



Réf : XT596

Le Président

Miss Polly YEUNG
Clerk to Bills Committee
LEGISLATIVE COUNCIL
8 Jackson Road
Central
HONG KONG

Paris, 31 May 2005

RE : Advice requested on Securities and Futures (Amendment) Bill 2005

Dear Miss Yeung,

I have well received your letter dated May, 20th requesting my advice on the securities and futures amendment bill which aims at turning the existing Chairman of the Hong Kong Securities and Futures Commission into a non executive position and at creating a new office of Chief Executive Officer.

The IOSCO principles refer to the independence of the regulators in insisting on the aspects related to conflict of interest, but without elaborating in details on the exact responsibilities of the Chairman and the internal organisation of the regulator.

To my view, your draft reform raises two main issues: the share of responsibilities between the non executive Chairman and the Chief Executive Officer, and whether the part time position of the Chairman may impede on the independence of the regulator.

Considering the split of the functions, it seems to me that the Chairman shall be in a position to completely endorse the main responsibility of the regulator in order to remain fully accountable. Having said that, I have to recognise that there is no single model and IOSCO members have set up various arrangements to achieve this goal.

It has to be noted that the increasing number of tasks and responsibilities securities regulators have to tackle with, have lead some countries to put in place a system whereby the Executive Chairman is assisted by a Chief Executive Officer. This is the case in France since the creation of the AMF, the new French securities regulator. The General Secretary is the head of the staff and is in charge of the day to day management. However, the board remain responsible for all the regulatory and individual decisions taken by the AMF, and has the capacity to delegate this power to the Chairman (in practice all current decisions that do not necessitate any deliberation). To summarize, the French law provisions on the governance of the regulator is far from the model that articulates the sharing of responsibilities between a CEO and a non executive Chairman which has been developed for listed companies, as the Chairman remains fully executive. The Executive Director or Secretary General is appointed by the Chairman on the advice of the board with the consent of the Minister of Economy. The Chairman of the AMF is appointed directly by the President of the Republic, for a five-year non-renewable term and, besides severe misconduct, cannot be removed.

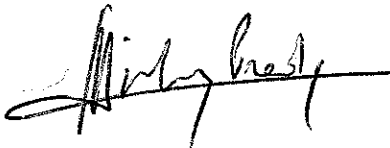
I am not aware of any example of a securities regulator of a significant marketplace of which the Chairman is non executive.

With regards to the question of a part time Chairman, I would like to point out that considering the workload of the duties mentioned above, it seems to me difficult to manage from a practical point of view. Moreover, the question of conflict of interests will remain to be addressed and I hardly see any activities related to financial matters that could be done by a Chairman of a regulatory authority, while the IOSCO principles and Methodology insist on the necessity to avoid conflict of interests and ensure independence. The Chairman of the AMF is subject to public service rules and cannot therefore have a "for-profit" professional activity, in particular he cannot be member of the board of a company or manager of such a company.

Finally and concerning participation to IOSCO, each authority is responsible for appointing its representative. The more is he in a position to effectively commit his authority, the more will he be able to be active in the discussion, recognised by his peers and able to chair the various Committees. Currently, as it has been the case in the past to my knowledge, every Member of the Executive Committee or of the Technical Committee is fully executive Chairman.

I hope these few comments could help the Legal Council in its work.

With my best regards,



Michel PRADA

C.c. : Mr Andrew SHENG, Chairman of the Securities and Futures Commission of Hong Kong SAR