

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

Appeals under Part III of the Securities and Futures Bill

At the Bills Committee meeting on 19 June 2001, some Members enquired about the role of the Financial Secretary (FS) as an ex-officio member of the Executive Council in considering appeals against the Securities and Futures Commission (SFC)'s decision to withdraw a market operator's recognition under Part III of the Securities and Futures Bill on which he had been consulted before the decision was made. The relevant provisions are clauses 33, 44, 73 and 86.

2. The requirement to consult FS in these provisions is modelled on existing law and is widely accepted by the market as a safeguard to ensure that the wider public interest will not be overlooked. SFC's decision to withdraw the recognition of a market operator, like an exchange company and a clearing house, affects not only its regulatees but also the general public, as such decision may have implications on the overall financial policy, financial stability and well-being of Hong Kong as a whole.

3. We have consulted our legal advisers on the appeal arrangement. We are advised that FS' presence and/or participation in the appeal to the Executive Council, as adviser and policy secretary in charge of Hong Kong's financial policy and issues, should not generally be impugned. Whether FS should be present and/or participate in the appeal would depend on all the circumstances of the individual case. In practice, FS would seek legal advice when SFC consults him, before withdrawing a market operator's recognition under the law. In particular, legal advice would be sought on whether, in the circumstances, FS should participate in the consideration of any subsequent appeal to the Executive Council, to ensure that there would not be any conflict of interest on the part of FS.