

立法會
Legislative Council

LC Paper No. CB(1)1453/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/03

Bills Committee on Clearing and Settlement Systems Bill

**Minutes of the first meeting held on
Thursday, 18 March 2004, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Dr Hon David LI Kwok-po, GBS, JP
Hon NG Leung-sing, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS, JP
- Members absent** : Hon Bernard CHAN, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
- Public officers attending** : Mr James LAU, JP
Executive Director
(Monetary Management and Infrastructure Department)
Hong Kong Monetary Authority
- Mr Esmond LEE
Head (Market Systems Development Division)
Monetary Management and Infrastructure Department
Hong Kong Monetary Authority
- Mr Edmond LAU
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Mr Clement CHAN
Assistant Secretary for Financial Services and the Treasury
(Financial Services)

Mr Jonothan ABBOTT
Senior Assistant Law Draftsman
Department of Justice

Ms Lonnie NG
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Salumi CHAN
Chief Council Secretary (1)5

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Rosalind MA
Senior Council Secretary (1)8

Action

I. Election of Chairman

Mr SIN Chung-kai was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper No. CB(3)206/03-04

— The Bill

Ref: B9/32C

— The Legislative Council Brief on
“Clearing and Settlement
Systems Bill” issued by the
Financial Services and the
Treasury Bureau

LC Paper No. LS 21/03-04

— The Legal Service Division
Report

- LC Paper No. CB(1)1284/03-04(01) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1284/03-04(02) — Powerpoint presentation material provided by the Administration
- LC Paper No. CB(1)1284/03-04(03) — Paper provided by the Administration on “Summary of comments received and the Administration’s response”
- LC Paper No. CB(1)1284/03-04(04) — Paper provided by the Administration on “Proposed discussion schedule”
- LC Paper No. CB(1)1284/03-04(05) — “Proposed meeting schedule from March to June 2004” prepared by the Legislative Council Secretariat)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

3. At the request of the Bills Committee, the Administration agreed to take the following actions -

- (a) To provide a paper summarizing the relevant parties’ views it received before and after gazettal of the Bill and its responses, including the views on Part 5 of the Bill on “Offences”.
- (b) To address members’ concern about the possible role conflicts of the Hong Kong Monetary Authority (HKMA) as both the regulator and operator of clearing and settlement systems, the Administration was requested to provide information on the following items:
 - (i) The proposed arrangements for Chinese walls to be put in place for the clear division of the oversight and system operation duties undertaken by HKMA officers;
 - (ii) The checks and balances on HKMA’s functions and powers under the Bill to monitor compliance of system operators, including itself, with the requirements under the Bill;
 - (iii) Whether HKMA, the operator of the Central Moneymarkets Unit

and the Hong Kong Dollar Clearing House Automated Transfer System, would be subject to the same sanctions as other system operators if it failed to comply with the requirements under the Bill;

- (iv) Whether and how fairness and impartiality could be maintained in HKMA's oversight of the Hong Kong Interbank Clearing Limited (HKICL), given that HKMA maintained a 50% shareholding in HKICL; and
 - (v) In connection with items (iii) and (iv) above, to provide information on overseas practices to illustrate whether it was an international practice for a clearing and settlement system regulator to be one of the system operators and/or shareholder of a clearing company, and whether the regulator concerned would be subject to the same sanctions as other system operators if it failed to comply with the relevant requirements.
- (c) To avoid regulatory overlap between HKMA and the Securities and Futures Commission, the Administration was invited to set out the relevant arrangements in the form of a Memorandum of Understanding.

(Post-meeting note: The information provided by the Administration on paragraph 3(a) was circulated to members vide LC Paper No. CB(1)1376/03-04(01) on 24 March 2004. The Administration's response to paragraph 3(b) and (c) was circulated to members vide LC Paper No. CB(1)1376/03-04(02) on 25 March 2004.)

Consultation with relevant organizations

4. The Bills Committee noted that the Administration had consulted the relevant organizations in the preparation of the Bill and received four written submissions after the Bill was gazetted on 28 November 2003. As agreed by the Bills Committee, the following organizations would be invited to give views on the Bill and/or meet with the Bills Committee at its meeting to be held on Thursday, 15 April 2004 at 2:30 pm:

- (a) Organizations which had been consulted by the Administration;
- (b) Organizations which had submitted views to the Administration; and
- (c) The Bank of China (Hong Kong) Limited.

5. As agreed by the Bills Committee, the Clerk would issue a circular to invite members to propose other relevant organizations, if any, for invitation of submissions on the Bill.

(Post-meeting note: On paragraph 4 above, invitation letters were issued to the

15 organizations concerned on 19 March 2004. On paragraph 5 above, a circular (LC Paper No. CB(1)1330/03-04) was issued to members on 19 March 2004.)

Discussion schedule

6. The Bills Committee noted the proposed discussion schedule prepared by the Administration (LC Paper No. CB(1)1284/03-04(04)). Members accepted the Administration's proposal that meetings be convened on a weekly basis to facilitate the completion of the scrutiny of the Bill within the current legislative session.

Meeting schedule

7. The Bills Committee noted the proposed meeting schedule from March to June 2004 prepared by the Legislative Council Secretariat (LC Paper No. CB(1)1284/03-04(05)). Members agreed that the tenth meeting of the Bills Committee be held on Monday, 31 May 2004 at 10:45 am, instead of on 28 May 2004 as originally proposed. The Bills Committee endorsed the meeting schedule as amended.

(Post-meeting note: The meeting schedule from March to June 2004 was issued to members vide LC Paper No. CB(1)1325/03-04 on 19 March 2004. As directed by the Chairman, the third meeting originally scheduled for 15 April 2004 was subsequently cancelled. A revised meeting schedule for April to June 2004 was issued to members vide LC Paper No. CB(1)1445/03-04 on 2 April 2004.)

8. The Chairman advised that the next meeting would be held on Friday, 26 March 2004 at 10:45 am.

III. Any other business

9. There being no other business, the meeting ended at 9:45 am.

Council Business Division 1
Legislative Council Secretariat
2 April 2004

Appendix

**Proceedings of the first meeting of the
Bills Committee on Clearing and Settlement Systems Bill
on Thursday, 18 March 2004, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000040	Dr David LI	Election of Chairman	
000041-000146	Chairman	Welcoming and introductory remarks	
000147-001820	Administration	Briefing on the proposals under the Bill with the aid of powerpoint presentation	
001821-002407	Chairman Mr NG Leung-sing Administration	Oversight role of the Hong Kong Monetary Authority (HKMA) and measures to be taken to ensure that operators of designated systems would comply with the requirement of ensuring safety and efficiency of the systems	
002408-003250	Mr Henry WU Administration	(a) Whether the Bill would provide HKMA with additional powers in the oversight of clearing and settlement systems (CSSs) (b) Threshold for HKMA to suspend or revoke the certificate of finality (c) Relevant parties' views received by the Administration before and after gazettal of the Bill	Administration to provide the required information under paragraph 3(a) of

Time marker	Speaker	Subject(s)	Action Required
		<p>and the Administration's responses</p> <p>(d) Flexibility of the provisions of the Bill to cater for the addition of new CSSs for different currencies in future</p>	<p>the minutes</p>
<p>003251-003915</p>	<p>Mr Henry WU Administration</p>	<p>(a) Whether the offence provisions under the Bill were consistent with those under the Banking Ordinance (Cap. 155) and the relevant legislation in other jurisdictions; the views of system operators on the offence provisions</p> <p>(b) Implications of the Bill on HKMA's manpower requirement and licence fees for banks</p> <p>(c) Mechanism for HKMA to designate a CSS as a "designated system" to be subject to HKMA's oversight</p> <p>(d) Measures to avoid regulatory overlap between HKMA and the Securities and Futures Commission</p>	<p>Administration to take follow up actions under paragraph 3(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
003916-004921	Mr Abraham SHEK Administration Chairman	<p>(a) Possible role conflicts of HKMA as both the regulator and operator of CSSs and overseas practices in this respect (Appendix II of LC Paper No. CB(1)1284/03-04(01))</p> <p>(b) Whether the offence provisions under the Bill were necessary given that similar provisions were provided in the Banking Ordinance</p>	
004922-005330	Mr Henry WU Chairman Administration	Whether it is an international practice for a CSS regulator to be one of the system operators and/or shareholder of a clearing company (Appendix II of LC Paper No. CB(1)1284/03-04(01))	Administration to provide the required information under paragraph 3(b)(v) of the minutes
005331-005947	Mr Abraham SHEK Administration Chairman	<p>(a) Historical background for HKMA's joint holdings of Hong Kong Interbank Clearing Limited (HKICL) with the Hong Kong Association of Banks</p> <p>(b) HKMA's role in market development through shareholdings in HKICL</p>	Administration to provide the required information under paragraph 3(b)(iv) of the minutes

Time marker	Speaker	Subject(s)	Action Required
005948-010626	Chairman Mr Abraham SHEK Mr NG Leung-sing Mr Henry WU	(a) Summary of comments received and the Administration's response (LC Paper No. CB(1)1284/03-04(03)) (b) Invitation for submissions and meeting with deputations	Clerk to take action as agreed under paragraphs 4 and 5 of the minutes
010627-011005	Chairman Clerk Mr Henry WU Mr Abraham SHEK Mr NG Leung-sing Administration	(a) Proposed discussion schedule provided by the Administration (LC Paper No. CB(1)1284/03-04(04)) (b) Proposed meeting schedule from March to June 2004 prepared by the LegCo Secretariat (LC Paper No. CB(1)1284/03-04(05))	
011006-011057	Chairman Mr Abraham SHEK	Proposed arrangements for Chinese walls to be put in place for the clear division of the oversight and system operation duties undertaken by HKMA officers	Administration to provide the required information under paragraph 3(b)(i) of the minutes
011058-011708	Chairman Administration Mr NG Leung-sing Mr Abraham SHEK	(a) Whether HKMA, the operator of the Central Moneymarkets Unit and the Hong Kong Dollar Clearing House Automated Transfer System, would be subject to the same sanctions as other system operators if it failed to comply with the requirements under the	Administration to provide the required information under paragraph 3(b)(iii) and (v) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		Bill, and overseas practices in this respect (b) Checks and balances on HKMA's functions and powers under the Bill	Administration to provide the required information under paragraph 3(b)(ii) of the minutes
011709-011718	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
2 April 2004