

立法會
Legislative Council

LC Paper No. CB(1)1736/04-05
(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 second meeting
held on Thursday, 19 May 2005, at 10:45 am
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 Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, 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 KWONG Chi-kin
Hon TAM Heung-man

Member absent : Hon Audrey EU Yuet-mee, SC, JP

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 Government Counsel
Department of Justice

**Attendance by
invitation**

: Securities and Futures Commission

Mr Andrew L T SHENG
Chairman

Miss Doris PAK
Commission Secretary

Hong Kong Stockbrokers Association Limited

Mr Henry CHAN
Chairman

Mr Anthony ESPINA
Vice Chairman

The Institute of Securities Dealers Limited

Mr Kenneth LAM
Vice Chairman

Hong Kong Securities & Futures Industry Staff
Union

Mr WONG Kwok-on
Chairman

Mr Roger LEUNG Sung-yeung
Vice Chairman

Hong Kong Society of Financial Analysts Limited

Mr James SOUTAR
Director

Mr Richard MAK
Director

Individuals

Mr David M WEBB
Editor
Webb-site.com

Mr Ermanno PASCUTTO

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 Confirmation of minutes and matters arising

(LC Paper No. CB(1)1536/04-05 - Minutes of meeting held on
22 April 2005)

The minutes of the meeting held on 22 April 2005 were confirmed.

II Meeting with deputations and the Administration

Submissions from attending deputations/individuals

(LC Paper No. CB(1)547/04-05(04) - Securities and Futures
Commission

LC Paper No. CB(1)547/04-05(06) - Hong Kong Securities &
and LC Paper No. CB(1)1537/04-05(01) Futures Industry Staff Union

LC Paper No. CB(1)547/04-05(08) - Hong Kong Stockbrokers
Association Limited

LC Paper No. CB(1)547/04-05(07) - The Hong Kong Society of
and LC Paper No. CB(1)1537/04-05(02) Financial Analysts Limited

LC Paper No. CB(1)547/04-05(16) - Mr David M WEBB

LC Paper No. CB(1)1590/04-05(01) - Mr Ermanno PASCUTTO
(tabled at the meeting)

Submission from party not attending the meeting

LC Paper No. CB(1)1537/04-05(03) - The Law Society of Hong
Kong (Securities Law
Committee)

Meeting with the Administration

- LC Paper No. CB(1)1537/04-05(04) - Administration's response to the issues raised at the meeting on 22 April 2005
- LC Paper No. CB(1)1537/04-05(05) - Administration's response to the written submissions
- LC Paper No. CB(1)880/04-05(08) - Administration's response to issues raised in the written submissions to the Panel on Financial Affairs
- LC Paper No. CB(1)1344/04-05(01) - Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(3)439/04-05
SUB12/2/1(2005)Pt.5 - The Bill
- The Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. LS43/04-05 - The Legal Service Division Report on the Bill
- LC Paper No. CB(1)1343/04-05 - Background brief on Securities and Futures (Amendment) Bill 2005 prepared by the Secretariat)

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

Issues which required follow-up actions by the Administration

3. The Administration was requested to take the following actions:
- (a) To provide a comprehensive response to the issues and concerns raised by members and deputations on the appropriateness or otherwise and the implementation details of the splitting proposal.
 - (b) To provide information on how each of the non-delegable functions of the Securities and Futures Commission (SFC) stipulated in Part 2 of Schedule 2 to the Securities and Futures Ordinance (SFO) (Cap. 571) would be discharged under the splitting proposal, if implemented.

(Post-meeting note : The English version of the information paper provided by the Administration in respect of the requests in paragraph 3 above was circulated to members vide LC Paper No. CB(1)1651/04-05(01) on 27 May 2005).

Consultation with the International Organization for Securities Commissions (IOSCO)

4. Noting SFC's concern about the impact of having a non-executive Chairman of SFC on Hong Kong's standing in the IOSCO Technical Committee, members agreed to SFC's suggestion that the Bills Committee would consult the Chairman of the Executive Committee of IOSCO and the Deputy Chairman of the Technical Committee of IOSCO for an independent assessment in this regard. The Secretariat would write to IOSCO accordingly.

(Post-meeting note: On behalf of the Bills Committee, the Clerk had written to consult the Chairman of the Executive Committee of IOSCO and the Deputy Chairman of the Technical Committee of IOSCO on 20 May 2005 as agreed in paragraph 4 above. The replies dated 31 May 2005 from the two parties, together with the letters from the Clerk, were circulated to members vide LC Paper No. CB(1)1699/04-05 on 2 June 2005.)

Arrangements for the next meeting

5. Members agreed that the Administration should be requested to provide its response to the issues raised at this meeting at the next Bills Committee meeting scheduled for Monday, 30 May 2005 at 8:30 am. Members also agreed that the attending deputations/individuals would be invited to attend the next meeting if they so wished.

(Post-meeting note: Invitation letters were sent to the deputations/individuals on 19 May 2005)

III Any other business

6. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the second meeting of the
Bills Committee on Securities and Futures (Amendment) Bill 2005
on Thursday, 19 May 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000– 000248	Chairman	(a) Confirmation of minutes (b) Welcoming and introductory remarks (c) Deputations' presentations and submissions were not covered by the protection and the immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap 382)	
000249 – 001112	Securities and Futures Commission (SFC)	Presentation of views	
001113 – 001630	Hong Kong Stockbrokers Association Limited (HKSA)	Presentation of views	
001631– 001741	The Institute of Securities Dealers Limited (ISD)	Presentation of views	
001742– 002258	Hong Kong Securities & Futures Industry Staff Union (HKSFISU)	Presentation of views	
002259 – 002841	Hong Kong Society of Financial Analysts Limited (HKSFA)	Presentation of views	
002842 – 003313	Mr David WEBB	Presentation of views	
003314 – 004123	Mr Ermanno PASCUTTO	Presentation of views	
004123 – 004356	Administration	Brief response by the Administration that the splitting proposal was one of the measures to enhance the governance of SFC as a regulator to meet the challenges of the future. The Administration recognized the	

Time Marker	Speaker	Subject(s)	Action Required
		effective regulatory role played by SFC and confirmed that the proposal had not been put forward in the light of any perceived problems in the operation of SFC	
004357 – 005720	Mr Ronny TONG SFC	<p>(a) Absence of explicit provisions to safeguard against conflicts of interests and to delineate the roles and responsibilities between the non-executive Chairman and the Chief Executive Officer (CEO)</p> <p>(b) Ambiguity on whether the non-executive Chairman or CEO would be ultimately responsible for the performance of non-delegable functions of SFC stipulated in Part 2 of Schedule 2 to SFO</p> <p>(c) Impact of the non-executive SFC chairmanship on the standing of Hong Kong in the IOSCO Technical Committee</p> <p>(d) SFC’s view that the Chairman should be executive. Even if the chairmanship was non-executive, the post should be full-time with a remuneration commensurate with the level of responsibility</p>	The Clerk to take action as required in paragraph 4 of minutes

Time Marker	Speaker	Subject(s)	Action Required
005721 – 011033	Ms Emily LAU HKSA Chairman	<p>(a) Importance of ensuring the independence of the SFC Chairman</p> <p>(b) Need for clear separation of role and responsibilities between the Chairman and the CEO</p> <p>(c) To what extent the SFC Chairman would have access to information on individual cases under investigation</p> <p>(d) Concern about the appropriate level of remuneration for the Chairman of SFC</p>	
011034 – 011639	Mr David WEBB HKSFSA	The SFC Chairman should be executive and the post should be full-time with a level of remuneration commensurate with the level of responsibilities	
011640 – 011948	ISD	The SFC Chairman should observe the internal Code of Conduct of SFC even if he/she was not an employee of SFC. The Chairman should avoid conflict of interests while at the same time maintain liaison with stakeholders of the securities and futures industry	
011949 – 012144	Ms Emily LAU Chairman	Agreed that the SFC chairmanship should be an executive and full-time appointment with an appropriate level of remuneration	
012145 – 012531	HKSFISU Chairman	HKSFISU supported the splitting proposal and expected that a non-executive Chairman of SFC could maintain closer liaison with stakeholders of the securities and futures industry without being involved in day-to-day executive responsibilities. Whether or not the Chairman post should be a full time post was not the issue of major concern	

Time Marker	Speaker	Subject(s)	Action Required
012532 – 012845	Miss Margaret NG The Administration HKSFISU HKSFA	<p>(a) Whether it was feasible to identify a suitable candidate for the chairman post on the level of remuneration contemplated by the Administration</p> <p>(b) The Administration’s advice that a Chairman with commitment would spend as much time as necessary to fulfill his/her roles and responsibilities.</p> <p>(c) In determining the level of remuneration, one of the factors to be considered by the Administration was that it was a service for the community</p>	
012846 – 013402	Mr Howard YOUNG Mr David WEBB HKSFSA Mr Ermanno PASCUTTO HKSA ISD	<p>(a) Whether securities and futures regulators in other jurisdictions would have preference for local candidates</p> <p>(b) Some deputations’ view that Chinese nationality should not be a strict pre-requisite but the SFC Chairman should possess profound knowledge of the international, local and Mainland markets and be proficient in both English and Chinese</p>	
013403 – 014320	Mr KWONG Chi-kin HKSFISU Mr Ermanno PASCUTTO ISD Chairman	Whether the Bill could effectively implement the splitting proposal by leaving the delineation of roles and responsibilities between the Chairman and CEO to be decided by SFC	
014321 – 014814	Mr David WEBB HKSA HKSFSA Mr Ermanno PASCUTTO	<p>(a) Whether the present appointment system under which the SFC Chairman would be selected and appointed by the Government could ensure the independent selection of a suitable candidate for the post</p> <p>(b) Whether the LegCo should have</p>	

Time Marker	Speaker	Subject(s)	Action Required
		a role in the appointment process	
014815 – 015456	Miss Margaret NG Chairman	(a) Importance of maintaining the independence and accountability of SFC in the performance of its statutory functions (b) Need to examine in details how each of the non-delegable functions of SFC stipulated in Part 2 of Schedule 2 to SFO would be discharged under the splitting proposal, if implemented	The Administration to take action as required in paragraph 3(b) of the minutes
015457 – 015618	Mr Ronny TONG Ms Emily LAU	(a) The Administration to provide a comprehensive response to the issues and concerns raised by members and deputations on the appropriateness or otherwise and the implementation details of the splitting proposal for discussion at the next Bills Committee meeting (b) Attending deputations/individuals to be invited to the next meeting scheduled for 30 May 2005	The Administration to take action as required in paragraph 3(a) of the minutes
015619 – 015910	Mr CHIM Pui-chung	As the splitting proposal was put forward by the Administration on its own initiative, the Administration should provide details on the necessary clarification to the Bills Committee and the public	
015911 – 020101	Chairman Miss Margaret NG Mr CHIM Pui-Chung	(a) Date of the next meeting (b) Attending deputations/individuals to be invited to the next meeting scheduled for 30 May 2005	The Clerk to take action as required in paragraph 5 of the minutes