

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2057/99-00  
(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, 14 January 2000, 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  
Dr Hon Philip WONG Yu-hong  
Hon Jasper TSANG Yok-sing, JP  
Hon FUNG Chi-kin
- Member absent** : Hon SIN Chung-kai
- 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 examination on the Bill

(LC Papers No. CB(3) 175/99-00 -- The Bill, and CB(1) 424/99-00 -- Marked-up copy of the consequential amendments to the Bill)

#### *Schedule 1*

Members noted that Schedule 1 of the Bill would apply to a person who had contravened a notice issued by the Securities and Futures Commission (SFC) under clauses 3(6), 4(1) or 6(5) requiring him to cease to be a controller or a minority controller of an exchange company or a clearing house.

2. The Administration explained that Schedule 1 was modelled on existing provisions in the Banking Ordinance (Cap. 155) and Insurance Companies Ordinance (Cap. 41). The enforcement authorities of the ordinances advised that they had never exercised the power and therefore had not encountered any practical difficulties in enforcing the provisions.

3. Members noted that section 1 of Schedule 1 empowered SFC to impose restrictions on the shares exceeding the specified limit, such as freezing the shares from sale and suspending the voting rights involved. As shares deposited in the Central Clearing and Settlement System of the Hong Kong Securities Clearing Company (HKSCC) were fungible, members were concerned that there might be practical problems in exercising the restrictions on these shares. The Administration noted the concern and agreed to move a

Committee Stage amendment (CSA) to section 1 requiring a holder of the shares to transfer the shares to a nominee appointed by SFC.

Admin

4. In this connection, members re-iterated their concern about the definitions of "associate", "minority controller", and "indirect controller" in the Bill which might catch those people carrying on normal company activities. The Administration informed members that two new schedules would be added to the Bill to give specifications of persons who would or would not fall into such definitions. Moreover, the Administration would move a CSA to clause 6(1) to clarify that the concept of "minority controller" was only applied in relation to a recognized exchange controller, an exchange company, or a clearing house.

Admin

5. As to the concern about innocent victims who inadvertently held shares over the 5% limit and hence became minority controllers unknowingly, the Administration undertook to move a CSA to clause 6(4) to provide a defence for a person charged with such offence to prove that he did not know that the acts or circumstances by virtue of which he became a minority controller, or increased the interest he had as a minority controller.

Admin

6. On the application to SFC for approval to become a minority controller, some members suggested stipulating in the Bill the factors for consideration in approving such applications and requiring SFC to give reasons for their refusal in order to enhance the transparency of the process. The Administration agreed to move a CSA to clause 6(2) to provide that SFC shall not grant such approval unless it was satisfied that it was appropriate to do so in the interest of the investing public or in public interest, and that SFC had to give reasons for the refusal of application.

Admin

7. The Administration explained that section 2 of Schedule 1 dealt with punishment for attempted evasion of the restrictions imposed under section 1. It noted members' comment that a person who complied with SFC's notice to dispose of the excessive shares should not be taken as contravening section 2(1)(a). The Administration agreed to move a CSA to the section to provide that it would be an offence to dispose of the shares if the person concerned knew that to do so would contravene the restrictions prescribed in section 1.

Admin

8. The Chairman expressed concern that sections 2 (1)(b) and (c) would punish the proxy appointed by the holder of excessive shares to vote on his behalf when the proxy was not aware that the shares were subject to restrictions. In response, the Administration undertook to move a CSA to the section to address the concern.

Admin

9. Members noted that section 3 of Schedule 1 dealt with prohibition on a person acting as an indirect controller of an exchange company or a clearing house. The Administration noted members' suggestion of notifying the company concerned that a person was or might become a prohibited person in

respect of the company and undertook to move a CSA to section 3 requiring SFC to serve on the company a copy of the notice it issued under clause 3(6) or 4(1) of the Bill.

*Schedule 2*

Admin

10. The Assistant Legal Adviser 6 enquired about the appropriateness of section 62 of Schedule 2 (which was to amend section 26 of the Stock Exchanges Unification Ordinance (Cap. 361)) as the purpose would now be served by other provisions in the Bill. The Administration agreed to review the provision therein.

Examination of draft CSA to the Bill

(LC Paper No. CB(1) 784/99-00 -- Draft CSA (seventh draft dated 13 January 2000))

*Clause 2*

11. Members noted that the definitions of "associate" and "indirect controller" in clause 2 would be refined. A new Schedule 1 would be added to the Bill. Part 1 and Part 2 of new Schedule 1 would specify persons who were or were not associates for the purpose of the definition. The Administration was preparing details of Parts 1 and 2 and would provide the draft CSAs for members' consideration at the next meeting. Part 3 of new Schedule 1 would specify those persons who did not fall into the definition of "indirect controller".

Admin

12. In this connection, the Administration advised that the existing Schedules 1 and 2 (consequential amendments necessitated by the Bill) to the Bill would be renumbered as Schedules 2 and 4 respectively. A new Schedule 3 would be added to specify particulars of persons who would not be regarded as minority controllers. Members noted that amendment to Schedules 1, 2 and 3 would be made by the Chief Executive in Council by notice in the Gazette. The Administration would move CSAs to clause 16 to reflect this.

Admin

13. The Administration explained that the definition of "working day" in clause 2 would be deleted to avoid confusion with "trading day". A CSA would also be made to clause 22(3)(e) to substitute "5 working days" with "7 days". The Chairman opined that in order to provide flexibility to HKSCC when necessary, SFC should be given the power to extend the period for submission of documents required under clause 22(3)(e) to beyond 7 days. The Administration agreed to make a CSA to this effect.

**II Any other business**

14. Members were reminded that the next meeting of the Bills Committee would be held on 17 January 2000, at 10:45 am. They also agreed to schedule another meeting for 20 January 2000, at 8:30 am to scrutinize the draft CSA.

15. On the legislative timetable of the Bill, members agreed that subject to Administration's CSAs being accepted, the Bills Committee would submit a report to the House Committee at its meeting on 11 February 2000 recommending the resumption of the Second Reading debate on the Bill on 1 March 2000.

16. There being no other business, the meeting ended at 10:35 am.

Legislative Council Secretariat

18 September 2000