

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

### **Division of Responsibilities between the Chairman and the Chief Executive Officer of the Securities and Futures Commission**

#### **INTRODUCTION**

At the last meeting of the Bills Committee held on 5 July 2005, the Administration and the Securities and Futures Commission (“SFC”) were requested to further discuss the division of responsibilities of the Chairman and the Chief Executive Officer (“CEO”) of the SFC under the split model.

2. Since the last Bills Committee meeting, the Administration and the SFC have worked closely with a view to reaching a consensus on the arrangements for the proposed split model. This paper reports on the current proposal for the division of responsibilities between the Chairman and CEO, and the proposed amendments to the Securities and Futures (Amendment) Bill 2005 (“the Bill”).

#### **PROPOSED DIVISION OF RESPONSIBILITIES**

##### **(a) The Role and Responsibilities of the Chairman**

3. The Chairman of the SFC is the head of the Commission. The Chairman’s key responsibilities will be to establish and develop an effective SFC Board<sup>1</sup>, and lead the Board in its setting of the overall directions, policies, agendas, strategies and priorities of the Commission and in monitoring the performance of the executive arm in the implementation. The Chairman shall also evaluate the effective functioning of the SFC Board, the SFC Committees and individual directors from time to time.

4. The Chairman shall have no executive responsibility for the day-to-day running of the SFC. Since the Chairman will not be involved in the day-to-day running of the SFC, there are a number of responsibilities of the Chairman the delivery of which requires the Chairman and CEO to work closely together. For instance, the Chairman, together with the CEO, shall ensure that key issues of the Commission are discussed by the Board in a timely manner,

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<sup>1</sup> There is no definition of “SFC Board” in the Securities and Futures Ordinance (SFO). According to the Split Bill, the Commission shall consist of Chairman, CEO, other Executive Directors and Non-executive Directors. To distinguish between the Commission and its employees or staff, the term “SFC Board” is used in this paper.

and that the Board has adequate support and is provided with all the necessary information on which to base decisions. They are also required to work together in leading the communication of the policies of SFC to the stakeholders. The Chairman and the CEO will also share the responsibility of representing the Commission officially at the local and international level.

**(b) The Role and Responsibilities of the CEO**

5. The CEO will be the head of the executive arm, assuming overall executive responsibility for the day-to-day running of the SFC. His key responsibilities include to lead the executive arm in carrying out the objectives, policies and strategies set by the Board and the statutory functions delegated by the Board; assist the Board in setting the agenda and establish priorities for the SFC; report to the Board regularly with appropriate, timely and quality information; recommend to the Board significant operational changes and major capital expenditures where these are beyond the authority delegated by the Board; inform and consult the Chairman and the Board on all matters of significance to the SFC in a timely manner and ensure that the Board is provided with adequate support and all the necessary information on which to base decisions.

6. The CEO will also be responsible for assigning responsibilities to senior management and supervise the work of other Executive Directors (“EDs”); ensure that the Commission is equipped with the necessary staffing, financial and risk management systems for its mission; recruit, develop and retain talented people to work at the SFC for the building of a strong executive team; and communicate throughout the executive arm the strategic objectives set by the Board. As mentioned in paragraph 4 above, the CEO will also share with Chairman the responsibilities of representing the SFC officially at the local and international level and communicating the SFC policies externally.

7. Arising from changes to the role of Chairman under the split model, certain statutory functions of the Chairman need to be transferred or extended to the CEO to ensure proper execution. These will be elaborated in detail in paragraphs 10-16 below. They are now included in the proposed duty list of CEO and will be proposed as amendments to the Bill.

8. Details of the proposed division of the roles and responsibilities of the Chairman and the CEO are set out at **Annex A**<sup>2</sup>. To ensure a clear understanding of their respective roles and responsibilities and to enhance

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<sup>2</sup> The proposed duty lists of Chairman and CEO at Annex A are subject to refinement and formal approval by the SFC Board and may be amended by the SFC Board from time to time.

transparency, such details will be attached to the appointment letters of the Chairman and the CEO and made totally transparent by being uploaded onto the website of SFC.

## **PROPOSED AMENDMENTS TO THE BILL**

9. The proposed amendments to the Bill fall into two major categories. The first category is concerned with specific statutory functions / powers of the Chairman under the SFO. Arising from the changes to be brought by the split model, in particular the changes that the Chairman shall no longer be regarded as an ED and the transfer of his executive responsibilities to the CEO, it is considered appropriate that some of the statutory functions of the Chairman be transferred or extended to the CEO post. The second category of the proposed amendments is consequential amendments arising from the conferring of statutory functions on the CEO. Paragraphs 10 to 21 below explain the substance of the proposed amendments. For Members' easy reference, detailed wordings of the proposed amendments are set out at **Annex B**, which contains the proposed amendments to the Bill and marked-up amendments to the SFO (brown colour for original proposed amendments to the SFO; red and blue colours for the latest proposed amendments).

### **(a) Current statutory functions of the Chairman to be transferred or extended to the CEO**

10. There are eight statutory functions currently assigned to the Chairman in the SFO (**Annex C**). Arising from the changes to the role of the Chairman and the creation of a new CEO post under the split model, the SFC proposed and the Administration concurred that amendments should be made in respect of five of those statutory functions.

#### **(1) The Chief Executive to consult CEO before giving written directions to SFC under section 11 of SFO**

11. At present, section 11(1) of SFO requires the CE to consult the SFC Chairman before giving written directions to the Commission. Arising from changes to the role of Chairman under the split proposal, the Chairman will no longer be an executive of the SFC and will thus not be involved in the day-to-day running of the SFC. His executive responsibilities will be transferred to the CEO, who will be the head of the executive arm and be responsible for the day-to-day running of the SFC. As the CEO will be the one who will understand best the detailed and daily operation of the Commission, he will be in the best position to respond to or advise the Chief Executive on what

is achievable as to the subject of the written directions. It is therefore proposed that section 11(1) be amended so that the Chief Executive would consult the CEO instead of the Chairman before giving written directions to the SFC. The CEO should in turn consult the Chairman and any other member(s) of the Commission as appropriate before tendering advice to the CE. We would stipulate this latter requirement in the duty list of CEO (see item 2(h) of CEO's proposed duty list at Annex A).

(2) The authority to sign the financial statements of the SFC under section 15(2)(b) of SFO

12. At present, section 15(2)(b) of SFO provides that the financial statements of the SFC shall be signed by the Chairman (who is an ED) and one Non-executive director ("NED") of the Commission. While we consider it appropriate to retain the Chairman as one of the signatories, it is considered appropriate for the CEO, who will have the relevant detailed knowledge of the administration of the SFC throughout the financial year, to be the other signatory of the financial statements. In short, it is proposed that the signing of the financial statements of the SFC be amended to the effect that it shall be signed by the Chairman and the CEO, instead of by the Chairman and one NED as currently provided.

(3) The authority to sign the financial statement of the Investor Compensation Fund under section 240(4) of SFO

13. At present, section 240(4) of SFO provides that the financial statement of the Investor Compensation Fund shall be signed by the Chairman and at least one NED of the Commission. For the same reasons mentioned in the preceding paragraph, it is proposed that the signing of the financial statement of the Investor Compensation Fund be amended to the effect that it shall be signed by the Chairman and the CEO, instead of by the Chairman and at least one NED as currently provided.

(4) The power to convene Commission meetings under section 14 of Part 1 of Schedule 2 to SFO

14. At present, section 14 of Part 1 of Schedule 2 to SFO empowers the chairman, the deputy chairman or any 2 other members of the Commission to convene Commission (i.e. SFC Board) meetings. There may be a possibility that a Board meeting needs to be convened urgently outside the normal monthly Board meeting schedule to discuss certain important operational or enforcement issues which are considered necessary by the CEO. It is therefore proposed that section 14 of Part 1 of Schedule 2 be amended so

that in addition to the chairman, the deputy chairman or 2 other members of the Commission, the CEO will also be empowered to convene Board meetings.

- (5) The membership of SFC Advisory Committee and the power to convene Advisory Committee meetings under sections 27-28 of Part 1 of Schedule 2 to SFO

15. At present, section 27 of Part 1 of Schedule 2 to SFO provides that the Advisory Committee shall consist of the Chairman, not more than 2 other EDs appointed by the SFC, and not less than 8 (but not more than 12) other members appointed by the Chief Executive. In short, the Advisory Committee currently has up to three EDs including the Chairman. As the Chairman will no longer be an ED, to preserve the existing composition of three EDs in the Advisory Committee, it is proposed that section 27 of Part 1 of Schedule 2 be amended so that the CEO shall also sit on the Advisory Committee, in addition to the chairman and 2 other EDs.

16. As regards the convening of Advisory Committee meetings, section 28 of Part 1 of Schedule 2 currently provides that the Chairman or any 3 other members of the Advisory Committee may convene meetings. As the person in charge of the daily operation of the Commission, the CEO will be well placed to raise the burgeoning issues of the securities and futures sector to the Advisory Committee in a timely manner. It is therefore proposed that the CEO be empowered to convene Advisory Committee meetings in addition to the Chairman or any 3 other members of the Committee as currently provided.

- (b) **Consequential amendments arising from the conferring of statutory functions to the CEO**

- (1) The appointment of CEO under section 1, Part 1 of Schedule 2 to SFO

17. In view of the proposed amendments to confer statutory functions to the CEO, we need to expressly provide for the inclusion of the CEO in the composition of the SFC. It is therefore proposed that section 1, Part 1 of Schedule 2 be amended to the effect that “The Commission shall consist of a chairman, **a chief executive officer** and such number of other executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive.”

- (2) The definitions of “executive director” and “member” under section 1, Part 1 of Schedule 1 to SFO

18. In expressly providing the appointment of CEO, the meanings of “executive director” and “member” of the Commission under section 1, Part 1 of Schedule 1 to SFO will also be amended so that the CEO will be included in the definitions.

- (3) Vacancy in the office of the CEO under section 9, Part 1 of Schedule 2 to SFO

19. As the CEO will be conferred with statutory functions, it is also legally in order to institute a statutory acting arrangement for CEO. A new section 9B in Part 1 of Schedule 2 will be added to provide for the designation of an ED by the Chief Executive to act as CEO when the CEO is unable to act due to illness, absence from Hong Kong or any other cause, and that the designation may be revoked at any time. In addition, a new section 9C will be added to provide clarity that where an ED is designated to act as CEO, the ED shall be deemed for all purposes to be the CEO of the Commission

**(c) Other consequential amendments**

20. Amendments to the SFO are required to make clear that an ED or NED who acts as Chairman will not lose his/her own status in the Commission. This is relevant to any provision that requires a head count of EDs or NEDs, such as -

- (a) section 1(b) in Part 1 of Schedule 2 which states that “the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission”;
- (b) section 16 in Part 1 of Schedule 2 which stipulates the quorum for a meeting of the Commission; and
- (c) section 21(b)(ii) of Part 1 of Schedule 2 which stipulates the minimum head count of EDs and NEDs for the validation of a written resolution that is signed and passed by the SFC Board.

21. It is proposed that a new section 9A in Part 1 of Schedule 2 be added so that an ED shall not cease to be regarded as an ED because of his acting as the Chairman and likewise, an NED shall not cease to be regarded as an NED because of his acting as the Chairman. In addition, the definition of “non-executive director” under section 1 of Part 1 of Schedule 1 will also be

amended so that a non-executive director is a person appointed as a non-executive director under section 1 of Part 1 of Schedule 2, **whether or not acting in any other capacity.**

## **ADVICE SOUGHT**

22. The proposals detailed in this paper represent the agreement reached between the Administration and the SFC regarding the split proposal. We invite Members of this Committee to consider and express support for them.

Financial Services and the Treasury Bureau  
Securities and Futures Commission  
February 2006

**Proposed Division of responsibilities  
between Chairman and CEO of SFC<sup>1</sup>**

**(A) Role and responsibilities of the chairman of the SFC**

1. The Chairman has no executive responsibility for the day-to-day running of the SFC.
2. His/her key responsibilities are to –
  - (a) establish and develop an effective Board;
  - (b) lead the Board as a team;
  - (c) plan and manage the Board's business;
  - (d) lead the Board in its setting of the overall directions, policies, strategies, agendas and priorities of the Commission;
  - (e) facilitate effective contributions by the non-executive directors;
  - (f) maintain and develop a productive relationship with the CEO;
  - (g) with the CEO, ensure that key issues are discussed by the Board in a timely manner, that the Board has adequate support and is provided with all the necessary information on which to base decisions
  - (h) with the CEO, lead the communication of SFC policies to its stakeholders;
  - (i) as Chairman of the Commission, represent the SFC officially at the local and international level, as appropriate.
  - (j) provide a source of counsel and challenge to the CEO on how the SFC is run, including giving feedback to the CEO on senior management performance, development and succession, and on organizational structure; and

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<sup>1</sup> The proposed duty lists of Chairman and CEO set out in this document are subject to refinement and formal approval by the SFC Board and may be amended by the SFC Board from time to time.

- (k) Evaluate the effective functioning of the Board, SFC committees and individual directors.

**(B) Role and responsibilities of the CEO of SFC**

1. The CEO has the overall executive responsibility for the day-to-day running of the SFC and specific functions or duties delegated by the Board from time to time.
2. His/her key responsibilities include -
  - (a) implementing the strategy agreed by the SFC Board, in whose formulation s/he will have played a major part, and facilitating the effective functioning of the Board;
  - (b) reporting to the Board regularly with appropriate, timely and quality information so that the Board can discharge its responsibilities effectively;
  - (c) informing and consulting the chairman and the Board on all matters of significance to the SFC including helping ensure that key issues are discussed by the Board in a timely manner, that the Board has adequate support and is provided with all the necessary information on which to base decisions;
  - (d) developing and delivering the strategic objectives agreed with the Board including helping to set the agenda and establish priorities for the SFC;
  - (e) recommending to the Board significant operational changes and major capital expenditures where these are beyond the delegated authority;
  - (f) assigning responsibilities clearly to senior management and supervising the work of other Executive Directors;
  - (g) overseeing the day-to-day regulatory work of the Commission and ensuring that the Commission is equipped with the necessary staffing, financial and risk management systems for its mission;

- (h) tendering advice to the Chief Executive of the Hong Kong Special Administrative Region under section 11(1) of the Securities and Futures Ordinance (Cap. 571) after consulting Chairman and any other member of the Commission as appropriate;
- (i) signing the annual accounts of the SFC and the Investor Compensation Fund;
- (j) sharing with the chairman the task of convening meetings of the Board and the Advisory Committee;
- (k) recruiting, developing and retaining talented people to work at the SFC and in particular establishing a strong management team which is fair and fully evaluated;
- (l) communicating throughout the SFC the strategic objectives agreed with the Board, including those in the corporate plan, and ensuring that these are achieved in practice;
- (m) sharing with the chairman and other members of the SFC senior management the responsibility of communicating the SFC's messages externally; and
- (n) as CEO of the Commission, represent the SFC officially at the local and international level, as appropriate.

Financial Services Branch  
Financial Services and the Treasury Bureau  
February 2006

A BILL

To

Amend the Securities and Futures Ordinance -

- (a) so that the chairman of the Securities and Futures Commission is no longer to be regarded as an executive director of the Commission;
- (b) to provide that the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission;
- (c) so that a non-executive director of the Commission may also be appointed to be the deputy chairman of the Commission or be designated to act as chairman of the Commission;
- (d) to empower the Chief Executive to appoint the chief executive officer of the Commission;
- (e) to provide expressly that the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission; and
- (f) to provide for related matters.

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Securities and Futures (Amendment) Ordinance 2005.

**1A. Directions to Commission**

Section 11(1) of the Securities and Futures Ordinance (Cap. 571) is amended by repealing "chairman" and substituting "chief executive officer".

**1B. Accounts and annual report**

Section 15(2)(b) is amended by repealing ", and one non-executive director," and substituting "and the chief executive officer".

**1C. Accounts of compensation fund**

Section 240(4) is amended by repealing "at least one non-executive director" and substituting "the chief executive officer".

**2. Interpretation and general provisions**

Section 1 of Part 1 of Schedule 1 ~~to the Securities and Futures Ordinance (Cap. 571)~~ is amended -

- (a) in the definition of "executive director", by repealing ~~"the chairman of the Commission, or any other"~~ and substituting "a"; everything after "means" and substituting -

"-

(a) the chief executive officer of  
the Commission; or

(b) any other person who is  
appointed as an executive  
director of the Commission under  
section 1 of Part 1 of Schedule  
2 to this Ordinance,

(whether or not acting in any other  
capacity under that Part);";

- (b) in the definition of "member", by repealing everything after "means" and substituting ~~"the chairman of the Commission, or any executive director or non-executive director of the Commission (whether or not acting as the chairman, deputy chairman or chief executive officer);".~~

"-

(a) the chairman of the Commission;  
or

(b) the chief executive officer or  
any other executive director or  
non-executive director of the  
Commission (whether or not  
acting in any other capacity

under Part 1 of Schedule 2 to  
this Ordinance);";

(c) in the definition of "non-executive director",  
by adding "(whether or not acting in any other  
capacity under that Part)" before the  
semicolon.

### 3. Securities and Futures Commission

Part 1 of Schedule 2 is amended -

(aa) in the heading immediately before section 1, by  
adding ", chief executive officer" after  
"Chairman";

(ab) in section 1, by repealing "and such number of"  
and substituting ", a chief executive officer  
and such number of other";

(a) by repealing section 1(b) and substituting -  
" (b) the number of non-executive directors  
of the Commission shall exceed the  
number of executive directors of the  
Commission. " ;

(b) by repealing section 2;

~~(c) in the heading immediately before section 4, by  
repealing "vacancies in office of chairman or  
deputy chairman" and substituting "chief  
executive officer";~~

(d) in section 4, by adding "or non-executive director" after "director";

~~\_(e) by adding~~

~~"4A. The Chief Executive may appoint an executive director of the Commission to be the chief executive officer of the Commission.";~~

~~\_(f) by adding immediately before section 5~~

~~"Vacancies in office of chairman or deputy chairman";~~

(g) in section 6, by adding "or non-executive director" after "director";

(h) in section 7, by adding "or non-executive director" after "director";

(i) by repealing section 9 and substituting -

"9. A deputy chairman of the Commission who acts as chairman of the Commission under section 5, or an executive director or non-executive director of the Commission who acts as chairman of the Commission in accordance with a designation under section 6 or 7, shall be deemed for all purposes to be the chairman of the Commission.

9A. Notwithstanding section 9 -

(a) an executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission;

(b) a non-executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission.

**Vacancy in office of chief executive officer**

9B. The Chief Executive may designate an executive director of the Commission to act as chief executive officer of the Commission for any period during which the chief executive officer is unable to act as chief executive officer due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation.

9C. An executive director of the Commission who acts as chief executive officer of the Commission shall be deemed for all purposes to be the chief executive officer of the Commission.";

(j) in the heading immediately before section 10, by repealing "**Office**" and substituting

**"Functions and office"**;

(k) by adding immediately before section 10 -

"9A9D. Subject to the other provisions of this Ordinance, the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission."

(l) in section 10, by adding ", chief executive officer" after "deputy chairman";

(m) in section 11, by adding ", chief executive officer" after "deputy chairman";

(n) in section 12, by adding ", chief executive officer" after "deputy chairman";

(o) in section 13, by adding ", chief executive officer" after "deputy chairman";

(oa) in section 14, by repealing "or the deputy chairman" and substituting ", deputy chairman, chief executive officer";

(p) in section 27 ~~(b), by repealing "other".~~, by adding -

"(aa) the chief executive officer of the Commission;";

(q) in section 28(a), by repealing "or";

(r) in section 28, by adding -

"(aa) the chief executive officer of the Commission; or".

### **Explanatory Memorandum**

This Bill amends the Securities and Futures Ordinance (Cap. 571). The main purpose is to provide for the separation of the role of the chairman of the Securities and Futures Commission from that of the executive directors of the Commission.

2. Clause 2 amends the definitions of "executive director" and "member" in Schedule 1 to the Ordinance as the chairman of the Commission is no longer to be regarded as an executive director of the Commission.

3. Clause 3 amends Part 1 of Schedule 2 to the Ordinance, and the main amendments are explained below -

(a) paragraph (a) replaces section 1(b) of that Part by a new provision, which provides that the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission;

- (b) paragraph (b) repeals section 2 of that Part so that the chairman of the Commission is no longer to be regarded as an executive director of the Commission;
- (c) paragraphs (d), (g) and (h) amend sections 4, 6 and 7 of that Part respectively so that a non-executive director of the Commission may also be appointed to be the deputy chairman of the Commission or be designated to act as chairman of the Commission; and paragraph (i) introduces a new section 9 to that Part to tally with the amendments made by those 3 paragraphs;
- (d) paragraph (e) adds a new section 4A to that Part to empower the Chief Executive to appoint an executive director of the Commission to be the chief executive officer of the Commission;
- (e) paragraph (k) adds a new section 9A to that Part, which provides that the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission.

## Marked-up amendments to the Securities and Futures Ordinance (SFO)

### [Main body of SFO]

#### 11. Directions to Commission

(1) After consultation with the ~~chairman~~ chief executive officer of the Commission, the Chief Executive may, upon being satisfied that it is in the public interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objectives or the performance of any of its functions.

(2) The Commission shall comply with any written direction given under subsection (1).

(3) Where any written direction is given under subsection (1), any requirement under any other provision of this or any other Ordinance that the Commission shall, for the purpose of performing any of the functions to which the written direction relates-

(a) form any opinion;

(b) be satisfied as to any matter (including existence of particular circumstances); or

(c) consult any person,

shall not apply for all purposes connected with the performance of functions pursuant to, or consequent upon, the written direction.

(4) Written directions given under subsection (1) are not subsidiary legislation.

#### 15. Accounts and annual report

(1) The Commission shall keep proper accounts and records of its transactions.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare financial statements which shall-

(a) give a true and fair view of the state of affairs of the Commission as at the end of the financial year and of the results of its operations and cash flows in the financial year; and

(b) be signed by the chairman, ~~and one non-executive director,~~ and the chief executive officer of the Commission.

(3) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare a report on its activities during the financial year and send a copy of the report to the Financial Secretary who shall cause a copy thereof to be laid on the table of the Legislative Council.

#### 240. Accounts of compensation fund

(1) The Commission shall keep proper accounts of the compensation fund.

(2) The Commission may, if it considers it necessary to do so-

- (a) maintain separate accounts in respect of the amounts that are respectively paid into the compensation fund under sections 74, 75 and 76 of Schedule 10;
  - (b) maintain separate accounts in respect of the compensation fund-
    - (i) for different-
      - (A) recognized exchange companies;
      - (B) markets operated by recognized exchange companies;
      - (C) persons providing automated trading services; or
      - (D) classes of investors; or
    - (ii) for the better and more effectual management or administration of the fund;
  - (c) maintain sub-accounts in respect of the separate accounts referred to in paragraph (a) or (b) in such manner as it considers appropriate.
- (3) The Commission shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare-
- (a) a financial statement made up to (and including) the last day of that year, in respect of the accounts of the compensation fund; and
  - (b) in the case where separate accounts are maintained under subsection (2)(a) or (b) or sub-accounts are maintained under subsection (2)(c)-
    - (i) a consolidated financial statement made up to (and including) the last day of that year, in respect of the separate accounts or sub-accounts (as the case may be); and
    - (ii) a separate financial statement made up to (and including) the last day of that year, in respect of each separate account or sub-account (as the case may be).
- (4) A financial statement prepared under subsection (3) shall be signed by the chairman and ~~at least one non-executive director~~ the chief executive officer of the Commission.
- (5) The Commission shall appoint an auditor to audit the compensation fund.
- (6) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each financial statement prepared under subsection (3) and shall submit the report to the Commission.
- (7) An auditor's report prepared under subsection (6) shall contain a statement made by the auditor as to whether in his opinion the financial statement gives a true and fair view of the matters to which the statement relates.
- (8) The auditor appointed under this section may call for and inspect such books and records of the Commission or any recognized investor compensation company as he may require in order to perform his functions under this section.
- (9) Not later than 4 months after the end of each financial year the Commission shall cause-
- (a) a copy of-
    - (i) each audited financial statement in respect of that financial year; and

- (ii) the auditor's report on each such financial statement, to be sent to the Financial Secretary; and
- (b) a copy of each such audited financial statement to be published in the Gazette.

(10) The Financial Secretary shall cause to be laid on the table of the Legislative Council any financial statement and report sent to him under subsection (9)(a).

(11) In this section, "financial statement" (財務報表) means a statement which contains all of the following documents-

- (a) a revenue and expenditure account;
- (b) a balance sheet; and
- (c) a cash flow statement.

### [s.1 of Part 1 of Schedule 1, SFO]

“executive director” (執行董事), in relation to the Commission, means —

- (a) the chief executive officer of the Commission; or
- (b) any other ~~the chairman of the Commission, or any other a~~ person who is appointed as an executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance;  
(whether or not acting in any other capacity under that Part);

“member” (成員), in relation to the Commission, means ~~any executive director (whether or not acting as the chairman or deputy chairman) or non-executive director of the Commission; the chairman of the Commission, or any executive director or non-executive director of the Commission (whether or not acting as the chairman, deputy chairman or chief executive officer);~~ —

- (a) the chairman of the Commission; or
- (b) the chief executive officer or any other executive director or non-executive director of the Commission (whether or not acting in any other capacity under Part 1 of Schedule 2 to this Ordinance);

“non-executive director” (非執行董事), in relation to the Commission, means a person who is appointed as a non-executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance (whether or not acting in any other capacity under that Part);

[Part 1 of Schedule 2, SFO]

PART 1

CONSTITUTION AND PROCEEDINGS OF COMMISSION, ETC.

**Chairman, chief executive officer  
and other members of Commission**

1. The Commission shall consist of a chairman, a chief executive officer and such number of other executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows-

- (a) the number of members of the Commission shall not be less than 8; and
- ~~(b) the majority of the members of the Commission shall be non-executive directors of the Commission.~~
- (b) the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission.

~~2. The chairman of the Commission shall, by virtue of holding that office, be regarded as an executive director of the Commission.~~

3. When the membership of the Commission ceases to comply with the requirements of section 1, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

~~**Deputy chairman and vacancies in office of  
chairman or deputy chairman chief executive officer**~~

**Deputy chairman and vacancies in office of  
chairman or deputy chairman**

4. The Chief Executive may appoint an executive director ~~or non-executive director~~ of the Commission to be the deputy chairman of the Commission.

~~4A. The Chief Executive may appoint an executive director of the Commission to be the chief executive officer of the Commission.~~

~~**Vacancies in office of chairman or deputy chairman**~~

5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.

6. Notwithstanding that a deputy chairman has been appointed under section 4, the chairman of the Commission may, where there is no designation under section 7, designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which both he and the deputy chairman are unable to act as chairman due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation.

7. If-

- (a) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or
- (b) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,

the Financial Secretary may designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause.

8. A designation under section 7 ceases to have effect when-

- (a) it is revoked by the Financial Secretary;
- (b) where the designation is under section 7(a), an appointment is made under section 4; or
- (c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is able to act as chairman,

whichever is the earlier.

~~9. — A deputy chairman or an executive director of the Commission who acts as chairman of the Commission under section 5 or in accordance with a designation under section 6 or 7 shall be deemed for all purposes to be the chairman of the Commission.~~

9. A deputy chairman of the Commission who acts as chairman of the Commission under section 5, or an executive director or non-executive director of the Commission who acts as chairman of the Commission in accordance with a designation under section 6 or 7, shall be deemed for all purposes to be the chairman of the Commission.

9A. Notwithstanding section 9 –

- (a) an executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission;

(b) a non-executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission.

### **Vacancy in office of chief executive officer**

9B. The Chief Executive may designate an executive director of the Commission to act as chief executive officer of the Commission for any period during which the chief executive officer is unable to act as chief executive officer due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation.

9C. An executive director of the Commission who acts as chief executive officer of the Commission shall be deemed for all purposes to be the chief executive officer of the Commission.

### **Office Functions and office of members, etc.**

~~9A~~9D. Subject to the other provisions of this Ordinance, the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission.

10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be determined by the Chief Executive.

11. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) may at any time resign his office by notice in writing to the Chief Executive.

12. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine.

13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) whose removal appears to him to be desirable for the effective performance by the Commission of its functions.

### **Meetings**

14. Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman ~~or the deputy chairman,~~ deputy chairman, chief executive officer, or any 2 other members, of the Commission.

15. At a meeting of the Commission-
- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting;
  - (b) if the chairman of the Commission is not present but the deputy chairman of the Commission is present, the deputy chairman shall be the chairman of the meeting; or
  - (c) if neither the chairman nor the deputy chairman of the Commission is present, the members of the Commission present shall choose one of their number to be the chairman of the meeting.
16. The quorum for a meeting of the Commission is not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission.
17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.
18. Each member of the Commission present at a meeting of the Commission has one vote.
19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.
20. The chairman of a meeting of the Commission shall not exercise a casting vote in respect of any question for decision at the meeting until after he has consulted the Financial Secretary on the question.

### **Written resolution**

21. Where a resolution-
- (a) is in writing; and
  - (b) is signed by such number of members of the Commission as-
    - (i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and
    - (ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,
- the resolution shall be as valid and effectual as if it had been passed at a meeting of the

Commission convened and conducted in accordance with this Ordinance.

22. For the purposes of section 21, a resolution to which that section applies may be-
  - (a) in the form of one document; or
  - (b) in the form of more than one document, each in the like form and signed by one or more members of the Commission.
  
23. Where a resolution is in the form of more than one document as described in section 22(b), the requirement under section 21(b) shall be regarded as having been satisfied if the documents together bear the signatures of such number of members of the Commission as is specified in section 21(b)(i) and (ii).
  
24. For the purposes of sections 21 to 23-
  - (a) a document shall be regarded as having been signed by a member of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the member; and
  - (b) a resolution to which section 21 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as a member of the Commission for the purposes of that section.

#### **Seal, and regulation of administration, etc.**

25. The Commission shall have a seal, the affixing of which shall be authenticated by the signature of the chairman or the deputy chairman of the Commission, or by the signature of such other member of the Commission as is authorized by it to act in that behalf.
  
26. The Commission shall organize and regulate its administration, procedure and business in such manner as it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

#### **Advisory Committee**

27. The Advisory Committee shall consist of-
  - (a) the chairman of the Commission;
  - [\(aa\) the chief executive officer of the Commission;](#)
  - (b) not more than 2 ~~other~~ [other](#) executive directors of the Commission who shall be appointed by the Commission;
  - (c) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.
  
28. A meeting of the Advisory Committee may be convened by-
  - (a) the chairman of the Commission; ~~or~~

- (aa) the chief executive officer of the Commission; or
- (b) any 3 other members of the Advisory Committee.

29. At a meeting of the Advisory Committee-
- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting; or
  - (b) if the chairman of the Commission is not present, the members of the Advisory Committee present shall choose one of their number to be the chairman of the meeting.
30. Where a member of the Advisory Committee appointed under section 27(b) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.
31. A member of the Advisory Committee appointed under section 27(b) or (c) may at any time resign his office by notice in writing to-
- (a) where he has been appointed under section 27(b), the Commission; or
  - (b) where he has been appointed under section 27(c), the Chief Executive.
32. The Chief Executive may by notice in writing remove from office any member of the Advisory Committee appointed under section 27(c).

**Powers, functions and duties to be exercised by the Chairman of the Securities and Futures Commission under the Securities and Futures Ordinance (Cap. 571)**

<b>Description</b>	<b>Section(s)</b>
(i) Chief Executive to give written directions to the Commission <u>after consultation with Chairman.</u>	s.11(1)
(ii) Chairman and one non-executive director (NED) to sign the financial statements of the Commission	s.15(2)b
(iii) Chairman and at least one NED to sign the financial statements of the Investor Compensation Fund.	s.240(4)
(iv) Chairman to designate an executive director to act as chairman.	s.6, Part 1, Schedule 2
(v) Chairman may convene meetings of the Commission and, if present, shall preside at the meeting.	s.14 and 15, Part 1, Schedule 2
(vi) The chairman of the meeting has a casting vote in case of equal votes.	s.19, Part 1, Schedule 2
(vii) Chairman or deputy chairman or other member as authorized shall authenticate the affixing of the seal.	s.25, Part 1, Schedule 2
(viii) Chairman shall be a member of the Advisory Committee, may convene meetings and if present, shall preside at the meeting.	s.27-29, Part 1, Schedule 2