

立法會
Legislative Council

LC Paper No. CB(1) 2055/99-00
(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 Friday, 7 January 2000, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Ronald ARCULLI, JP (Chairman)
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
- Member absent** : Hon LEE Kai-ming, SBS, JP
- Public officers attending** : Mr Bryan P K CHAN
Principal Assistant Secretary for Financial Services
- Ms Gloria LO
Assistant Secretary for Financial Services
- 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

I Meeting with the Administration

Clause-by-clause examination on the Bill

(LC Paper No. CB(1) 424/99-00(02) -- Marked-up copy of the consequential amendments to the Bill)

Members examined the provisions in Schedule 2 of the Bill which contained the consequential amendments necessitated by the Bill.

Schedule 2 -- section 6

2. Members noted that section 6(a) was to amend the existing section 47 of the Securities and Futures Commission Ordinance (SFCO) (Cap. 24) to provide that the Securities and Futures Commission (SFC) could apply to the Chief Executive in Council to transfer the functions applied by the section to an exchange company or a recognized exchange controller if it was satisfied that the latter party was capable of performing the functions.

3. Mr Gerald GREINER, Senior Director of Market Supervision, SFC explained that the amendment under section 6(a) would not change the original purpose of section 47 of SFCO which aimed at encouraging self-regulation of the stock exchanges. Functions which could be transferred under the section were mainly related to listing matters such as vetting of prospectuses of applicant companies and continuous monitoring of compliance with the listing rules, which had been transferred to SEHK for a long time. SFC assumed a monitoring role over SEHK and was in-charge of policy matters concerning listing. The two parties had established memorandum of understanding regarding the division of functions in this respect. So far, licensing function had not been devolved. Mr GREINER stressed that SFC could resume the delegated functions from SEHK if necessary. Moreover, sections 50 and 51 of

SFCO empowered SFC to issue restriction and suspension notices relating to the operation of SEHK for the protection of the interest of the investing public or public interest.

4. As regards the listing of HKEC or its subsidiary exchanges and clearing houses, Mr GREINER stressed that clauses 13 and 14 of the Bill would provide adequate control over the HKEC group on the matter whenever SFC found that there was a possible conflict of interest.

5. On division of function over listing activities between the regulatory authorities and the exchanges in overseas jurisdictions, Mr David STANNARD, Executive Director, Corporate Finance, SFC advised that the practices varied among different jurisdictions. The Hong Kong system was essentially developed from the UK model under which listing matters were mainly governed by the exchanges. The UK regulatory authority was considering taking up the function from the exchanges. In Australia, a lot of the listing functions were performed by the exchanges. The authority was currently reviewing the system. The system in the USA was different where a lot of the listing activities were governed by statute rather than by non-statutory rules enforced by the exchanges.

Schedule 2 -- section 14

6. The Principal Assistant Secretary for Financial Services explained that the purpose of section 14 was to include HKEC in the category of public body under Schedule 1 of the Prevention of Bribery Ordinance (POBO) (Cap. 201).

7. Mr SIN Chung-kai opined that as HKEC was a public body, the election of directors to HKEC board should be subject to POBO. He urged the Administration to look into the matter.

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Schedule 2 -- section 60

8. Members noted that section 60 was to delete sections 11, 12, 13 and 14 of the Stock Exchanges Unification Ordinance (SEUO) (Cap. 361) relating to membership of SEHK. They noted that before the merger, shareholders of SEHK were members who were allowed to trade on and through the exchange. After the merger, ownership of the exchange and access to its trading facilities would be separated. Existing members of SEHK would be issued with "trading rights". A holder of the trading right could trade on or through SEHK as an "exchange participant" if he possessed the relevant intermediary licence from SFC and fulfilled other requirements imposed by SEHK as specified in the exchange rules. These rules were subject to the approval of SFC. The "fit and proper" criteria imposed by SFC on licensees included requisite knowledge and expertise to ensure that only qualified persons were allowed to conduct securities business.

Schedule 2 -- section 64

9. Members noted that existing section 29 of SEUO required SEHK to maintain adequate and properly equipped premises for the conduct of securities business. Section 64 was to extend such requirement to HKEC.

10. Mr SIN Chung-kai opined that with the advancement in information technology, trading of securities could be conducted in other modes than through a physical market. As such, section 29 of SEUO might be obsolete. Mr GREINER took note of the comment. He advised that the matter would be considered in the context of the composite Securities and Futures Bill.

Schedule 2 -- section 65

11. Members noted that section 65 related to consequential amendments to SEHK rules under section 34 of SEUO. The existing section 34(1)(b) of SEUO required SEHK to ensure compliance of its members with the financial resources rules (FRR). Pursuant to the rationalization of regulation between SFC and the exchanges after the merger, certain provisions in the existing exchanges rules in relation to compliance with the FRR would be enforced by SFC. Members noted that since the exercise for the transfer of the enforcement would not be completed until after the merger, the existing provision relating to the compliance with FRR in SEUO needed to be maintained in the interim. The Administration agreed to move a Committee Stage amendment to preserve the relevant provisions under section 34(1)(b) of SEUO.

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II Any other business

Date of future meetings

12. The Chairman reminded members that the next two meetings of the Bills Committee would be held on 11 and 14 January 2000, both at 8:30 am.

13. Members also agreed to schedule another meeting for 17 January 2000, at 10:45 am.

14. There being no other business, the meeting ended at 10: 30 am.

Legislative Council Secretariat

18 September 2000