

Bills Committee on Securities and Futures (Amendment) Bill 2005

Seventh meeting on 22 March 2006

**List of follow-up actions to be taken by the Administration/
the Securities and Futures Commission**

1. In relation to members' concern that section 11(1) of the Securities and Futures Ordinance (Cap. 571) (SFO), which provides the Chief Executive (CE) with the power to give written directions to the Securities and Futures Commission (SFC), may compromise the independence of SFC, the Administration is requested to provide information on whether a similar reserve power over the regulator is given to the executive government under the legislation of other jurisdictions.
2. To address members' concern about the accountability of the Chairman and the Chief Executive Officer (CEO) of SFC to the legislature, the Administration is requested to provide its response in writing to Ms Emily LAU's suggestion of including a provision in the current Bill with reference to the relevant provisions in the Urban Renewal Authority Ordinance (Cap. 563) (section 9) and the Kowloon-Canton Railway Corporation Ordinance (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 when requested.
3. On the additional safeguard to be imposed on the future SFC Chairman, i.e. He/she should not have any material interest in any principal business activity or be involved in any material business dealing with a listed company or any person or institution engaged in activities regulated by SFC (paragraph 23(ii) of LC Paper No. CB(1)1088/05-06(01)), the Administration is requested to provide information on what constitutes "material interest" and "material business dealing" with reference to precedent cases under the Companies Ordinance (Cap. 32). In particular, the Administration is requested to comment whether a conflict of interests would arise if the future SFC Chairman is a partner of a law firm whose client is a listed company regulated by SFC; and to explain why the requirement in paragraph 23(ii) is not to be provided in legislation.
4. The Administration has not stipulated in the legislation that the future SFC Chairman is non-executive. Referring to section 16 of Part 1 of Schedule 2 of SFO, members note that the attendance of the future SFC Chairman at meetings of the Commission will not be counted for the purpose of forming a quorum for the meeting. In this connection, the Administration is requested to consider re-drafting the aforesaid section of SFO to the effect that for the purpose of a quorum, the attendance of the future SFC Chairman may count.

5. Referring to the recent row between the senior management and the Chairman of the Kowloon-Canton Railway Corporation (KCRC), some members have requested the Administration to advise whether in resolving the dispute, the CE has exercised any reserve power comparable or similar to section 11(1) of SFO; and whether the Administration contemplates that section 11(1) of SFO will be invoked by CE to deal with similar disputes that may arise between the senior management and the SFC Chairman in the future.

Council Business Division 1
Legislative Council Secretariat
29 March 2006