

Bills Committee on Securities and Futures (Amendment) Bill 2005
Follow-up to eighth meeting on 31 March 2006

This paper sets out the response of the Administration and the Securities and Futures Commission (“SFC”) to the issues raised at the eighth meeting of the Bills Committee held on 31 March 2006.

(a) To examine further the proposed amendment to section 11(1) of the Securities and Futures Ordinance (“SFO”)

2. At present, section 11 (1) of the SFO requires the Chief Executive (“CE”) to consult the SFC Chairman before giving written directions to the Commission. At the last Bills Committee meeting on 31 March 2006, Members requested the Administration to examine further the proposed amendment to section 11(1) in consultation with the SFC.

3. Having carefully re-examined the proposed amendment in consultation with the SFC, we still consider the present proposal of consulting the Chief Executive Officer (“CEO”) more desirable and practicable due to the following reasons -

- (a) As explained to the Bills Committee in previous submissions, section 11(1) of the SFO has never been invoked since the establishment of the SFC in 1989. It is a reserve power and a tool of last resort for the Government to implement necessary remedial measures in the most pressing and extreme circumstances, which may include any sudden and unexpected possible threats to the financial stability of Hong Kong or its reputation as an international financial centre. Requiring the CE to consult both the Chairman and the CEO before giving written directions to the SFC would unnecessarily restrain the flexibility of the CE to give timely directions to the SFC during emergencies.
- (b) Being the head of the executive arm, the CEO will be responsible for the day-to-day running of the SFC and will thus understand best the detailed and daily operation of the Commission. The SFC therefore considers that the CEO would be in the best position to respond to or advise the CE on what is achievable as to the subject of the written directions particularly in an emergency situation.

4. Due to the above reasons, the SFC 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. In anticipation of the dire circumstances where Section 11 would need to be invoked, we consider it more appropriate to impose an administrative obligation on the CEO to consult the Chairman and any other member(s) of the Commission as appropriate, instead of imposing a legal obligation on the CE to consult both the Chairman and the CEO of the SFC.

5. The Administration wishes to emphasize that giving written directions to the SFC is a reserve power not to be used lightly and might only be invoked subject to the following statutory restrictions embedded in section 11(1) of the SFO –

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

6. Section 11(1) of the SFO is the only statutory tool available to the Government for the effective application of remedial measures in a critical situation. It would only be exercised judiciously for unforeseen and extreme scenarios.

- (b) To consider adding an additional provision in section 11 of the SFO to stipulate a requirement that the Administration should make a public announcement of the written directions issued and the timing for making such an announcement**

7. At present, there is no provision in the SFO which prohibits the disclosure of the written directions given by the CE to SFC under section 11(1) of the SFO. The CE will decide whether to make public such written directions, and if so, in what manner, in the light of actual circumstances. There are also no similar requirements in other Ordinances (for example, section 10 of the Clearing and Settlement Systems Ordinance) to mandate the CE to make such disclosure. We consider the proposed additional provision not necessary or appropriate.

8. In any event a provision to impose a legal obligation on the CE is a substantially different issue from those which form the purposes of this bill and is therefore outside the scope of the bill.

(c) To reconsider providing a statutory provision to require the Chairman and the CEO of the SFC to attend meetings of the committees and subcommittees of the Legislative Council (LegCo) when requested

9. The Administration has carefully re-examined the suggestion together with the SFC and we uphold the view that Members' concern about the accountability of the Chairman and CEO of SFC to LegCo has already been addressed by the Legislative Council (Powers and Privileges) Ordinance.

10. We also consider that as an independent regulator, the SFC has always been cooperative with LegCo and its committees and subcommittees in respect of attending meetings on request and providing information on its work subject to the confidentiality requirement of the SFO. Irrespective of the suggestion in question, the SFC will continue with this cooperation spirit and respond positively to the requests of LegCo, its committees and subcommittees.

11. Notwithstanding the above, in order to address Members' concern, we propose to add the requirement of attending meetings of the committees and subcommittees of LegCo, where requested and appropriate, in the duty lists of the Chairman and CEO of the SFC (see the revised proposed duty lists of the Chairman (item 2(i)) and the CEO (item 2(n)) at **Annex**). As stated in our submissions to the Bills Committee previously, the duty lists will be attached to the appointment letters of the Chairman and the CEO and made public by uploading onto the website of SFC.

(d) To re-consider the proposed level of remuneration for SFC Chairman.

12. The Administration wishes to reiterate again that the future Chairman post is not an employment with the SFC but a voluntary service to the community of Hong Kong. It is generally accepted by the public and members of advisory and statutory bodies that public service to such bodies is on a voluntary service principle.

13. Having carefully considered that on the one hand the post is a service to the community and on the other hand the post comes with heavy responsibilities and high public expectations, we have already struck a balance by proposing to set the remuneration at around \$702,000, which is three times the remuneration for the Non-executive Directors of SFC. To people with a commitment to serve Hong Kong, we believe remuneration is not a key

consideration in deciding whether to accept an appointment of public service. As evident in many appointments in statutory organizations, we can see that there are many people who are willing to serve the community and devote a lot of their time and efforts in taking up public appointments with little or no remuneration.

Financial Services and the Treasury Bureau
Securities and Futures Commission

April 2006

**Proposed Division of responsibilities
between Chairman and CEO of SFC¹**

(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, including attending meetings of the committees and subcommittees of the Legislative Council when requested;
 - (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

¹ 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, including attending meetings of the committees and subcommittees of the Legislative Council when requested.

Financial Services Branch
Financial Services and the Treasury Bureau
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