

立法會
Legislative Council

LC Paper No. CB(1) 1801/00-01

(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 Friday, 8 December 2000, 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 Albert HO Chun-yan
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 Ambrose LAU Hon-chuen, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS
- Members absent** : Hon Eric LI Ka-cheung, JP
Hon Jasper TSANG Yok-sing, JP
- Public officers attending** : Miss AU King-chi, JP
Deputy Secretary for Financial Services
- Miss Vivian LAU
Principal Assistant Secretary for Financial Services
- Mr Frank TSANG
Assistant Secretary for Financial Services

Mr Gilbert MO
Deputy Law Draftsman

Attendance by invitation : Securities and Futures Commission

Mr Andrew PROCTER
Executive Director of Intermediaries and
Investment Products

Mrs Alexa LAM
Chief Counsel

Mr Andrew YOUNG
Legal Consultant

Ms Noelle TAI
Counsel

Clerk in attendance : Ms LEUNG Siu-kum
Chief Assistant Secretary (1)4

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

Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Florence LAM
Chief Assistant Secretary (3)2

Ms Connie SZETO
Senior Assistant Secretary (1)1

I Election of Chairman

Mr SIN Chung-kai and Ms Margaret NG were elected Chairman and Deputy Chairman of the Bills Committee respectively.

II Meeting with the Administration

Proposed Work Plan

(LC Paper No. CB(1) 311/00-01(01) tabled at the meeting)

2. The Principal Assistant Secretary for Financial Services briefed members on the Administration's paper setting out the proposed work plan for the Bills Committee to consider the Securities and Futures Bill and the Banking (Amendment) Bill 2000 (BAB). A tentative meeting schedule for the Bills Committee to deal with the two bills on a part-by-part basis had been prepared for members' comments.

3. Ms Margaret NG suggested that in view of the complexity of the bills, the Bills Committee should first hold internal study sessions for members to consider the policy issues and legal aspects of the bills. The study sessions would enable members to have a better understanding of the background of the bills and the major issues involved. After that, members would meet with the Administration. Discussion could then focus on the controversial issues and areas which members were more concerned about.

4. In response, the Deputy Secretary for Financial Services (DS/FS) said that the Administration could give an overview of the bills if members considered it necessary. The Administration proposed that the Bills Committee could consider the bills on a part-by-part basis. The Administration would produce a working paper for each part of the SFB when it was discussed. The papers would outline the major provisions of the relevant parts, in particular those which were new. A table comparing the proposed provisions with existing legislation would also be provided. Where appropriate, amendments made to the Securities and Futures Bill (the White Bill) in response to market comments during the public consultation period would be highlighted. Corresponding provisions of the BAB would be dealt with when the relevant provisions of the SFB were discussed.

5. The Senior Assistant Legal Adviser said that the Legal Services Division would provide the Bills Committee with information papers analyzing each part of the bills and comparing the proposed provisions with those in existing ordinances to facilitate members' consideration of the bills.

6. On the proposed timetable, members opined that in view of the length of the bills and their far-reaching impacts on the financial market, the Bills Committee should allow sufficient time to scrutinize the bills. Members recognized that early enactment of the bills would be important for Hong Kong to bring the regulatory regimes on par with international standards and to maintain Hong Kong's competitiveness as a major international financial centre. However, they considered that the Administration's proposed timetable for the Bills Committee to complete its deliberations by the end of April 2001 was too ambitious.

7. In response, DS/FS said that it would be desirable for the Bills Committee to set a target for completing its work. The proposed work plan was only tentative and was provided for members' consideration. It could be reviewed in light of progress made.

8. After discussion, members agreed that meetings of the Bills Committee should be scheduled for Fridays at 10:45 am. On the Friday when the Transport Panel held its regular monthly meeting, the Bills Committee would meet at 8:30 am instead. They also agreed that the proposed work schedule should be revised in consultation with the Chairman and Deputy Chairman for members' consideration at the next meeting.

(Post-meeting note: The Bills Committee endorsed the revised work schedule at the meeting held on 15 December 2000. The endorsed work schedule was issued vide LC Paper No. CB(1) 336/00-01 dated 18 December 2000.)

9. Members further agreed to invite the public to make submissions on the bills. The organizations which had provided their views to the Administration on the White Bill would be invited to give written submissions. The invitation would also be placed on the Legislative Council internet homepage. Members could suggest organizations which should be invited by the Bills Committee to make representations. The deadline for written submissions would be 27 January 2001. The Bills Committee would meet deputations which wished to make oral presentation on their views on Saturday, 3 February 2001 at 9:30 am.

Discussion on Part I and Schedule 1 of the SFB

(LC Paper Nos. CB(1) 283/00-01(03), 311/00-01(02) tabled at the meeting))

10. Mrs Alexa LAM, Chief Counsel, Securities and Futures Commission (SFC) took members through the paper on the SFB Part I and Schedule 1 (CB(1) 283/00-01(03)). Members noted that Part I of the SFB set out the long title and referred to the major interpretation provisions of the Bill which appeared mainly in Schedule 1.

*The definition of "associate"
(Paragraph 25 of the paper)*

11. Members noted that the term "controlling entity" was defined as a person, who alone or together with associates, controlled 20% of the voting power at general meetings of a corporation. The definition of "associate" included a spouse and children of a person. Mr James TO commented that it would be unfair to deem a person's spouse and children as "associates", because while his spouse and children might hold shares of the same corporation, they might not act in concert at the corporation's general meetings. He was concerned that by including his spouse and children as associates, the person

concerned would easily fall within the definition of "controlling entity". He asked whether exceptions should be provided for.

12. Mrs LAM responded that the definition of "associate" was drawn from section 2 of the Securities and Futures Commission Ordinance (Cap. 24). Other terms, such as "associated entity" and "controlling entity", were new concepts and would be discussed in the context of Part VI of the Bill. Mr TO's concern was noted and would be addressed in that context.

(Post-meeting note: Further information has been provided to members as requested vide LC Paper No. CB(1) 626/00-01(01).)

*Authorized financial institutions (AI) as exempt persons in the SFB
(Paragraph 24 of the paper)*

13. Mr Henry WU expressed concern about granting AIs with exempt status under the new regulatory regime. He opined that securities business had become the core business of an AI, and that granting the latter with exempt status would not promote a level playing field between the securities arms of AIs and licensed securities corporations.

14. In response, DS/ES stressed that the new regulatory regime was aimed at enhancing protection for investors, minimizing duplication in the regulation of market intermediaries, and reducing their compliance cost. She took note of Mr WU's concern about the need for retaining the exempt status and reiterated that the Administration would attach much importance to promoting a level playing field between licensed securities corporations and securities arms of AIs under the new regulatory regime. The Administration would provide information to compare the standards and practices to be adopted by SFC and the Hong Kong Monetary Authority (HKMA) in the regulation of licensed and exempt persons respectively when the Bills Committee discussed Parts V to VII of the Bill.

(Post-meeting note: Further information has been provided to members as requested vide LC Paper No. CB(1) 569/00-01(01).)

15. Mr Andrew PROCTER, Executive Director of Intermediaries and Investment Products, SFC explained that the term "exempt person" would replace "exempt dealer" in existing provisions of the Securities Ordinance (Cap. 333). Currently, exempt dealers included AIs; and insurance companies and trustees etc. which conducted securities business incidental to their core business. He clarified that under the Bill, only AIs could apply for the exempt status. An AI would need to apply for an "exempt" status from SFC for conducting regulated activities. SFC would act on the advice of HKMA in deciding the AI's application for such status. AIs would be subject to the same "fit and proper" test applied by SFC in considering applications for licences by securities corporations. HKMA would be vested with the same

power as that of SFC to conduct effective front-line regulation of the securities arm of exempt AIs in line with the standards applied by SFC to its licensees. The same set of Code of Conduct issued by SFC would apply to exempt AIs and SFC licensees. Some SFC rules (e.g. the Financial Resources Rules) would not apply to exempt AIs as equivalent, if not more stringent, regulatory measures had already been put in place by HKMA under the Banking Ordinance.

16. Mr Henry WU expressed concern that securities corporations would be put in a disadvantageous position when competing with AIs for business as the latter could conduct securities business through their branches or separate entities. Mr PROCTER clarified that AIs had to seek HKMA's approval for opening new branches. Under the new regulatory regime, separate entities set up by AIs for conducting securities business would be required to obtain licences from SFC. As regards SFC's control over a licensee's places of business, Mr PROCTER said that a licensee was required to notify SFC for opening new places of business. SFC would grant the approval if it was satisfied that the corporation had the appropriate systems and control measures in place and the premises concerned was suitable for the conduct of securities business.

17. Some members suggested that the Bills Committee should make reference to the regulatory practices of major international financial centres. DS/FS undertook to provide the relevant information when the Bills Committee considered Parts V to VII of the Bill.

(Post-meeting note: Further information has been provided to members as requested vide LC Paper Nos. CB(1) 569/00-01(01) and CB(1) 626/00-01(01).)

*Protection for professional investors
(Paragraph 27 of the paper)*

18. On Mr James TO's enquiry about the definition of "professional investor", DS/FS said that the SFB would designate eight categories of clients as professional investors who were expected to have a greater understanding of the market and so needed less protection than retail investors. The definition could be expanded to include other categories of clients to be prescribed by SFC through subsidiary legislation to cater for developments in the market.

19. As regards protection for professional investors, Mr PROCTER said that the eight categories of clients included under the definition had been drawn up carefully. Professional investors could elect to give up protective rights provided under SFC rules which might imply a cost on them. To prevent abuse of the term, there would be risk disclosure requirement on their intermediaries and clear election procedures for these investors to ensure that they fully understood the protective rights to be foregone.

III Any other business

20. Members agreed that the next meeting would be held on 15 December 2000 at 8:30 am. The agenda for the meeting would be circulated to members as soon as possible.

21. There being no other business, the meeting ended at 12:30 pm.

Legislative Council Secretariat
17 July 2001