on whether some companies, which were set up by banks as subsidiaries to conduct securities business, were currently being regulated by the SFC, DS/ES said that the HKEx presently required all Exchange participants to be registered with the SFC as licensees. It would be up to the individual banks to decide whether they would maintain this status and mode of operation. Mr Andrew PROCTOR added that there were a number of banks that had subsidiaries conducting securities business. They were regulated by the SFC in the same way as any other SFC registrants would be regulated. This practice would continue in the future. For complex groups which had both banking and securities entities within them, to avoid overlapping inspections, the SFC had an arrangement with the HKMA to assess the structure of the group so as to determine whether its activities were predominantly banking or securities in nature. A judgement would then be made to divide the primary or frontline responsibility for this group accordingly. This arrangement was particularly relevant to overseas domicile banks that operated in Hong Kong and conducted securities business. This was part of the current MOU and would continue in the future. However, it had been made very clear that this would not abrogate any responsibility from the two regulatory bodies. They would remain fully responsible for the supervision of their own registrants.

21. At the request of Mr WU, DS/ES agreed to provide members with further information to clarify the definition of "exempt person" and to compare the standards and practices to be adopted by the SFC and the HKMA and in the regulation of licensed and exempt persons respectively. She also pointed out that this issue would be further considered under Parts V to VII of the SFB and

the corresponding provisions in the BAB.

(*Post-meeting note* : (a) Information on the definition of "exempt person" was issued under LC Paper No. CB(1) 569/00-01(01) on 12 February 2001; and

(b) a table comparing the regulation of exempt and licensed persons under the proposed regime was issued under LC Paper No. CB(1) 569/00-01(01) on 12 February 2001.)

### **III Any other business**

22. The Chairman reminded members that the next meeting will be held on Friday, 12 January 2001 at 10:45 am to consider Part III of the Securities and Futures Bill.

23. There being no other business, the meeting ended at 12:35 pm.

Legislative Council Secretariat

17 July 2001