

立法會
Legislative Council

LC Paper No. CB(1) 2058/99-00
(These minutes have been seen
by the Administration and
cleared by the Chairman)

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

**Minutes of meeting
held on Monday, 17 January 2000, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Ronald ARCULLI, JP (Chairman)
Hon NG Leung-sing
Hon CHAN Kam-lam
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon FUNG Chi-kin
- Members absent** : Hon LEE Kai-ming, SBS, JP
Hon SIN Chung-kai
- Public officers attending** : Mr Bryan P K CHAN
Principal 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 : Ms Pauline NG
Assistant Secretary General 1

Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Connie SEZTO
Senior Assistant Secretary (1)1

I Meeting with the Administration

Examination of draft Committee Stage amendments (CSAs) to the Bill
(LC Paper No. CB(1) 818/99-00(01) -- Draft CSA (ninth draft dated 15 January 2000) tabled at the meeting)

The Principal Assistant Secretary for Financial Services (PAS/FS) took members through the draft CSAs proposed by the Administration starting from clause 3.

Clause 8

2. PAS/FS explained that the proposed CSAs to clause 8(3) aimed at clarifying that the exemption from liabilities to be provided to a recognized exchange controller (REC) or any person acting on its behalf in discharging the public duty referred to in clause 8(1) would also cover the board of directors of the REC and its committees. He informed members that consequential amendments would be made to section 27A of the Stock Exchanges Unification Ordinance (SEUO) (Cap. 361) to provide the same exemption to the board of directors of the Stock Exchange of Hong Kong (SEHK) and its committees. As to the Hong Kong Futures Exchange (HKFE), Mr Gerald GREINER, Senior Director of Supervision of Markets, Securities and Futures Commission (SFC) said that there was no equivalent provision in the Commodities Trading Ordinance (CTO) (Cap. 250) imposing public duty on HKFE. Hence no consequential amendment similar to SEUO would be necessary for CTO. PAS/FS advised that there would be proposals under the composite Securities and Futures Bill to enhance regulation of the two exchanges and their associated clearing houses. The issue of liability of directors would be addressed in that context.

Admin 3. The Chairman opined that it would be more desirable to address the issue in the Bill. He suggested amending clause 8(3) to extend the scope of exemption to cover the boards of directors and committees of the REC, its exchange companies and clearing houses. The Administration undertook to consider the Chairman's suggestion.

Admin 4. The Assistant Legal Adviser 6 (ALA6) re-iterated his concern that as, under relevant existing legislation, some of the subsidiaries of the Hong Kong Exchanges and Clearing Limited (HKEC) had similar public duty as stipulated under clause 8(1), there might be difference of opinion in the discharge of the respective statutory duties by HKEC and its subsidiaries. The Administration said that should there be such differences, the decision of HKEC would override that of its subsidiaries. Nonetheless, the Administration agreed to redraft the provision to remove such conflict where possible.

Admin 5. The Chairman pointed out that the use of the word "duty" in clause 8(2) was not appropriate. He suggested replacing it by "obligation". The Administration undertook to make the necessary amendment.

Clause 22

6. Members noted that clause 22(3)(d) required HKEC to provide guarantee for the Hong Kong Securities Clearing Company Limited (HKSCC). ALA6 pointed out that the scope of the guarantee as provided under clause 22 (3)(d)(i) was wider than that provided in the Memorandum of Association of HKEC. He opined that the drafting of the two provisions should be consistent.

7. In response, PAS/FS said that the purpose of clause 22 (3)(d)(i) was to ensure that, upon the merger, HKEC would provide the same level of guarantee to HKSCC which it currently enjoyed. There would be no objection to HKEC providing a larger amount of guarantee to HKSCC.

New Schedule 1

8. Members noted that Part 1 and Part 2 of new Schedule 1 would give specifications of persons or classes of persons who were or were not associates while Part 3 would specify persons who were not indirect controllers. Mr GREINER said that Part 1 would be empty for the time being. Part 2 would include a clearing house or its nominee, the chairman of a general meeting of a REC entitled to exercise voting rights in the company due to his appointment as the proxy, and persons who had appointed the chairman of the general meeting of a REC as a proxy. As regards Part 3, Mr GREINER said that although the intention was to exclude fund managers, custodians, nominee companies, and those carrying on activities from the definition of minority controllers, no broad exemption would be granted to these persons as SFC considered it more appropriate to deal with their applications on a case-by-case

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basis subject to suitable conditions attached to such exemption. The Chairman remarked that it would allay the concern of these professionals over the exemption provisions if the Administration could clarify its intention upon the resumption of the Second Reading debate of the Bill. The remark was noted by the Administration.

9. The Chairman also expressed reservation on the drafting of Part 3 of new Schedule 1. The Administration said that the provision was modelled on similar provisions in the Banking Ordinance (Cap. 155) and Insurance Companies Ordinance (Cap. 41).

New Schedule 4

10. Members noted that the original Schedule 2 of the Bill which contained the consequential amendments would be re-numbered as Schedule 4.

11. On section 65 of the new Schedule 4 which was to amend section 34 of SEUO relating to the power of SEHK to make Listing Rules, the Chairman opined that in order to deal with possible conflict of interest, SFC should be vested with power to make rules for the listing of HKEC and its subsidiaries and to monitor its activities after listing. Moreover, for the sake of clarity, such rule-making power of SFC should be provided in clause 13 of the Bill which dealt with the listing of a REC.

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12. The Bills Committee noted the explanation of the Administration that SEHK would continue making and administering the Listing Rules after the merger. Should there be conflicts of interest which would arise when HKEC or its subsidiaries sought to be listed on the stock exchange, the new section 34(2B) of SEUO would provide SFC with reserved power to make rules addressing the conflicts. SFC envisaged that there would be dialogue between SFC and HKEC to resolve any possible conflict of interest. Where necessary, SFC would request SEHK to make appropriate changes to its rules. In the event that SEHK refused to make any changes, SFC would have power under the new section 34(2B) to repeal or to amend the rules. The Administration confirmed that there would only be one set of Listing Rules for the compliance of the market. The Administration undertook to refine the intention of the new section.

II Any other business

Legislative timetable of the Bill

13. PAS(FS) said that in order to allow ample time for HKEC and its subsidiary exchanges and clearing houses to complete all the necessary procedural steps for the implementation of the merger, the Administration intended to advance the resumption of the Second Reading debate on the Bill from 1 March 2000 as originally proposed to 23 February 2000. Members

noted that the Bills Committee would submit its report to the House Committee at the latter's meeting on 11 February 2000.

Date of the next meeting

14. Members were reminded that the next meeting would be held on 20 January 2000, at 8:30 am to continue with examination of the draft CSA.

15. The meeting ended at 12:40 pm.

Legislative Council Secretariat

18 September 2000