

立法會
Legislative Council

LC Paper No. CB(1)1536 /04-05
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/04

**Bills Committee on
Securities and Futures (Amendment) Bill 2005**

**Minutes of first meeting
held on Friday, 22 April 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Margaret NG
Hon CHAN Kam-lam, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon TAM Heung-man
- Members absent** : Hon Bernard CHAN, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon KWONG Chi-kin
- Public officers attending** : Mr Kevin HO
Permanent Secretary for Financial Services and the
Treasury (Financial Services)
- Miss Alice CHEUNG
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)

Miss Aubrey FUNG
Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Mr W L CHEUNG
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Rosalind MA
Senior Council Secretary (1)8

I Election of Chairman and Deputy Chairman

Election of Chairman

Ms Margaret NG, the member who had the highest precedence in the Council among all members of the Bills Committee present, presided over the election of the Chairman of the Bills Committee. She invited nominations for the chairmanship of the Bills Committee.

2. Mr SIN Chung-kai was nominated by Ms Audrey EU and seconded by Mr Ronny TONG. Mr SIN accepted the nomination. There being no other nominations, Mr SIN Chung-kai was elected the Chairman. Mr SIN took over the chair.

Election of Deputy Chairman

3. As members agreed that a Deputy Chairman should be elected, the Chairman invited nominations for the deputy chairmanship of the Bills Committee. Mr Ronny TONG was nominated by Ms Margaret NG and seconded by Mr CHAN Kam-lam. Mr TONG accepted the nomination. There being no other nominations, Mr Ronny TONG was elected the Deputy Chairman.

II Meeting with the Administration

- (LC Paper No. CB(1)1344/04-05(01) - Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(3)439/04-05 - The Bill
- SUB12/2/1(2005)Pt.5 - The Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. LS43/04-05 - The Legal Service Division Report on the Bill
- LC Paper No. CB(1)1343/04-05 - Background brief on Securities and Futures (Amendment) Bill 2005 prepared by the Secretariat)

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

Urgency or otherwise of the Bill

5. In response to the Chairman's enquiry, the Administration advised that as the proposal of splitting the post of the Chairman of the Securities and Futures Commission (SFC) aimed at enhancing the governance of SFC, the early passage of the Bill would be conducive to strengthening Hong Kong's status as an international financial centre. However, there was no specific time limit within which the Bill must be passed and the Administration was aware that the Bills Committee should be given adequate opportunities to scrutinize the Bill.

Public consultation

6. Members agreed that a general invitation for submissions should be posted on the website of the Legislative Council. Members also agreed that relevant organizations/individuals previously invited by the Panel on Financial Affairs to give views on matters relating to corporate governance and the securities and futures industry should be invited by the Bills Committee to provide their views on the Bill, and if they so wished, to attend the meeting of the Bills Committee scheduled for Thursday, 19 May 2005 at 10:45 am.

(Post-meeting note: Invitation for submissions was posted on the web site of the Legislative Council on 22 April 2005. Invitation letters were sent to relevant organizations/individuals on 23 April 2005.)

Issues which required follow-up actions/consideration by the Administration

7. Members expressed concern about the implementation arrangements and the impact of the separation of the role and responsibilities of the Chairman of SFC from the executive arm of SFC as proposed by the Administration. Noting that the Bill did not contain any provisions specifying the respective roles and responsibilities of the SFC Chairman and the Chief Executive Officer (CEO), members requested the Administration to take the following actions:

- (a) To liaise with SFC for the provision of the following information:
 - (i) SFC's internal Code of Conduct which set out the standards of integrity and conduct required of its directors (including the Chairman of SFC and the non-executive directors of SFC) and its staff;
 - (ii) the existing arrangements governing the division of role and responsibilities between the executive and non-executive directors of SFC;
 - (iii) whether and how such existing arrangements would apply to the non-executive Chairman and the CEO; and
 - (iv) the arrangements through which information relating to the division of responsibilities between the future SFC Chairman and the CEO could be made known to the public.
- (b) To examine the impact of the splitting proposal on existing provisions under the Securities and Futures Ordinance (SFO) (Cap. 571), such as how directions given under section 11(1) of SFO would be executed after the implementation of the Bill, and advise the Bills Committee on the Administration's analysis and conclusion.
- (c) To highlight the existing provisions under SFO which stipulated the functions vested with the Chairman of SFC, as well as to explain whether it was proper to continue vesting such functions with the future non-executive SFC Chairman if the Bill was enacted.
- (d) To provide information as far as practicable on the remuneration level of and the number of days spent on their work by the non-executive chairmen of other regulators and public bodies listed in paragraph 3 of the Legislative Council Brief, i.e. the Hong Kong Exchanges and Clearing Limited, the Mandatory Provident Fund Schemes Authority, the Airport Authority, the Kowloon-Canton Railway Corporation and the Mass Transit Railway Corporation Limited.

- (e) To advise the Bills Committee in writing the principles and the factors to be taken into consideration by the Administration in determining the level of remuneration of the non-executive chairman post of SFC as well as the proposed level and/or range of remuneration to be offered to the candidate for the post.
- (f) To provide in due course a copy of the recruitment advertisement inviting applications to fill the post to be vacated by the incumbent Chairman of SFC.

8. On paragraph 7(c), the Chairman had also requested the Assistant Legal Adviser to make available the relevant sections of SFO for members' reference.

(Post-meeting note : The required information in paragraphs 7 and 8 above was circulated to members vide LC paper Nos. CB(1)1537/04-05(04) and CB(1)1553/04-05(01) on 13 and 17 May 2005 respectively).

9. To better address their concerns about the implementation of the splitting proposal, if the Bill was enacted, and its impact on the work of SFC, members considered it necessary to seek the comments of SFC in this regard. Members agreed that SFC should be invited to attend the next meeting of the Bills Committee scheduled on Thursday, 19 May 2005, and future meetings, if necessary.

(Post-meeting note: Invitation letter was sent to SFC on 25 April 2005.)

10. On the level of remuneration for the Chairman of SFC, Ms Audrey EU stated her view that she would find it difficult to support the Bill if the Administration could not come up with an objective mechanism for determining the level of remuneration.

11. Summing up members' concerns, the Chairman stated that the Administration should provide the Bills Committee with sufficient information on the respective roles and responsibilities of the SFC Chairman and CEO such that members were fully aware of how the new governance structure would function in actual practice, if the Bill was enacted.

Schedule of meetings

12. Members agreed that the next three meetings of the Bills Committee would be held as follows:

- Thursday, 19 May 2005 at 10:45 am
- Monday, 30 May 2005 at 8:30 am
- Friday, 3 June 2005 at 10:45 am

(Post-meeting note: The notice of meetings was issued to members vide LC Paper No. CB(1)1378/04-05 on 26 April 2005.)

III Any other business

13. There being no other business, the meeting ended at 12:20 pm.

Council Business Division 1
Legislative Council Secretariat
17 May 2005

**Proceedings of the first meeting of the
Bills Committee on Securities and Futures (Amendment) Bill 2005
on Friday, 22 April 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000132 – 000234	Ms Margaret NG Ms Audrey EU Mr Ronny TONG Mr SIN Chung-kai	Election of Chairman	
000235 – 000338	Chairman Ms Margaret NG Mr CHAN Kam-lam Mr Ronny TONG	Election of Deputy Chairman	
000339 – 000445	Chairman	Introductory and welcoming remarks	
000446 – 001058	The Administration	(a) Briefing by the Administration on the legislative proposal (b) The Administration's advice that as the splitting proposal aimed at enhancing the governance of SFC, the early passage of the Bill would be conducive to strengthening Hong Kong's status as an international financial centre. However, there was no specific time limit within which the Bill must be passed	
001059 – 001303	Chairman Ms Margaret NG	Arrangements for inviting views from the public and relevant organizations/individuals	
001304 – 001710	Mr Ronny TONG Chairman The Administration	Major concerns raised at meetings of the Panel on Financial Affairs (FA Panel) and the Administration's written response to the Panel	The information paper provided by the Administration for further discussion at the FA Panel meeting on 17 February 2005 (LC Paper No. CB(1)880/04-05(08)) was circulated to members for reference vide LC Paper No.

Time Marker	Speaker	Subject(s)	Action Required
			CB(1)1367/04-05 on 25 April 2005
001711 – 002159	Chairman Ms Margaret NG Ms Emily LAU Clerk	Arrangements for inviting views from the public and relevant organizations/individuals	
002200– 002348	Ms Margaret NG The Administration	(a) Whether the Administration had made reference to overseas practices in recommending that it would not stipulate in the legislation that the chairman post was non-executive (b) The Administration’s advice that it might be problematic to delineate in law the distinction between executive and non-executive duties. It had made reference to the Financial Services and Markets Act in the United Kingdom which did not contain such stipulation	
002349 – 002919	Chairman Ms Emily LAU Ms Margaret NG Mr CHIM Pui-chung	Schedule of meetings with deputations and the Administration	
002920 – 004119	Chairman Ms Emily LAU The Administration	(a) SFC’s internal Code of Conduct which set out the standards of integrity and conduct required of its directors and its staff (b) Measures to safeguard the independence of the Chairman of SFC	
004120 – 004705	Mr Ronny TONG Chairman Mr Margaret NG	Agreed that SFC should be invited to attend the next meeting of the Bills Committee to give comments on the implementation of the splitting proposal and its impact on SFC’s work, such as the implications on SFC’s international status and its participation in the International Organization for Securities Commissions	The Clerk to take follow-up action as required in paragraph 9 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
004706 – 005033	Chairman Ms Emily LAU The Administration	(a) The Administration to liaise with SFC for the provision of SFC’s internal Code of Conduct; and (b) Information on measures to safeguard the independence of the Chairman of SFC	The Administration to take follow-up action as requested in paragraph 7(a)(i) of the minutes
005034 – 010628	Ms Margaret NG The Administration ALA6 Chairman	Impact of the splitting proposal on existing provisions under SFO, in particular the question of how directions given under section 11(1) of SFO would be executed after the implementation of the Bill	The Administration to take follow-up action as requested in paragraph 7(b) of the minutes
010629 – 010705	Ms Audrey EU Chairman The Administration	Existing provisions under SFO which stipulated the functions vested with the SFC Chairman and whether it was proper to vest such functions with the future non-executive SFC Chairman if the Bill was enacted	The Administration to take follow-up action as requested in paragraph 7(c) of the minutes ALA6 to take follow-up action as requested in paragraph 8 of the minutes
010706 – 011259	Ms Emily LAU The Administration Chairman	Arrangements governing the division of roles and responsibilities between the non-executive Chairman and CEO if the splitting proposal was implemented and in what ways such division could be made known to the public	The Administration to take follow-up action as requested in paragraph 7(a)(ii) to (iv) of the minutes
011300 – 012254	Ms Emily LAU The Administration Mr Howard YOUNG Ms Audrey EU Chairman	Members expressed concern about the remuneration level to be offered to the candidate for the non-executive Chairman post, as follow: (a) the amount of time the non-executive Chairman would be expected to spend on his/her work and whether the post would be full-time or part-time; (b) a reasonable level of	The Administration to take follow-up action as requested in paragraph 7(e) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>remuneration should be provided having regard to the number of days the Chairman would be required to spend on his/her work; and</p> <p>(c) the Administration should formulate a mechanism for determining the level of remuneration for the post of the SFC Chairman instead of determining the level through negotiation with the selected candidate.</p>	
012255 – 012551	Ms Margaret NG The Administration	Without stipulating in the legislation the division of roles and responsibilities between the non-executive Chairman and CEO, whether ambiguity would arise in the application of provisions under SFO	
012552 – 012854	Ms Emily LAU The Chairman	The remuneration level of and the number of days spent on the work by the non-executive chairmen of other regulators and public bodies in Hong Kong would provide the basis for reference	The Administration to take follow-up action as requested in paragraph 7(d) of the minutes
012855 – 013159	Mr CHAN Kam-lam The Administration	The need to provide a reasonable level of remuneration to the non-executive Chairman of SFC and to formulate a mechanism for determining the level of remuneration to prevent public skepticism of any “transfer of benefits”	
013200 – 013539	Ms Emily LAU The Administration	Arrangements for the chairman post if the legislative amendments for implementing the splitting proposal were not passed in time before the departure of the incumbent SFC Chairman in September 2005	The Administration to take follow-up action as requested in paragraph 7(f) of the minutes
013540 – 013616	Chairman	Dates of the next three meetings	

Council Business Division 1
Legislative Council Secretariat
17 May 2005