

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1062/05-06  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/6/04/1

**Bills Committee on  
Securities and Futures (Amendment) Bill 2005**

**Minutes of the sixth meeting  
held on Tuesday, 14 February 2006, at 2:30 pm  
in the Chamber of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)  
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)  
Hon Bernard CHAN, JP  
Hon CHAN Kam-lam, SBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon WONG Ting-kwong, BBS  
Hon CHIM Pui-chung  
Hon TAM Heung-man
- Members absent** : Hon Margaret NG  
Hon Emily LAU Wai-hing, JP  
Hon KWONG Chi-kin
- Public officers attending** : Mr Kevin HO  
Permanent Secretary for Financial Services and the  
Treasury (Financial Services)
- Miss Alice CHEUNG  
Principal Assistant Secretary for Financial Services  
and the Treasury (Financial Services)
- Miss Aubrey FUNG  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)

Mr W L CHEUNG  
Senior Assistant Law Draftsman (Acting)  
Department of Justice

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

Mr Martin WHEATLEY  
Chairman

Miss Doris PAK  
Commission Secretary

Mr Christopher CHENG  
Non-Executive Director

Hong Kong Society of Financial Analysts Limited

Mr Karl LUNG  
President

Mr James SOUTAR  
Director

Hong Kong Securities & Futures Industry Staff Union

Mr WONG Kwok-on  
Chairman

Mr Roger LEUNG Sung-yeung  
Vice Chairman

**Clerk in attendance** : Miss Polly YEUNG  
Chief Council Secretary (1)3

**Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Rosalind MA  
Senior Council Secretary (1)8

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**I Meeting with the Administration and deputations**

Follow-up to previous meetings

**(a) Issues arising from the meeting held on 5 July 2005**

- (LC Paper No. CB(1)800/05-06(01) - Administration's response to the issues raised at the meeting on 5 July 2005
- LC Paper No. CB(1)2376/04-05(01) - Press release of appointment of the Chairman of the Securities and Futures Commission on 30 September 2005
- LC Paper No. CB(1)1997/04-05(01) - Speaking note of Mr Andrew L T SHENG, Chairman, Securities and Futures Commission for the meeting on 5 July 2005)

**(b) Issues arising from the meeting held on 10 June 2005**

- (LC Paper No. CB(1)1927/04-05(01) - Administration's response to the issues raised at the meeting on 10 June 2005
- LC Paper No. CB(1)1955/04-05(01) - Letter dated 16 June 2005 from the Administration to Chairman of SFC )
- LC Paper No. CB(1)1927/04-05(02) - SFC's response to the Administration's request in June 2005
- LC Paper No. CB(1)1745/04-05(03) - Letter dated 7 June 2005 from the Administration to Chairman of the Securities and Futures Commission (SFC)
- Annex B to LC Paper No. CB(1)1735/04-05(01) - Powers, functions and duties to be exercised by the Chairman of the SFC under the Securities and Futures Ordinance (Cap.571))

(c) *Reference to overseas models*

- (LC Paper No. CB(1)1927/04-05(03) - Information note on "Governance structures of overseas securities regulators" provided by SFC
- LC Paper No. CB(1)1930/04-05 - Paper for the meeting on 5 July 2005 prepared by the Secretariat
- LC Paper No. LS78/04-05 - Paper on "Observations on the United Kingdom legislation in respect of the separation of the roles of the Chairman and Chief Executive of the Financial Services Authority (FSA)" prepared by the Legal Service Division)

The Bills Committee deliberated (Index of proceedings attached at Appendix).

Proposed amendment to existing section 11(1) of the Securities and Futures Ordinance (Cap. 571) (SFO)

2. Some members recapped the view expressed by some members of the former Bills Committee on the Securities and Futures Bill that section 11(1) of SFO, which provided the Chief Executive (CE) with the power to give written directions to the Securities and Futures Commission (SFC), might compromise the independence of SFC. Members nevertheless noted the Administration's view that section 11(1) would not be invoked lightly and would only be resorted to under very exceptional circumstances. On the Administration's proposal to amend section 11(1) of SFO to require CE to consult the Chief Executive Officer (CEO) instead of the Chairman before giving written directions to SFC, some members expressed the following concerns:

- (a) As the future non-executive Chairman of SFC would be the head of the Commission and responsible for the overall policies and directions of SFC, there was no reason why the consultation requirement would be relegated to the level of the CEO instead of the Chairman as currently provided in SFO. As the written direction would likely concern matters of great importance, the consultation requirement might even need to be further strengthened by requiring CE to consult both the Chairman and the CEO before giving written directions to SFC.

- (b) To ensure adequate checks and balances on the power of CE to give written directions under section 11(1) of SFO, it might be necessary for CE to consult the Commission as a whole, for example, through special meetings convened for the purpose and such requirement should be stipulated in the legislation.

Admin

3. The Administration informed members that the aforesaid amendment to section 11(1) of SFO had in fact been proposed by SFC. SFC held the view that the CEO should act as the channel for consultation as the CEO would understand best the operation of SFC and be in the best position to advise CE on what was achievable as to the subject of the written directions, particularly in an emergency situation. Nevertheless, the Administration agreed to consider members' views in conjunction with SFC.

### Measures to safeguard independence of the non-executive SFC Chairman

#### *Safeguards against conflict of interests*

Admin

4. Noting that the role of the SFC Chairman would be changed under the split model, some members reiterated their concern about whether there would be adequate safeguards against any real or perceived conflict of interests between the roles and responsibilities of the future Chairman and his other employment/connections with listed or private companies. In this connection, the Administration was requested to provide a paper setting out in a comprehensive manner all the existing and additional safeguards against conflict of interests applicable to the future non-executive Chairman, including statutory safeguards, SFC's internal Code of Conduct and other relevant administrative measures. The Administration was also requested to confirm whether the existing and additional requirements were considered adequate to safeguard against any real/perceived conflict of interests on the part of the future non-executive Chairman.

#### *Remuneration*

Admin

5. In determining the level of remuneration for the future non-executive Chairman, the Administration was asked to take into account the views of some members and deputations on the importance of providing a reasonable level of remuneration, not a token remuneration, commensurate with the level of responsibility of the post so as to secure a competent and qualified candidate for the post. In this connection, some members considered the level of remuneration currently proposed by the Administration for the SFC Chairman post (amounting to some \$700,000 per annum), which was three times the remuneration of a Non-executive Director (NED) of SFC, to be on the low side. Some members suggested the Administration to re-consider its proposal with reference to the remuneration package for overseas regulators such as the Financial Services Authority (FSA) of the United Kingdom.

Arrangement for future meetings

*Date of the next meeting*

6. Members agreed that the next meeting of the Bills Committee would be held on Wednesday, 22 March 2006, at 8:30 am. The Chairman said that the Bills Committee would commence clause-by-clause examination of the Bill at the next meeting.

*Attendance of deputations*

7. The Chairman thanked the representatives of the two deputations for their participation and input to the Bills Committee. Regarding their attendance or otherwise at future meetings, the Chairman suggested that subject to any contrary view members might have, deputations would be welcomed to observe proceedings of the meetings in the public gallery and/or provide further written submissions to the Bills Committee, if they so wished. The Bills Committee would extend invitation to deputations to attend future meetings again, if necessary. Members agreed with the above arrangements.

**II Any other business**

8. There being no other business, the meeting ended at 3:55 pm.

Council Business Division 1  
Legislative Council Secretariat  
10 March 2006

**Proceedings of the sixth meeting of the  
Bills Committee on Securities and Futures (Amendment) Bill 2005  
on Tuesday, 14 February 2006, at 2:30 pm  
in the Chamber of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 – 000233	Chairman	(a) Confirmation of minutes  (b) Introductory and welcoming remarks	
000234 – 000448	Chairman Mr Abraham SHEK	The Chairman advised members that he and Ms Emily LAU had an informal meeting with Mr John TINER, the Chief Executive of FSA on 2 February 2006. In brief, Mr TINER shared the operational experience of FSA under the split model and advised that members of the FSA Board generally were of the view that the splitting arrangement was effective. (The note of the informal meeting were circulated to members vide LC Paper No. CB(1)911/05-06(01) on 15 February 2006)	
000449 - 001104	Chairman Administration	The Administration's briefing on its paper on "Division of responsibilities between the Chairman and the Chief Executive Officer of the Securities and Futures Commission" (LC Paper No. CB(1)800/05-06(01)).	
001105 - 002258	Chairman Mr Ronny TONG Administration SFC	(a) The Administration's elaboration on the proposed amendments to the Bill in respect of five of the eight statutory functions currently assigned to the SFC Chairman in SFO (A list of the eight statutory functions was in Annex C to LC Paper No. CB(1)800/05-06(01)).  (b) Mr Ronny TONG's query why the division of roles and responsibilities of the Chairman and the CEO could not be stipulated in the legislation.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) SFC’s explanation that as duties and responsibilities would evolve over time, members of the SFC Board considered that flexibility should be provided for the Board to fine-tune and adjust the delineation of roles and responsibilities between the Chairman and the CEO in the light of the operational needs of SFC.</p>	
002257 - 004911	Ms Audrey EU Administration Chairman SFC	<p>(a) The concern shared by Ms Audrey EU and the Chairman that section 11(1) of SFO, which provided CE with the power to give written directions to SFC, might compromise the independence of SFC.</p> <p>(b) Ms Audrey EU’s view that as the head of SFC, the Chairman should also be consulted before CE gave any written directions to SFC under section 11(1) of SFO. Ms EU doubted the propriety of relegating the consultation requirement to the level of CEO under the split model, contrary to the existing requirement on CE to consult the SFC Chairman. She opined that to strengthen the consultation requirement, amendments should be made to section 11(1) to require CE to consult both the Chairman and the CEO before giving written directions to SFC.</p> <p>(c) The Administration’s explanation that section 11 of SFO conferred a reserve power on the Government to implement necessary remedial measures under the most pressing and extreme circumstances. The Administration concurred with SFC’s suggestion that the future CEO should act as the channel</p>	<p>The Administration to take follow-up action as required in paragraph 3 of the minutes</p>



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>for consultation as the CEO would best understand the operation of SFC and be in the best position to advise CE on what was achievable as to the subject of written directions. It was expected that the CEO would also consult the Chairman, and if necessary, other executive directors and NEDs of SFC before tendering advice to CE.</p> <p>(d) Ms Audrey EU's concern about the impact of the splitting arrangement on the international status of SFC.</p> <p>(e) The Administration's advice that the splitting proposal would not have any adverse impact on the international standing of SFC.</p> <p>(f) The advice of the Administration and SFC that in respect of the participation of securities regulators in the International Organization of Securities Commissions (IOSCO), it would be up to individual regulators to decide on the level of their representation at meetings of the IOSCO and its Technical Committee. There were no firm rules as to whether participation was limited to executive or non-executive chairmen or directors.</p>	
004912 - 005613	Mr Ronny TONG Administration Chairman Ms Audrey EU	(a) Mr Ronny TONG's view that given the likely significance of the written directions to be given by CE under section 11(1) SFO, there should be adequate checks and balances on such power of CE. He opined that CE should be required to consult SFC as a whole, for example, through special meetings convened for the purpose, and that such	The Administration to take follow-up action as required in paragraph 3 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>requirement should be stipulated in the legislation.</p> <p>(b) The Administration's view that there might be practical difficulty for CE to consult the whole Commission under extreme or urgent circumstances.</p> <p>(c) The view of Mr Ronny TONG and Ms Audrey EU that expediency or efficiency should not override the need for adequate consultation.</p>	
005614 – 012326	<p>Chairman Administration SFC Mr Ronny TONG Hong Kong Society of Financial Analysts (HKSFA) Hong Kong Securities &amp; Futures Industry Staff Union (HKSFISU)</p>	<p>(a) The Administration's advice that the splitting proposal was put forward with a view to enhancing the internal governance structure of SFC, which would in turn ensure its effective functioning.</p> <p>(b) Given the change in the role of the SFC Chairman, the Chairman's concern about the safeguards against conflict of interests which would be binding on the future non-executive Chairman of SFC and whether such safeguards were adequate.</p> <p>(c) The explanation of the Administration and SFC on existing safeguards.</p> <p>(d) The Chairman's request for comprehensive information on the safeguards/measures applicable to the future non-executive SFC Chairman, including all statutory and administrative (e.g. Code of Conduct etc.) measures and the adequacy of such measures.</p> <p>(e) The Chairman's view that a reasonable level of remuneration commensurate with the level of responsibility of the</p>	<p>The Administration to take follow-up action as required in paragraph 4 of the minutes</p> <p>The Administration to take follow-up action as required in paragraph 5 of the</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>non-executive Chairman of SFC should be offered to the future post-holder for the possible loss in income arising from the need to give up certain paid directorships.</p> <p>(f) Mr Christopher CHENG's view that a reasonable level of remuneration commensurate with the amount of time spent by the non-executive Chairman of SFC for the job should be provided.</p> <p>(g) The Administration's explanation that having considered the remuneration of non-executive chairmen of other statutory bodies in Hong Kong and the remuneration of NEDs of SFC, it recommended to set the remuneration of the future non-executive Chairman of SFC at around \$700,000 per annum, which was three times of that for NEDs of SFC. The Administration did not think that remuneration was a key consideration of the suitable candidate in deciding whether to accept the appointment of Chairman of SFC. The Administration's advice that it could consider adjusting the level of remuneration in consultation with the suitable candidate when one was identified.</p> <p>(h) Mr Ronny TONG's concern about safeguards against conflict of interests between the role of the future non-executive SFC Chairman and his previous or future employment and/or his connections with companies in the private sector.</p>	<p>minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(i) HKSFA's view that consideration might be given to putting in place a requirement that the post-holder should not have held any directorship in any listed company in Hong Kong in the previous two years before taking up the post.</p> <p>(j) On the level of remuneration for the SFC Chairman, HKSFA suggested the Administration to make reference to the relativity of the remuneration level of the Chairman and the Chief Executive of FSA.</p> <p>(k) HKSFISU's concern about whether sanitization period should be imposed before a candidate from the private sector could take up the appointment as the non-executive Chairman of SFC.</p> <p>(l) Noting that some senior staff of SFC, e.g. the Executive Directors, had taken up jobs in companies regulated by SFC shortly after their employment with SFC, the Chairman considered that the need for strengthening the requirements governing the post-service employment in the private sector of senior staff of SFC should be examined at an appropriate forum other than the Bills Committee.</p>	
012327 - 012658	Chairman	<p>(a) Date of next meeting</p> <p>(b) Arrangements for future meetings</p>	