

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2002/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/03

**Bills Committee on Clearing and Settlement Systems Bill**

**Minutes of the fifth meeting held on  
Friday, 14 May 2004, at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)  
Hon NG Leung-sing, JP  
Hon Bernard CHAN, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Henry WU King-cheong, BBS, JP
- Members absent** : Dr Hon David LI Kwok-po, GBS, JP  
Hon Abraham SHEK Lai-him, 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

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Action

**I. Confirmation of minutes of meetings**

(LC Paper No. CB(1)1759/03-04 — Minutes of third meeting held on  
23 April 2004

LC Paper No. CB(1)1796/03-04 — Minutes of fourth meeting held  
on 29 April 2004)

The minutes of the meetings held on 23 and 29 April 2004 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(1)1795/03-04(01) — “Follow-up to the third meeting  
on 23 April 2004” prepared by  
the Legislative Council  
Secretariat

LC Paper No. CB(1)1795/03-04(02) — “Follow-up to the fourth  
meeting on 29 April 2004”  
prepared by the Legislative

Action

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Council Secretariat

- LC Paper No. CB(1)1795/03-04(03) — The Administration’s response to issues raised at the meeting held on 29 April 2004
- LC Paper No. CB(3)206/03-04 — The Bill
- LC Paper No. CB(1)1795/03-04(04) — Proposed Committee Stage amendments of the Bill provided by the Administration
- 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 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)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”)

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) The Administration was invited to provide the Bills Committee with its finalized response to the written submission of the Hong Kong Exchanges and Clearing Limited;
- (b) On the draft proposed Committee Stage amendments (CSAs) to clause 2, the Administration was invited to remove the proposed provision on the application of the Bill and set it out in a separate clause;
- (c) For the purpose of clarity, the Administration was invited to propose a CSA to clause 5(1)(c) by adding the phrase “in addition” at the beginning of the subclause to make it clear that where the system operator or settlement institution of a designated system was a corporation, the requirement in clause 5(1)(c) was in addition to, and not in substitution for, the requirements under clause 5(1)(a) and (b);
- (d) Given that the draft proposed CSAs to clause 22 were proposed in response to the comments by the Continuous Linked Settlement System (CLS) for the removal of any uncertainty in applying the provision, the Administration was invited to seek the views of CLS on the draft proposed CSAs and report back to the Bills Committee; and
- (e) Given that the Administration had recently revised some of its initial response to the concerns raised in submissions from various organizations, such as the comments by the Hong Kong Society of Accountants on clause 29, the Administration was invited to update its paper on “Summary of Comments Received and the Administration’s Response” (LC Paper No. CB(1)1284/03-04(03)) by highlighting the changes.

*(Post-meeting note: The Administration’s responses to items (a) to (e) above were circulated to members vide LC Paper No. CB(1)1870/03-04 on 19 May 2004.)*

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 21 May 2004 at 10:45 am.

**III. Any other business**

5. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1  
Legislative Council Secretariat  
1 June 2004

## Appendix

**Proceedings of the fifth meeting of the  
Bills Committee on Clearing and Settlement Systems Bill  
on Friday, 14 May 2004, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000200	Chairman	(a) Confirmation of the minutes of meetings on 23 and 29 April 2004  (b) Welcoming and introductory remarks	
<i>Part A: Matters arising from previous meetings</i>			
000201-000351	Administration	Briefing by the Administration on the draft terms of reference of the proposed Process Review Committee (Footnote on page 54 of LC Paper No. CB(1)1795/03-04(04))	
000352-000951	Chairman Administration Mr Henry WU	Concerns of the Hong Kong Exchanges and Clearing Limited in relation to the possible regulatory overlap between the Securities and Futures Commission and the Hong Kong Monetary Authority (HKMA)	The Administration to take follow-up actions required under paragraph 3(a) of the minutes
000952-001428	Administration	(a) Briefing by the Administration on its response to issues raised at the meeting held on 29 April 2004 (LC Paper No. CB(1)1795/03-04(03))	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>(b) Administration's advice that there was no need to include provisions in the Bill to rule out the availability of the privilege against self-incrimination in circumstance where a request for information was made by HKMA under clauses 10, 51 and 52. In the event of non-compliance with such request and the privilege being raised, HKMA could rely on clauses 39 and 42 to have the matter decided by the court.</p>	
001429-002004	Chairman Mr Henry WU Administration	Whether the list of designated systems should be provided as a Schedule to the Bill in addition to the Administration's proposal of maintaining an updated list of these systems on the website of HKMA	
002005-002928	Chairman Administration	<p>(a) Purpose of setting out in Schedule 2 to the Bill the clearing and settlement systems deemed to have been designated</p> <p>(b) The need to retain Schedule 2 despite the Administration's proposal of maintaining an updated list of these systems on the website of HKMA</p>	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
002929-003002	Mr Henry WU Administration	Whether the provisions under clause 3 applied to recognized clearing houses under the Securities and Futures Ordinance (SFO) (Cap. 571)	
003003-003245	Chairman Assistant Legal Adviser Administration	<p>(a) Briefing by the Assistant Legal Adviser that there was no express provision in existing legislation excluding legal professional privilege as an excuse from complying with a request for information. On the contrary, it was noted that in recently enacted legislation like SFO, an express provision had been included to affirm the availability of legal professional privilege. In SFO, for example, it was expressly provided that legal professional privilege would not be affected by that Ordinance</p> <p>(b) The Administration's policy intent that legal professional privilege would not be affected by the requirements in clauses 10, 51 and 52</p>	

Time marker	Speaker	Subject(s)	Action Required
<p><b>Part B: Clause-by-clause examination of the Bill</b> (LC Paper No. CB(1)1795/03-04(04))</p>			
003246-003808	Assistant Legal Adviser Administration	<p>(a) Briefing by the Administration on its proposal to broaden the scope of clause 2 to cover both the interpretation and application of the Bill</p> <p>(b) Propriety of including the provision on the application of the Bill (the proposed new subclause (2)) in clause 2</p>	The Administration to take the required follow-up actions under paragraph 3(b) of the minutes
003809-003835	Chairman Administration	Proposed Committee Stage amendments (CSAs) in clause 3(2) and (4)	
003836-003942	Chairman Assistant Legal Adviser Administration	To make it clear that where the system operator or settlement institution of a designated system was a corporation, the requirement under clause 5(1)(c) was in addition to the requirements under clause 5(1)(a) and (b), the Administration would propose a CSA to clause 5(1)(c) by adding the phrase “in addition” at the beginning	The Administration to take the required follow-up actions under paragraph 3(c) of the minutes
003943-004119	Mr Henry WU Chairman Administration	Confirmed that the definition of “officer” in clause 2 was the same as that provided in SFO	
004120-004307	Chairman Administration	Proposed CSAs to clauses 8 and 10	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
004308-005209	Chairman Administration	Proposed CSAs to clauses 13, 14(3) and 14(7)	
005210-005409	Chairman Administration	(a) Proposed CSAs to clause 15  (b) Whether the Monetary Authority would provide an explanation for the suspension or revocation of a certificate of finality when notifying in writing the system operator and settlement institution before the suspension or revocation (clause 15(2))	
005410-005559	Chairman Administration	(a) Application of the provisions on finality of transactions and proceedings within designated systems in relation to bankruptcy and winding up proceedings (clauses 16 to 18)  (b) Whether similar practices were adopted by overseas regulators of clearing and settlement systems	
005600-005757	Mr Henry WU Chairman Administration	Whether the provisions on finality of transactions and proceedings within designated systems were drafted with reference to similar provisions in SFO	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
005758-010342	Chairman Administration	Whether abrogation of statutory provisions relating to disclaimer of property, restriction on disposition of property, etc. (clause 19) was also provided for in the legislation for regulation of clearing and settlement systems in overseas jurisdictions	
010343-010451	Chairman Administration	(a) Clause 20 (Abrogation of statutory powers relating to adjustment of prior transactions)  (b) Clause 21 (Net sum payable on completion of default arrangements provable in insolvency proceedings)	
010452-011357	Chairman Administration Mr Henry WU	(a) Possible liability of HKMA in the case of disputes between participants in a designated system in relation to transfer orders entered into designated system after insolvency of the participant (clause 22)  (b) Whether the proposed CSAs to clause 22 could adequately address the concern of the difference in actual time of expiry of a day in different countries, and the possibility of abuse by insolvent participants through transfer of funds during the time gap	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		(c) Whether the provisions in clause 22 were in line with international practices	The Administration to take the required follow-up actions under paragraph 3(d) of the minutes
011358-011550	Chairman Mr Henry WU	(a) Clause 23 (Netting may be effected)  (b) Clause 24 (Law of insolvency in other jurisdictions)  (c) Clause 25 (Preservation of rights, etc. in underlying transactions)  (d) Need to ensure consistency in the use of terms under the Bill and SFO	
011551-011903	Chairman Administration	Example of transactions at undervalue (clause 26)	
011904-012116	Mr Henry WU Administration	Differentiation between “first participant” and “second participant” referred to in clause 26	
012117-012457	Chairman Administration	Clause 27 (Right of relevant insolvency office-holder to recover transfer between 2 participants giving unfair preference)	
012458-012644	Chairman Administration Assistant Legal Adviser	Proposed CSAs to add the new clause 27A (Duty to report on completion of default proceedings)	

Time marker	Speaker	Subject(s)	Action Required
012645-013133	Chairman Administration Mr Henry WU	<p>(a) Whether the offence provision (clause 40) to impose a fine of \$400,000 would be realistic in the case of a participant who failed to fulfill his obligation under clause 28 to notify the system operator and the Monetary Authority of its bankruptcy or winding up</p> <p>(b) Whether there was consistency in the offence provisions of the Bill</p>	
013134-013928	Chairman Assistant Legal Adviser Administration	Whether the Administration would amend clause 29 in response to the proposal of the Hong Kong Society of Accountants to include a deeming provision that an insolvency office-holder's duties would be deemed to be modified to the extent affected by the Bill (Annex to LC Paper No. CB(1)1284/03-04(03))	The Administration to take the follow-up action as required under paragraph 3(e) of the minutes
013929-014045	Chairman	<p>(a) Clause 30 (Enforcement of judgments over property of participant as judgment debtor)</p> <p>(b) Proposed CSA to delete the definitions in clause 31 as those definitions had been moved to clause 2</p> <p>(c) Clause 32 (Establishment of Clearing and Settlement Systems Appeals Tribunal</p>	

Time marker	Speaker	Subject(s)	Action Required
		(CSSAT))  (d) Clause 33 (Review of decisions by Tribunal)	
014046-014623	Chairman Mr Henry WU Assistant Legal Adviser	Comparison of provisions governing the proposed CSSAT under the Bill and other similar statutory tribunals (LC Paper No. LS69/03-04)	
014624-014801	Chairman Administration Assistant Legal Adviser	Proposed CSA to clause 34(2)	
014802-014826	Chairman	(a) Clause 35 (Use of incriminating evidence given under compulsion)  (b) Clause 36 (Contempt dealt with by Tribunal)	
014827-015059	Chairman Mr Ambrose LAU Assistant Legal Adviser	(a) Proposed CSA to clause 37  (b) An express provision that the lodging of an appeal to the Court of Appeal did not of itself operate as a stay of execution of a determination of CSSAT (new subclause (1A) of clause 37) was provided for the purpose of clarity and consistency with the provision of SFO  (c) Clause 38 (Power of Chief Justice to make rules)	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
015100-015148	Chairman	Date of next meeting	

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1 June 2004