

立法會
Legislative Council

LC Paper No. CB(1)1330/05-06
(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 eighth meeting
held on Friday, 31 March 2006, at 3:00 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHIM Pui-chung
Hon TAM Heung-man
- Members absent** : Hon Bernard CHAN, JP
Hon Howard YOUNG, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Ting-kwong, BBS
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)

Ms Shandy LIU
Senior Government Counsel
Department of Justice

Attendance by invitation : Securities and Futures Commission

Mr Martin WHEATLEY
Chairman

Miss Doris PAK
Commission Secretary

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

Action

I Meeting with the Administration and the Securities and Futures Commission

- Matters arising from the meeting on 22 March 2006

(LC Paper No. CB(1)1200/05-06(01) - List of follow-up actions to be taken by the Administration/the Securities and Futures Commission (SFC) for the meeting on 22 March 2006

LC Paper No. CB(1)1200/05-06(02) - Response of the Administration and SFC to the issues raised at the meeting on 22 March 2006)

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

Accountability of the future Chairman and the Chief Executive Officer (CEO) of SFC

2. Noting the Administration's written response to the suggestion of including provision in the current Bill similar to the relevant provisions in the Urban Renewal Authority (URA) Ordinance (Cap. 563) (section 9) and the Kowloon- Canton Railway Corporation (KCRC) Ordinance (Cap. 372)(section 6A) requiring the Chairman and the CEO of these bodies to attend meetings of committees and subcommittees of the Legislative Council (LegCo) when requested, Ms Emily LAU was not convinced by the Administration's reasoning and maintained her view that such a provision should be included in the current Bill to enhance the accountability of the future Chairman and the CEO of SFC to LegCo. Ms Audrey EU and Mr Ronny TONG shared her view. Given that the powers under section 9 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) could not be invoked lightly, they did not agree with the Administration that concerns about the accountability of the Chairman and the CEO of SFC to LegCo could be addressed by the relevant provisions in the said Ordinance. They also considered it undesirable and inadequate to rely on the goodwill and cooperation of the SFC in fulfilling their accountability to attend meetings and provide information to LegCo on request.

3. Regarding section 9 of the URA Ordinance and section 6A of the KCRC Ordinance, the Assistant Legal Adviser 6 (ALA6) advised that the provisions were declaratory in nature. Non-compliance with the provisions would not incur any sanction. He remarked that the inclusion of a similar provision in the Securities and Futures Ordinance (Cap. 571) (SFO) might give rise to an inference that where no similar provisions were explicitly stipulated in the relevant legislation, the statutory body concerned would not be under an obligation or requirement to attend meetings of LegCo and its committees.

4. While maintaining their view, Ms Emily LAU and Mr Ronny TONG further opined that provision similar to section 9 of the URA Ordinance and section 6A of the KCRC Ordinance should be included in every piece of legislation governing statutory bodies to enhance their accountability to LegCo. Mr CHAN Kam-lam however expressed reservation on the need to include a statutory requirement for the Chairman and the CEO of SFC to attend meetings of the committees and subcommittees of LegCo, having regard to the cooperation displayed by SFC so far and its status as an independent market regulator.

5. Members agreed to invite ALA6 to prepare a draft Committee Stage Amendment (CSA) with reference to the provisions in section 9 of the URA Ordinance and section 6A of the KCRC Ordinance. The draft CSA would be circulated to members for consideration before the next Bills Committee meeting and a decision would be made on whether the CSA should be proposed by the Bills Committee in its name, if the Administration would not agree to introduce the amendment.

(*Post-meeting note:* The draft CSA prepared by ALA6 as required in paragraph 5 above was circulated to members vide LC Paper No. CB(1)1315/05-06(02) on 18 April 2006.)

Section 11(1) of SFO

6. Some members remained gravely concerned that the existing section 11(1) of SFO, which provided the Chief Executive (CE) with the power to give written directions to SFC might compromise the independence of SFC. They pointed out that in the case of the Financial Services Authority of the United Kingdom (UK), the UK Government did not have a reserve power similar to section 11(1) of SFO under the Financial Services and Market Act 2000. In this connection, some members recapped their previous view that section 11(1) of SFO should be deleted altogether to remove any possibility of the Government's intervention in the regulation of the securities and futures market.

7. Referring to a similar concern expressed by members during the current scrutiny of the Financial Reporting Council Bill, some members considered that if the power for CE to give written directions would remain in the SFO, an additional provision should be included to require that the written directions issued be made public and the timing for making public such directions should be determined according to the circumstances of each case. The Administration was requested to consider members' request and provide its response in writing.

8. On the Administration's proposal to amend section 11(1) of SFO to require CE to consult the CEO instead of the Chairman before giving written directions to SFC, some members recapped their view that as the written directions would only be given under very exceptional circumstances, the future Chairman of SFC, being the head of the Commission and responsible for the overall policies and directions of SFC, should be consulted before CE gave any written directions to SFC. It would be unjustified and unreasonable to relegate the consultation requirement to the level of CEO.

9. Ms Margaret NG opined that the Administration might consider keeping the existing section 11(1) which required CE to consult the Chairman of SFC before giving written directions to SFC. Members noted that if section 11(1) would remain in its current form, there would be no need to consider the CSA as proposed by the Administration. Mr Ronny TONG stated his view that the reserve power provided under section 11(1) should be removed and if not, both the Chairman and the CEO of SFC should be consulted before CE gave any written directions to SFC under the split model. Given the lack of transparency in the proposed appointment mechanism for the future SFC Chairman, Ms Margaret NG said that Mr Ronny TONG's suggestion to consult both the SFC Chairman and CEO might be an option in revising the proposed amendment to section 11(1) as the advice from both the strategic/policy and executive levels would be available under Mr TONG's suggestion.

10. Members noted the Administration's explanation that the reserve power under section 11(1) of SFO would not be used lightly and might only be invoked subject to the following statutory restriction embedded in section 11(1):

- (a) it is in the interest of the public to do so; and
- (b) the written direction must be for the purpose of furthering any of the regulatory objectives of SFC or the performance of any of its functions under the SFO.

11. Members noted that the proposed amendments to section 11(1) had been worked out with the agreement of SFC that the CEO should act as the channel for consultation. The Administration nevertheless undertook to discuss further with SFC the consultation requirement taking into account members' views.

Remuneration

12. Ms Emily LAU reiterated her concern about the level of remuneration for the future non-executive Chairman. She stressed the importance of providing a reasonable level of remuneration, not a token remuneration as currently proposed by the Administration (about three times the remuneration of a non-executive director of SFC, i.e. amounting to some \$700,000 per annum), which would be commensurate with the level of responsibility of the post as well as the amount of time spent by the post-holder on the work of SFC. Ms Margaret NG shared Ms LAU's view that the level of remuneration proposed by the Administration was on the low side and might jeopardize the appointment of a suitable candidate with the competence and knowledge required of the chairman post. Noting that the Administration maintained its view that the recommended level of remuneration was appropriate given that the chairman post was regarded as a service to the community rather than an employment with SFC, Ms Emily LAU stated her objection to the splitting proposal. The Administration was requested to reconsider the remuneration level of the future SFC Chairman having regard to members' views.

(Post-meeting note: The Administration's written response to members' requests in paragraphs 7, 11 and 12 above was circulated to members vide LC Paper No. CB(1)1315/05-06(01) on 20 April 2006.)

Quorum for meetings of the Commission

13. Members noted the proposed CSA to section 16 of Part 1 of Schedule 2 of SFO provided by the Administration tabled at the meeting. Members agreed with the proposed CSA which added a new section 16A to Part 1 of Schedule 2 of SFO to the effect that the Chairman would be deemed to be a non-executive director for the purpose of forming a quorum for a meeting of the Commission.

(Post-meeting note: The proposed CSA to section 16 of Part 1 of Schedule 2 of SFO tabled at the meeting was circulated to members vide LC Paper No. CB(1)1232/05-06 on 3 April 2006.)

II Any other business

Date of next meeting

14. Members agreed that the next meeting of the Bills Committee would be held on Wednesday, 26 April 2006 at 8:30 am. The Bills Committee would consider the draft CSAs to the Bill, including proposed provisions to enhance accountability of SFC to the legislature and further revised CSAs prepared by the Administration, if any. The Chairman advised that if necessary, the Bills Committee would decide at the next meeting whether the Committee should move any CSAs to the Bill in its name.

15. There being no other business, the meeting ended at 4:13 pm.

Council Business Division 1
Legislative Council Secretariat
25 April 2006

**Proceedings of the eighth meeting of the
Bills Committee on Securities and Futures (Amendment) Bill 2005
on Friday, 31 March 2006, at 3:00 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000059	Chairman	Introductory and welcoming remarks	
<i>Issues arising from the meeting held on 22 March 2006 (LC Paper No. CB(1)1200/05-06(02))</i>			
000100 – 000630	Administration Chairman	<p>(a) The Administration's briefing on its response to issues raised at the meeting on 22 March 2006 (LC Paper No. CB(1)1200/05-06(02))</p> <p>(b) Members noted the CSA proposed by the Administration to section 16 of Part 1 of Schedule 2 of SFO.</p>	
000631 – 002227	Ms Emily LAU Administration Ms Audrey EU Mr CHAN Kam-lam Chairman ALA6 Mr Ronny TONG	<p>(a) Concern shared by Ms Emily LAU, Ms Audrey EU and Mr Ronny TONG on enhancing the accountability of SFC to LegCo by including a provision in the current Bill similar to the relevant provisions in the URA Ordinance (section 9) and the KCRC Ordinance (section 6A).</p> <p>(b) The Administration's view that the accountability of the future Chairman and the CEO of SFC had been addressed by the power to order attendance of any person before the Council or such committee to give evidence under section 9 of the Legislative Council (Power and Privileges) Ordinance. Moreover, SFC would continue to be cooperative and respond positively to the requests of LegCo, its committees and subcommittees.</p> <p>(c) ALA6's advice that the aforesaid provisions in the</p>	ALA6 to take follow-up action as required in paragraph 5 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>URA Ordinance and the KCRC Ordinance were declaratory in nature. Non-compliance with the provisions would not incur any sanction. He remarked that the inclusion of a similar provision in SFO might give rise to an inference that where no similar provisions were explicitly stipulated in the relevant legislation, the statutory body concerned would not be under an obligation or requirement to attend meetings of LegCo and its committees.</p> <p>(d) The view shared by Ms Emily LAU and Mr Ronny TONG that a provision similar to section 9 of the URA Ordinance and section 6A of the KCRC Ordinance should be included in every piece of legislation governing statutory bodies to enhance their accountability to LegCo.</p> <p>(e) Mr CHAN Kam-lam's reservation on the need to include a statutory requirement for the Chairman and the CEO of SFC to attend meetings of the committees and subcommittees of LegCo, having regard to the cooperation displayed by SFC so far and its status as an independent market regulator.</p>	
000235 - 002546	Chairman	Further meeting arrangements	
002547 – 005803	Ms Emily LAU Chairman Administration SFC Chairman Mr Ronny TONG Ms Margaret NG Ms Audrey EU	(a) The grave concern shared by Ms Emily LAU, Ms Margaret NG and Mr Ronny TONG that the existing section 11(1) which provided CE with the power to give written directions to SFC might compromise the independence of SFC. Some members recapped their view that section 11(1) should be	

Time Marker	Speaker	Subject(s)	Action Required
		<p>deleted altogether to remove any possibility of the Government's intervention in the regulation of the securities and futures market.</p> <p>(b) The view shared by Ms Emily LAU and the Chairman that if the power for CE to give written directions would remain in the SFO, an additional provision should be included to require that the written directions issued be made public and the timing for making public such directions should be determined according to the circumstances of each case.</p> <p>(c) The concern shared by Ms Emily LAU, Mr Ronny TONG and Ms Audrey EU on the Administration's proposal to amend section 11(1) of SFO to require CE to consult the CEO instead of the Chairman before giving written directions to SFC. It would be unjustified and unreasonable to relegate the consultation requirements to the level of the CEO.</p> <p>(d) The explanation given by the Administration and SFC that the CEO, being the head of the executive arm, would be in the best position to respond to or advise CE on what was achievable as to the subject of the written directions.</p> <p>(e) Ms Margaret NG's view that the Administration might consider keeping the existing section 11(1) which required CE to consult the Chairman of SFC before giving written directions to SFC</p>	<p>The Administration to take follow-up action as requested in paragraph 7 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(f) Mr Ronny TONG’s view that the reserve power provided under section 11(1) should be removed and if not, both the Chairman and CEO of SFC should be consulted before CE gave any written directions to SFC under the split model.</p> <p>(g) The Administration’s explanation that the reserve power under section 11(1) would not be used lightly and might only be invoked subject to statutory restriction embedded in section 11(1).</p>	<p>The Administration to take follow-up action as required in paragraph 11 of the minutes</p>
005804 - 010605	<p>Ms Emily LAU Chairman Administration Ms Margaret NG</p>	<p>(a) Concern shared by Ms Emily LAU and Ms Margaret NG on the importance of providing a reasonable level of remuneration, not a token remuneration as currently proposed by the Administration, commensurate with the level of responsibility of the post as well as the amount of time spent by the post-holder on the work of SFC.</p> <p>(b) The Administration’s explanation that the recommended level of remuneration was considered appropriate given that the chairman post was regarded as a service to the community rather than an employment with SFC.</p> <p>(c) Ms Emily LAU’s view that the level of remuneration for the future SFC Chairman was an important piece of information for members to consider whether the splitting proposal should be supported.</p>	<p>The Administration to take follow-up action as required in paragraph 12 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
010606 - 011353	Chairman Ms Margaret NG Mr Ronny TONG	<p>(a) Mr Ronny TONG's view that it would be logical to amend the existing section 11(1) of SFO so that both the Chairman and CEO of SFC would be consulted before CE gave any written directions to SFC under the split model.</p> <p>(b) Given the lack of transparency in the proposed appointment mechanism for the future SFC Chairman, Ms Margaret NG's view that Mr Ronny TONG's suggestion in (a) above might be an option in revising the proposed amendment to section 11(1) as the advice from both the strategic/policy and executive levels could be available.</p>	
011354 – 011535	ALA6 Administration	<p>(a) ALA6 sought clarification on paragraph 6 of LC Paper No. CB(1)1200/05-06(02), namely, whether the 5% holding of share in a listed company being regarded as material was merely an example of "material interest" or a principle determining what constituted "material interest".</p> <p>(b) The Administration's advice that the holding of about 5% shares of a listed company might be regarded as material as provided in paragraph 6 was one of the examples of what constituted material interest.</p>	
011536 - 011552	Chairman	Date of next meeting	