

立法會
Legislative Council

LC Paper No. CB(1)1796/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/03

Bills Committee on Clearing and Settlement Systems Bill

**Minutes of the fourth meeting held on
Thursday, 29 April 2004, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon NG Leung-sing, JP
Hon Bernard CHAN, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Abraham SHEK Lai-him, JP
- Members absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Henry WU King-cheong, BBS, 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 Danny LEUNG
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. Meeting with the Administration**
(LC Paper No. CB(1)1571/03-04(02) — “Follow-up to the second meeting on 26 March 2004” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1600/03-04(01) — Paper provided by the Administration on “Extra-territorial Effect”
- LC Paper No. CB(3)206/03-04 — The Bill
- LC Paper No. CB(1)1600/03-04(02) — First letter dated 10 March 2004 from the Assistant Legal Adviser to the Administration
- LC Paper No. CB(1)1600/03-04(03) — Administration’s response to the Assistant Legal Adviser’s letter

Action

- 3 -

of 10 March 2004

- LC Paper No. CB(1)1600/03-04(04) — Second letter dated 22 April 2004 from the Assistant Legal Adviser to the Administration
- LC Paper No. CB(1)1665/03-04(01) — Administration's response to the Assistant Legal Adviser's letter of 22 April 2004
- LC Paper No. CB(1)1649/03-04(01) — Proposed Committee Stage amendments on Parts 1 and 2 of and Schedule 2 to the Bill provided by the Administration
- LC Paper No. CB(1)1665/03-04(02) — Proposed Committee Stage amendments on Part 3 of the Bill 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)1376/03-04(01) — Paper provided by the Administration on "Summary of Key Comments received before Gazettal of the Bill and the Administration's Responses")

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

Follow-up actions to be taken by the Administration

- Admin 2. At the request of the Bills Committee, the Administration agreed to take the following actions -
- (a) Given the Administration's policy intent that the Bill had extra-territorial application (LC Paper No. CB(1)1600/03-04(01)), the Administration had undertaken to consider making the extra-territorial effect of the Bill more explicit by introducing Committee Stage Amendments (CSAs) to the offence provisions to make it clear that these applied to persons both in and outside Hong Kong.
 - (b) Clause 3(1) provided that the Monetary Authority (MA) might, by notice published in the Gazette, designate for the purposes of the Bill any

clearing and settlement system. Under this arrangement, members of the public who needed to check whether a clearing and settlement system was a designated system under the Bill might have to go through various notices published in the Gazette. To facilitate members of the public, the Administration was invited to consider providing a list of designated clearing and settlement systems for their easy reference. Some of the suggested options were set out as follows:

- (i) To provide a list of designated systems in a Schedule to the Bill which would be amended by subsidiary legislation subject to the negative vetting of the Legislative Council; or
 - (ii) To publish in the Gazette a consolidated list of designated systems whenever amendments were made to the list; or
 - (iii) To maintain and make available to the public an updated list of designated systems, such as through uploading the list to the website of the Hong Kong Monetary Authority.
- (c) Clause 8(3) provided that “[t]he Monetary Authority may appoint persons as agents or advisers to assist him in the performance of his functions under this Ordinance”. To address members’ concerns about the need and propriety of this subclause, the Administration was invited to consider the following issues:
- (i) Whether clause 8(3) was superfluous given that section 5A(3) of the Exchange Fund Ordinance (Cap. 66) provided that the Financial Secretary might appoint persons to assist MA in the performance of his functions under the Exchange Fund Ordinance and any other Ordinance;
 - (ii) If the need for clause 8(3) was established, the Administration was invited to examine the drafting of the subclause by making reference to section 9(3) of the Securities and Futures Ordinance (Cap. 571), which provided that “[t]he Commission may engage consultants, agents and advisers to assist it in the performance of its functions”. Members were particularly concerned about the phrase “appoint persons as agents” in clause 8(3), as it seemed to imply that MA might delegate his authority to the appointed agents. If that was the case, the appointed agents might perform MA’s functions under delegated authority, instead of taking up an assisting role. The Administration was therefore invited to consider whether it was appropriate to use the phrase “appoint persons as agents” and the term “agents” in clause 8(3); and
 - (iii) Whether it was appropriate to include the provision of clause 8(3) under clause 8 — “Functions of Monetary Authority”.
- (d) In line with the Administration’s proposal to extend the time limit in clause 5 from 3 days to 6 days, the Administration was invited to

consider whether the requirement under clause 12(2)(c) for a system operator or settlement institution of a designated system to provide a copy of the relevant part of the amended operating rules to MA within a further period of 3 days should also be extended to 6 days.

- (e) Members noted the Administration's reply (LC Paper No. CB(1)1665/03-04(01)) that it would consider appropriate CSAs to make it clear that the system operator or settlement institution of a designated system could not refuse to provide information on the ground that the information was privileged. As the legal professional privilege and the privilege against self-incrimination were involved, the Administration was invited to consult the relevant professional bodies on the relevant provisions in the Bill and CSAs.

Follow-up actions to be taken by the Assistant Legal Adviser

3. In response to the Chairman's enquiry, the Assistant Legal Adviser 3 (ALA3) undertook to examine whether there were express provisions in existing legislation excluding legal professional privilege as an excuse from complying with a request for information.

ALA

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 14 May 2004 at 8:30 am.

II. Any other business

5. There being no other business, the meeting ended at 4:00 pm.

Council Business Division 1
Legislative Council Secretariat
12 May 2004

Appendix

**Proceedings of the fourth meeting of the
Bills Committee on Clearing and Settlement Systems Bill
on Thursday, 29 April 2004, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
<i>Part A: Matters arising from previous meetings</i>			
000000-000234	Chairman Administration	Paper provided by the Administration on “Extra-territorial Effect” (LC Paper No. CB(1)1600/03-04(01))	The Administration to take the follow-up action as required under paragraph 2(a) of the minutes
<i>Part B: Clause-by-clause examination of the Bill</i>			
000235-000315	Chairman Administration	Tentative date for the Ordinance to come into operation (clause 1(2))	
000316-000735	Assistant Legal Adviser Administration Chairman Mr Abraham SHEK	Whether there was a need to define “securities” referred to in the definition of “book-entry securities” similar to that provided in the Securities and Futures Ordinance (SFO) (Cap. 571) (clause 2) (LC Paper No. CB(1)1600/03-04(03))	
000736-001011	Chairman Administration	Nature and functions of “operating rules” in relation to clearing and settlement systems (clause 2)	
001012-001132	Chairman	Clause 2 — “Interpretation”	

Time marker	Speaker	Subject(s)	Action Required
001133-001555	Assistant Legal Adviser Administration Chairman	Whether a reciprocal amendment to SFO was needed to avoid regulatory overlap with the Securities and Futures Commission (SFC) in the oversight of clearing and settlement systems designated by the Monetary Authority (MA) which subsequently became “recognized clearing houses” under SFO (clause 3) (LC Paper No. CB(1)1600/03-04(03))	
001556-003138	Assistant Legal Adviser Administration Chairman Mr Ambrose LAU	(a) Whether the notice referred to in the phrase “by notice published in Gazette” under the provisions clauses 3(1), 4(1) and (2), 12(5) and 26(4) was subsidiary legislation (LC Paper No. CB(1)1600/03-04(03)) (b) Measures to facilitate members of the public to check whether a clearing and settlement system was a designated system under the Bill	The Administration to take the follow-up actions required under paragraph 2(b) of the minutes
003139-003302	Chairman Administration	Period allowed for the system operator or settlement institution of a system to be heard, or to make representations, as to why the system should not be designated (clause 3(5)(b))	

Time marker	Speaker	Subject(s)	Action Required
003303-003455	Chairman Administration	Clause 4 – “Revocation of designation”	
003456-003700	Administration	Briefing by the Administration on the paper on “Proposed Committee Stage Amendments on Parts 1 and 2 of and Schedule 2 to the Bill” (LC Paper No. CB(1)1649/03-04(01))	
003701-003848	Mr NG Leung-sing Administration	Whether the Administration had made reference to any regulatory practices in proposing the Committee Stage Amendments (CSAs) for extending the time limit for a system operator or settlement institution of a designated system to inform MA of its particulars from 3 to 6 days (LC Paper No. CB(1)1649/03-04(01))	
003849-004314	Chairman Administration Mr Bernard CHAN	Whether the term “person” referred to in clause 5(1) was a natural person or a corporation	
004315-004827	Chairman Mr Ambrose LAU Administration	Measures to ensure that the operating rules of designated systems complied with the requirements under relevant provisions of the Bill (clause 6)	
004828-005122	Chairman Administration	Clause 7 – “Safety and efficiency”	
005123-010820	Chairman Administration Mr NG Leung-sing Assistant Legal Adviser	(a) Whether clause 8(3) was superfluous given that section 5A(3) of the Exchange Fund Ordinance	The Administration to take follow-up actions required under paragraph

Time marker	Speaker	Subject(s)	Action Required
	Mr Bernard CHAN Mr Ambrose LAU	<p>(Cap. 66) provided that the Financial Secretary might appoint persons to assist MA in the performance of his functions under the Exchange Fund Ordinance and any other Ordinance</p> <p>(b) Need to examine the drafting of clause 8(3) by making reference to section 9(3) of SFO</p> <p>(c) Whether it was appropriate to use the phrase “appoint persons as agents” and the term “agents” in clause 8(3)</p> <p>(d) Whether it was appropriate to include the provision of clause 8(3) under clause 8 – “Functions of Monetary Authority”</p>	2(c) of the minutes
010821-011256	Chairman Administration Mr NG Leung-sing	Clause 9 – “Power of Monetary Authority to exempt”	
011257-011624	Chairman Administration Assistant Legal Adviser	<p>(a) CSAs would be considered to make it clear that the system operator or settlement institution of a designated system could not refuse to provide information on the ground that the information was privileged (clause 10) (LC Paper No. 1665/03-04(01))</p> <p>(b) Whether there were express</p>	ALA3 to take

Time marker	Speaker	Subject(s)	Action Required
		provisions in existing legislation excluding legal professional privilege as an excuse from complying with a request for information	follow-up actions as required under paragraph 3 of the minutes
011625-012130	Chairman Mr NG Leung-sing Administration	Whether the requirement under clause 12(2)(c) for a system operator or settlement institution of a designated system to provide a copy of the relevant part of the amended operating rules to MA within a further period of 3 days should be extended to 6 days	The Administration to take the required follow-up actions under paragraph 2(d) of the minutes
012131-012720	Chairman Administration Mr NG Leung-sing	Actions to be taken by MA for imposing operating rules on designated systems (clause 12)	
012721-012814	Chairman Administration	Need to consult the relevant professional bodies on the provisions in the Bill and CSAs relating to the requirement that the system operator or settlement institution of a designated system could not refuse to provide information to MA on the ground that the information was privileged	The Administration to take the required follow-up actions under paragraph 2(e) of the minutes
012815-012900	Chairman	Date of next meeting	