

立法會
Legislative Council

LC Paper No. CB(1)1929/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/04/1

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

**Minutes of the fourth meeting
held on Friday, 10 June 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 Bernard CHAN, JP
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 Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon TAM Heung-man
- Members absent** : Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
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

Attendance by invitation : Securities and Futures Commission

Mr Andrew L T SHENG
Chairman

Miss Doris PAK
Commission Secretary

Hong Kong Securities & Futures Industry Staff
Union

Mr WONG Kwok-on
Chairman

Mr Roger LEUNG Sung-yeung
Vice Chairman

Hong Kong Society of Financial Analysts Limited

Mr Karl LUNG
President

Mr James SOUTAR
Director

Individual

Mr David M WEBB
Editor
Webb-site.com

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

Action

I Meeting with the Administration and deputations

Follow-up to previous meetings

(a) Consultation with IOSCO

- LC Paper No. CB(1)1699/04-05(01) - Letter dated 20 May 2005 to the Chairman of the IOSCO Executive Committee
- LC Paper No. CB(1)1699/04-05(02) - Letter dated 20 May 2005 to the Deputy Chairman of the IOSCO Technical Committee
- LC Paper No. CB(1)1699/04-05(03) - Letter dated 31 May 2005 from the Chairman of the IOSCO Executive Committee
- LC Paper No. CB(1)1699/04-05(04) - Letter dated 31 May 2005 from the Deputy Chairman of the IOSCO Technical Committee
- LC Paper No. CB(1)1745/04-05(01) - The Administration's response to the views of the Chairman of the Executive Committee and the Deputy Chairman of the Technical Committee of the IOSCO
- LC Paper No. CB(1)1745/04-05(02) - Letter dated 12 January 2005 from Mr Philippe Richard to Financial Services and the Treasury Bureau

(b) Reference to UK model

- LC Paper No. LS78/04-05 - Paper on "Observations on the United Kingdom legislation in respect of the separation of the roles of the Chairman and Chief Executive of the Financial Services Authority (FSA)" prepared by the Legal Service Division

(c) Issues arising from the meeting held on 30 May 2005

- LC Paper No. CB(1)1735/04-05(01) - Administration's response to the issues raised at the meeting on 30 May 2005
- LC Paper No. CB(1)1745/04-05(03) - Letter dated 7 June 2005 from the Administration to Chairman of the Securities and Futures Commission
- LC Paper No. CB(1)1745/04-05(04) - The Administration's response to the submission of the Hong Kong Bar Association

Further submission from deputation

- LC Paper No. CB(1)1735/04-05(02) - Submission from the Hong Kong Society of Financial Analysts Limited (English version only)

Previous papers provided by the Administration

- LC Paper No. CB(1)1651/04-05(01) - Administration's response to the issues raised at the meeting on 19 May 2005
- LC Paper No. CB(1)1537/04-05(04) - Administration's response to the issues raised at the meeting on 22 April 2005
- LC Paper No. CB(1)1537/04-05(05) - Administration's response to the written submissions
- LC Paper No. CB(1)880/04-05(08) - Administration's response to issues raised in the written submissions to the Panel on Financial Affairs

Submissions previously received

- LC Paper No. CB(1)547/04-05(04) - Submissions from Securities and Futures Commission
- LC Paper No. CB(1)1590/04-05(02) - Speaking note of Mr Andrew L T SHENG, Chairman, Securities and Futures Commission
- LC Paper No. CB(1)547/04-05(06) - Submissions from Hong Kong Securities & Futures Industry Staff Union (Chinese version only)
- LC Paper No. CB(1)1537/04-05(01)
- LC Paper No. CB(1)1651/04-05(02)

- LC Paper No. CB(1)547/04-05(07) - Submissions from the Hong Kong Society of Financial Analysts Limited (English version only)
- LC Paper No. CB(1)1537/04-05(02)
- LC Paper No. CB(1)1651/04-05(03)
- LC Paper No. CB(1)547/04-05(16) - Submission from Mr David M WEBB (English version only)
- LC Paper No. CB(1)547/04-05(08) - Submission from Hong Kong Stockbrokers Association Limited
- LC Paper No. CB(1)1537/04-05(03) - Submission from the Law Society of Hong Kong (Securities Law Committee) (English version only)
- LC Paper No. CB(1)1590/04-05(01) - Submission from Mr Ermanno PASCUTTO (English version only)
- LC Paper No. CB(1)1669/04-05(01) - Submission from Hong Kong Bar Association (English version only)

Other relevant papers

- LC Paper No. CB(1)1553/04-05(01) - Extracts of relevant provisions under Securities and Futures Ordinance (Cap.571) on functions vested with the Chairman of Securities and Futures Commission
- 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
SUB12/2/1(2005)Pt.5 - The Bill
- 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

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

Issues which required follow-up actions by the Administration/the Securities and Futures Commission (SFC)

2. The Administration was requested to provide information on the following:

- (a) Provisions or requirements concerning the avoidance of conflict of interests which would be binding on the future non-executive Chairman of SFC and on the executive or non-executive director acting as the Chairman during his temporary absence under the splitting proposal if enacted; and
- (b) Where an executive or non-executive director would be appointed to act as the Chairman of SFC after the implementation of the splitting proposal, how far he would be expected to perform the roles and responsibilities of the Chairman during the acting period and how he would be remunerated for the acting appointment.

(Post-meeting note : The English and Chinese version of the information provided by the Administration as requested in paragraph 2 above was circulated to members vide LC Paper No. CB(1)1927/04-05(01) on 27 June and 4 July 2005 respectively).

SFC 3. Noting that SFC would consider the broad principles governing the division of roles and responsibilities between the future Chairman and the Chief Executive Officer (CEO) of SFC (in response to the Administration's letter dated 7 June 2005 issued vide LC Paper No. CB(1)1745/04-05(03)) and provide its comments to the Administration, members requested SFC to provide a copy of its written response for the Bills Committee's reference. Members also invited SFC to consider the future acting arrangements and advise the Bills Committee of its observations.

(Post-meeting note : The written response of SFC was circulated to members vide LC Paper No. CB(1)1927/04-05(02) on 30 June 2005. Nevertheless, the response did not cover SFC's observations on the future acting arrangements).

Consultation with the International Organization for Securities Commissions (IOSCO)

4. Members noted the written replies from the Chairman of the Executive Committee and the Deputy Chairman of the Technical Committee of IOSCO and the Administration's comments on the replies.

5. Members agreed that after the delineation of roles and responsibilities between the SFC Chairman and its CEO had been drawn up, with the relevant input from SFC as requested in paragraph 3 above, the Bills Committee would

Clerk seek the views of IOSCO on the proposed governance structure underpinned by the split in functions.

Arrangements for the next meeting

6. Having regard to the time required for SFC to deliberate and formulate its views, members agreed that the next meeting would be held on Tuesday, 5 July 2005 at 10:45 am.

7. The Chairman sought members' views on the attendance of deputations. Members agreed that representatives of SFC would be invited to attend the next meeting to assist in the scrutiny of the Administration's proposal. They also agreed that the other deputations/individual present could attend the next meeting if they so wished.

(Post-meeting note: Notice of meeting was issued vide LC Paper No. CB(1)1770/04-05 on 13 June 2005. Letters were also sent to the deputations/individual on 13 June 2005.)

II Any other business

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

Council Business Division 1
Legislative Council Secretariat
4 July 2005

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

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000116	Chairman	Confirmation of minutes	
000117 – 001942	Chairman Administration Ms Emily LAU SFC ALA	<p>(a) The Administration provided information on the existing acting arrangements during the temporary absence of the Chairman of SFC-</p> <ul style="list-style-type: none"> ● Under the existing provisions of the Securities and Futures Ordinance (SFO) (Cap. 571), if a deputy chairman (being an executive director of SFC) was appointed by the Chief Executive (CE), he would act as Chairman of SFC; ● where a deputy chairman had not been appointed (which was the case at present), the Financial Secretary (FS) might designate an executive director of SFC to act as Chairman; and ● where FS had not made such a designation, the SFC Chairman might designate an executive director to act as the Chairman <p>(b) The Administration's advice on future acting arrangements-</p> <ul style="list-style-type: none"> ● Under the Bill, CE might appoint an executive director or a non-executive director to be the deputy chairman of the Commission. If a deputy chairman was appointed, he would act as the Chairman; ● if a deputy chairman was not appointed or was unable 	

Time Marker	Speaker	Subject(s)	Action Required
		<p>to act, FS might designate an executive director or a non-executive director to act as SFC Chairman;</p> <ul style="list-style-type: none">● where FS had not made such a designation, the SFC Chairman might designate an executive director or a non-executive director to act as Chairman; and● consideration would be given to the non-executive nature of the chairman post in making the acting arrangements <p>(c) It was the Administration's policy intention that a deputy chairman would not be appointed if a CEO was appointed</p> <p>(d) SFC's advice that the arrangement currently adopted was for the Chief Operating Officer to act as the Chairman during the temporary absence of the latter</p> <p>(e) The Administration's advice that the governing body of SFC would bear the ultimate accountability for the affairs of SFC</p> <p>(f) ALA6's advice that under SFO, there was no provision on the "governing body" of SFC as such. The Commission was a legal entity constituted by all the executive directors (including the chairman) and non-executive directors appointed by CE</p> <p>(g) Regarding the Administration's letter of 7 June 2005 (LC Paper No. CB(1)1745/04-05(03)), SFC would discuss the broad</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>principles governing the proposed division of responsibilities between the Chairman and CEO including the related legal and policy implications and provide its response to the Administration in due course</p>	
001943 – 003307	<p>Mr Ronny TONG Ms Margaret NG Administration Chairman Mr Abraham SHEK</p>	<p>(a) The Administration was asked to make reference to the relevant UK legislation and consider the need to set out clearly in the legislation the division of roles and responsibilities between the non-executive Chairman and CEO</p> <p>(b) The Administration’s advice that:</p> <ul style="list-style-type: none"> ● The division of roles and responsibilities between the Chairman and the Chief Executive of UK Financial Services Authority was not set out in the relevant legislation; ● the governing legislation for other statutory bodies in Hong Kong did not provide for the respective roles and responsibilities between the Chairman and CEO; and ● the division of work among the Chairman, executive directors and non-executive directors of SFC should be decided by its governing body <p>(c) Ms Margaret NG’s view that the Bills Committee could hardly proceed further in the absence of a clear stipulation of the division of roles and responsibilities between the SFC Chairman and CEO in the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Bill, as well as uncertainty on whether the future Chairman or CEO would be ultimately accountable for the affairs of SFC</p> <p>(d) The Administration’s advice that the future Chairman would be responsible for the overall policy and strategies of SFC while the CEO would be responsible for the day-to-day running of the Commission</p> <p>(e) Mr Abraham SHEK’s view that it would be acceptable to allow flexibility in fine-tuning and adjusting the division of roles and responsibilities of the Chairman and CEO by providing broad principles for SFC to work out the details accordingly. He considered that it might not be practicable to stipulate details of duties and responsibilities, which might evolve over time, in the legislation</p>	
003308 – 004553	<p>Ms Emily LAU Chairman Hong Kong Society of Financial Analysts (HKSFA) Mr David WBB Administration</p>	<p>(a) HKSFA’s view that SFC needed a competent Chairman with the necessary regulatory experience. The chairmanship should not be honorary or be regarded as a form of public service. The level of remuneration offered should be commensurate with the responsibilities of the post</p> <p>(b) Mr David WEBB’s view that:</p> <ul style="list-style-type: none"> ● an adequate level of remuneration should be provided to ensure the appointment of an independent Chairman; ● the division of roles and responsibilities of the 	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Chairman and CEO could be set out through non-statutory means ; and</p> <ul style="list-style-type: none"> ● it would be illogical to designate an executive director as the acting Chairman during the temporary absence of a non-executive Chairman of SFC. However, the concern about conflict of interest might arise if a non-executive director was designated as the acting Chairman <p>(c) Ms Emily LAU’s view that the Chairman should be held accountable. He/she should be full-time and be remunerated accordingly</p> <p>(d) Ms Emily LAU's view that a clear delineation of roles and responsibilities between the SFC Chairman and CEO should be worked out, clearly stipulated and made known to the public. It might not be absolutely necessary to provide for such delineation in law</p> <p>(e) The Administration’s advice that the level of remuneration might not be the decisive factor when a prospective candidate considered whether or not to take up the chairmanship</p>	
004554 – 005808	Mr Ronny TONG Administration Ms Margaret NG Chairman	(a) The need to set out clearly the Administration’s policy intention on who had the ultimate accountability for the affairs of SFC, as well as the division of roles and responsibilities between the Chairman and CEO if the splitting proposal was implemented	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) The Administration’s advice that as a general principle, the governing body of SFC would bear the ultimate accountability for the performance of SFC. As the leader of the Commission, the Chairman should have an overall responsibility for the major policies and decisions of the Commission. The division of work among the Chairman, executive directors and non-executive directors of SFC should be decided by its governing body and made known to the public.</p>	
005809 – 011137	<p>Chairman Administration Ms Margaret NG Ms Emily LAU SFC</p>	<p>(a) Provisions or requirements concerning the avoidance of conflict of interests which would be binding on the future non-executive Chairman of SFC and on the executive or non-executive director acting as the Chairman during his temporary absence under the splitting proposal, if enacted</p> <p>(b) Where an executive or non-executive director would be appointed to act as the Chairman of SFC after the implementation of the splitting proposal, how far he would be expected to perform the roles and responsibilities of the Chairman during the acting period and how he would be remunerated for the acting appointment</p> <p>(c) Future acting arrangements during the temporary absence of the non-executive Chairman of SFC</p>	<p>The Administration to take follow-up action as requested in paragraph 2(a) of the minutes</p> <p>The Administration to take follow-up action as requested in paragraph 2(b) of the minutes</p> <p>SFC to take follow-up action as requested in paragraph 3 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
011138 – 011855	Chairman Ms Margaret NG SFC Ms Emily LAU Mr Ronny TONG	<p>(a) The Chairman's remark that the Bills Committee would be in a better position to deliberate on the Administration's proposal after SFC had given its views on the proposed delineation of responsibilities between the SFC Chairman and CEO.</p> <p>(b) SFC would consider the broad principles governing the division of roles and responsibilities between the future Chairman and CEO of SFC (in response to the Administration's letter dated 7 June 2005 issued vide LC Paper No. CB(1)1745/04-05(03)) and provide its formal response to the Administration</p> <p>(c) The Bills Committee would seek the views of IOSCO on the proposed governance structure underpinned by the split in functions after the delineation of roles and responsibilities between the SFC Chairman and its CEO had been drawn up, with the relevant input from SFC as requested in (b) above</p>	SFC to take follow-up action requested in paragraph 3 of the minutes
011856 – 012417	Chairman Ms Emily LAU SFC Mr Ronny TONG Ms Margaret NG	Arrangements for the next meeting	