

立法會
Legislative Council

LC Paper No. CB(3) 63/13-14

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Date : 18 October 2013

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 23 October 2013

**Amendments to motion on
“Reviewing the functions of the Securities and Futures Commission”**

Further to LC Paper No. CB(3) 37/13-14 issued on 9 October 2013, four Members (Hon Albert HO, Hon Christopher CHEUNG, Hon Kenneth LEUNG and Hon Dennis KWOK) have respectively given notices of their intention to move separate amendments to Hon Tommy CHEUNG’s motion on “Reviewing the functions of the Securities and Futures Commission” scheduled for the Council meeting of 23 October 2013. As directed by the President, the respective amendments will be printed in the terms in which they were handed in on the Agenda of the Council.

2. The President will order a joint debate on the above motion and amendments. To assist Members in debating the motion and amendments, I set out below the procedure to be followed during the debate:

- (a) the President calls upon Hon Tommy CHEUNG to speak and move his motion;
- (b) the President proposes the question on Hon Tommy CHEUNG’s motion;
- (c) the President calls upon the four Members who wish to move amendments to speak in the following order, but no amendment is to be moved at this stage:
 - (i) Hon Albert HO;
 - (ii) Hon Christopher CHEUNG;
 - (iii) Hon Kenneth LEUNG; and
 - (iv) Hon Dennis KWOK;

- (d) the President calls upon the public officer(s) to speak;
- (e) the President invites other Members to speak;
- (f) the President gives leave to Hon Tommy CHEUNG to speak for the second time on the amendments;
- (g) the President calls upon the public officer(s) to speak again;
- (h) in accordance with Rule 34(5) of the Rules of Procedure, the President has decided that he will call upon the four Members to move their respective amendments in the order set out in paragraph (c) above. The President invites Hon Albert HO to move his amendment to the motion, and forthwith proposes and puts to vote the question on Hon Albert HO's amendment;
- (i) after Hon Albert HO's amendment has been voted upon, the President deals with the other three amendments; and
- (j) after all amendments have been dealt with, the President calls upon Hon Tommy CHEUNG to reply. Thereafter, the President puts to vote the question on Hon Tommy CHEUNG's motion, or his motion as amended, as the case may be.

3. For Members' reference, the terms of the original motion and of the motion, if amended, are set out in the **Appendix**.

(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

(Translation)

**Motion debate on
“Reviewing the functions of the Securities and Futures Commission”
to be held at the Council meeting of 23 October 2013**

1. Hon Tommy CHEUNG’s original motion

That this Council urges the Government to expeditiously review the functions and operating mechanism of the Securities and Futures Commission (‘SFC’), including studying amending the legislation to assign SFC’s duty of criminal prosecution to be under the sole responsibility of the Department of Justice, thereby achieving separation of powers and checks and balances, so as to ensure SFC’s impartiality and independence, and make its work better accord with the public interest.

2. Motion as amended by Hon Albert HO

That a series of incidents occurring in the financial sector in recent years, including the ‘Lehman Incident’ and the ‘Citic Pacific Incident’, etc., have reflected that the regulatory regime of Hong Kong’s financial system needs to be further reformed and the protection for bank clients and investors strengthened; in this connection, this Council urges the Government to expeditiously review the functions and operating mechanism of the Securities and Futures Commission (‘SFC’), including ~~studying amending the legislation to assign SFC’s:~~

- (1) to vest SFC with the duty of criminal prosecution ~~to be under the sole responsibility of the Department of Justice, thereby achieving separation of powers and checks and balances, so as to ensure SFC’s impartiality and independence, and make its work better accord with the public interest,~~ and where appropriate and necessary, the Department of Justice may step in and exercise the prosecutorial responsibility in respect of the cases concerned;*
- (2) to allow the public to inspect SFC’s prosecution documents on the grounds of public interest, so as to enhance information transparency and protect investors’ interests; and*
- (3) to set up under SFC a department similar to the Operations Review Committee of the Independent Commission Against Corruption to*

review all cases in which the law enforcement agencies have decided not to institute prosecution or conduct investigation, so as to upgrade SFC's regulatory mechanism.

Note: Hon Albert HO's amendment is marked in *bold and italic type* or with deletion line.

3. Motion as amended by Hon Christopher CHEUNG

That ~~this Council urges the Government to expeditiously review~~, *as the society has divergent views on* the functions and operating mechanism of the Securities and Futures Commission ('SFC'), ~~including studying amending the legislation to assign SFC's duty of criminal prosecution to be under the sole responsibility of the Department of Justice,~~ *this Council urges the Government to expeditiously conduct a review in this regard, including the arrangements for criminal and non-criminal investigations, enforcement and prosecution work, and even the investigation technique of front-line officers, etc. of SFC,* thereby achieving separation of powers and checks and balances, so as to *protect the legitimate rights and interests of practitioners in the securities industry and* ensure SFC's impartiality and independence, and ~~make its work to make SFC's work more transparent and~~ better accord with the public interest.

Note: Hon Christopher CHEUNG's amendment is marked in *bold and italic type* or with deletion line.

4. Motion as amended by Hon Kenneth LEUNG

That this Council urges the Government to ~~expeditiously~~ review the functions and operating mechanism of the Securities and Futures Commission ('SFC'), including studying amending the legislation to assign SFC's duty of criminal prosecution to be under the sole responsibility of the Department of Justice, thereby achieving separation of powers and checks and balances, so as to ensure SFC's impartiality and independence, and make its work better accord with the public interest; *the Government should also consider launching a comprehensive strategic review of SFC within two years, with the review scope covering the role of SFC in Hong Kong's financial regulatory framework, and its division of work and co-operation relationship with other financial regulators, so as to ensure that Hong Kong's financial regulatory framework suits the development of the international financial industry and local needs.*

Note: Hon Kenneth LEUNG's amendment is marked in *bold and italic type* or with deletion line.

5. Motion as amended by Hon Dennis KWOK

That this Council urges the Government to expeditiously review the functions and operating mechanism of the Securities and Futures Commission ('SFC'), ~~including studying~~ ***to require that SFC must abide by the Prosecution Code in handling criminal prosecutions, and to conduct a study on*** amending the legislation to ~~assign SFC's duty of criminal prosecution to be under the sole responsibility of the Department of Justice~~ ***allow the Department of Justice to have sufficient oversight of SFC's criminal prosecution work, and to retain the Department of Justice's ultimate control over all criminal prosecutions in Hong Kong, so as to comply with the constitutional requirement under Article 63 of the Basic Law***, thereby achieving separation of powers and checks and balances, so as to ensure SFC's impartiality and independence, and make its work better accord with the public interest.

Note: Hon Dennis KWOK's amendment is marked in ***bold and italic type*** or with deletion line.