

**立法會**  
**Legislative Council**

LC Paper No. CB(1)511/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/11/09/2

**Bills Committee on Securities and Futures and Companies Legislation  
(Structured Products Amendment) Bill 2010**

**First meeting on  
Tuesday, 26 October 2010, at 10:45 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Starry LEE Wai-king, JP (Chairman)  
Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon CHIM Pui-chung  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Member absent** : Hon Audrey EU Yuet-mee, SC, JP

**Public officers attending** : Financial Services and the Treasury Bureau  
Mr Anthony LI  
Principal Assistant Secretary (Financial Services)  
Ms Jane LEE  
Assistant Secretary (Financial Services)

Securities and Futures Commission

Mr Brian HO  
Executive Director, Corporate Finance

Ms Alexandra YEONG  
Director, Corporate Finance

Department of Justice

Mr Paul O'BRIEN  
Senior Assistant Law Draftsman

Ms Karmen KWOK  
Government Counsel

**Clerk in attendance** : Ms Anita SIT  
Chief Council Secretary (1)5

**Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6

Mr Noel SUNG  
Senior Council Secretary (1)4

Miss Zoe TONG  
Clerical Assistant (1)2

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**I Election of Chairman**

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Ms Starry LEE was nominated by Mr WONG Ting-kwong and the nomination was seconded by Mrs Regina IP. Ms Starry LEE accepted the nomination. There being no other nomination, Mr James TO declared that Ms Starry LEE was elected Chairman of the Bills Committee.

3. Members agreed that there was no need to elect a Deputy Chairman.

## **II Meeting with the Administration**

- (LC Paper No. CB(3)877/09-10 — The Bill
- SUB/12/2/2/1 — The Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. LS89/09-10 — The Legal Service Division Report on Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010
- LC Paper No. CB(1)198/10-11 — Background Brief on Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)199/10-11(01) — Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)199/10-11(02) — Administration's first batch replies dated 21 September 2010 to the questions raised by Assistant Legal Adviser on Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010
- LC Paper No. CB(1)199/10-11(03) — Administration's second batch replies dated 4 October 2010 to the questions raised by Assistant Legal Adviser on Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010)

Declaration of interest

4. Mr CHAN Kam-lam declared interest as a non-executive director of the Securities and Futures Commission (SFC).

Discussion

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

Admin Follow-up actions to be taken by the Administration

6. The Administration was requested to take the following actions:
- (a) to provide a comparison between the existing and the proposed arrangements for regulation of public offers of structured products, the respective rationale/justifications for the arrangements, and setting out the differences in tabular form.
  - (b) to explain the definition of "securities" in the Securities and Futures Ordinance (Cap. 571) and other definitions and terms in relation to investment products (e.g. structured products, interest rate-linked instruments) covered by the Bill, with information on the underlying basic concepts, real life examples, the differences among the basic concepts, and the definitions of those terms and corresponding regulatory regimes adopted by international organizations and/or other developed markets.
  - (c) to provide information on the market development of structured products in Hong Kong with relevant quantitative information, and explain how the development has been affected by changes to the regulatory regime, such as the enactment of the safe harbour provisions in the Seventeenth Schedule to the Companies Ordinance (Cap. 32) (CO).
  - (d) to critically re-consider the proposed arrangement that the offer documents issued by banks in respect of currency-linked, interest rate-linked, and currency and interest rate-linked instruments will not require the authorization of the SFC, and provide information on relevant arrangements in comparable jurisdictions.
  - (e) to consider whether the principles for the regulation of public offers of structured products in the Code on Unlisted Structured Investment Products could be separated from the technical provisions and specifying those principles in the legislation, and to

provide information on the relevant arrangements in comparable jurisdictions.

### **III Any other business**

#### Invitation for views

7. Members agreed to post an invitation on the Legislative Council website to invite the public to give views on the Bill, and to invite relevant organizations to attend a Bills Committee meeting to express their views and/or provide submissions on the Bill.

#### Date of next meeting

8. The Chairman said that she would work out with the Clerk a schedule of meetings and members would be informed of the details in due course.

*(Post-meeting note: Members were informed vide LC Paper No. CB(1)264/10-11 on 29 October 2010 of the schedule of meetings, and the organizations/individuals to be invited to give views on the Bill and/or attend the meeting on 6 December 2010.)*

9. There being no other business, the meeting ended at 12:00 noon.

Council Business Division 1  
Legislative Council Secretariat  
19 November 2010

**Proceedings of the  
Bills Committee on Securities and Futures and Companies Legislation  
(Structured Products Amendment) Bill 2010  
First meeting on Tuesday, 26 October 2010, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000031 – 000315	Mr James TO Mr WONG Ting-kwong Mrs Regina IP Ms Starry LEE Mr CHAN Kam-lam	Election of Chairman	
000316 – 001551	Administration	Briefing by the Administration on the proposals in the Bill.	
001552 – 002620	Mr James TO Administration SFC Chairman	<p>(a) At the request of Mr James TO, the Administration agreed to provide a comparison between the existing and the proposed arrangements for regulation of public offers of structured products, the respective rationale/justifications for the arrangements, and setting out the differences in tabular form.</p> <p>(b) Mr James TO expressed concern about differences in regulation if offer documents issued by local banks in respect of currency-linked instruments and interest rate-linked instruments would not require Securities and Futures Commission (SFC)'s authorization, and the sale of such investment instruments was regulated by the Hong Kong Monetary Authority (HKMA).</p> <p>(c) The Administration responded that the purpose of the Bill was to transfer the regulation of public offers of "structured products" in the form of shares or debentures from the prospectus regime of the Companies Ordinance (Cap. 32) (CO) to the offers of investments regime of the Securities and Futures Ordinance (Cap. 571) (SFO). The SFC noted that currency-linked and interest rate-linked instruments were banking products and it would not be appropriate for the SFC to regulate the operation of banks. The Administration advised that offer documents</p>	The Administration to take action as per paragraph 6(a) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		of currency-linked instruments and interest rate-linked instruments issued by overseas banks required SFC's authorization.	
002621 – 003154	Mrs Regina IP Administration SFC Chairman	<p>(a) Mrs Regina IP said that she welcomed the Bill, which sought to address some of the loopholes identified in the Lehman Borthers Minibonds incident. She remarked that clear explanation should be given on the various definitions and terms in respect of investment products covered by the Bill, e.g. "structured products", "securities", and "currency and/or interest rate-linked instruments", with information on the underlying basic concepts, real life examples, the differences among the basic concepts, and the definitions of those terms and corresponding regulatory regimes adopted by international organizations and/or other developed markets.</p> <p>(b) The Administration responded that the proposed legislative amendments would transfer the regulation of public offers of structured products in the form of shares or debentures from the CO to the SFO. The SFC added that under the SFO, the authorization of offer documents was only one of the regulatory measures taken to protect investor interests, among other regulatory measures such as licensing of issuers/intermediaries, and regulation of the sale process of structured products. The Administration agreed to provide the information requested by Mrs IP.</p>	The Administration to take action as per paragraph 6(b) of the minutes.
003155 – 004213	Mr CHAN Kam-lam Administration SFC Chairman	<p>(a) Mr CHAN Kam-lam was concerned that there might be confusion in the market, or allegation of favouritism to banks, if offer documents issued by banks in respect of currency-linked and interest rate-linked instruments were exempted from SFC's authorization, whilst the offer documents of similar investment instruments issued by other financial institutions or overseas banks were subject to SFC's authorization. Mr CHAN enquired about the rationale for exempting the offer documents issued by local banks. Mr CHAN opined that all structured products should be subject to the same regulatory arrangements.</p>	

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		<p>(b) The SFC responded that currently, offer documents issued by local banks in respect of currency-linked and interest rate-linked instruments did not require SFC's authorization. Any change to the arrangement would involve a major change of policy. In terms of legal definition, it would be difficult to distinguish between complicated and simple currency-linked and interest rate-linked instruments offered by banks. The inclusion of such instruments under SFC's regulation would also entail huge resource implications on SFC. The SFC reiterated that if banking products were to be authorized by the SFC, this would be a major change in policy. Such major change would need to be consulted upon.</p> <p>(c) Mr CHAN Kam-lam declared interest as a non-executive director of SFC. He said that given the development and complexity of "structured products", offer documents of currency-linked and interest rate-linked instruments should be subject to authorization by SFC. If necessary, SFC should seek additional resources to cope with the increased workload.</p> <p>(d) The Administration was requested to critically re-consider the proposed arrangement that the offer documents issued by banks in respect of currency-linked, interest rate-linked and currency and interest rate-linked instruments would not require the authorization of SFC, and provide information on relevant arrangements in comparable jurisdictions.</p>	<p>The Administration to take action as per paragraph 6(d) of the minutes.</p>
<p>004214 – 005020</p>	<p>Mr CHIM Pui-chung Administration SFC</p>	<p>(a) Mr CHIM Pui-chung enquired whether the proposed authorization regime was a result of a change of regulatory policy, as the "disclosure based" principle had been adopted in the past in the regulation of the offer of "structured products". He asked if SFC's authorization in each case would be subject to a time limit, and what liabilities SFC would be subject to in making the authorization. Mr CHIM was concerned that issuers might have difficulty in complying with SFC's codes and guidelines for authorization regarding the</p>	

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		<p>disclosure of collaterals, as the collaterals might only be acquired after the sale of the structured products. Mr CHIM was of the view that the proposed regulatory arrangements had not addressed the grave public concern about the regulation of sale of financial products by two regulatory bodies, namely the SFC and the HKMA. Mr CHIM opined that the sale of "structured products" should be under the regulation of SFC.</p> <p>(b) The Administration responded that the arrangement of having two regulatory bodies involved in the regulation of sale of financial products was a broad policy issue; the Government would keep in view the development of the financial market and relevant public views in reviewing the policy. The current legislative proposal only involved the transfer of the regulation of public offers of structured products from the CO to the SFO.</p> <p>(c) The SFC advised that while the "disclosure based" principle remained an integral part of the regulatory framework for the financial market, the proposed new section 104A of SFO of empowering the SFC to authorize structured products was modeled on the arrangements for collective investment schemes. The proposed legislative amendments would enhance protection of investor interests. An appeal mechanism was in place to deal with cases whereby an applicant felt aggrieved by the time or decision taken by SFC in authorizing the offer documents of a structured product. In relation to collateral, the Code on Unlisted Structured Investment Products issued by SFC on 25 June 2010 only specified that the collateral should be liquid and could not by itself be another structured product.</p>	
005021 – 010115	Mr Albert HO Administration SFC	(a) Mr Albert HO expressed concern about the regulation of public offers of structured products by two regulatory bodies, i.e. SFC and HKMA, pointing out that the two bodies had different regulatory objectives and focuses. He opined that the primary objective of the present proposal was to	

Time Marker	Speaker	Subject(s)	Action Required
		<p>enhance investor protection, while HKMA focused on prudential regulation of banks. The resource implication of having SFC taking up the regulation of structured products offered by banks was not insurmountable and could be suitably addressed.</p> <p>(b) Mr HO expressed concern that SFC's authorization of structured products would mainly be based on the guidelines specified in a code issued by SFC. He opined that the principles for the regulation of public offers of structured products should be separated from the technical provisions and be specified in the legislation.</p> <p>(c) The SFC responded that sections 4, 5 and 6 of SFO already specified the powers and regulatory objectives and principles of SFC. SFC was empowered under section 105 of the SFO to authorize the offer documents of investment products, and SFC was empowered under SFO to issue codes and guidelines for the performance of this function. An important merit of using codes and/or guidelines for authorization of offer documents of structured products was that revisions to the codes and guidelines could be made in a timely manner in response to developments of the market, and creation of new and complex investment instruments. Any revision of the codes and guidelines would be made after consultation with the public and market participants, and published in the Gazette. An appeal mechanism was in place to deal with appeals relating to the implementation of the codes and guidelines.</p> <p>(d) The Administration remarked that the existing CO prospectus regime did not cater for the regulation of public offers of structured products, and one main reason was that the various authorization requirements were specified in the relevant schedules to CO, thereby lacking the flexibility required for timely response to market development.</p> <p>(e) Mr HO maintained that SFC's exercise of powers in the authorization of structured products should be supported by clear policy</p>	<p>The Administration to take action as per</p>

Time Marker	Speaker	Subject(s)	Action Required
		objectives and principles stipulated in legislation. He requested the Administration to consider the issue and provide information on the relevant arrangements in comparable jurisdictions.	paragraph 6(e) of the minutes
010116 – 010619	Mr James TO SFC	<p>(a) Mr James TO was concerned as to the types and amount of currency-linked and/or interest rate-linked instruments the offer documents of which were not subject to authorization by SFC, and the rationale for the exclusion of such instruments from the proposed regulatory regime for structured products.</p> <p>(b) The SFC responded that there was a wide variety of currency-linked and/or interest rate-linked instruments and it would be difficult to draw up objective criteria in the law to distinguish between "simple" currency-linked and/or interest rate-linked instruments and "complicated" ones.</p>	
010620 – 010808	Mrs Regina IP Administration	At the request of Mrs Regina IP, the Administration agreed to provide information of the market development of "structured products" in Hong Kong with relevant quantitative information, and explanation on how the development had been affected by changes to the regulatory regime, such as the enactment of the safe harbour provisions in the Seventeenth Schedule to the CO.	The Administration to take action as per paragraph 6(c) of the minutes
010809 – 010905	Chairman	Conclusion	
010906 – 010955	Chairman	The Chairman suggested and members agreed that the public and relevant parties should be invited to give views on the Bill.	
010956 – 011249	Mr Ronny TONG Clerk SFC	<p>(a) Mr Ronny TONG suggested that the Legislative Council Secretariat conduct some research on the interpretation of various "structured products" and the regulatory arrangements on "structured products" in different jurisdictions be provided for members' reference.</p> <p>(b) The SFC responded that Hong Kong was the first developed market introducing a specific regulatory framework on public offering of "structured products", and was unique among the few developed markets in that there was</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		high retail participation in "structured products".  (c) The Chairman suggested and members agreed that members should first study the information to be provided by the Administration.	
011250 – 011322	Chairman	The Chairman said that members would be informed of the schedule of meetings in due course.	

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