

立法會
Legislative Council

LC Paper No. CB(1)1022/15-16
(These minutes have been seen
by the Administration and
the Securities and Futures Commission)

Ref : CB1/BC/8/15/2

Bills Committee on Securities and Futures (Amendment) Bill 2016

Minutes of second meeting
held on Monday, 21 March 2016, at 8:30 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP

Members absent : Hon TAM Yiu-chung, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP

Public Officers : **For item I**
attending

Financial Services and the Treasury Bureau

Miss Salina YAN, JP
Deputy Secretary (Financial Services)1

Ms Joyce HO
Principal Assistant Secretary (Financial Services)1

Securities and Futures Commission

Ms Christina CHOI
Senior Director (Investment Products)

Ms Grace CHAN
Director (Investment Products)

Ms Fiona TSE
Senior Manager (Investment Products)

Ms Mary AHERN
Consultant (Legal Services Division)

Department of Justice

Ms Monica LAW
Senior Assistant Law Draftsman (II)2

Mr Peter SZE
Senior Government Counsel

Companies Registry

Miss Hilda CHANG
Deputy Registry Manager (Registration)

Attendance by invitation : For item I

Hong Kong Securities Association

Mr Gary CHEUNG
Vice Chairman

CompliancePlus Consulting Limited

Ms Josephine CHUNG
Director

Hong Kong Investment Funds Association

Mrs Sally WONG
Chief Executive Officer

Vanguard Investments Hong Kong Limited

Miss Lora YIP
Head of Legal and Compliance, Asia

Timothy Loh Solicitors

Mr Timothy LOH
Principal

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Miss Rachel DAI
Assistant Legal Adviser 2

Miss Rita YUNG
Senior Council Secretary (1)8

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Meeting with deputations and the Administration

Meeting with deputations

Submissions from deputations attending the meeting

(LC Paper No. CB(1)691/15-16(04) — CompliancePlus Consulting Limited (English version only)

LC Paper No. CB(1)713/15-16(01) — Timothy Loh Solicitors (English version only))

Submissions from deputations not attending the meeting

(LC Paper No. CB(1)691/15-16(05) — The Hong Kong Institute of Chartered Secretaries (English version only)

LC Paper No. CB(1)691/15-16(06) — The Hong Kong Association of Banks (English version only)

Action

- LC Paper No. CB(1)691/15-16(07) — Joint Liaison Committee on Taxation (English version only)
- LC Paper No. CB(1)691/15-16(08) — Hong Kong Bar Association (English version only)
- LC Paper No. CB(1)713/15-16(02) — The Hong Kong Institute of Directors (English version only))

Meeting with the Administration

Matters arising from previous meeting

- (LC Paper No. CB(1)691/15-16(01) — List of follow-up actions arising from the meeting on 23 February 2016
- LC Paper No. CB(1)691/15-16(02) — Administration's response to the issues raised at the meeting on 23 February 2016
- LC Paper No. CB(1)691/15-16(03) — Assistant Legal Adviser's letter dated 16 March 2016 to the Administration)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)585/15-16(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(3)305/15-16 — The Bill
- File Ref: SF&C/1/2/22C(2015) — Legislative Council Brief
- LC Paper No. LS31/15-16 — Legal Service Division Report
- LC Paper No. CB(1)585/15-16(02) — Background brief prepared by the Legislative Council Secretariat)

Action

Presentation of views by deputations

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their written submissions provided to the Bills Committee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. The Bills Committee received views from five deputations attending the meeting and noted the views from five deputations which did not attend the meeting.

(Post-meeting note: Two submissions from deputations on the Bill received after the meeting were issued to members vide LC Paper Nos. CB(1)713/15-16(01) and (02) on 23 March 2016.)

Follow-up actions to be taken by the Administration

4. The Administration was requested to provide a written response to:

- (a) the views and concerns expressed by the deputations at the meeting or in their written submissions; and
- (b) Assistant Legal Adviser's letter dated 16 March 2016 addressed to the Administration [LC Paper No. CB(1)691/15-16(03)].

(Post-meeting note: The Administration's responses were issued to members vide LC Paper Nos. CB(1)773/15-16(01) and (03) on 8 April 2016.)

5. The Administration would also provide a paper on its proposed Committee Stage amendments ("CSAs") to the Bill.

(Post-meeting note: The Administration's proposed draft CSAs were issued to members vide LC Paper No. CB(1)779/15-16(01) on 11 April 2016.)

Action

II. Any other business

Date of next meeting

6. The Chairman informed members that the next meeting would be held on Tuesday, 12 April 2016, at 8:30 am.
7. There being no other business, the meeting ended at 10:13 am.

Council Business Division 1
Legislative Council Secretariat
13 June 2016

Bills Committee on Securities and Futures (Amendment) Bill 2016

**Proceedings of the second meeting
on Monday, 21 March 2016, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I — Meeting with deputations and the Administration</i>			
000127 – 000355	Chairman	Introductory remarks	
000356 – 000410	Hong Kong Securities Association	Presentation of views	
000411 – 000828	CompliancePlus Consulting Limited ("Compliance Plus")	Presentation of views [LC Paper No. CB(1)691/15-16(04)]	
000829 – 001109	Hong Kong Investment Funds Association	Presentation of views	
001110 – 001324	Vanguard Investments Hong Kong Limited	Presentation of views	
001325 – 001734	Timothy Loh Solicitors	Presentation of views [LC Paper No. CB(1)713/15-16(01)]	
001735 – 003410	Chairman Administration Securities and Futures Commission ("SFC")	<p>The Administration's and SFC's initial responses to the views of the deputations:</p> <p>(a) in considering the regulatory framework for publicly or privately offered open-ended fund companies ("OFCs"), a measured approach was adopted having regard to international regulatory practices and standards, and the primary purpose of OFC as an investment fund;</p> <p>(b) the detailed operational requirements of OFCs would be set out in the OFC Rules to be made under the Securities and Futures Ordinance (Cap. 571) ("SFO") and/or the OFC Code to be published by SFC, and public consultation would be held before the making of the OFC Rules and the OFC Code;</p> <p>(c) a one-stop service would be provided for the incorporation and registration of OFCs, under which SFC would be the sole recipient of all application documents. This arrangement was expected to enhance efficiency and save costs.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Besides, OFCs which did not seek to offer their shares to the public would not require SFC's authorization;</p> <p>(d) it would be required that the investment manager of an OFC (whether publicly or privately offered) be SFC-licensed or registered such that the investment manager would be subject to the applicable requirements under SFO and related rules/codes/guidelines;</p> <p>(e) to enhance investor protection, the scheme property of an OFC must be entrusted to a custodian, who was separate and independent from the investment manager, for safe keeping. Prior approval by SFC would be required for streamlined termination of publicly or privately offered OFCs; and</p> <p>(f) exempting onshore privately offered OFCs from profits tax might give rise to concerns about tax avoidance. The Administration was gauging the industry's preliminary views on related issues. The Administration would carefully consider the views received and critically review the necessary safeguards to plug possible loopholes for abuse.</p>	
003411 – 003951	<p>Chairman Mr Christopher CHEUNG Administration SFC</p>	<p>Mr Christopher CHEUNG enquired about the timetable of introducing the OFC structure. He called on the Administration to put in place measures to encourage listing and trading of OFC shares on the stock exchange.</p> <p>The Administration and SFC responded that:</p> <p>(a) the Administration aimed to take forward enactment of the Bill before July 2016 to put in place the enabling provisions for introducing the OFC structure in Hong Kong, and then to proceed to work on the OFC Rules to prescribe the detailed operational and procedural matters in respect of OFCs;</p> <p>(b) the Administration had been discussing with the Hong Kong Exchanges and Clearing Limited about the possibility of establishing an exchange-based platform allowing fund distribution through exchange participants. The Panel on Financial Affairs would be consulted on the proposal; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) so long as the Listing Rules and other applicable requirements were complied with, OFCs could be listed on the stock exchange.</p> <p>Regarding some deputations' concerns about the processing time for registration and incorporation of OFCs, the Administration advised that SFC and the Registrar of Companies would publish the general processing time in handling relevant applications, which was expected to be broadly in line with existing practice.</p>	
003952 – 004904	Chairman CompliancePlus Administration	<p>Briefing by the Administration on the details of the one-stop company incorporation and registration service for OFCs and related filing requirements</p> <p>The Administration advised that it would consider how the one-stop process could be further streamlined at the next stage of consultation on the OFC Rules and the OFC Code.</p> <p>CompliancePlus called on the Administration to consider removing the Type 9 licensing requirement for investment managers of privately offered OFCs, and allowing such OFCs to appoint overseas management companies (from jurisdictions with inspection regimes acceptable to SFC) as investment managers.</p> <p>The Administration responded that having regard that the management of property falling within the relevant provisions of SFO was required to be conducted by a Type 9-licensed or registered person, it considered that the Type 9 licensing requirement mentioned above should be maintained. After implementation, the Administration would keep in review the OFC regime from time to time having regard to market developments.</p> <p>The Chairman commented that there was a need to strike a balance between development of the fund industry and investor protection.</p>	
004905 – 005011	Chairman	Conclusion of meeting with deputations	

Time marker	Speaker	Subject(s)	Action required
005012 – 005433	Chairman Administration	Briefing by the Administration on its response to the issues arising from the discussions at the meeting on 23 February 2016 [LC Paper No. CB(1)691/15-16(02)] Members raised no queries.	
<p>Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)305/15-16)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)585/15-16(01))]</p>			
005434 – 010040	Chairman Administration	The Bills Committee continued clause-by-clause examination of the Bill. Part 2 — Amendments to Securities and Futures Ordinance <u>Clause 6 — Part IVA added</u> Part IVA — Open-ended Fund Companies <u>Division 1 — Preliminary</u> <u>Division 2 — Incorporation, Registration, Name and Registered Office</u> <u>Division 3 — Capacity and Powers</u> <u>Division 4 — Contracts</u> <u>Division 5 — Share Capital and Shareholders' Liability</u> Members raised no queries.	
010041 – 010150	Chairman Administration	<u>Division 6 — Sub-funds</u> Members raised no queries. Separately, the Chairman referred to the Assistant Legal Adviser ("ALA")'s letter dated 16 March 2016 to the Administration [LC Paper No. CB(1)691/15-16(03)]. The Administration agreed to provide a written response as soon as practicable.	Admin (paragraph 4(b) of the minutes refers)
010151 – 010428	Chairman Administration ALA SFC	<i>112D — Application for registration with Commission before incorporation</i> ALA sought clarifications of the arrangements for incorporation and registration, and enquired how SFC would ensure that all the requirements for registration	

Time marker	Speaker	Subject(s)	Action required
		<p>had been met with respect to a proposed OFC on the day when the certification of incorporation was issued and the registration took effect.</p> <p>SFC elaborated on the incorporation and registration process to explain that SFC would not register a proposed OFC before it was satisfied that the OFC would fulfill all the registration requirements upon incorporation. SFC further explained that the registration would only come into effect upon incorporation of the OFC by the Registrar of Companies.</p>	
010429 – 011128	Chairman Administration SFC	<p><u><i>Division 7 — Directors, Investment Manager, Custodian, Sub-custodian and Auditor</i></u></p> <p><i>112U — Directors</i></p> <p>Members raised no queries.</p> <p>The Administration advised that it would propose a Committee Stage amendment ("CSA") to the new section 112U to specify that "other duties" owed by an OFC director should only comprise the duty to exercise reasonable care, skill and diligence that was owed by a director of an ordinary company to the ordinary company under section 465 of the Companies Ordinance (Cap. 622) ("CO").</p> <p><i>112ZA — Custodian</i></p> <p>The Administration advised that it would propose a CSA to the new section 112ZA to reflect the policy intent to allow sub-custodial arrangements to be conducted by a custodian or a sub-custodian in respect of the scheme property of an OFC in line with local and overseas market practices.</p> <p>In response to the Chairman's enquiry about SFC's regulation of sub-custodians, SFC explained that:</p> <ul style="list-style-type: none"> (a) sub-delegation would be allowed provided that the applicable requirements in the OFC Code were met, including that the custodian should exercise due care and diligence in the selection, appointment and ongoing monitoring of the sub-delegates; (b) the requirement for the custodian to take reasonable care, skill and diligence would also apply to the sub-custodian under the OFC Rules; and 	

Time marker	Speaker	Subject(s)	Action required
		(c) operational matters and requirements relating to custodians, sub-custodians and delegation would be set out in the OFC Rules and/or the OFC Code.	
011129 – 011511	Chairman Administration	<p><i>Division 8 — Supervision by Commission</i></p> <p><i>112ZF — Commission's power to give directions</i></p> <p>Members raised no queries.</p> <p>The Administration advised that it would propose a CSA to the new section 112ZF to enable the directions and any amendment or revocation of such directions made by SFC under that section to take effect at the time of service of the notice or a later time as specified in the notice.</p> <p><i>112ZG — Application to Court of First Instance for inquiry into failure to comply with direction</i></p> <p>Members raised no queries.</p> <p>The Administration advised that having taken into account the views of the Judiciary, it would propose a CSA to the new section 112ZG to remove the references to "inquiry".</p> <p><i>112ZJ — Permission to carry on essential business operations on cancellation of registration</i></p> <p>Members raised no queries.</p> <p>The Administration advised that it would propose a CSA to the new section 112ZJ so that an amendment or revocation of conditions or imposition of new conditions under subsection (6) of that section would take effect at the time of service of the notice or such later time as specified in the notice.</p>	
011512 – 011944	Chairman Administration	<p><i>Division 9 — Rules made by Commission</i></p> <p><i>112ZK — Commission's power to make rules</i></p> <p>Members raised no queries.</p> <p>The Administration advised that it would propose a CSA to the new section 112ZK to provide for SFC's rule-making power in respect of the creation of personal liability of a person acting as a director or being involved in the management of an OFC while being an undischarged bankrupt or acting in</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>contravention of a disqualification order.</p> <p><i>Division 10 — Miscellaneous</i></p> <p>Members raised no queries.</p>	
011945 – 012012	Chairman Administration	<p><u>Clause 7 — Section 180 amended (supervision of intermediaries and their associated entities)</u></p> <p><u>Clause 8 — Section 182 amended (investigations by Commission)</u></p> <p><u>Clause 9 — Section 193 amended (interpretation of Part IX)</u></p> <p><u>Clause 10 — Section 201 amended (general provisions relating to exercise of powers under Division 2 or 3)</u></p> <p><u>Clause 11 — Section 212 amended (winding-up orders and bankruptcy orders)</u></p> <p>Members raised no queries.</p>	
012013 – 012224	Chairman Administration	<p><u>Clause 12 — Section 213 amended (injunctions and other orders)</u></p> <p>Members raised no queries.</p> <p>The Administration advised that it would propose a CSA to the new section 213(3A) regarding the grounds on which SFC might apply to the Court of First Instance for orders specified in the new section 213(3B).</p>	
012225 – 012501	Chairman Administration SFC	<p><u>Clause 13 — Sections 214A and 214B added</u></p> <p><i>214A — Remedies in cases of unfair prejudice etc. to interests of shareholders of open-ended fund companies</i></p> <p>The Administration advised that it would propose a CSA to the new section 214A to provide that SFC must first consult the Hong Kong Monetary Authority before making applications under subsection (1) of that section for orders against authorized financial institutions, etc.</p> <p>The Chairman sought elaboration on how the business or affairs of an OFC would be considered to have been conducted in a manner "oppressive" to its shareholders under the new section 214A(1).</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>SFC explained that:</p> <p>(a) the new section 214A(1) was formulated with reference to a similar provision in CO in relation to remedies for unfair prejudice to shareholders' interests; and</p> <p>(b) it would be for the court to decide having regard to the circumstances of individual cases whether the business or affairs of an OFC had been conducted in a manner oppressive to its shareholders.</p>	
012502 – 012514	Chairman Administration	<p><u>Clause 14 — Section 336 amended (register of interests in shares and short positions)</u></p> <p><u>Clause 15 — Section 352 amended (register of directors' and chief executives' interests and short positions)</u></p> <p><u>Clause 16 — Section 378 amended (preservation of secrecy, etc.)</u></p> <p><u>Clause 17 — Section 379 amended (avoidance of conflict of interests)</u></p> <p><u>Clause 18 — Section 400 amended (service of notices, etc.)</u></p> <p><u>Clause 19 — Schedule 1 amended (interpretation and general provisions)</u></p> <p><u>Clause 20 — Schedule 2 amended (Securities and Futures Commission)</u></p> <p><u>Clause 21 — Schedule 5 amended (regulated activities)</u></p> <p>Members raised no queries.</p>	
012515 – 013200	Chairman Administration	<p><u>Clause 22 — Schedule 8 amended (Securities and Futures Appeals Tribunal)</u></p> <p>Part 3 — Related Amendments</p> <p><i>Division 1 — Amendment to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)</i></p> <p><u>Clause 23 — Section 168R amended (register of disqualification orders)</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><i>Division 2 — Amendment to Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. 1)</i></p> <p><u>Clause 24 — Schedule 1 amended</u></p> <p><i>Division 3 — Amendments to Inland Revenue Ordinance (Cap. 112)</i></p> <p><u>Clause 25 — Section 2 amended (interpretation)</u></p> <p><u>Clause 26 — Section 57 amended (principal officer to act on behalf of a corporation or body of persons)</u></p> <p><i>Division 4 — Amendments to Stamp Duty Ordinance (Cap. 117)</i></p> <p><u>Clause 27 — Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)</u></p> <p><u>Clause 28 — Section 30A added</u></p> <p><u>Clause 29 — Part IVA added</u></p> <p><u>Clause 30 — Section 63 amended (regulations)</u></p> <p><u>Clause 31 — First Schedule amended</u></p> <p><u>Clause 32 — Schedule 8 amended (transactions and transfers relating to exchange traded funds)</u></p> <p><u>Clause 33 — Schedule 9 added</u></p> <p><i>Division 5 — Amendments to Business Registration Ordinance (Cap. 310)</i></p> <p><u>Clause 34 — Section 2 amended (interpretation and application)</u></p> <p><u>Clause 35 — Section 3 amended (persons answerable for doing all acts, etc. required to be done)</u></p> <p><u>Clause 36 — Section 5A amended (simultaneous business registration applications of companies incorporated under Companies Ordinance)</u></p> <p><u>Clause 37 — Section 6 amended (registration of business and issue of business registration certificate)</u></p> <p><u>Clause 38 — Section 7A amended (refund of prescribed business registration fees, prescribed branch registration fees or levies)</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 39 — Section 8 amended (information to be furnished)</u></p> <p><u>Clause 40 — Section 9 amended (exemption from payments of fees for small businesses)</u></p> <p><u>Clause 41 — Section 15 amended (offences)</u></p> <p><i>Division 6 — Amendments to Business Registration Regulations (Cap. 310 sub. leg. A)</i></p> <p><u>Clause 42 — Regulation 3A amended (business particulars in relation to simultaneous business registration applications)</u></p> <p><i>Division 7 — Amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B)</i></p> <p><u>Clause 43 — Schedule 1 amended (services to be provided by the trading fund)</u></p> <p><i>Division 8 — Amendments to Contracts (Rights of Third Parties) Ordinance (Cap. 623)</i></p> <p><u>Clause 44 — Section 3 amended (application)</u></p> <p>Members raised no queries.</p>	
013201 – 013417	Chairman Administration	The Administration advised that it would propose CSAs to add new clauses to amend the Banking Ordinance (Cap. 155) and the Financial Reporting Council Ordinance (Cap. 588) concerning the powers of the Monetary Authority and the Financial Reporting Council in relation to OFCs.	
013418 – 013826	Chairman ALA Administration SFC	<p>ALA suggested the Administration consider setting out clearly in the Bill the regulatory requirements applicable to sub-custodians.</p> <p>The Administration and SFC explained that:</p> <p>(a) the Bill included provisions to ensure that the enforcement powers of SFC would reach the sub-custodians of OFCs. For instance, by virtue of the new section 112ZF(1)(b), SFC's power to give directions under the new section 112ZF(2) could be invoked in respect of contravention by sub-custodians;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the requirement for a custodian to take reasonable care, skill and diligence as provided in the new section 112ZA(4) would also apply to a sub-custodian under the OFC Rules;</p> <p>(c) the offering documents of the OFC should disclose the OFC's custodial arrangements and changes to the offering documents would need to be reported to SFC; and</p> <p>(d) requirements on sub-custodians would be set out in the OFC Rules.</p>	
013827 – 014302	Chairman ALA SFC	<p>Referring to the new sections 112ZH(8)(b) and 112ZI(6)(b) which provided that SFC "may" publish notice of the cancellation of an OFC and the reason for the cancellation in any manner that it considered appropriate, ALA sought clarification on whether the publication was discretionary.</p> <p>SFC explained the purposes and processes regarding the publication of matters under the said sections; and pointed out that the use of the word "may" in these provisions was intended to retain flexibility in the means of making the publication in question, while achieving consistency with existing provisions in SFO and current practices of SFC.</p>	
<i>Agenda Item II — Any other business</i>			
014303 – 014400	Chairman Administration	<p>The Administration is requested to provide a written response to:</p> <p>(a) the views and concerns expressed by the deputations at the meeting or in their written submissions; and</p> <p>(b) ALA's letter dated 16 March 2016 addressed to the Administration [LC Paper No. CB(1)691/15-16(03)].</p> <p>Date of next meeting</p>	Admin (paragraph 4 of the minutes refers)