

立法會
Legislative Council

LC Paper No. CB(1) 2053/99-00
(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, 17 December 1999, at 10:45 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 Jasper TSANG Yok-sing, JP
Hon FUNG Chi-kin
- Members absent** : Hon CHAN Kam-lam
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
- 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 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

Clause 17

Members noted that the Hong Kong Exchanges and Clearing Limited (HKEC) was a commercial entity and was, therefore, bound by the Companies Ordinance (CO) (Cap. 32). Clause 17 clarified that the provisions of CO shall apply to HKEC to the extent that they were not inconsistent with the Bill. The Senior Assistant Law Draftsman (SALD) explained that by providing clause 17 in the Bill, it would be unnecessary for the Administration to run through the entire CO to check its consistency with the Bill. He also advised that there were provisions similar to clause 17 in the existing Commodities Trading Ordinance (Cap. 250) and Stock Exchange Unification Ordinance (SEUO) (Cap. 361).

2. Members noted that the Memorandum of Association (MOA) of HKEC laid down the rules for the operation of the company. Clause 10(1) provided that no amendment to the rules of a recognized exchange controller (REC) shall have effect unless approved by the Securities and Futures Commission (SFC). As such, SFC would have the power to approve MOA of HKEC. Mr Gerald GREINER, Senior Director of Market Supervision, SFC said that the essential provisions of MOA of HKEC would closely replicate those of the Bill. SFC would ensure that provisions of the two documents were consistent. If there were conflicts between them, the Bill would prevail.

Clause 20

3. Members noted that MOA of HKEC stipulated that the board of directors of HKEC (HKEC board) shall comprise 15 members including eight appointed by the Financial Secretary (FS), six elected by shareholders, and the Chief Executive Officer as the ex-officio member. They noted that Clause 20 provided the legal basis for FS to appoint members to the board.

4. The Administration had provided a summary table on the composition of the boards of major overseas exchanges for members' reference (LC Paper No. CB(1) 646/99-00(01)). Members noted that among the exchanges listed in the table, the Amsterdam Exchanges, OM Group (Stockholm) and Australian Stock Exchange had been demutualized and become public listed companies. The rest were either in such process or had drawn up plans to follow suit.

5. On the composition of the boards of the exchanges, members noted that the boards usually comprised representatives from the government, securities industry, banks, business sector, professionals and the community, etc. Mr GREINER undertook to provide members with more information on the methods for appointing directors to the boards and their operation as far as possible.

SFC

6. Members re-iterated their concern over the strong government influence on HKEC board. They were of the view that when compared to the existing arrangement where the Government only nominated independent members of the public and the industry for appointment as board members by the councils of the exchanges, the proposed composition of HKEC board would provide the Government with excessive control over the company and might adversely affect its commercial viability in the long run. There was also concern that the chairman, who was supposed to be elected among the directors of HKEC board, was indeed chosen by the Government as his appointment would have to be subject to the approval of the Chief Executive, who also had the power to remove the chairman from office.

7. In response, the Principal Assistant Secretary for Financial Services (PAS/FS) stressed that the Administration had no intention to control HKEC. It was of the view that the proposed structure of HKEC board was appropriate to ensure that the company could be run properly in pursuit of both its public functions and commercial objectives and could strike a right balance where there were conflicts between them. With the diversification of the shareholding of HKEC over time, the Administration envisaged that the representation of the shareholders' interest on the board would increase. He informed members that the Administration would review the composition of HKEC board in 2003. Taking into account the actual commercial and operational needs of HKEC at the time and the pace of diversification of

shareholding in HKEC, the structure of HKEC board would be subject to change.

8. As regards the suggestion that FS should make nominations for appointment by the shareholders instead of making appointments to the board, PAS/FS said that it would be more appropriate to adopt the current proposed appointment mechanism as it was more simple and straightforward.

9. On the composition of the eight board members appointed by FS, some members were of the view that it would be advisable to spell out in the Bill the professions or constituencies of these members and, the number or quota for respective professions or constituencies so as to ensure a balanced representation of public interests in the board.

10. PAS/FS said that under clause 20(1)(a), FS had to satisfy that it would be in the interest of the investing public or in public interest when appointing the eight directors to HKEC board. He assured members that FS would appoint directors from among, inter alia, market professionals and respectable members of the community.

11. On clause 20(1)(b), the Chairman pointed out that apart from removal from office by FS revoking the appointment, the appointed directors should be removed from office under certain circumstances, such as personal bankruptcy or commitment of offences. PAS/FS explained that the purpose of clause 20(1)(b) was to prevent an appointed director from being removed from office by the board. He agreed to re-consider the provision to incorporate the Chairman's suggestion.

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12. Clause 20(2) provided that the directors appointed by FS would have the same rights, privileges, obligations and liabilities under other laws as those directors elected by shareholders. Some members however expressed concern about the possible conflict between the appointed directors and the elected directors as the formers had to represent public interest while the later would have to be responsible to shareholders of the company. Members were also concerned that HKEC board would be divided by having two categories of directors. PAS/FS explained that clause 8(1) imposed public duty on a REC to ensure an orderly and fair market, to manage associated risks prudently, and to comply with statutory requirements of other laws. The HKEC board representing the company collectively should comply with clause 8(1). There would be no difference between the directors appointed by FS and shareholder directors in fulfilling the duty under clause 8(1). He further explained that clause 8(3) provided immunity against liabilities for a REC or any person acting on its behalf, including its directors, in respect of anything done in good faith in the performance of the public duty referred to in clause 8(1).

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13. The Chairman opined that it was unclear that "any person" referred to in clause 8(3) would include directors of HKEC board. SALD responded that clause 8(3) was modeled on an existing provision in SEUO. He agreed to consider improving the drafting of clause 8(3) to clarify this.

Clause 21

14. Members noted that the Administration would move a Committee Stage amendment (CSA) to delete clause 21. This clause was no longer necessary as the exemption for the Stock Exchange of Hong Kong (SEHK) and Hong Kong Futures Exchange (HKFE) to become a REC in relation to the SEHK Options Clearing House Limited and HKFE Clearing Corporation Limited could be granted by FS under clause 7 of the Bill.

Clause 22

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15. Members noted that clause 22 stipulated the procedures for the conversion of the Hong Kong Securities Clearing Company Limited (HKSCC) from a company limited by guarantee to a company limited by shares. They noted that clauses 22(1) and (2), which provided for the conversion through amendments to HKSCC's constitution and for SFC to approve such amendments, would take effect before the rest of the Bill to enable the conversion to take place prior to the coming into effect of the merger. The two provisions would commence on the same date the Bill was gazetted after enactment. SALD said that a CSA would be moved in clause 1(2) to clarify this. PAS/FS added that the Administration would submit an information paper explaining the commencement dates of the Bill for members' reference.

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16. The Assistant Legal Adviser 6 (ALA6) expressed concern about the wide scope of clause 22(3)(b), which provided that HKSCC shall issue its shares to HKEC and any nominee of HKEC, and clause 22 (3)(d), which stipulated that HKEC shall undertake to contribute to the assets of HKSCC as an guarantee for HKSCC unconditionally in a form as approved by SFC. In response, Mr David STANNARD, Executive Director of Corporate Finance, SFC said that the purpose of the provisions was to ensure that HKEC would provide HKSCC with the same level of guarantee after the conversion as provided by the existing guarantor banks. He stressed that SFC would ensure that the provisions of the new guarantee would replicate those of the existing one as far as possible. The Chairman opined that the drafting of clause 22(3)(d) should be improved to clarify the intention. The Administration took note of the Chairman's suggestion.

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17. On clause 22(3)(e), ALA6 observed that the requirement for HKSCC to file copies of the resolution and the constitution to the Registrar of Companies was different from that stipulated under CO. The Administration undertook to make amendments in this respect. As regards clause 22(3)(f), ALA6 also queried whether the Registrar would have the authority under CO to issue a certificate to HKSCC stating that the company was a company by shares after the conversion. SALD explained that the provisions of the Bill would override those of CO as provided under clause 17. As regards the enquiry about the format of the certificate referred to in clause 22(3)(f), SALD said that the Registrar was empowered under the existing CO to decide on the format of certificates for companies.

II Any other business

18. Members noted that the next meeting of the Bills Committee had been scheduled for 6 January 2000 from 2:30 pm to 6:30 pm to meet deputations.

19. There being no other business, the meeting ended at 12:45 pm.

Legislative Council Secretariat
18 September 2000