

立法會
Legislative Council

LC Paper No. LS43/04-05

**Paper for the House Committee Meeting
on 8 April 2005**

**Legal Service Division Report on
Securities and Futures (Amendment) Bill 2005**

I. SUMMARY

- 1. Objects of the Bill** To provide for the removal of executive director status of the Chairman of the Securities and Futures Commission (SFC), the power of the Chief Executive to appoint a chief executive officer (CEO) for SFC, an excess of non-executive directors over executive directors on the SFC, and related and incidental matters.
- 2. Comments** The division of functions between the Chairman and CEO would be left to be determined by SFC, of which both are members. The Bill contains no provision that would ensure the implementation of the separation of roles and responsibilities of the Chairman and CEO in the way as envisaged by the Administration. It appears that the Chairman would be regarded neither as an executive director nor a non-executive director. Consequently, it seems that he would not be counted in the calculation of the requisite majority or quorum under other provisions of the Ordinance.
- 3. Public Consultation** The SFC was consulted on the proposal and had agreed to it in principle. Members of the SFC had raised practical issues of implementation which are listed in Annex B to the LegCo Brief.
- 4. Consultation with LegCo Panel** The Financial Affairs Panel was briefed on the proposal at its meetings on 10 November 2004 and 17 February 2005. The Panel also heard views from professional bodies, industries associations and academia at the 3 January 2005 meeting. Despite divided views on the proposal among members, the Panel at the meeting on 17 February 2005 passed a motion supporting the proposal in principle.
- 5. Conclusion** The proposed legislation would introduce some important changes in the governance structure of the SFC that might significantly affect its future operation. It is recommended that a Bills Committee be set up to study the Bill in view of its impact on the statutory regulator.

II. REPORT

Objects of the Bill

To amend the Securities and Futures Ordinance (Cap. 571) (the Ordinance) to provide for the removal of the executive director status of the Chairman of the Securities and Futures Commission (SFC), the power of the Chief Executive to appoint a chief executive officer (CEO) for The SFC, an excess of non-executive directors over executive directors on SFC, and related and incidental matters.

LegCo Brief Reference

2. SUB12/2/1(2005)Pt.5 issued by the Financial Services Branch of the Financial Services and the Treasury Bureau on 9 March 2005.

Date of First Reading

3. 6 April 2005.

Background

4. Since both the international and the local best governance practices require the roles and responsibilities of Chairman and chief executive of a public body to be separated, the Administration considers that SFC as the market regulator should implement such practice and set exemplary standard for others to follow. That would also be in line with the corporate governance practice of other public corporations in Hong Kong, e.g. the Hong Kong Exchange and Clearing Limited, the Airport Authority, the Canton Kowloon Railway Corporation and the Mandatory Provident Fund Schemes Authority.

5. The Administration has proposed that the role of the Chairman of SFC should be separated from that of the CEO. The Chairman should focus on the establishment and development of an effective governing body; setting agenda and priorities; facilitating effective contribution of non-executive directors; representing SFC publicly and liaising with local and international financial institutions and organizations as well as other stakeholders. The CEO should have the executive responsibility on the day-to-day running of SFC. His key responsibilities include reporting to the governing body of SFC regularly with appropriate, timely and quality information; informing and consulting the Chairman on all matters of significance to SFC; developing and delivering the strategic objectives agreed with the governing body; overseeing the day-to-day operation and regulatory work of SFC and ensuring that SFC is equipped with the necessary staffing, financial and risk management systems for its mission.

Comments

6. The Administration has decided that the assignment of the functions of the Chairman and CEO is to be determined by SFC (Clause 2(k)). The Bill therefore does not contain any provisions specifying the roles or responsibilities of the Chairman or CEO, nor the respective scope of such roles and responsibilities. It remains to be seen how, in the absence of any express provision in the Bill, the effective implementation of the separation of the roles and responsibilities of the Chairman and CEO as envisaged by the Administration could be ensured.

7. Since the Chairman would be regarded neither as a non-executive director nor as an executive director, it seems that he is not to be counted when the requisite majority or quorum is to be calculated for the purposes of other provisions of the Ordinance (e.g. sections 1(b), 16 and 21(b)(ii) of Schedule 2).

Public Consultation

8. SFC has been consulted on the proposal and has agreed to it in principle. Members of SFC have raised practical issues of implementation which are listed in Annex B to the LegCo Brief.

Consultation with LegCo Panel

9. The Financial Affairs Panel (the Panel) has been briefed on the proposal at its meetings on 10 November 2004 and 17 February 2005. To facilitate Members' consideration of the Administration's proposal, the Panel invited SFC, other interested organizations, and academics to give views on the proposal and attend its meeting on 3 January 2005. Apart from SFC, of the 17 other organizations and academics who submitted views to the Panel, 11 expressly stated that they supported the splitting proposal and two indicated that they were against the proposal while the remaining four expressed some views and concerns.

10. Members of the Panel had divided views on the splitting proposal. While some members supported the proposal in principle for enhancing the governance structure of SFC, some members either did not support or expressed reservations on the proposal. At its meeting on 17 February 2005, the Panel passed by a majority vote (nine to six) a motion supporting the proposal in principle. Members may refer to the minutes of the 17 February 2005 meeting of the Panel (Ref: LC Paper No. CB(1)1159/04-05) for details of Members' views and the actual wording of the motion passed.

Conclusion

11. The proposed legislation would introduce some important changes in the governance structure of the SFC that might significantly affect its future operation. It is recommended that a Bills Committee be set up to study the Bill in view of its impact on the statutory regulator.

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