

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2362/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/03

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

**Minutes of the seventh meeting held on  
Monday, 31 May 2004, at 10:45 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)  
Dr Hon David LI Kwok-po, GBS, JP  
Hon Bernard CHAN, JP  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Henry WU King-cheong, BBS, JP
- Members absent** : Hon NG Leung-sing, JP  
Hon Jasper TSANG Yok-sing, GBS, JP
- Public officers attending** : Mr Esmond LEE  
Head (Market Systems Development Division)  
Monetary Management and Infrastructure Department  
Hong Kong Monetary Authority
- Mr Stanley CHAN  
Senior Manager (Market Systems Policy 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)1957/03-04(01) | — Paper provided by the Administration on “The Administration’s final responses to recent comments from stakeholders” |
| LC Paper No. CB(1)1975/03-04(01)  | — Letter dated 27 May 2004 from the Hong Kong Exchanges and Clearing Limited  |
| LC Paper No. CB(1)1993/03-04(01)  | — Letter dated 28 May 2004 from the Hong Kong Society of Accountants  |
| LC Paper No. CB(3)206/03-04       | — The Bill  |
| LC Paper No. CB(1)1957/03-04(02)  | — Proposed Committee Stage amendments of the Bill (Draft 3)   |

- 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)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"
- 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")

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 the Hong Kong Society of Accountants' concern about the need to make it clear that rights resulting from underlying transactions in respect of transfer orders were not affected by the Bill, the Administration agreed to propose a Committee Stage amendment (CSA) to clause 25(1) by deleting the phrase "Except to the extent that it expressly provides" at the beginning of the subclause;
  - (b) Referring to the Administration's reply dated 13 May 2004 to the Hong

Kong Exchanges and Clearing Limited (HKEx), addressing HKEx's concern about the potential regulatory overlap between the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) in implementing the Securities and Futures Ordinance (Cap. 571) and the Bill when the Bill came into effect, members noted that the Administration had undertaken to consider referring to the agreed consultation arrangements between the two regulators in the speech by the Secretary for Financial Services and the Treasury (SFST) in resuming the Second Reading debate on the Bill. The Administration confirmed that the agreed consultation arrangements would be included in the speech by SFST in resuming the Second Reading debate on the Bill;

- (c) To provide timely information to the public about the exemptions granted by the Monetary Authority to system operators or settlement institutions under clause 9, the Administration agreed that apart from publishing the particulars of the exemptions in the Gazette notice under clause 9(3), arrangements would be made to make available the particulars of the exemptions on HKMA's website; and
- (d) To make it clear that clause 49(1) did not apply to the disclosure of information to the Process Review Committee in relation to the clearing and settlement systems deemed to have been designated under clause 54, the Administration agreed to propose adding the phrase "the designated systems specified in Schedule 2 or" before "designated systems in which the Monetary Authority has a legal or beneficial interest" to the new subclauses (eb) under clause 49(3).

3. The Bills Committee completed examination of the Bill and the draft Committee Stage amendments (CSAs) proposed by the Administration. The Chairman invited the Administration to provide the revised draft CSAs on or before 4 June 2004 for the Bills Committee's consideration.

*(Post-meeting note: The revised draft CSAs proposed by the Administration was issued to members vide LC Paper No. CB(1)2045/03-04(1) on 4 June 2004. The Administration's written reply to HKSA regarding its submission dated 28 May 2004 was issued to members vide LC Paper No. CB(1)2022/03-04(01) on 2 June 2004.)*

Next step

4. The Bills Committee agreed that subject to any further views from members on the revised draft CSAs proposed by the Administration, a report would be presented to the House Committee on 11 June 2004 recommending the resumption of the Second Reading debate on the Bill on 30 June 2004.



Cancellation of meeting scheduled for 4 June 2004

5. As the Bills Committee had completed examination of the Bill, the Chairman directed that the meeting originally scheduled for Friday, 4 June 2004 be cancelled.

*(Post-meeting note: Notice for cancellation of the meeting scheduled for 4 June 2004 was issued to members vide LC Paper No. CB(1)1997/03-04 on 31 May 2004.)*

**II. Any other business**

6. There being no other business, the meeting ended at 11:30 am.

Council Business Division 1  
Legislative Council Secretariat  
12 July 2004

## Appendix

**Proceedings of the seventh meeting of the  
Bills Committee on Clearing and Settlement Systems Bill  
on Monday, 31 May 2004, at 10:45 am  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000030	Chairman	Welcoming and introductory remarks	
<i>Part A: Matters arising from the sixth meeting on 21 May 2004</i>			
000031-000059	Chairman	Declared interest as an employee of the Hong Kong and Shanghai Banking Corporation (HSBC)	
000100-001636	Administration Chairman	<p>(a) Briefing by the Administration on the paper on “The Administration’s final responses to recent comments from stakeholders” (LC Paper No. CB(1)1957/03-04(01))</p> <p>(b) Administration’s confirmation that the proposed Committee Stage amendments (CSAs) to clauses 2 and 22 were made in response to the comment by the Continuous Linked Settlement Bank International (CLS) and that the legal adviser of CLS had confirmed that CLS had no further</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>comments on the Bill</p> <p>(c) Administration's advice that to address the concern of the Hong Kong Society of Accountants (HKSA), and with no objection from CLS, a CSA would be proposed to delete the expression "Except to the extent that it expressly provides" at the beginning of clause 25(1)</p> <p>(d) Administration's response to the submission dated 19 May 2004 from HSBC on clauses 27A, 40(1), 46 and 50</p>	<p>The Administration to take the follow-up action under paragraph 2(a) of the minutes</p>
001637-001651	Chairman Mr Henry WU Administration	<p>(a) Letter dated 27 May 2004 from the Hong Kong Exchanges and Clearing Limited (HKEx), confirming that it did not have further views on the Bill (LC Paper No. CB(1)1975/03-04(01))</p> <p>(b) Administration's confirmation that, to address HKEx's concern about the potential regulatory overlap between the Hong Kong Monetary Authority and the Securities and Futures Commission, the agreed consultation arrangements between the two regulators would be referred to in the speech by the Secretary for</p>	<p>The Administration to take the follow-up action under paragraph 2(b) of the minutes</p>



Time marker	Speaker	Subject(s)	Action Required
		Financial Services and the Treasury in resuming the Second Reading debate on the Bill	
001652-001815	Chairman Administration	<p>(a) HKSA's further submission dated 28 May 2004 (LC Paper No. CB(1)1993/03-04(01))</p> <p>(b) Administration's clarification on its policy intention of exempting a system operator or settlement institution from the application of clauses 26 and 27 in respect of transfer effected by the system operator or settlement institution as first participant in his capacity as such system operator or settlement institution</p>	
<p><b><i>Part B: Examination of the draft proposed Committee Stage Amendments (LC Paper No. CB(1)1957/03-04(02))</i></b></p>			
001816-002702	Chairman Administration Mr Henry WU	<p>(a) Proposed CSAs to clause 2 (Interpretation)</p> <p>(b) Proposed CSA to the heading of Division 3 of Part 2</p> <p>(c) New clause 8A (Power of Chief Executive to give directions) proposed for replacement of the original clause 47 in response to the Bills Committee's</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>comment</p> <p>(d) New subclause (2A) of clause 9 proposed for the purpose of grouping under clause 9 the power of Monetary Authority to exempt system operators, settlement institutions or participants from the application of clauses 27A, 28 or 52 of the Bill</p> <p>(e) Members' concern about the provision of timely information to the public about the exemptions granted by the Monetary Authority under clause 9</p> <p>(f) New subclause (2) of clause 13 proposed in response to market comments</p> <p>(g) Proposed CSA to subclause (2) of clause 21 (Net sum payable on completion of default arrangements provable in insolvency proceedings)</p> <p>(h) Proposed CSAs to subclauses (1) and (2) of clause 22 (Transfer orders entered into designated system after insolvency not affected)</p> <p>(i) Proposed CSA to subclause (1) of clause 23 (Netting may be effected)</p>	<p>The Administration to take the follow-up action under paragraph 2(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(j) Proposed new clause 27A (Duty to report on completion of default proceedings)</p> <p>(k) Proposed CSA to delete subclause (3) of clause 28 (Obligation of participant to notify of bankruptcy or winding up)</p> <p>(l) Proposed CSA to subclause (5) of clause 32 (Establishment of Clearing and Settlement Systems Appeals Tribunal)</p>	
002703-002802	Chairman Mr Henry WU Administration	<p>(a) Proposed CSA to subclause (1) and proposed new subclause (1A) of clause 39 (Contravention of provisions of Part 2) in response to members' comment that contravention of clause 5(2) should not result in imprisonment</p> <p>(b) Administration's confirmation that the offence provisions under clause 39 were similar to those under the Securities and Futures Ordinance (Cap. 571)</p>	
002803-003024	Chairman Administration Mr Ambrose LAU	(a) Administration's advice that in order to address members' concern about the clarity of the provision,	

Time marker	Speaker	Subject(s)	Action Required
		<p>CSAs would be proposed to clause 44 (Misrepresentation in respect of designated system) to replace the expression “in a manner that indicates” by “in terms that indicate” in subclauses (1) and (3)</p> <p>(b) Members noted that the Chinese version of “terms” was “措詞” and the word had a narrower meaning than that of “manner”</p>	
003025-003705	Chairman Assistant Legal Adviser Administration	<p>(a) Administration’s advice that the offence provision under the proposed new subclause (1A) of clause 39 was not included under clause 46 (Liability of company officers) because the offender was liable to a fine but not imprisonment and a fine was normally imposed on a corporation rather than its officers</p> <p>(b) Proposed renumbering of clause 47 (Power of Chief Executive to give directions) as clause 8A</p> <p>(c) Proposed CSA to subclause (1) of clause 48 (Power of Monetary Authority to make regulations)</p> <p>(d) To make it clear that clause 49(1) did not apply</p>	The Administration to take the follow-

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		to disclosure of information to the Process Review Committee in relation to the clearing and settlement systems deemed to have been designated under clause 54, the Administration agreed to make the necessary amendment to subclause (eb) under clause 49(3)	up action under paragraph 2(d) of the minutes
003706-003834	Chairman Assistant Legal Adviser	(a) ALA to liaise with the Administration on further comments on the Chinese version of the proposed CSAs  (b) Administration to provide the revised draft CSAs for circulation to members	The Administration to take the follow-up action under paragraph 3 of the minutes
003835-003957	Chairman	(a) The Bills Committee to report to the House Committee on 11 June 2004 recommending the resumption of the Second reading debate on the Bill on 30 June 2004  (b) Cancellation of meeting scheduled for 4 June 2004	