

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2051/99-00  
(These minutes have been seen  
by the Administration and  
cleared by the Chairman)

Ref: CB1/BC/2/99/2

**Bills Committee on  
Exchanges and Clearing Houses (Merger) Bill**

**Minutes of meeting  
held on Monday, 6 December 1999, at 8:30 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Ronald ARCULLI, JP (Chairman)  
Hon LEE Kai-ming, SBS, JP  
Hon NG Leung-sing  
Hon CHAN Kam-lam  
Hon SIN Chung-kai  
Dr Hon Philip WONG Yu-hong  
Hon Jasper TSANG Yok-sing, JP  
Hon FUNG Chi-kin
- Public officers attending** : Mr Bryan P K CHAN  
Principal Assistant Secretary for Financial Services
- Ms Gloria LO  
Assistant Secretary for Financial Services
- Mr G A FOX  
Senior Assistant Law Draftsman  
Department of Justice
- Ms Mabel CHEUNG  
Government Counsel  
Department of Justice

- Attendance by invitation** : Mr David STANNARD  
Executive Director, Corporate Finance  
Securities and Futures Commission
- Mr Gerald D GREINER  
Senior Director of Supervision of Markets  
Securities and Futures Commission
- Clerk in attendance** : Ms LEUNG Siu-kum  
Chief Assistant Secretary (1)4
- Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6
- Ms Connie SEZTO  
Senior Assistant Secretary (1)1
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## **I Meeting with the Administration**

Clause-by-clause examinations on the Bill  
(LC Paper No. CB(3) 175/99-00 -- The Bill)

### *Clause 3*

Members noted that while under clause 3(1), no person could be the controller of an exchange company or clearing house unless it was a recognized exchange controller (REC), clause 21 provided that the Stock Exchange of Hong Kong (SEHK) and Futures Exchange of Hong Kong (HKFE) would deem to be exempted from clause 3(1) as far as they were the controllers of their respective subsidiary clearing houses, i.e. the SEHK Options Clearing House Limited (SEOCH) and HKFE Clearing Corporation Limited (HKFECC). The Chairman opined that clause 21 was not necessary since the exemption for SEHK and HKFE could be granted by the Financial Secretary (FS) under clause 7. The Administration agreed and undertook to move a Committee Stage Amendment to delete clause 21.

Admin

2. On the Assistant Legal Adviser 6 (ALA6)'s enquiry about the status of Hong Kong Exchanges and Clearing Limited (HKEC) as a REC when it entered into alliances with other exchanges, the Principal Assistant Secretary for Financial Services (PAS/FS) said that according to the Bill, if other companies became shareholder controllers of an exchange company or clearing house holding 35% or more of its shares, they would need to apply for

recognition as exchange controllers. However, in view of difficulties envisaged in the management of HKEC with more than one RECs, a possible way to deal with the situation would be that the shareholder controllers should agree among themselves which company should take up the management of HKEC. The company in-charge would then be recognized as the exchange controller while the others would be exempted from clause 3(1). In the case before a company had acquired 5% or above of shares of HKEC, it had first to apply to the Securities and Futures Commission (SFC) for approval to become a minority controller in accordance with clause 6.

*Clause 6*

Admin 3. The Chairman pointed out that a "minority controller" as defined in clause 6(1) meant any person, either alone or with any associate or associates, was entitled to exercise, or control the exercise of, 5% or more of the voting power of a REC. He expressed concern over the wide scope of the definitions of "associate" and "indirect controller" in clause 2 and "minority controller" in clause 6. Under these definitions, fund managers, custodians, nominee companies, and those carrying on normal company activities such as appointing the same person as a proxy to exercise voting rights at a general meeting would be caught. PAS/FS re-iterated that the 5% shareholding limit was set to prevent control of HKEC by any individual party or parties acting in concert. In view of members' concern, the Administration undertook to review the three definitions. SALD added that the Administration was considering giving specifications of persons or class of persons who would or would not fall into such definitions in the Schedules to the Bill. These Schedules when amended would be subject to "negative vetting" of the Legislative Council.

*Clause 8*

Admin 4. Members noted that under clause 8(1) it was a duty for HKEC to ensure an orderly and fair market. ALA6 remarked that under relevant existing legislation, some of the subsidiaries to be of HKEC had similar duty. He pointed out that HKEC and its subsidiaries might have difference in opinion regarding the discharge of their respective statutory duties. Members shared the concern. The Administration agreed to review the drafting of clause 8.

*Clause 9*

5. Members noted that clause 9(1) required a REC to set up a Risk Management Committee (RMC) within three months after the commencement of the section or the date on which it became a REC. As regards the commencement of the clause, PAS/FS advised that the Administration intended to introduce different commencement dates for different clauses of the Bill.

Admin

Clause 22(1) and (2) would take effect before the rest of the Bill to enable the conversion of HKSCC from a company limited by guarantee to a company limited by shares to take place prior to the effect of the merger. Upon the request of the Chairman, PAS/FS undertook to provide an information paper explaining the details of different commencement dates of the Bill.

6. On clause 9(2), (3), and (4), members noted that RMC would be chaired by the chairman of HKEC and comprised a maximum of five members appointed by FS, and a maximum of two members appointed by HKEC board of directors (HKEC board). They also noted that in order to provide flexibility in appointment and to ensure a balance representation on RMC, the appointed members might not be members of HKEC board. Members expressed concern about the strong government influence over RMC. They suggested stipulating in the Bill that RMC members shall include directors of HKEC board who were elected by shareholders in order to ensure the representation of shareholders' views on RMC.

7. As regards clause 9(5), members expressed grave concern over the provision which specified that the decision of RMC would prevail unless overruled by a two-third majority of HKEC board. They were of the view that the majority requirement was excessive and that the decision of RMC should not be binding on the board, as the latter carried ultimate responsibility for HKEC. They suggested specifying in the Bill that the duties of RMC were to formulate risk management policies and to submit them for consideration of HKEC board. Mr SIN Chung-kai was of the view that the scope of risk management matters to be handled by RMC should also be defined in the Bill to avoid excessive power of RMC.

Admin

8. In response, PAS/FS said that prudent management of risks by the exchanges and clearing houses would be essential to maintain a stable and orderly market. The Administration believed that the proposed structure of RMC would ensure HKEC would perform such important public function properly without compromising it with profit-related considerations. Nonetheless, the Administration took note of members' concerns and would consider their suggestions in respect of composition and functions of RMC.

9. On the feasibility of specifying the risk management function of RMC in the Bill, Mr Gerald GREINER, Senior Director of Supervision of Markets, SFC said that it would be difficult to provide a comprehensive definition on the term. He assured members that SFC would continue monitoring the risk management functions performed by the exchanges and their clearing houses through vetting and approval of their rules.

*Clause 10*

Admin 10. On the suggestion of amending clause 10(3) to require SFC to provide reasons for its refusal to give approval to the amendments of the constitution, rules etc., of a REC, Mr GREINER said that the provision mirrored those in existing legislation governing the exchanges and their clearing houses. He stressed that although such requirement was not stated in the Bill, SFC would provide the reasons of refusal to REC with a view to upholding natural justice. He added that there were only two occasions in the last ten years where SFC had not approved amendments of the constitutions, or rules of the exchanges. SALD undertook to re-draft the provision to stipulate the requirement and to make consequential amendments in other existing legislation as appropriate.

Admin 11. On clause 10(5) which provided that FS, on the advice of SFC, would extend the time for SFC to give approval or disapproval for matters stipulated in clause 10(3), the Chairman opined that it would be more reasonable and fair to consult the REC as well before the extension. SALD undertook to review the drafting of the provision to incorporate the Chairman's suggestion.

**II Any other business**

12. Members noted that the next meeting would be held on 8 December 1999, at 8:30 am.

13. There being no other business, the meeting ended at 10:20 am.

Legislative Council Secretariat  
18 September 2000