



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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6 June 2012

Mr Anthony LI
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)
Financial Services Branch
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Mr LI,

Subcommittee on Securities and Futures (Futures Contracts) Notice 2012

In the meeting on 4 June 2012, there was a discussion on whether it was possible –

- (a) to exempt the HKSAR Government, through legislation, from liability to any loss sustained by a local central counterparty ("CCP") and/or its clearing members due to the default of any of those clearing members; and
- (b) to limit the liability of any recognised clearing house or CCP to a certain sum if loss in the above nature is sustained by any of the aforesaid bodies.

During the discussion, the Administration drew Members' attention to section 39 of the Securities and Futures Ordinance (Cap. 571) and further stated that the HKSAR Government is not a party to the contract between the CCP and any of its clearing members.

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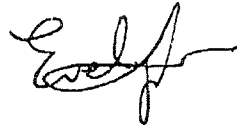
To address Members' concerns, the Administration may wish to elaborate how section 39 operates --

- (i) to exempt the HKSAR Government from the liability mentioned in paragraph (a) other than contractual liability (as the Administration has already pointed out that the HKSAR Government is not a party to the contract of between a clearing member and the CCP); and
- (ii) to limit or help limit the liability of ,or to afford immunity to, a recognised clearing house or CCP in its actual operation in case where the situation mentioned in paragraph (b) above arises.

Further, the Administration may also wish to respond to Members' concern as stated in paragraph (a) above.

As the Subcommittee will consider the above notice at its meeting early next week, I look forward to receiving your reply in both Chinese and English languages by **8 June 2012**. Please also send an electronic copy of your reply to ftse@legco.gov.hk.

Yours sincerely,



(Evelyn LEE)
Assistant Legal Adviser