

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2048/99-00  
(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, 29 November 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 SIN Chung-kai  
Dr Hon Philip WONG Yu-hong  
Hon FUNG Chi-kin
- Members absent** : Hon CHAN Kam-lam  
Hon Jasper TSANG Yok-sing, JP
- 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**  
(LC Paper Nos. CB(1)453/99-00(01) and 424/99-00(03))

Composition and functions of the Board of the Hong Kong Exchanges and Clearing Limited

Members noted that the Administration had tabled a paper regarding the composition of the boards of other major exchanges in the world.

2. The Principal Assistant Secretary for Financial Services (PAS/FS) briefed members on the content of the paper. He pointed out that except the Deutsche B rse, the boards of directors of the other major exchanges in general composed of representatives from the securities industry and other relevant sectors and professions, and in some cases, government/public interest representatives. The Board of the Hong Kong Exchanges and Clearing Limited (HKEC) was proposed to comprise up to 15 members, including eight directors to be appointed by the Financial Secretary (FS) to represent public and market interests, a maximum of six directors to be elected by shareholders of HKEC, and the Chief Executive Officer (CEO) who would be a director ex-officio.

3. Mr SIN Chung-kai pointed out that the ratio of the Government appointees in the Board of HKEC would be the highest among the major exchanges in the world. As HKEC would be a profit-driven commercial entity, he asked whether the ratio of appointed directors should be lowered in pursuit of its commercial interest.

4. PAS/FS explained that HKEC had to perform both commercial and public functions. The Administration had to ensure that these functions would be carried out properly. The appointment of directors by FS was necessary so that public and market interests could be adequately represented in the decision making body of HKEC. The Administration agreed that with the diversification of shareholding of HKEC over time, it would be appropriate to increase the representation of shareholder interests on the Board. However, it would still be necessary to maintain a reasonable representation of public and market interests by way of appointing directors to HKEC Board. The composition of the Board would be reviewed around 2002/2003.

5. Dr Philip WONG Yu-hong expressed concern on whether the Legislative Council (LegCo) Member returned by the financial services functional constituency would be appointed as an ex-officio director of the Board.

6. PAS/FS replied that in exercising the power to appoint directors to the Board, FS would be mindful of the need to maintain a balanced representation of the public interest and the interest of the investing public on the Board. Therefore, the directors to be appointed would include market professionals and members of the community, such as LegCo Members, who could represent the public interest. To allow flexibility for FS in exercising his appointment power, the Administration had no intention to set out rigidly the criteria for appointment of directors.

7. On representation of shareholders' interests, Mr FUNG Chi-kin opined that the Administration should not be over worried about the abuse of power by directors, and that a substantial representation of exchange participants was essential to the effective functioning of the Board of HKEC. He expressed concern that there might not be half of the directors elected from exchange participants even on the second Board of HKEC in 2003. He was also concerned about whether FS appointed directors would have sufficient time to perform effectively the functions of a director of HKEC.

8. In response, PAS/FS re-iterated that it was important for HKEC to have an appropriate corporate governance structure whereby the Government could appoint directors to the Board to ensure that it would be run properly in pursuit of both of its public and commercial objectives and be able to strike a right balance where conflict of interests arose. Market participants and professionals could provide input to HKEC by their participation in its committees and consultative panels on specific areas and market segments. The Administration trusted that by accepting the appointment, the appointed directors would try their very best to fulfill their obligations.

9. Mr FUNG Chi-kin enquired further on the nomination of candidates for election by shareholders. PAS/FS replied that the Preparatory Board of

HKEC would act as the nominating committee responsible for returning no less than nine candidates for election by shareholders of HKEC as directors of its Inaugural Board. A maximum of six directors would be elected by shareholders. For the second Board and thereafter, both the incumbent directors and shareholders of HKEC could nominate candidates for election by shareholders as directors. He added that the appointment of directors of HKEC would be clearly set out in its Memorandum and Articles of Association.

#### Establishment and functions of the Risk Management Committee

10. PAS/FS advised that in order to ensure that HKEC would perform the risk management function in a prudent manner and to prevent any compromise of such function by profit-related considerations, a Risk Management Committee (RMC) would be established to deal with matters relating to the risk management of HKEC and its subsidiary exchanges and clearing houses. Under the proposal, the decision of RMC would prevail unless overruled by a two-third majority of the Board. Members expressed reservations over the proposed power of RMC. The Administration noted members' concerns.

#### Business scope of HKEC

11. Responding to the Chairman's concern over the "unrestricted" business scope of HKEC, PAS/FS explained that the Government had no intention to limit the business scope of HKEC as long as the commercial and public objectives of HKEC were achieved and properly balanced.

#### Regulatory framework for Hong Kong Exchanges and Clearing Limited

12. The Chairman asked whether there would be significant changes between the regulatory framework for the present exchanges and clearing houses and that for HKEC after the merger. PAS/FS replied that the regulatory framework for HKEC would be built on the basis of the current regulatory regime of the exchanges and clearing houses as provided for by the various securities-related ordinances. The Senior Director of Supervision of Markets, Securities and Futures Commission (SDSM/SFC) supplemented that a number of specific measures and regulations would be adopted to address issues that arose primarily from the merger reform.

13. Dr Philip WONG Yu-hong expressed concern over the competitiveness and efficiency of HKEC in response to challenges arising from technological advances, globalisation of the international financial markets and the needs of the increasingly sophisticated investors both locally and overseas. He considered that directors of HKEC should possess knowledge of international financial markets.

14. PAS/FS responded that the challenges inherent in the creation of HKEC called for strong leaders. As such, both the posts of CEO and the Chief Operating Officer of HKEC were internationally advertised in the hope to recruit the best available candidates who possessed the necessary international exposure and working experience in meeting the challenges facing HKEC. He added that with the establishment of an independent RMC, HKEC would be able to perform the risk management function in a prudent manner and to prevent any compromise of such function by profit-related considerations. In addition, SFC would continue to maintain its regulatory role over the operation of HKEC to ensure fair and orderly market activities. PAS/FS further informed members that a Cross-market Surveillance Committee had been set up to review periodically the operation of the securities and futures markets. The work of the committee was proved to be very promising. All in all, the Administration's stance was not to impose stricter control over HKEC, but rather to increase its transparency and accountability.

SFC 15. Dr Philip WONG Yu-hong expressed his concern over the control and regulatory framework for international market players. SDSM/SFC replied that SFC shared the concern of Dr WONG. To tackle the problem, SFC had signed memorandum of understanding (MOU) with different jurisdictions to enhance cooperation and exchange of cross market information. The Chairman requested and SDSM/SFC agreed that SFC should supply a full list of MOU that it had entered into with overseas regulators.

#### Amendment of fees and charges

16. As to members' concern over SFC's power to approve adjustments of fees and charges by HKEC, PAS/FS said that at the moment, fees and charges imposed by the exchanges were set out in their respective rules. The making of or amendments to these rules required the approval of SFC. Such practice would continue after the merger. He added that in view of HKEC's monopolistic status, the control on fees and charges was necessary to prevent possible abuse by HKEC. PAS/FS stressed that the Administration was very much concerned about the level of transaction cost which might affect the competitiveness of Hong Kong as a global financial centre.

17. On the Chairman's enquiry about the types of charges and fees to be imposed by the exchanges, PAS/FS responded that these included, inter alia, listing fees, trader admission fees, annual/monthly trading fees, transaction fees, clearing fees and charges for trade data and other market information. They were very much the same as those in overseas exchanges.

18. On the competitiveness of HKEC, Mr FUNG Chi-kin asked whether the Government would impose ceilings on the fees and charges in order to maintain the competitiveness of HKEC in the international market. PAS/FS replied that as a commercial service provider, HKEC was entitled to charge for

its services at a profit and there should not be any ceiling imposed by the Government or SFC. However, it was the Administration's concern that HKEC would not abuse its monopoly status by charging unreasonable and excessive fees, thereby reducing Hong Kong's competitiveness in the world. He stressed that it was the intention of the Government to provide the necessary flexibility and incentives for HKEC to pursue its commercial interest. SDSM/SFC supplemented that there was no standard practice on the control of fees and charges adopted by other major exchanges. He was of the view that the competition between overseas exchanges and HKEC on the level of fees and charges would not be too keen.

### Shareholding limit

Admin 19. Members noted that any person who, either alone or with any associates, was entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of HKEC or its holding company would be a minority controller. In response to members' concern on such shareholding limit, PAS/FS explained that the shareholding limit of 5% was to prevent the control of HKEC by any individual parties or parties acting in concert. SFC could waive the limit in consultation with FS when it considered that an exemption would be in the interest of the public and the market. The Chairman however raised the question whether the exercise of a member's voting rights by proxy would fall within the definition of "minority controller". The Administration undertook to address members' concern at a future meeting.

### Composition of the Financial services functional constituency

20. Mr FUNG Chi-kin expressed serious concern over the eligibility of 21 non-trading active members of the Stock Exchange of Hong Kong for registration as electors of financial services functional constituency (FSFC). In response, PAS/FS said that the eligibility of these members to become electors of FSFC would depend essentially on whether they would continue to be registered by SFC as dealers and whether they would be accepted as exchange participants by HKEC.

### Public Consultation

21. Mr SIN Chung-kai asked whether there had been adequate public consultation on the Bill. He expressed concern on whether there was sufficient communication between the Administration and existing market operators on the merger proposal and whether they had been well informed of the details of the Bill. The Chairman also asked whether the Administration had invited any relevant parties/organizations to make submissions on the Bill.

22. PAS/FS informed members that since the announcement of the market structure reform by FS in March 1999, the merger proposal had been the focus of discussion in the local financial market and the brokerage industry. The proposal had been set out in extensive detail in the two papers published by the Administration in March and July respectively. There had also been continuous dialogue with the industry in the various fora including the Co-ordinating Committee on Market Structure Reform chaired by the Secretary for Financial Services. Moreover, the LegCo Financial Affairs Panel had also been briefed twice on the progress of the merger as well as the scope of the Bill in June and October 1999 respectively. Therefore, it was the Administration's view that no further public consultation on the reform was necessary.

23. After deliberations, members decided that the Committee should invite public views on the Bill and meet deputations. The Administration was requested to provide a proposed list of organizations for consideration for consultation.

*(Post-meeting note: The proposed list of bodies for consultation was tabled by the Administration at the meeting held on 30 November 1999 for members' reference.)*

24. Dr Philip WONG Yu-hong made a general comment that when conducting consultation exercise, the Administration should highlight all important areas to facilitate feedback from organizations. Otherwise, views collected would not be comprehensive.

## **II Any other business**

25. Members agreed that the clause-by-clause examination of the Bill should be commenced in the coming meeting on 30 November 1999, at 8:30 am.

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