

立法會
Legislative Council

LC Paper No. CB(1)1893/04-05
(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 third meeting
held on Monday, 30 May 2005, at 8:30 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 Howard YOUNG, 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 WONG Ting-kwong, BBS
Hon KWONG Chi-kin
Hon TAM Heung-man

Members absent : Hon CHAN Kam-lam, JP
Hon Abraham SHEK Lai-him, JP
Hon CHIM Pui-chung

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 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 Karl LUNG
President

Mr James SOUTAR
Director

Individual

Mr David M WEBB
Editor
Webb-site.com

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 deputations

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| (LC Paper No. CB(1)1651/04-05(01) | - Administration's response to the issues raised at the meeting on 19 May 2005 |
| 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 |

Submissions from attending deputations/individual

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| LC Paper No. CB(1)547/04-05(04) | - Submissions from Securities and Futures Commission |
| LC Paper No. CB(1)1590/04-05(02) | - Speaking note of Mr Andrew L T SHENG, Chairman, Securities and Futures Commission |
| LC Paper No. CB(1)547/04-05(06)
LC Paper No. CB(1)1537/04-05(01)
LC Paper No. CB(1)1651/04-05(02) | - Submissions from Hong Kong Securities & Futures Industry Staff Union (Chinese version only) |
| LC Paper No. CB(1)547/04-05(07)
LC Paper No. CB(1)1537/04-05(02)
LC Paper No. CB(1)1651/04-05(03) | - Submissions from the Hong Kong Society of Financial Analysts Limited (English version only) |
| LC Paper No. CB(1)547/04-05(16) | - Submission from Mr David M WEBB (English version only) |

Submissions from parties not attending the meeting

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| LC Paper No. CB(1)1669/04-05(01)
<i>(tabled and subsequently issued on 30 May 2005)</i> | - Submission from Hong Kong Bar Association |
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- LC Paper No. CB(1)547/04-05(08) - Submission from Hong Kong Stockbrokers Association Limited
- LC Paper No. CB(1)1537/04-05(03) - Submission from the Law Society of Hong Kong (Securities Law Committee) (English version only)
- LC Paper No. CB(1)1590/04-05(01) - Submission from Mr Ermanno PASCUTTO (English version only)

Other relevant papers

- LC Paper No. CB(1)1553/04-05(01) - Extracts of relevant provisions under Securities and Futures Ordinance (Cap.571) on functions vested with the Chairman of Securities and Futures Commission
- 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)

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

Issues which required follow-up actions/consideration by the Administration

2. The Administration was requested to take the following actions:
 - (a) To consider members' request of stipulating in the legislation the division of roles and responsibilities between the non-executive Chairman and the Chief Executive Officer (CEO) of the Securities and Futures Commission (SFC), and to provide justification if the Administration maintained its position that it was not appropriate to delineate the respective roles and responsibilities of the two posts

in the legislation. The Administration was also requested to explore the feasibility of drawing up the proposed delineation of roles and responsibilities in consultation with SFC.

- (b) To address concerns about the independence and competence of the future SFC Chairman and the selection of a suitable candidate for the post, the Administration was requested to:
 - (i) set a level of remuneration commensurate with the level of responsibilities of the SFC Chairman instead of the level of remuneration currently contemplated, which was primarily based on the principle that the appointment was a service to the community; and
 - (ii) conduct an objective and broad-based search for the candidate for the chairman post instead of adhering to the existing mechanism for making appointments to public and statutory bodies by appointing someone from a limited pool of candidates.
- (c) To address members' concern to stipulate clearly the Administration's policy intent as to whether the future Chairman of SFC or the CEO would bear the ultimate accountability for the affairs of SFC and to reflect this policy intent in the legislation.

(Post-meeting note : The English and Chinese versions of the information required in paragraph 2 above provided by the Administration was circulated to members vide LC Paper No. CB(1)1735/04-05(01) on 7 and 9 June 2005 respectively).

Follow-up actions to be taken by the Assistant Legal Adviser

3. In relation to members' concern about the experience of the United Kingdom (UK) in implementing the split model, the Chairman invited the Assistant Legal Adviser to examine the provisions of the UK Financial Services and Market Act and advise the Bills Committee on whether the division of roles and responsibilities between the Chairman and the CEO and the acting arrangements during the temporary absence of the incumbent of one of these two posts were spelt out explicitly in the statutory provisions; and if yes, the relevant arrangements.

(Post-meeting note : The English and Chinese versions of the information required in paragraph 3 above prepared by the Legal Service Division was circulated to members vide LC Paper No. LS78/04-05(01) on 7 and 9 June 2005 respectively).

Arrangements for the next meeting

4. To allow time for the Administration to prepare its written response to issues set out in paragraph 2 above, members agreed that the next meeting originally scheduled for 3 June 2005 should be re-scheduled to be held on Friday, 10 June 2005 at 10:45 am. Members also agreed that the attending deputations/individual could attend the next meeting if they so wished.

(Post-meeting note: Notice of meeting was issued vide LC Paper No. CB(1)1676/04-05 on 31 May 2005. Letters were also sent to the deputations/individual on 31 May 2005.)

II Any other business

5. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
23 June 2005

**Proceedings of the third meeting of the
Bills Committee on Securities and Futures (Amendment) Bill 2005
on Monday, 30 May 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000108	Chairman	Introductory and welcoming remarks	
000109 – 001950	Administration	Briefing by the Administration on its response to issues raised at the meeting held on 19 May 2005 (LC Paper No. CB(1)1651/04-05(01))	
001951 – 002720	Mr Howard YOUNG Administration	<p>(a) Whether the future non-executive Chairman of SFC would be able to develop more social contacts with the industry to gauge their views on the work of SFC given that he/she would not be involved in the executive and day-to-day regulatory work of SFC</p> <p>(b) The Administration's view that a suitable candidate for the chairman post should be capable of balancing the needs to maintain contacts with stakeholders and to avoid conflict of interest in his/her work with SFC</p>	
002721 – 004332	Chairman Ms Emily LAU SFC Administration	<p>Concerns expressed by members and deputations on the followings:</p> <p>(a) The SFC chairmanship should be a full-time appointment with a level of remuneration commensurate with the level of responsibilities</p> <p>(b) Nationality requirement should not be a pre-requisite for the chairman post</p> <p>(c) Access to information on individual cases under investigation by the current</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>executive Chairman and the future non-executive Chairman of SFC</p> <p>(d) Acting arrangements in SFC in future during the temporary absence of its Chairman</p> <p>The Administration's advice that:</p> <p>(a) Under the splitting proposal, the non-executive Chairman of SFC would not be involved in day-to-day operational and regulatory work and investigation of individual cases. Nevertheless, like other non-executive directors of SFC, the Chairman would be apprised of cases of significance</p> <p>(b) During the temporary absence of the future SFC Chairman, it was proposed that the deputy chairman to be appointed by the Government would act as the Chairman. In the event that a deputy chairman was not appointed, an executive director or non-executive director might be designated to act as Chairman.</p>	
004333 – 004805	<p>Chairman Hong Kong Society of Financial Analysts Limited (HKSFA) Ms Emily LAU Administration</p>	<p>HKSFA's view that:</p> <p>(a) The level of remuneration for the chairman post currently contemplated, which was primarily based on the principle that the appointment was a service to the community, would inevitably limit the choice of candidates from among the pool of affluent people in Hong Kong</p> <p>(b) The need for a competent and independent chairman to provide the necessary steer to</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>SFC</p> <p>(c) The Administration should be accountable and answerable to the Legislative Council and the public on its choice of the candidate for the chairman post</p> <p>The Administration's response that the appointment of the Chairman of SFC would be in accordance with the present appointment system in which the powers of appointment and removal of members of SFC were vested with the Chief Executive, as provided for in the Securities and Futures Ordinance (SFO) (Cap. 571)</p>	
004806 – 010723	Mr Ronny TONG Chairman Administration SFC	<p>(a) Reasons for not delineating the roles and responsibilities between the non-executive Chairman and the CEO explicitly in the legislation</p> <p>(b) The Administration's advice that the governing body of SFC is vested with the responsibility to perform the 89 non-delegable functions stipulated in Part 2 of Schedule 2 to SFO</p> <p>(c) Queries on the role, if any, of the future non-executive Chairman in the performance of these non-delegable functions</p> <p>(d) Experience of FSA of UK in the delineation of roles and responsibilities between the two posts, and the acting arrangements in UK during the temporary absence of the Chairman or the CEO of FSA</p>	<p>The Administration to take follow-up action as required in paragraph 2(a) of the minutes</p> <p>The Assistant Legal Adviser to take follow-up action as required in paragraph 3 of the minutes</p>
010724 – 011345	Ms Margaret NG Administration	<p>(a) The need to set out clearly in the legislation the division of roles and responsibilities between the non-executive</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Chairman and the CEO</p> <p>(b) Whether the appointment of the Chairman of SFC made in accordance with the existing appointment system for advisory and statutory bodies would have an adverse impact on the operation and the regulatory role of SFC</p> <p>The Administration's advice that:</p> <p>(a) The division of work among Chairman, executive directors, non-executive directors and staff of SFC would be decided by its governing body after the enactment of the Bill and made public by press release and the website of SFC</p> <p>(b) The Government would exercise its best effort to ensure the selection of the most suitable candidate based on merits</p>	
011346 – 012224	Mr David WEBB	<p>(a) As shown in the annual report of FSA, its Chairman was an executive director and received a level of remuneration commensurate with a full-time job</p> <p>(b) Some public and statutory bodies which the Administration made reference to were not regulatory bodies like SFC</p> <p>(c) Appointment of the SFC Chairman as proposed by the Administration would limit the choice to a small pool of candidates and not conducive to the selection of a professional and competent Chairman for SFC</p>	

Time Marker	Speaker	Subject(s)	Action Required
012225 – 012348	HKSA	The SFC Chairman should be competitively remunerated to ensure the selection of a competent and independent Chairman who would be accountable to the investing public and the community at large	
012349 – 013546	Ms Margaret NG Chairman Administration HKSA	<p>(a) Reasons for not providing explicitly in the legislation the division of roles and responsibilities between the non-executive Chairman and the CEO</p> <p>(b) Queries on how prospective candidates were to be sourced and shortlisted</p> <p>(c) Need for an objective and broad-based search for the candidate for the chairman post should be conducted</p>	
013547 – 013901	Mr KWONG Chi-kin Administration	<p>(a) The need to set out clearly in the legislation the division of roles and responsibilities between the non-executive Chairman and the CEO</p> <p>(b) The role, if any, of the future non-executive Chairman in the performance of non-delegable functions of SFC stipulated in Part 2 of Schedule 2 to SFO</p>	
013902 – 014200	Mr Howard YOUNG Chairman Administration	<p>(a) Future acting arrangements in SFC during the temporary absence of its non-executive Chairman</p> <p>(b) The Administration's advice that during the temporary absence of the future SFC Chairman, it was proposed that the deputy chairman to be appointed by the Government would act as the Chairman and the deputy chairmanship would</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>likely be non-executive. Under the Bill, the Chief Executive may appoint an executive director or non-executive director to be the deputy chairman of the Commission. In the event that a deputy chairman was not appointed, an executive director or non-executive director might be designated to act as Chairman.</p>	
<p>014201 – 015447</p>	<p>Ms Emily LAU Chairman Administration SFC Mr Ronny TONG Ms Margaret NG</p>	<p>(a) The Administration should explore the feasibility of drawing up the proposed delineation of roles and responsibilities of the non-executive Chairman and the CEO in consultation with the SFC</p> <p>(b) Mr Andrew SHENG’s view that notwithstanding that the delineation of the roles and responsibilities of the two posts could be drawn up as requested by members, the practical problems in implementing the splitting proposal could not be resolved unless the Administration stipulated clearly its policy intent as to whether the future Chairman of SFC or the CEO would bear the ultimate accountability for the affairs of SFC</p> <p>(c) The level of remuneration for the SFC Chairman should commensurate with his/her level of responsibilities</p> <p>(d) An objective and broad-based search for the candidate for the chairman post should be conducted instead of adhering to the existing mechanism for making appointments to public</p>	<p>The Administration to take action as required in paragraph 2(a) of the minutes</p> <p>The Administration to take action as required in paragraph 2(b)(i) of the minutes</p> <p>The Administration to take action as required in paragraph 2(b)(ii) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>and statutory bodies by appointing someone from a limited pool of candidates</p> <p>(e) The Administration was requested to address members' concern to stipulate clearly its policy intent as to whether the future Chairman of SFC or the CEO would bear the ultimate accountability for the affairs of SFC and to reflect this policy intent in the legislation</p>	<p>The Administration to take action as required in paragraph 2(c) of the minutes</p>
015448 – 015706	Chairman Ms Emily LAU Administration HKSF	<p>(a) Arrangements for the next meeting</p> <p>(b) Members noted that the Secretariat had written to the IOSCO Executive Committee and its Technical Committee and their replies were awaited</p>	<p>The Clerk to take action as required in paragraph 4 of the minutes</p>