

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, 15 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)
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
- Members absent** : Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Abraham SHEK Lai-him, JP
- Public officers** : Miss Vivian LAU
Principal Assistant Secretary for Financial Services
- Mr Frank TSANG
Assistant Secretary for Financial Services
- Ms Sherman CHAN
Senior Assistant Law Draftsman

Attendance by invitation : Securities and Futures Commission

Mr Mark DICKENS
Executive Director
Supervision of Markets

Mrs Alexa LAM
Chief Counsel

Mr Leo LEE
Director of Licensing

Hong Kong Monetary Authority

Mr Arthur YUEN
Division Head
Banking Supervision Department

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

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

Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Connie SZETO
Senior Assistant Secretary (1)1

I Meeting with the Administration

Briefing by the Administration on the Securities and Futures Bill
and Banking (Amendment) Bill 2000
(LC Paper No. CB(1) 323/00-01(03))

The Principal Assistant Secretary for Financial Services (PAS/FS),
briefed members on the main policy proposals enshrined in the Securities and
Futures Bill (SFB) and the Banking (Amendment) Bill 2000 (BAB). An outline

of the presentation was provided in LC Paper No. CB(1) 323/00-01(03).

2. PAS/FS also took members through the contents of the SFB and highlighted those clauses which were new provisions. She also undertook to provide the Bills Committee with a derivation table for each part of the SFB.

3. In reply to Ms Margaret NG's enquiry about the urgency of passing the proposed legislation, PAS/FS pointed out that the United Kingdom had passed the Financial Services and Markets Act 2000 which was expected to become effective in the summer of 2001, while Australia had introduced major reforms to the securities and futures regulation since 1998 under the Corporate Law Economic Reform Programme. A further package of reform proposals was embodied in the Financial Services Reform Bill, which aimed at harmonizing the separate market misconduct provisions for securities and futures, was expected to be introduced in early 2001. All these reforms were intended to address the challenges of globalization. Jurisdictions with relatively small but internationally open financial markets such as Hong Kong were particularly vulnerable to the threats posed by globalization. Hence, there was an urgent need for Hong Kong to reform its securities and futures regulation in order to maintain its competitiveness as a major international financial centre.

4. As regards the major areas of contention, PAS/FS said that the provisions relating to the licensing regime, market misconduct and disclosure of securities interests had caused some concern in the market. The related proposals might require closer scrutiny by the Bills Committee.

5. Mr Henry WU was concerned that the term "exempt persons" had not been clearly defined in the SFB and that the new licensing regime might not be able to provide a level playing field for small and medium-sized intermediaries. He was worried that as intermediaries were subject to two regulatory regimes, there was a risk that the regulatory standards and requirements would not be consistently applied to licensed corporations and exempt authorized institutions (AIs). Under such circumstances, it would be difficult to promote fair competition in the market. Mr WU also queried the rationale of relying on the Hong Kong Monetary Authority (HKMA) to supervise exempt AIs. In this regard, he asked whether consideration had been given to the introduction of a single regulatory regime under the Securities and Futures Commission (SFC) and how fair competition could be ensured after the enactment of the SFB and BAB.

6. Mr Leo LEE, Director of Licensing, SFC, replied that an exempt status would be granted to an AI whose main business was not in securities. In 1998, a consultation exercise was conducted to seek the industry's views on how a level playing field could be promoted between licensed corporations and exempt AIs. Having regard to the concerns raised, it was proposed in the SFB that the "fit and proper" test would also apply to exempt AIs. While the SFC was vested with the authority to grant exempt status to AIs conducting

securities business, the HKMA would remain as the frontline regulator and would perform its regulatory functions, in relation to exempt AIs, according to standards set by the SFC for its licensees and in a manner consistent with the way the SFC applied those standards. It should also be noted that exempt AIs were already subject to stringent regulation by the HKMA under the Banking Ordinance.

7. The Division Head, Banking Supervision Department, HKMA (DH/BSD(HKMA)), added that Part VI of the SFB empowered the SFC to make rules and guidelines to govern detailed regulation of market practitioners. These rules and guidelines would apply directly to exempt AIs, except where the rules were already applied by the HKMA on AIs generally under the Banking Ordinance. This would be a significant improvement over the existing arrangement whereby the HKMA could only exercise its powers under the Banking Ordinance to require exempt AIs to comply with the rules and guidelines made by the SFC. It was envisaged that after the implementation of the various legislative proposals, fair competition in the market would be enhanced.

8. In respect of Mr Henry WU's enquiry about the introduction of a single regulatory regime for all intermediaries, DH/BSD(HKMA) pointed out that in response to market developments, the United States had amended its legislation in recent years to allow banking group to conduct securities business and securities companies to provide services for dealing in futures contracts. Banks in Singapore could also conduct securities business as exempt dealers. These examples were provided to illustrate the trend in international markets of allowing market practitioners to conduct businesses of different nature instead of segregating these businesses artificially. Mr Leo LEE supplemented that under the proposed regulatory regime, market practitioners would be regulated according to the nature of their business and not by individual entities. The same regulatory standards were applicable to market practitioners conducting a similar business. Under the proposals in the SFB and BAB, licensed corporations and exempt AIs would be supervised on a day-to-day basis by the SFC and the HKMA respectively.

9. Mrs Alexa LAM, Chief Counsel, SFC, also said that the SFC had signed a Memorandum of Understanding with HKMA concerning the regulation of exempt AIs. This would be updated to ensure that the regulatory standards would be applied consistently to exempt AIs and SFC licensees. One example was that the HKMA would be provided with the same inspection manuals for it to carry out day-to-day supervision of the securities arms of exempt AIs. The SFC and the HKMA would also hold regular meetings to exchange information and views.

10. In response to Mr James TO's concern about the regulation of AIs

conducting securities business, DH/BSA(HKMA) pointed out that the securities arm of a bank was also a part of the bank's operation which was under the supervision of HKMA. As the various activities were inter-related, a problem arising in any one of these activities would increase the risk faced by the bank and affect its reputation. Hence, it was imperative for the HKMA to be empowered under the Banking Ordinance to supervise the whole range of a bank's businesses. For operational reasons, it was not desirable for the different parts of a bank's business to be supervised by two regulators.

11. PAS/FS reiterated that the guiding principles in developing the new regulatory framework were to provide better protection to investors, to minimize regulatory overlap, thereby reducing unnecessary regulatory costs, and to level the playing field between exempt AIs and SFC licensees. The Administration was open to market comments and members' suggestions on how the regulatory framework could be further improved. At members' request, PAS/FS undertook to provide information on the regulation of exempt and licensed persons under the existing and new licensing regimes.

(Post-meeting note: The relevant information was issued to members under LC Paper Nos. CB(1) 569/00-01(01) on 12 February 2001, CB(1) 648/00-01(02) and CB(1) 648/00-01(03) on 22 February 2001.)

12. In reply to Mr Bernard CHAN's enquiry as to why reference was made to Australia in drafting the SFB, Mr Mark DICKENS, Executive Director, Supervision of Markets, SFC, said that in setting up the new market misconduct regime, reference had been made to a variety of models including those of the United States and the United Kingdom. As these models were not particularly applicable to the situation in Hong Kong, reference was made to the Australian model which shared the common law tradition as Hong Kong. Furthermore, Australia's market was of a similar size and was going through the same process in reforming its regulatory regime. However, the drafting of the SFB had been adapted to suit local conditions.

II Internal meeting

(LC Paper No. CB(1) 323/00-01(01))

13. The Chairman informed members that a proposed work schedule for the Bills Committee was issued under LC Paper No. CB(1) 323/00-01(01). After discussion, members agreed to the following arrangements for the Bills Committee to scrutinize the SFB and BAB:

- (a) future meetings would be scheduled according to the dates proposed in the work schedule. However, the work schedule

should be suitably adjusted to enable members to study those parts of the Bills which required closer scrutiny;

- (b) information papers by the Administration on the relevant parts of the Bills and comments made by the Legal Service Division should be forwarded to the members at least one week in advance of the meetings. To enable the Legal Service Division to prepare its comments in time, the Administration would be requested to supply its information papers two weeks in advance of the meetings;
- (c) members could raise any issues in writing and these would be forwarded to the Administration for comments;
- (d) sufficient time should be allowed for members to study the various provisions of the Bills including Committee Stage Amendments in detail;
- (e) the Administration would be required to provide a response to the views put forth by deputations at the meeting to be held on 3 February 2001;
- (f) the Administration should be asked to brief members, at the meeting to be held on 5 January 2001, on the latest developments and reforms in the regulatory framework of global securities and futures markets. The work schedule would be revised accordingly. Staff members of the Research and Library Services Division should be invited to attend the meeting to assist members in ascertaining the need for conducting independent research on relevant subject areas; and
- (g) the Chairman would make a request at the House Committee meeting to be held later in the afternoon for members of the Bills Committee to join the duty visit to be conducted by the Financial Affairs Panel in April 2001 to major financial centres including London and New York.

III Any other business

14. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 5 January 2001 at 10:45 am.

15. There being no other business, the meeting ended at 12:40 pm.

Legislative Council Secretariat
17 July 2001