

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2100/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/03

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

**Minutes of the sixth meeting held on  
Friday, 21 May 2004, at 10:45 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)  
Hon NG Leung-sing, JP  
Hon Jasper TSANG Yok-sing, GBS, 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 Bernard CHAN, 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

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Action

- I. Meeting with the Administration**
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|-----------------------------------|--|
| (LC Paper No. CB(1)1870/03-04(01) | — Administration's response to issues raised at the meeting held on 14 May 2004                                    |
| LC Paper No. CB(1)1870/03-04(02)  | — Paper provided by the Administration on "Updated summary of comments received and the Administration's response" |
| LC Paper No. CB(3)206/03-04       | — The Bill   |
| LC Paper No. CB(1)1870/03-04(03)  | — Proposed Committee Stage amendments of the Bill (Draft 2) 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")

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

Follow-up actions to be taken by the Administration

2. At the request of the Bills Committee, the Administration agreed to take the following actions -
- (a) To address members' concern about the severity of penalty under clause 39(1) for a convicted offender who contravened clause 5(2), the Administration was invited to propose a Committee Stage amendment (CSA) to clause 39(1) to the effect that a person who contravened clause 5(2), on conviction upon indictment, would be liable to a fine of \$400,000 but not to imprisonment;
  - (b) When considering clause 46 (Liability of company officers), members noted that the definition of "officer" in relation to a corporation set out in clause 2 was modelled on the definition of the same term in the Securities and Futures Ordinance (SFO) (Cap. 571). Given that there were some variations in the drafting of the two definitions, the Administration was invited to amend the definition of "officer" in clause

2 by adopting the definition in SFO to achieve consistency;

- (c) The Administration was invited to make reference to SFO and put clause 47 (Power of Chief Executive to give directions) under preceding parts of the Bill instead of under Part 6 – Miscellaneous;
- (d) Noting that the Administration had sent the draft proposed CSAs to the relevant organizations and had since received further written submissions from the Continuous Link Settlement Bank International, the Hong Kong Society of Accountants (HKSA) and the Hong Kong and Shanghai Banking Corporation (HSBC), members were concerned whether the comments of these organizations had been addressed. In this connection, the Administration was invited:
  - (i) to provide the Bills Committee with the further submission dated 19 May 2004 from HSBC and the Administration's response; and
  - (ii) to inform the Bills Committee of any further views expressed by any relevant organizations and the Administration's response; and
- (e) The Administration was invited to propose a CSA to clause 53 stipulating that the Monetary Authority was required to consult the system operators and settlement institutions concerned before issuance of the guidelines under that clause.

*(Post-meeting note: The submission dated 20 May 2004 from HKSA to the Administration, which was tabled at the meeting, was issued to members vide LC Paper No. CB(1)1916/03-04(01) on 24 May 2004. Proposed CSAs in relation to items (a), (b), (c) and (e) above provided by the Administration was circulated to members vide LC Paper No. CB(1)1957/03-04(02) on 27 May 2004. The Administration's response to item (d) above was circulated to members vide LC Paper No. CB(1)1957/03-04(01) on the same day.)*

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

- 3. To facilitate the Bills Committee's examination of the Chinese version of the Bill and the draft proposed CSAs, the Chairman invited the Assistant Legal Adviser 3 (ALA3) to go through the Chinese version before the next meeting.

ALA3

Date of next meeting

- 4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 31 May 2004 at 10:45 am.

**II. Any other business**

5. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1  
Legislative Council Secretariat  
9 June 2004

**Proceedings of the sixth meeting of the  
Bills Committee on Clearing and Settlement Systems Bill  
on Friday, 21 May 2004, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000058	Chairman	Welcoming and introductory remarks	
<i>Part A: Matters arising from previous meetings</i>			
000059-000206	Administration	Briefing by the Administration on the paper on "Administration's response to issues raised at the meeting held on 14 May 2004" (LC Paper No. CB(1)1870/03-04(01))	
000207-000323	Chairman Administration	<p>(a) Administration's confirmation that its reply dated 13 May 2004 to the Hong Kong Exchanges and Clearing Limited (HKEx) had set out the consensus reached amongst the parties concerned, including HKEx</p> <p>(b) Administration's confirmation that it had received a submission from the Continuous Link Settlement Bank International (CLS) on clause 22 and had addressed the concern raised by CLS</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000324-000415	Administration	Briefing by the Administration on the paper on “Updated summary of comments received and the Administration’s response” (LC Paper No. CB(1)1870/03-04(02))	
000416-002158	Chairman Administration Mr Jasper TSANG	(a) Administration’s confirmation that it had passed the draft proposed Committee Stage amendments (CSAs) to the Hong Kong Society of Accountants (HKSA) and other relevant organizations for information and comments  (b) Administration’s advice that it had received a further submission from HKSA on 20 May 2004 about two points, including the need of the expression “Except to the extent that it expressly provides” in clause 25(1) (LC Paper No. CB(1)1916/03-04(01)), and the Administration’s view that the expression was necessary to balance the rights of system operators and/or settlement institutions on the one hand and insolvency office-holders on the other in relation to any transaction between two participants in a designated system in case of bankruptcy or winding up of the second participant	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		(c) Administration's advice that the provision in clause 25 was consistent with that in the Securities and Futures Ordinance (SFO) (Cap. 571)	
002159-003020	Administration Chairman	(a) Administration's response to HKSA's enquiry on the circumstances under which exemptions would be granted to system operators or settlement institutions under clauses 26(4) and 27(4)  (b) Whether the criteria for granting exemptions under clauses 26(4) and 27(4) would be provided in the guidelines to be issued under clause 53  (c) Example quoted by the Administration to illustrate the circumstances under which a system operator or settlement institution would be exempted from the application of clauses 26 and 27 in respect of transfer effected by the system operator or settlement institution as first participant	

Time marker	Speaker	Subject(s)	Action Required
<p><b>Part B: Clause-by-clause examination of the Bill</b> (LC Paper No. CB(1)1870/03-04(03))</p>			
003021-003222	Chairman Administration	Proposed CSAs to clause 2 and proposed new clause 2A	
003223-003521	Chairman Administration Mr Ambrose LAU	Purpose and need for the proposed CSA to clause 5(1)(c), adding the phrase “in addition” at the beginning of the subclause	
003522-004152	Chairman Administration	(a) Proposed CSAs to clauses 21 to 23  (b) Proposed new clause 27A	
004153-010433	Chairman Administration Mr NG Leung-sing	(a) Whether the penalty provisions under clause 39(1) was proportional to the severity of offences committed by offenders who contravened clauses 5(1) and (2) (Comments by the Hong Kong Association of Banks (HKAB) on Page 9 of LC Paper No. CB(1)1870/03-04(02))  (b) Members’ view that convicted offenders who contravened clause 5(2) should only be liable to a fine of \$400,000 but not to imprisonment	The Administration to take follow-up actions under paragraph 2(a) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
010434-011132	Chairman Administration	(a) Clause 40 (Contravention of provision of Part 3)  (b) Clause 41 (Contravention of provision of Part 4)  (c) Clause 42 (Contravention of provisions of Part 6)	
011133-001245	Mr NG Leung-sing Administration	(a) Member's concern about whether a person who gave false information to the Monetary Authority inadvertently committed an offence under clause 43  (b) Administration's advice that a person committed an offence if he knew or ought to know that the information being given was false or misleading (clause 43(b))	
011246-012414	Chairman Administration Mr Jasper TSANG Assistant Legal Adviser Mr NG Leung-sing	(a) Members' concern that clause 44(1) lacked objectivity because it was subjective to judge whether a person had made any representation in respect of a clearing and settlement system that was not a designated system "in a manner that indicates" that the system was a designated system, and similar concern about clause 44(3)  (b) Defence provisions under clauses 44(2) and (4)	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) Administration's explanation that without clause 44, a person who made false representation in respect of a clearing and settlement system or a certificate of finality could not be charged with an offence, and that the purpose of the two phrases - "in a manner that indicates" or "in a manner that could reasonably be construed as indicating" was to allow the Administration to look at the effect of the representation</p>	
012415-013153	<p>Chairman Administration Mr NG Leung-sing</p>	<p>(a) Justifications for imposing a penalty of a fine of \$1,000,000 and imprisonment for 5 years on a person who committed an offence under clause 45(1)</p> <p>(b) Administration's explanation that for serious offence such as that committed "wilfully and with intent to deceive" (clause 45(1)), the maximum penalty was 5 years of imprisonment</p> <p>(c) Reasons for the disparity in the levels of fine and/or years of imprisonment under the penalty provisions in clauses 40,</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>41, 42 and 45</p> <p>(d) Administration's explanation that where an offence was likely to be committed by an individual rather than a corporation, the fine was relatively less; where an offence was likely to be committed by a corporation, it was common to set a relatively higher level of fines to achieve the deterrent effect, as imprisonment did not apply to corporations</p> <p>(e) Whether consistency in the level of penalty was maintained with the offence provisions in other relevant legislation</p> <p>(f) Administration's confirmation that the level of penalty was determined with reference to section 123 of the Banking Ordinance (BO) (Cap. 155)</p>	
013154-014115	Chairman Administration Mr NG Leung-sing	<p>(a) Comments of HKAB that only relevant individuals of an appropriate level should be held liable under clause 46 (Liability of company officers) (Page 10 of LC Paper No. CB(1)1870/03-04(02))</p> <p>(b) Administration's response that clause 46 followed the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>SFO approach (section 390 of SFO), and that the definition of “officer” in clause 2 was similar to that in Schedule 1 of SFO and the Chinese version of the term “officer” (高級職員) was adopted from SFO</p> <p>(c) Members’ view that the definition of “officer” in relation to a corporation set out in clause 2 should be amended by adopting the definition in SFO to achieve consistency</p>	<p>The Administration to take follow-up actions under paragraph 2(b) of the minutes</p>
014116-014659	Chairman Mr NG Leung-sing Administration	Propriety of putting clause 47 (Power of Chief Executive to give directions) under Part 6 – Miscellaneous while similar provision under SFO was put under an earlier part of the legislation	The Administration to take follow-up actions under paragraph 2(c) of the minutes
014700-014815	Chairman Administration	<p>(a) Administration’s advice that the regulations made under clause 48 were subsidiary legislation subject to the negative vetting of the Legislative Council</p> <p>(b) Administration’s advice that the confidentiality provisions in clause 49 were drafted with reference to existing legislation, such as BO</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
014816-015428	Chairman Administration Mr NG Leung-sing	<p>(a) Comments of the Hong Kong Interbank Clearing Limited and the Hong Kong and Shanghai Banking Corporation (HSBC) on the immunity provision under clause 50 and the Administration's response (Pages 11 and 12 of LC Paper No. CB(1)1870/03-04(02))</p> <p>(b) Further submission dated 19 May 2004 from HSBC to the Administration on clause 50</p> <p>(c) Whether relevant organizations had accepted the Administration's responses to their further comments</p>	<p>The Administration to provide the required information under paragraph 2(d)(i) of the minutes</p> <p>The Administration to take follow-up actions under paragraph 2(d)(ii) of the minutes</p>
015429-015717	Chairman Administration	<p>(a) Clause 51 (Power of Monetary Authority to require information to be given)</p> <p>(b) Clause 52 (Requirement to give information relating to default)</p>	
015718-015806	Chairman Administration	Need to consult system operators and settlement institutions on the guidelines to be issued under clause 53	The Administration to take follow-up actions under paragraph 2(e) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
015807-015956	Chairman Administration	(a) Clause 54 (Systems deemed to have been designated)  (b) Clause 55 (Service of notices)  (c) Clause 56 (Amendment of Schedules)  (d) Clause 56A (Notices, etc., as subsidiary legislation)  (e) Consequential amendments to the Electronic Transaction Ordinance - Clause 57 (Proceedings in relation to which sections 5, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance)  (f) Schedule 1 (Provisions relating to Clearing and Settlement Systems Appeals Tribunal)	
015957-020128	Chairman Administration	Assistant Legal Adviser to go through the Chinese version of the Bill and the draft proposed CSAs	ALA3 to take the follow-up actions under paragraph 3 of the minutes
020129-020305	Chairman	Date of next meeting	