

立法會
Legislative Council

LC Paper No. CB(1)2170/04-05
(These minutes have been seen
by the Administration)

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

**Minutes of the fifth meeting
held on Tuesday, 5 July 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, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon TAM Heung-man

Members absent : Hon Bernard CHAN, JP
Hon Abraham SHEK Lai-him, JP
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) Issues arising from the meeting held on 10 June 2005

- (LC Paper No. CB(1)1927/04-05(01) - Administration's response to the issues raised at the meeting on 10 June 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 (SFC)
- LC Paper No. CB(1)1955/04-05(01) - Letter dated 16 June 2005 from the Administration to Chairman of SFC
- LC Paper No. CB(1)1927/04-05(02) - SFC's response to the Administration's request in June 2005
- Annex B to LC Paper No. CB(1)1735/04-05(01) - Powers, functions and duties to be exercised by the Chairman of the SFC under the Securities and Futures Ordinance (Cap.571)

(b) Reference to overseas models

- LC Paper No. CB(1)1927/04-05(03) - Information note on "Governance structures of overseas securities regulators" provided by SFC
- LC Paper No. CB(1)1930/04-05 - Paper for the meeting on 5 July 2005 prepared by the Secretariat
- 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

Previous papers provided by the Administration

- LC Paper No. CB(1)1762/04-05(01) - Administration's response to the submission of the Hong Kong Society of Financial Analysts Limited
- LC Paper No. CB(1)1745/04-05(04) - Administration's response to the submission of the Hong Kong Bar Association
- 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)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

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) - 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

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)
LC Paper No. CB(1)1537/04-05(01)
LC Paper No. CB(1)1651/04-05(02) - Submissions from Hong Kong Securities & Futures Industry Staff Union (Chinese version only)
- LC Paper No. CB(1)547/04-05(07)
LC Paper No. CB(1)1537/04-05(02)
LC Paper No. CB(1)1651/04-05(03)
LC Paper No. CB(1)1735/04-05(02)
LC Paper No. CB(1)547/04-05(16) - Submissions from the Hong Kong Society of Financial Analysts Limited (English version only)
- LC Paper No. CB(1)547/04-05(08) - 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 - 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)

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)

- Admin 2. The Administration was requested to take the following actions:
- (a) to further consider putting in place measures to address members' concern about the safeguards against conflict of interests which would be binding on the future non-executive Chairman of SFC, other non-executive directors and staff of SFC under the split model if the Bill was enacted;
 - (b) to facilitate the Bills Committee's consideration of the Bill and its practical implementation, the Administration and SFC were requested to further discuss the delineation of roles and responsibilities of the Chairman and the Chief Executive Officer (CEO) under the split model with a view to reaching a consensus on the arrangements for the future model; and
 - (c) to provide its response to the proposal of the SFC Board on the delineation of roles and responsibilities of the Chairman and CEO as set out in SFC's letter dated 28 June 2005 (LC Paper No. CB(1)1927/04-05(02)), as well as amendments, if any, to be proposed to the Bill.
3. In connection with paragraph 2(b), members deliberated on alternative means for setting out the delineation of roles and responsibilities of the two posts. The Chairman suggested that the roles and responsibilities of the two posts might be set out by a combination of the following means :

- (a) by including the relevant information in the respective appointment letters to the successful candidates of the two posts;
- (b) by including the relevant information in the speech by the Secretary for Financial Services and the Treasury (SFST) during the resumption of Second Reading debate of the Bill; and
- (c) by setting out the relevant information in the legislation, i.e. the Bill.

Members agreed that the means for setting out the delineation of roles and responsibilities between the two posts should be further considered after the Administration and SFC had reached a consensus on the arrangements under the split model.

4. Members invited SFC to provide in written form the remarks about the splitting proposal made by the incumbent Chairman of SFC at the meeting in his personal capacity.

(Post-meeting note: The paper provided by SFC on paragraph 4 above was circulated to members vide LC Paper No. CB(1)1997/04-05(01) on 6 July 2005.)

Arrangements for the next meeting

5. Members were of the view that in the absence of a consensus between the Administration and SFC on the delineation of roles and responsibilities between the future Chairman and CEO under the split model, it would be very difficult for the Bills Committee to consider how scrutiny of the Bill should be taken forward. Members therefore agreed in principle that the next meeting should only be held after such a consensus had been reached between the Administration and SFC. Nevertheless, noting that the current contract of the incumbent Chairman of SFC would expire at end September 2005, members agreed that the next meeting be scheduled for Monday, 5 September 2005 at 2:30 pm in anticipation that a consensus might be reached before then. The Secretariat would liaise with the Administration in late August 2005 to confirm the meeting arrangements having regard to the progress of the discussion between the Administration and SFC as requested in paragraph 2(b) above.

Clerk

(Post-meeting note : At the request of the Administration and with the concurrence of the Chairman, the next meeting has been deferred to October 2005 to allow more time for the Administration to discuss with SFC the various aspect of the splitting proposal. Members were informed of the arrangement vide LC Paper No. CB(1)2128/04-05 on 26 July 2005.)

II Any other business

6. There being no other business, the meeting ended at 12:10 pm.

Council Business Division 1
Legislative Council Secretariat
9 August 2005

**Proceedings of the fifth meeting of the
Bills Committee on Securities and Futures (Amendment) Bill 2005
on Tuesday, 5 July 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000019	Chairman	(a) Confirmation of minutes (b) Introductory and welcoming remarks	
000020 – 001935	Chairman Administration Ms Emily LAU SFC	(a) Whether the future Chairman or CEO of SFC would bear the ultimate accountability for the affairs of SFC (b) The Administration's advice that as a general principle, the Commission (i.e. the SFC Board) was ultimately accountable/responsible for the performance of the Commission under the Securities and Futures Ordinance (Cap. 571). This principle would continue to apply under the splitting proposal. Under normal circumstances, the CEO should be accountable for all operational matters while the Chairman would be accountable for the overall directions, policies and strategies of the Commission after the splitting proposal was implemented (c) SFC's view that there would be practical difficulties in drawing a clear distinction between policy decisions and case decisions as day-to-day operational decisions on individual cases might have policy implications (d) The Administration to provide its response to the proposal of the SFC Board on	The Administration to take follow-up action as requested in

Time Marker	Speaker	Subject(s)	Action Required
		<p>the delineation of roles and responsibilities of the Chairman and CEO as set out in SFC's letter dated 28 June 2005 (LC Paper No. CB(1)1927/04-05(02))</p> <p>(e) Reasons as to why the SFC Board considered that the delineation of roles and responsibilities between the Chairman and CEO should be decided after enactment of the Bill</p> <p>(f) SFC's advice that currently the governance structures of all members of the International Organization for Securities Commissions Technical Committee adopted the model with a full-time executive chairman. The model with a non-executive chairman was normally adopted in some emerging markets. The SFC Board needed the Administration's clarification on the policy intent on how the policy responsibilities should be split from the regulatory/executive responsibilities</p> <p>(g) The Administration's advice that the Chairman of the UK Financial Services Authority (FSA) was not an executive director according to its recently published Annual Report in June 2005. The proposed split model was similar to the UK model. The Administration did not intend to stipulate in the legislation whether the Chairman post was executive or non-executive. The</p>	<p>paragraph 2(c) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		Administration had provided to the SFC Board the broad principles governing the delineation of roles and responsibilities between the Chairman and CEO and would be willing to discuss with the Board for clarifications on any relevant matters	
001936 – 002659	Mr WONG Ting-kwong Administration	<p>(a) Future acting arrangements during the temporary absence of the non-executive Chairman of SFC</p> <p>(b) Safeguards against conflict of interests which would be binding on the future non-executive Chairman of SFC, other non-executive directors and staff of SFC under the split model</p>	The Administration to take follow-up action as requested in paragraph 2(a) of the minutes
002700 – 005212	Chairman Mr Ronny TONG SFC Administration Ms Audrey EU	<p>(a) The Chairman's view that it would be difficult for the Bills Committee to consider how scrutiny of the Bill should be taken forward without a clear consensus between the Administration and SFC on key issues such as the delineation of roles and responsibilities between the Chairman and CEO and safeguards for avoidance of conflicts of interest</p> <p>(b) Mr Ronny TONG's view that the Bills Committee could not consider the propriety of the delineation of roles and responsibilities if this was only to be worked out after the enactment of the Bill as suggested by the SFC Board in its response to the Administration (LC Paper No. CB(1)1927/04-05(02))</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) SFC's advice that the proposed split model was not the same as the UK model as FSA had a full-time Chairman who was accountable for its affairs. The SFC Board considered that if the future non-executive Chairman would not be working full-time, he/she might have difficulties in dealing with the affairs of SFC. As the Board was uncertain about the Administration's policy intent on the extent of regulatory/executive power to be delegated to CEO under the split model, it considered that it would be more appropriate to work out the detailed delineation when the Bill was enacted or when the policy intent was made clear by the Administration</p> <p>(d) The Administration's view that it had consolidated and provided information on the broad principles governing the separation of roles and responsibilities under the split model in its letter dated 16 June 2005 to SFC (LC Paper No. CB(1)1955/04-05(01)). Its view that since SFC was an independent statutory body, the detailed division of work among the Chairman, executive directors and non-executive directors of SFC should best be decided by the Commission</p> <p>(e) Ms Audrey EU's view that the crux of the problem was the lack of a clear division of roles and responsibilities</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>between the Chairman and CEO and the difference in views of the Administration and SFC as to whether and how the chairman post should be split</p> <p>(f) The Administration's concern that while the roles and responsibilities of the Chairman and CEO could be set out in the appointment letters to the candidates of the respective posts, the suggestion of setting out the division of work in the legislation could not provide the flexibility required for the SFC Board to fine-tune and adjust the duties and responsibilities of the posts which would evolve over time</p>	
005213 – 011200	<p>Mr CHAN Kam-lam Mr Howard YOUNG Chairman Mr Ronny TONG Ms Emily LAU Administration</p>	<p>(a) Mr CHAN Kam-lam's view that to facilitate the Bills Committee's consideration of the Bill and its practical implementations, the Administration and SFC should further discuss the delineation of roles and responsibilities of the Chairman and CEO under the split model with a view to reaching a consensus on the arrangements for the future model</p> <p>(b) The Chairman proposed a combination of three means for setting out the roles and responsibilities of the Chairman and CEO, namely, in the respective appointment letters for the candidates of the posts, in the speech of SFST during the resumption of the Second Reading debate</p>	<p>The Administration to take follow-up action as required in paragraph 2(b) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>of the Bill, and in the Bill</p> <p>(c) Mr Howard YOUNG agreed that flexibility for future adjustment would be constrained if the delineation of roles and responsibilities were stipulated in the legislation.</p> <p>(d) The Chairman's suggestion that reference be made to the arrangements adopted for the governance structure of the Mandatory Provident Fund Schemes Authority as provide in the Mandatory Provident Fund Schemes Ordinance (Cap. 485)</p> <p>(e) Mr Ronny TONG's view that the best option was to set out the delineation arrangements in the legislation. He also expressed reservation on relying on appointment letters only as the reference for the delineation of roles and responsibilities.</p> <p>(f) Ms Emily LAU's reiteration of her view that a clear delineation of roles and responsibilities between the SFC Chairman and CEO must be worked out, clearly stipulated and made known to the public before the Bill was enacted. She had no strong views on whether such delineation was stipulated in the legislation or by other non-statutory means</p>	
011201 – 012355	Chairman Ms Emily LAU Mr CHAN Kam-lam SFC Mr Ronny TONG	<p>(a) Arrangements for the next meeting</p> <p>(b) The incumbent Chairman of SFC's remarks</p>	The Clerk to take follow-up action as required in paragraph 5 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		(c) The Bills Committee's thanks extended to the incumbent SFC Chairman	

Council Business Division 1
Legislative Council Secretariat
9 August 2005