

**立法會**  
*Legislative Council*

LC Paper No. CB(1) 642/98-99

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**Paper for the House Committee meeting on 18 December 1998**

**Report of the Bills Committee on  
Securities (Insider Dealing) (Amendment) Bill 1998**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Securities (Insider Dealing) (Amendment) Bill 1998 (the Bill).

**The Bill**

2. As Hong Kong's securities and futures market continues to grow in terms of breadth and depth, the number as well as the complexity of insider dealing cases are also expected to increase, leading to increasing workload of the Insider Dealing Tribunal (the Tribunal). The Bill seeks to amend the definition of "judge" to include also a deputy judge of the Court of First Instance so as to enlarge the pool of candidates who are eligible for appointment as chairmen of the Tribunal.

**The Bills Committee**

3. At the meeting of the House Committee on 23 October 1998, Members decided to form a Bills Committee to study the Bill. With Hon Andrew WONG Wang-fat elected as Chairman, the Bills Committee held a meeting with the Administration. The membership list of the Bills Committee is at **Appendix I**.

**Deliberations of the Bills Committee**

4. The major concern of members of the Bills Committee is whether former deputy judges of the Court of First Instance should also be eligible for appointment as chairmen of the Tribunal. The Bill is to enable deputy judges of the Court of First Instance to be appointed as chairmen of the Tribunal, in addition to judges or former

judges of the Court of First Instance. However, former deputy judges are not included for appointment as chairmen of the Tribunal as the Administration has reservation in opening the scope of eligibility for appointment too widely, hence giving rise to concerns about the quality and credibility of the appointees.

5. According to the Administration, deputy judges of the Court of First Instance are temporary appointments made by the Chief Justice of the Court of Final Appeal and such appointments are usually necessitated by the operational needs of the High Court and/or to test a candidate on his suitability for substantive appointment. Hence, some former deputy judges might have been found to be unsuitable. For those who are suitable, the Chief Justice can still re-appoint them for the purpose of making them eligible for appointment as chairman of the Tribunal. Members generally have reservations about this arrangement of reappointing a former deputy judge in order to enable him to be eligible for appointment as chairman of the Tribunal.

6. Members maintain the view that former deputy judges should not be excluded as potential candidates for appointment as chairmen of the Tribunal since there are at least two safeguarding mechanisms in the appointment of chairman of the Tribunal as follows:

- (a) in the course of appointment of deputy judges of the Court of First Instance, the Chief Justice would need to take careful and thorough consideration of the appropriateness and suitability of the candidates in accordance with the Judiciary's existing guidelines; and
- (b) the Chief Executive of the Special Administrative Region would act on the advice of the Chief Justice when appointments are made for the positions of chairmen of the Tribunal.

Noting that the practice of the Chief Executive seeking advice from the Chief Justice on appointment of a chairman of the Tribunal is not spelt out in the principal ordinance, members suggest amending the ordinance in order to dispel any doubts in this regard. Specifically, section 15(2) of the ordinance should be amended to state explicitly that appointment of the Tribunal's chairman by the Chief Executive should be made on the recommendation of the Chief Justice.

7. Having considered members' view and suggestion, the Administration agrees to propose Committee Stage Amendments (CSAs) to make former deputy judges eligible for appointment as chairmen of the Tribunal and to spell out in the legislation that the Chief Executive would appoint chairmen of the Tribunal on the recommendation of the Chief Justice. Furthermore, the Administration proposes to make an additional amendment to make it clear that former judges and former deputy judges of the High Court of Justice which was in operation before the reunification are eligible for Tribunal chairmanship. In view of the Administration's CSAs, members of the Bills Committee have no further query on the Bill. Hon Jasper TSANG Yok-sing, however,

has indicated his support for the original Bill.

### **Committee Stage Amendments**

8. The draft CSAs as described in paragraph 7 above are at **Appendix II**.

### **Recommendation**

9. The Bills Committee supports the Bill and the CSAs proposed by the Administration, and recommends resumption of Second Reading debate on the Bill on 6 January 1999.

### **Advice Sought**

10. Members are invited to note the deliberations of the Bills Committee and support the recommendation at paragraph 9 above.

Legislative Council Secretariat  
15 December 1998

立法會  
《1998年證券(內幕交易)(修訂)條例草案》委員會  
Legislative Council  
Bills Committee on  
Securities (Insider Dealing) (Amendment) Bill 1998

委員名單  
Membership List

黃宏發議員 (主席)	Hon Andrew WONG Wang-fat, JP (Chairman)
何俊仁議員	Hon Albert HO Chun-yan
李柱銘議員	Hon Martin LEE Chu-ming, SC, JP
李家祥議員	Hon Eric LI Ka-cheung, JP
吳靄儀議員	Hon Margaret NG
夏佳理議員	Hon Ronald ARCULLI, JP
陳婉嫻議員	Hon CHAN Yuen-han
單仲偕議員	Hon SIN Chung-kai
黃宜弘議員	Dr Hon Philip WONG Yu-hong
曾鈺成議員	Hon Jasper TSANG Wok-sing, JP
劉漢銓議員	Hon Ambrose LAU Hon-chuen, JP
馮志堅議員	Hon FUNG Chi-kin

合共： 12 位議員  
Total: 12 Members

日期： 1998 年 11 月 6 日  
Date: 6 November 1998

**SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1998**

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>By deleting the clause and substituting -</p> <p>"2. Interpretation</p> <p>Section 2(1) of the Securities (Insider Dealing) Ordinance (Cap. 395) is amended in the definition of "judge" -</p> <p>(a) in paragraph (a), by adding "or a deputy judge" after "judge";</p> <p>(b) by repealing paragraph (b) and substituting -</p> <p style="padding-left: 40px;">"(b) a former judge or a former deputy judge of the Court of First Instance; or</p> <p style="padding-left: 40px;">(c) a former judge or a former deputy judge of the High</p>

Court of Justice which was in operation before 1 July 1997;".

New

By adding -

"3. Constitution of Tribunal

Section 15(2) is amended by adding "on the recommendation of the Chief Justice" before "and 2".