

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2059/99-00  
(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 Thursday, 20 January 2000, at 10:45 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  
Hon Jasper TSANG Yok-sing, JP
- Members absent** : Hon LEE Kai-ming, SBS, JP  
Dr Hon Philip WONG Yu-hong  
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

Action

- 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**

Examination of draft Committee Stage Amendments (CSAs) to the Bill  
(LC Paper No. CB(1) 864/99-00(01) -- Draft CSAs (eleventh draft dated 19 January 2000 tabled at the meeting)

The Principal Assistant Secretary for Financial Services (PAS/FS) briefed members on the eleventh draft of CSAs on the Bill to be proposed by the Administration.

*Clause 6*

2. PAS/FS advised that two new subsections (2A) and (2B) would be added in clause 6 to provide that the Securities and Futures Commission (SFC) shall not grant approval for a person to become a minority controller of a recognized exchange controller (REC), its exchanges or clearing houses unless SFC was satisfied that it was in the interest of the investing public or in the public interest to do so. SFC also had to give reasons on the refusal of application.

3. Mr SIN Chung-kai suggested stipulating in clause 6 factors for consideration in approving an application to become a minority controller in order to enhance the transparency of the process. In response, Mr Gerald GREINER, Senior Director of Supervision of Markets, SFC said that under normal circumstances, the reasons for granting statutory approval for an

Action

application by SFC would not be disclosed to the applicant. Mr David STANNARD, Executive Director, Corporate Finance, SFC added that the provision of reasons for the refusal of application was to facilitate appeal or judicial review by applicants. PAS/FS stressed that every application would be considered on its own merits and the Administration believed that SFC would exercise its power fairly and consistently. Moreover, there would be sufficient safeguards to check SFC's power.

*Clause 8*

4. PAS/FS said that clause 8(3) would be amended to extend the exemption from liabilities of the REC in respect of its performance of the public duty referred to in clause 8(1) to cover the boards of directors and committees of the REC, its exchange companies and clearing houses.

5. On the new section 8(4), the Administration explained that the obligation under clause 8(1) would cease to apply to the subsidiaries of Hong Kong Exchanges and Clearing Company Limited (HKEC) if there were conflicts in the discharge of statutory duty by HKEC and its subsidiaries. The Chairman and Assistant Legal Adviser 6 however expressed reservation over the drafting of new section 8(4). They opined that it was necessary to provide in the Bill that the public duty of the subsidiaries of HKEC was deemed discharged if they had carried out the directives given by the REC so that the subsidiaries would not be able to go against the decision of HKEC in the event of their disagreement with the HKEC's view of discharging the relevant public duty.

6. In response, the Administration said that there were sufficient safeguards under existing legislation for parent companies to supervise the work of and to ensure control over their subsidiaries. The Administration was of the view that HKEC could resolve conflicts with its subsidiaries through the normal corporate group operation. The present drafting of the new section 8(4) to relieve the subsidiaries from their obligation under clause 8(1) would be sufficient to resolve any conflicts arisen in respect of the discharge of their statutory duties.

*Clause 9*

7. PAS/FS said that clause 9(4) would be amended to provide that at least one of the two members of the Risk Management Committee (RMC) to be appointed by the board of directors of the REC shall be a board director elected by the shareholders. On the other hand, in view of members' concern over the stringent requirement of the majority of the total membership of a REC board for overruling a decision of the RMC, clause 9(5) would be deleted.

Action

Admin 8. The Chairman suggested refining clause 9(1) to clarify the duty of RMC which was to formulate risk management policies and to submit them for consideration of the REC board. The Administration undertook to make appropriate CSAs to this effect.

*Clause 20*

Admin 9. PAS/FS advised that CSAs would be made to clause 20(2) to provide that the number of directors of the HKEC board appointed by the Financial Secretary (FS) would not exceed that elected by shareholders starting from the second board of HKEC in 2003. The Administration noted the Chairman's suggestion to refine the drafting of the provision to convey the intention.

Admin 10. On the new clause 20(4), the Chairman re-iterated his suggestion made in a previous meeting of amending the provision to provide that a director appointed by FS who had committed an offence for disqualification under the law could be removed from the office without the need for FS revoking the appointment. The Administration undertook to consider members' suggestion.

*New Schedule 4 (consequential amendments to the Bill)*

11. On section 62 of new Schedule 4, members noted that after reviewing the provision, the Administration had decided to make a CSA to repeal section 26 of the Stock Exchanges Unification Ordinance (SEUO) (Cap. 361).

12. As regards the proposed new section 63A, members noted that it was a CSA to repeal section 27A of SEUO which was about the public duty of an exchange company to ensure a fair market and the exemption from liabilities provided to its directors. The section would no longer be necessary as the provision would be incorporated in clause 8 of the Bill.

13. On sections 82 and 85, the amendments were mainly to replace "membership" by "exchange participation/membership". Members noted the Administration's explanation that although the term "participation" was not found in standard English, SFC and the Stock Exchange of Hong Kong did not envisage any problem in using the term.

14. The Bills Committee completed examination on the proposed CSAs to be moved by the Administration. The Administration undertook to circulate the finalized CSAs for members' comments as soon as possible. It was also agreed that ALA6 would follow up with the Law Draftsman on the Chinese version of the finalized CSAs.

Action

**II Any other business**

15. Members agreed that the Bills Committee would submit its report to the House Committee on 11 February 2000. The Chairman would make a verbal report to the House Committee at its coming meeting on 21 January 2000.

16. The meeting ended at 12:30 pm.

Legislative Council Secretariat

18 September 2000