

立法會
Legislative Council

LC Paper No. CB(1)879/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

Minutes of meeting
held on Monday, 3 January 2005 at 9:00 am
in the Chamber of the Legislative Council Building

- Members present** : Hon Bernard CHAN, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon Albert Jinghan CHENG
Hon TAM Heung-man
- Member attending** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Member absent** : Dr Hon David LI Kwok-po, GBS, JP

**Public officers
attending**

: Agenda Item IV

Mr G W E JONES
Registrar of Companies

Miss Peggy LAU
Registry Manager
Companies Registry

Mr T C HO
Business Manager
Companies Registry

Mr Alan LO
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)4

Agenda Item V

Mrs Clarie LO
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Ms Edna WONG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)2

Miss Aubrey FUNG
Assistant Secretary for Financial Services and the
Treasury (Financial Services) (2)1

**Attendance by
invitation**

: Agenda Item V

Securities and Futures Commission

Mr Andrew L T SHENG, SBS, JP
Chairman

Ms Doris PAK
Commission Secretary

Hong Kong Baptist University

Professor Simon S M HO
Dean & Professor
School of Business

Hong Kong Securities Professionals Association

Mr CHEUNG Wah-fung
Chairman

Ms Jeanne LEE Sai-yin
Vice Chairman

Hong Kong Securities & Futures Industry Staff Union

Mr WONG Kwok-on
Chairman

Mr Roger LEUNG Sung-yeung
Vice Chairman

The Institute of Securities Dealers Limited

Ms CHEN Po-sum
Vice Chairman

The Hong Kong Society of Financial Analysts Limited

Mr Richard MAK
President

Mr James SOUTAR
Director

Hong Kong Stockbrokers Association Limited

Mr Henry CHAN
Chairman

Mr Anthony ESPINA
Vice Chairman

ACI - The Financial Markets Association of Hong Kong

Mr Horace FAN
President

Mr Joseph LAM
Chief Executive Officer

Hong Kong Institute of Certified Public Accountants

Mr Edward CHOW
President

Ms Mary LAM
Assistant Director
(Business Members & Specialist Practices)

Clerk in attendance : Miss Salumi CHAN
Chief Council Secretary (1)5

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms May LEUNG
Legislative Assistant

Agenda Items I to IV

Ms Connie SZETO
Senior Council Secretary (1)4

Agenda Items V and VI

Ms Rosalind MA
Senior Council Secretary (1)8

Agenda Item V

Ms Elyssa WONG
Deputy Head (Research and Library)

Mr CHAU Pak-kwan
Research Officer 5

Miss Edith CHAN
Council Secretary (1)1

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)567/04-05 — Minutes of meeting on 1 November 2004

LC Paper No. CB(1)568/04-05 — Minutes of special meeting on 10 November 2004)

The minutes of the meetings held on 1 November 2004 and 10 November 2004 were confirmed.

II. Information paper issued since the last meeting

2. Members noted that no information paper had been issued since the last regular meeting held on 6 December 2004.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)547/04-05(01) — List of outstanding items for discussion

LC Paper No. CB(1)547/04-05(02) — List of follow-up actions)

Informal meeting on 7 January 2005

3. The Chairman reminded members that an informal meeting had been scheduled to be held immediately after the House Committee meeting on Friday, 7 January 2005 for the Research and Library Services Division of the LegCo Secretariat to discuss with members on the revised draft research report on “Management of Government Investment Incomes”.

Special meeting on 19 January 2005

4. The Chairman reminded members that a special meeting had been scheduled for Wednesday, 19 January 2005, from 8:30 am to 9:30 am to receive a briefing by the

Secretary for Financial Services and the Treasury on the relevant policy initiatives relating to financial affairs featuring in the Chief Executive's Policy Address 2005.

Regular meeting on 17 February 2005

5. The Chairman reminded members that the regular meeting for February 2005 had been re-scheduled to be held on Thursday, 17 February 2005, from 9:30 am to 12:30 pm.

6. The Chairman pointed out that in line with the established practice, the Chief Executive of the Hong Kong Monetary Authority (CE/HKMA) would brief the Panel on the work of HKMA at the regular meeting in February. Apart from this item, the Chairman said that depending on the outcome of members' discussion at the informal meeting to be held on 7 January, the subject on "Management of Government Investment Incomes" might be placed on the agenda for the meeting on 17 February. Members agreed that the agenda for the meeting on 17 February be finalized later.

7. Referring to the existing practice under which the Securities and Futures Commission would present its annual budget to the Panel for Members' information at the meeting in March each year, Ms Emily LAU suggested that HKMA be invited to brief the Panel on its annual budget. She also suggested that the subject be covered by CE/HKMA's briefing to the Panel on 17 February.

8. Miss TAM Heung-man suggested that HKMA be invited to provide information on whether there was a target return rate set for the Exchange Fund (EF); the actual return rates of the EF in recent years; and a comparison of the actual return rates of the EF in recent years with those reflecting the performance of relevant bodies in other jurisdictions, such as the United States and United Kingdom. Miss TAM also suggested that the subject on the return rate of the EF be covered by CE/HKMA's briefing to the Panel on 17 February.

9. The Chairman directed the Clerk to Panel to convey members' requests mentioned in paragraphs 7 and 8 above to the Administration.

IV. Proposal of re-structuring the filing fees for non-Hong Kong companies
(LC Paper No. CB(1)547/04-05(03) — Paper provided by the Administration)

Briefing by the Administration

10. At the invitation of the Chairman, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)4 (PAS/FST(FS)4) gave a brief introduction. He advised that the Companies (Amendment) Ordinance 2004 (the Amendment Ordinance 2004) enacted in July 2004 introduced a number of proposals for modernizing the registration regime, including the introduction of a

requirement for an overseas company (to be renamed as a non-Hong Kong company once Schedule 2 to the Amendment Ordinance 2004 came into effect) to file a full annual return in the specified form containing particulars of the company within 42 days from the anniversary date of its registration, and a new service of additional issue of certificates of registration in relation to such companies. To put in place the proposals, it was necessary to restructure the current filing fees set out in the Eighth Schedule to the Companies Ordinance (CO) (Cap. 32) and to introduce a new fee for the additional issue of the relevant certificates. PAS/FST(FS)4 pointed out that these two proposals would be implemented by amending the Eighth Schedule to the CO. Under section 360(3A) of the CO, the Financial Secretary might amend the Schedule by an order published in the Gazette. The order would be subject to negative vetting of LegCo. The Administration planned to table the relevant order at LegCo in the first quarter of 2005. The changes, together with the relevant provisions in the Amendment Ordinance 2004, were planned to come into effect in the latter half of 2005, in order to tie in with the completion of the necessary modifications to the Companies Registry (CR)'s information system.

11. Upon invitation by the Chairman, the Registrar of Companies (R of C) briefed members on the details of the two proposals. R of C highlighted the following points:

Proposed filing fees

- (a) The Administration proposed to replace the existing fee of \$140 payable by an overseas company for filing an annual return and the fee of \$20 for filing each other document as prescribed in items (b) and (c) of Part III of the Eighth Schedule by a new single filing fee of \$250 payable upon the delivery of a full annual return in the specified form. This approach had been adopted in the filing fees for local companies in 1996. The proposed new fee was worked out on the basis that overseas companies would not pay more than as present. CR's statistics indicated that, on average, an overseas company submitted some 5.5 documents in a year. The current fee of \$140 for filing an annual return plus the current fee for filing 5.5 documents at \$20 per document (i.e. $\$20 \times 5.5 = \110) was equivalent to \$250.
- (b) In order to encourage compliance with the filing requirements under the CO and timely disclosure of corporate information, the Administration proposed to introduce escalating fees in respect of late filing of annual returns. The same arrangement had already been in place for local companies having a share capital since 1988. Under the proposal, the longer the delay in filing the returns, the higher would be the fee payable. For instance, if an overseas company filed the annual return more than nine months after the anniversary of registration, the fee payable would be \$4,800.

Proposed fee for the additional issue of certificates of registration

- (c) To enhance customer service and to meet customers' needs, the Administration proposed to introduce a new service of the additional issue of certificates of registration in relation to overseas companies. The proposed fee for this service was \$170 per copy of certificate, which was the same as that applicable to local companies.

12. R of C also pointed out that the Bills Committee on the Companies (Amendment) Bill 2003 (now the Amendment Ordinance 2004) had briefly discussed the proposed filing fees for overseas companies and raised no objections. CR had also consulted its Customer Liaison Group (CLG) on the fees proposals. Members of the CLG generally considered that the proposals were fair and reasonable and did not raise any objections.

Discussion

Financial implications of the fees proposals

13. Mr SIN Chung-kai said that the Democratic Party had no objection to the fees proposals but considered that the proposals should be implemented on a cost recovery basis. Ms Emily LAU also stressed the importance of cost recovery.

14. In response, the Business Manager, CR pointed out that the fees proposals would be revenue neutral. It was expected that after the implementation of the fees proposals, the total revenue from filing fees submitted by overseas companies would be more or less the same as before. He added that as CR was operating under the Companies Registry Trading Fund (CRTF) on a global basis, it was difficult for it to calculate the cost for each individual service item. Nevertheless, the overall target rate of return of CRTF was set at 10% and the target rate was achieved in 2003-04.

Escalating fees for late filing and other actions against non-compliance

15. Mr CHAN Kam-lam indicated that the Democratic Alliance for Betterment of Hong Kong was supportive of the fees proposals in principle. However, he considered that, apart from introducing escalating fees for late filing, the Administration should find out the reasons why companies had failed to comply with the requirement of filing an annual return within the prescribed period. Without knowing the reasons, it would be difficult for the Administration to tackle the root of the problem. In this connection, Mr CHAN pointed out that if an overseas company deliberately filed late returns to cover up its illegal acts, the proposed requirement for the company to pay the escalating fee might not serve any meaningful purpose.

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16. In response, R of C advised that CR did not have the information about the reasons why overseas companies had filed late returns. He also pointed out that at present, overseas companies were not required to file full annual returns but only a return confirming that no changes had taken place in respect of the company data over the year. It was envisaged that overseas companies would have no difficulty in complying with the new requirement of filing a full annual return on time, particularly in the case of listed companies which had professional teams, such as auditors and company secretaries, to take care of company registration matters. R of C assured members that the Administration would monitor the implementation of escalating fees and review their effectiveness in due course. He added that the introduction of escalating fees in respect of late filing for local companies since 1988 had significantly improved the compliance rate of local companies. In this connection, the Registry Manager, CR (RM/CR) advised that the main reason for local companies to file late returns was that they had forgotten to submit the returns within the prescribed period.

17. Mr WONG Ting-kwong enquired whether R of C had the discretionary power to waive the requirement for companies filing late returns to pay the escalating fees. R of C confirmed that he was not given the power to vary any statutory fees payable under the Eighth Schedule to the CO.

18. Ms Emily LAU considered it necessary for CR to compile statistics on late filing by companies and find out the reasons involved. She also enquired about the prosecutions taken by the Administration against overseas companies for non-compliance with the statutory filing requirements.

19. On statistics about late returns by companies, RM/CR advised that about 30% of overseas companies had not submitted their annual returns within the prescribed period. As regards the prosecutions taken against companies for non-compliance with the statutory filing requirements, R of C advised that given the resource constraints and public interest considerations, priority in enforcement action was given to listed companies. In respect of prosecutions instituted, a total of 1 351 and 1 317 summonses had been issued in 2003 and 2004 (up to November) respectively. In 2003-04, there were a total of 326 convictions involving 106 overseas companies, representing 32.5% of the total number of convictions.

20. Miss TAM Heung-man enquired when the Administration would initiate actions to prosecute overseas companies for not filing annual returns within the prescribed period. In response, RM/CR explained that in respect of local companies, a grace period of 28 days would be allowed for companies which had not filed their annual returns within the statutory 42 days. After the grace period, the CR's computer system would randomly select cases for issuance of summons. The number of summons to be issued would depend on the number of cases to be heard by Magistrates' Courts. R of C re-iterated that given the resource constraints and public

interest considerations, it would not be feasible to take prosecutions on all breaches by companies.

Admin 21. Ms Emily LAU expressed reservation about the approach adopted by CR in taking enforcement actions on a selective basis. She urged that CR should strengthen its enforcement actions against companies for non-compliance with the statutory requirements so as to enhance the corporate governance standards of companies in Hong Kong. Miss Tam Heung-man shared her view.

22. The Chairman enquired whether CR had explored the feasibility of issuing reminders to companies which had not filed their returns. In reply, R of C re-iterated that given the resource constraints and the fact that there were over 500 000 local companies and some 7 000 oversea companies in Hong Kong, it was not feasible to issue reminders to them. Ms Emily LAU pointed out that the reminders should only be issued to companies which had not filed their returns, but not to all companies. R of C stressed that companies should be aware of the various statutory requirements under the CO and CR had no statutory obligation to remind them of the requirements. He added that the current level of compliance with the statutory filing requirements in Hong Kong compared very favourably to that in the United Kingdom (UK).

23. Mr Ronny TONG enquired whether the Administration had considered the feasibility of introducing a fixed penalty for non-compliance with the statutory filing requirements. He was of the view that the suggestion would obviate the need for the Magistrates' Courts to hear such cases and, simplify the process for CR in taking enforcement action thereby saving resources. R of C replied that the suggestion was one of the options being considered by CR in the context of a longer-term review of the offences and punishment provisions under the CO. He agreed that the key filing requirements under the CO should be backed by strict liability sanctions. The suggestion would help ease the workload of CR and the Magistrates' Courts.

Admin 24. Mr CHAN Kam-lam stressed the importance for the Administration to simplify filing requirements for companies with a view to facilitating the operation of businesses and reducing their compliance costs. He suggested that after the implementation of the new filing requirement and filing fees for oversea companies, CR should monitor the situation and compile the relevant information, including statistics on compliance, non-compliance and late returns, enforcement actions taken, and consider, in the light of experience, the need for relaxing the filing requirements for companies.

25. In reply, R of C pointed out that one of the objectives of the Amendment Ordinance 2004 was to modernize the registration regime of oversea companies through simplifying the filing requirements for these companies. He envisaged that upon implementation of the proposed escalating filing fees for oversea companies, CR would be able to compile the statistics related to late filing by these companies.

26. Ms Emily LAU also requested the Administration to monitor the

Admin implementation of the new filing requirement and filing fees for oversea companies and report the situation to the Panel in 12 months' time. The report should include the required information mentioned in paragraph 24 above and the measures proposed by the Administration to improve the situation.

Admin 27. PAS/FST(FS)4 pointed out that the new filing requirement and filing fees for oversea companies were expected to come into effect in the latter half of 2005. To allow time for observing the implementation of the new requirements and compiling the relevant statistics, the Administration would not be able to report the situation to the Panel in 12 months' time. He undertook that the Administration would report back to the Panel in due course.

Publicity on filing requirements under the Companies Ordinance

28. To enhance companies' awareness of and compliance with the filing requirements under the CO, Mr CHAN Kam-lam considered that CR should strengthen its efforts in publicity so that companies, in particular small and medium sized enterprises, and professional accountants would be aware of the need to comply with the requirements. Ms Emily LAU and Miss TAM Henug-man held the same view.

29. In reply, RM/CR advised that upon the issue of certificates of registration to companies, CR would provide them with a pamphlet on the various general filing requirements under the CO. The pamphlet was also available at CR's enquiry counter and website. Moreover, CR maintained regular contact with major customers and professional bodies, such as the Hong Kong Institute of Certified Public Accountants, to solicit their support in publicizing the filing requirements under the CO and distributing the relevant pamphlet to their clients and members.

Conclusion

30. The Chairman concluded that members were supportive of the fees proposal in principle. He invited the Administration to take note of members' concerns and take the follow-up actions mentioned in paragraphs 16, 21, 24, 26 and 27 above.

V. Further discussion on proposed amendments to the Securities and Futures Ordinance — the proposal of splitting the post of the Chairman of Securities and Futures Commission into a non-executive chairman post and a chief executive officer post

(LC Paper No. CB(1)547/04-05(04) — Securities and Futures Commission

LC Paper No. CB(1)547/04-05(05) — Hong Kong Securities Professionals Association

LC Paper No. CB(1)547/04-05(06) — Hong Kong Securities & Futures Industry Staff Union

LC Paper No. CB(1)547/04-05(07) — The Hong Kong Society of Financial Analysts Limited

LC Paper No. CB(1)547/04-05(08) — Hong Kong Stockbrokers Association Limited

LC Paper No. CB(1)547/04-05(15) — Hong Kong Institute of Certified Public Accountants

LC Paper No. CB(1)547/04-05(10) — The Law Society of Hong Kong (Securities Law Committee)

LC Paper No. CB(1)547/04-05(11) — Dr Stanley HOI Chun-Keung
Associate Professor
Department of Finance & Insurance
Lingnan University

LC Paper No. CB(1)547/04-05(12) — Hong Kong Exchanges and Clearing Limited

LC Paper No. CB(1)547/04-05(13) — Professor Stephen Y L CHEUNG
Chair Professor
Department of Economics & Finance
City University of Hong Kong

LC Paper No. CB(1)547/04-05(14) — The Hong Kong Association of Online Brokers

LC Paper No. CB(1)547/04-05(16) — Mr David M WEBB
Editor, Webb-site.com

LC Paper No. CB(1)547/04-05(17) — The Hong Kong Investment Funds

Association

- LC Paper No. CB(1)547/04-05(18) — Professor LOW Chee-keong
Associate Professor in Corporate
Law
School of Accountancy
The Chinese University of Hong
Kong
- LC Paper No. CB(1)547/04-05(19) — Hong Kong Institute of Directors
- LC Paper No. CB(1)595/04-05(01) — Summary of submissions
- LC Paper No. IN12/04-05 — Information note on Overseas
Securities and Futures Regulators
prepared by the Research and
Library Services Division of the
LegCo Secretariat
- LC Paper No. CB(1)177/04-05(01) — Paper provided by the
Administration
- LC Paper No. CB(1)177/04-05(02) — Background brief prepared by the
Legislative Council Secretariat
- LC Paper No. CB(1)568/04-05 — Minutes of special meeting on
10 November 2004 (Agenda
Item I))

31. The Chairman welcomed representatives of deputations, the academic and representatives of the Administration to the meeting. He pointed out that pursuant to the Panel's decision at its meeting on 10 November 2004, the Securities and Futures Commission (SFC), other interested organizations, and academics were invited to attend this meeting to give views on the Administration's proposal to enhance the governance of SFC by splitting the post of the chairman into a chairman post and a chief executive officer (CEO) post. The Chairman reminded the representatives of deputations and the academic that when addressing the Panel, they would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

32. The Chairman drew members' attention to the submissions received from various deputations and academics, and the summary of submissions and "Information Note on Overseas Securities and Futures Regulators" prepared by the LegCo Secretariat.

Presentation of views by deputations/academic

33. The Chairman invited the key representative of each deputation and the academic to present their views in turn.

SFC

(LC Paper No. CB(1)547/04-05(04))

34. Mr Andrew SHENG, Chairman of SFC said that having served in SFC for seven years by September 2005, he was pleased to share with the Panel his personal views on the role of the chairman of SFC. In this connection, Mr SHENG declared that he had no interest in being appointed either as a non-executive chairman or CEO of SFC after the expiry of his current contract in September. He therefore had no personal interest in the outcome of the Administration's proposal. Mr SHENG indicated that he fully agreed with the SFC Board that the job of the chairman could be split between that of the chairman and a CEO. The key issues to be considered were the independence of SFC, its accountability for effectiveness and fairness as a statutory regulator, and whether there were sufficient checks and balances to ensure that SFC functioned fairly and transparently. He highlighted the following points:

(a) Independence of SFC as a statutory regulator

It was crucial for SFC to carry out its statutory regulatory functions in an independent manner, which should be, and seen to be, free from political or commercial interests.

(b) Checks and balances on the powers of SFC

- SFC was the only securities regulator in the world which was subject to the scrutiny of an independent Process Review Panel (PRP). In addition, many of SFC's regulatory decisions were subject to full review by the independent Securities and Futures Appeals Tribunal.
- The executive powers of SFC, especially the regulatory powers, were delegated to individual executive directors and not concentrated in the chairman. Moreover, all SFC Board members, including its executive directors and non-executive directors, were appointed by the Chief Executive (CE) of the Hong Kong Special Administrative Region Government.

(c) Accountability of SFC

- SFC, as a regulatory body, must be accountable to the public for public and statutory regulatory decisions. For full accountability, there could be only one captain in one ship and during financial crisis, there should be no doubt as to who was fully responsible and accountable for overseeing that crisis in the securities market.
- The personal experience of the current chairman of SFC was that the chairman could delegate authority, but not responsibility. He

had to devote 100% of his time to understand the daily complex regulatory issues that SFC was involved in.

- Given the complexity involved in exercising the regulatory role of SFC, there would be difficulties in separating operational responsibilities from policy responsibilities since both were intertwined. The chairman could not function effectively and be responsible for policy without hands-on understanding of the regulatory details of individual cases. As an Executive Director, the chairman had the right to ensure that all due process, checks and balances were followed in individual cases, and that such processes and due fairness were followed in accordance with the set procedures, which were reviewed by the independent PRP.

(d) International dimension

The status of SFC in the international community was an important factor in strengthening Hong Kong's role as an international financial centre. Two chairmen of SFC, including the current chairman, had been invited to chair the Technical Committee of the International Organization for Securities Commissions (IOSCO). All chairmen of the member organizations of the Technical Committee were executive chairmen. There would be a risk for Hong Kong, if SFC was denied the opportunity of future chairs of important positions in the international community, because some full-time chairmen might not consider a part-time chairman as an equal.

35. Mr Andrew SHENG concluded that he agreed that there should be a chairman supported by a CEO, and that the chairman should be executive and the fully accountable public face of SFC. He also pointed out that SFC fully recognized that the decision regarding the splitting of the chairman post was a policy decision that was a prerogative of the Administration.

Professor Simon S M HO, Hong Kong Baptist University

36. Professor Simon HO indicated his support for the Administration's proposal as the splitting of the chairman post of SFC would strengthen the internal governance practice and enhance the effective functioning of SFC. As a major market regulator in Hong Kong, SFC should set an exemplary standard for other regulators to follow. Professor HO made the following suggestions on the implementation of the splitting proposal:

- (a) In making reference to good corporate governance principles and practices adopted by local and international organizations, direct comparison with experience of overseas regulators might not be useful given the differences in legal and market environment. Hong Kong should find its own path and directions in enhancing the corporate governance of SFC;

- (b) SFC should have a non-executive chairman with clear separation of functions from CEO. Being “non-executive” would give more freedom and flexibility to the appointee and to attract more suitable candidates. It should be treated as an honorary public office, but not a paid job (although the actual pay could be negotiated depending on the profile and financial needs of the appointee). Nevertheless, cost-saving should not be the reason for having a non-executive chairman;
- (c) The non-executive chairman should not be a political appointment by CE. To facilitate the selection of the most qualified candidate for the chairman post, a committee might be set up for headhunting the person with the suitable calibre in the global market; and
- (d) To minimize unnecessary intervention to the work of SFC, the Administration should consider implementing the proposal when the contract of the current chairman expired in September 2005.

(Post-meeting note: The submission from Professor Simon HO tabled at the meeting was circulated to members vide LC Paper No. CB(1)631/04-05(01) on 4 January 2005.)

*Hong Kong Securities Professionals Association (HKSPA)
(LC Paper No. CB(1)547/04-05(05))*

37. Mr CHEUNG Wah-fung, Chairman of HKSPA said that HKSPA fully agreed with the splitting proposal as it would enhance the transparency and efficiency of SFC. However, HKSPA was concerned about the details of the splitting proposal, in particular, the criteria to be adopted for and the process of recruitment of the chairman and CEO. The selected candidates should be free from any conflict of material interests and be familiar with the local securities and futures market. They should be able to lead SFC in achieving the dual objectives of facilitating the development of the local securities and futures market and promoting Hong Kong as an international financial centre.

*Hong Kong Securities and Futures Industry Staff Union (SFISU)
(LC Paper No. CB(1)547/04-05(06))*

38. Mr Roger LEUNG, Vice Chairman of SFISU referred members to the article of SFISU attached to its submission for details of its views. On the selection criteria for the chairman and CEO posts, SFISU considered that both of them should have sufficient knowledge of market operations, and that nationality of the candidates should also be a factor for consideration. Suitable candidates should be identified for the chairman and CEO posts to enhance communication and increase transparency. SFISU also hoped that in proposing any reform measures for the securities and futures sector in future, the Administration should not only aim to strengthen the

regulatory work, but also take into consideration other important factors such as improving the business environment of the industry, creating more job opportunities, strengthening investor education, and promoting fair competition.

The Institute of Securities Dealers Limited (ISD)

39. Ms CHEN Po-sum, Vice Chairman of ISD said that ISD supported the splitting proposal in principle and considered that there should be clear separation of duties between the non-executive chairman and CEO. The non-executive chairman should assume an oversight role to ensure fairness and impartiality of SFC's work while the CEO should lead the executive arm and be responsible for the daily operations of SFC. There should be no great problem in selecting the right candidate as the non-executive chairman. On the selection criteria for the chairman and CEO posts, Ms CHEN stressed that knowledge of the local market as well as ability to maintain close liaison and communication with the industry were crucial. Hence, she considered it preferable to identify suitable candidates of Chinese nationality for the two posts. She also pointed out that in making reference to overseas experience, due consideration should be given to the practicability of adopting overseas practices having regard to the uniqueness of the local market.

Hong Kong Society of Financial Analysts Limited (HKSFA)
(LC Paper No. CB(1)547/04-05(07))

40. Mr James SOUTAR, Director of HKSFA pointed out that as an industry organization representing financial professionals, HKSFA had a strong interest in the smooth, transparent, efficient and fair operations of SFC and would support any initiative that would improve the overall governance and efficiency of SFC. On the Administration's proposal of splitting the chairman post of SFC into chairman and CEO posts, it was important to fully and clearly understand the reasons why such a proposal was required. While HKSFA saw some merits of the proposal, it had the following views:

- (a) The chairman and CEO of SFC should be executive, full-time and fully remunerated. The appointment of an executive and full-time chairman to SFC would facilitate the perception of the independence of SFC by the public and the international community. This would be conducive to the promotion of the status of Hong Kong in the global financial market;
- (b) It was very important to appoint the right candidates to the chairman and CEO posts. The candidates for the two posts must possess profound knowledge of the operation of the financial market as well as the operations of regulatory bodies. The candidates should be selected through a transparent process with clearly set selection criteria, and the search for the suitable candidates should be made in the international arena. The two posts must be filled on the basis of professional merit and must not be a political appointment; and

- (c) The decision on the splitting proposal was a complex one and needed to be made after considerable consultation. The recruitment of the chairman and CEO must not be done in haste.

Hong Kong Stockbrokers Association Limited (HKSA)
(LC Paper No. CB(1)547/04-05(08))

41. Mr Henry CHAN, Chairman of HKSA said that HKSA agreed that good corporate governance was essential to maintaining Hong Kong's status as an international financial centre and that SFC, as the primary regulator of the securities market, should be, and seen to be, a model of good corporate governance. HKSA believed that the separation of roles between the chairman and CEO would have a number of advantages, such as strengthening the independence and oversight role of the Board, and ensuring that the powers were not concentrated. While checks and balances on the powers of SFC were in place, the proposed appointment of a non-executive chairman to lead and oversee the work of SFC would further enhance its corporate governance. Mr CHAN pointed out that a non-executive chairman was not the same as a part-time chairman and he/she could receive remuneration at an appropriate level. On the selection criteria for the chairman post, Mr CHAN said that the chairman should be, and seen to be, fully independent, and possessed in-depth knowledge and understanding of the operations of the securities and futures markets in the local, the Mainland and the international context.

ACI-The Financial Markets Association of Hong Kong (ACIHK)

42. Mr Horace FAN, President of ACIHK pointed out that with the majority of its members involving in activities under the regulation of SFC, ACIHK fully appreciated SFC's support to the industry and its effort in promoting the status of Hong Kong as an international financial centre. ACIHK would support the splitting proposal to enhance the transparency and credibility of SFC subject to the following three conditions being met:

- (a) The chairman must have profound relevant experience;
- (b) The roles and responsibilities of the chairman and CEO posts should be clearly defined; and
- (c) The current smooth work flow of SFC should be maintained.

(Post-meeting note: ACIHK's submission tabled at the meeting was circulated to members vide LC Paper No. CB(1)631/04-05(02) on 4 January 2005.)

Hong Kong Institute of Certified Public Accountants (HKICPA)
(LC Paper No. CB(1)547/04-05(15))

43. Mr Edward CHOW, President of HKICPA said that HKICPA supported the principle of the splitting proposal as the separation of duties between the chairman and CEO would avoid concentration of power in one post. This was also in line with good corporate governance practice advocated by HKICPA. Mr CHOW also presented the following suggestions on the splitting proposal:

- (a) The roles and responsibilities of the chairman and those of CEO should be clearly defined to avoid confusion and overlapping. The CEO should have line responsibility for all aspects of executive management and the chairman should be a non-executive member of the SFC Board responsible for leading and providing strategic direction to the Board and overseeing the executive arm;
- (b) With clearly defined roles and responsibilities, the chairman should be given the flexibility to decide how much time was required to fulfill the requirements of the position. It was not necessary to define whether the chairman was a “full-time” or “part-time” chairman. It was however essential that the chairman should have the competence to undertake the prescribed roles and responsibilities, the commitment to devote sufficient time and efforts to the SFC’s affairs, and the ability to obtain the support and confidence of the Board members; and
- (c) The chairman should be adequately remunerated having regard to the roles and responsibilities of the post on the one hand, and the fact that he was non-executive and not an employee of SFC on the other.

Brief response by the Administration

44. The Chairman invited the Administration to provide its written response to the submissions received by the Panel and advise how the various concerns set out in the submissions could be addressed. To facilitate discussion at the meeting, the Chairman invited the Administration to give a brief verbal response.

45. The Deputy Secretary for Financial Service and the Treasury (DSFST) pointed out that currently, the chairman of SFC headed both the governing body as well as the executive arm of the Commission. To strengthen the internal governance of SFC and in line with good corporate governance practice, the Administration proposed to improve SFC’s governance structure such that the Commission was led by a non-executive chairman while the executive arm was headed by a CEO. The Administration noted that the majority of the deputations/academics expressed support in principle to the proposed separation of roles and responsibilities of the chairman and CEO but held different views on whether the chairman should be non-executive or executive and whether he or she should be “full-time” or “part-time”.

46. DSFST said that in line with the trend of good governance practice, the role of the chairman should be separated from that of the executive arm for further enhancing the governance of SFC and its internal checks and balances. The Administration considered that the chairman of SFC should be non-executive so that the chairman could be suitably detached from and independent of the executive arm for discharging his/her supervisory functions effectively, and that the overlapping of responsibilities between an executive chairman and a CEO could be avoided.

47. DSFST pointed out that, from the experience of non-executive chairmen of other public bodies, the holders of the posts would spend as much time as needed to fulfill their roles and responsibilities as chairmen. Therefore, it should be made clear that a non-executive chairman was not the same as a part-time chairman. She assured members that the Administration would endeavour to identify a suitable and competent candidate for the non-executive chairman post.

Discussion

Attendance of the Administration's representatives at this meeting

48. Mr Ronny TONG was disappointed that the Secretary for Financial Services and the Treasury (SFST) had not attended this meeting to listen to the views of the deputations and academic on the splitting proposal. He requested DSFST to convey the details of the discussion to SFST so that he could take the views into full consideration. Mr Albert CHENG shared Mr TONG's view.

49. In reply, DSFST explained that SFST had briefed and exchanged views with members on the splitting proposal at the special Panel meeting held on 10 November 2004. As for this meeting, she represented the Administration to listen to the views of the deputations and academic (the majority of them had given views through written submissions prior to the meeting) and respond to enquiries on the details and technical issues in relation to the proposal. She assured members that all the views and concerns expressed at the meeting would be conveyed to SFST and the relevant Government officials in full for their consideration.

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Experience of local and overseas regulators

50. While noting that all the attending deputations and academic supported the splitting proposal in principle, Ms Emily LAU pointed out that two persons who were unable to attend this meeting, namely, Mr David WEBB and Professor LOW Chee-keong, had expressed their objection to the proposal in their written submissions to the Panel. Ms LAU stressed that while the separation of duties and responsibilities of the chairman and CEO was recognized as the international best practice for listed companies, whether the same practice should be applied to a statutory regulator such as SFC merited thorough consideration. Referring to the governance structures and practices of other local regulators, such as the Hong Kong Monetary Authority (HKMA), the Insurance Authority (IA) and the Office of the

Telecommunication Authority (OFTA), Ms LAU pointed out that their executive arms were not subject to the oversight of any governing board as in the case of SFC and none of them adopted the practice of separating the duties and responsibilities of the chairman and CEO. The Administration's proposal of implementing the splitting proposal in SFC would be inconsistent with the existing practice of other local regulators. Ms LAU invited the deputations and academic to give their views in this regard. She also urged the Administration to give detailed consideration to the propriety and implications of the splitting proposal, and not to implement the proposal in a hasty manner.

51. Mr James SOUTAR, Director of HKSFA opined that while the separation of the chairman and CEO positions had been put into effect in some overseas securities regulators and some public bodies in Hong Kong, the question to address was whether those regulators and public bodies were comparable to SFC. In his view, SFC was completely different from other public bodies such as the Airport Authority (AA) and the Kowloon-Canton Railway Corporation (KCRC).

52. Professor Simon HO referred members to his submission tabled at the meeting and pointed out that the Administration's proposal should be discussed in the context of enhancing the corporate governance of public bodies. He also pointed out that SFC was not the first public body which was subject to reform changes. To address the concern about consistency, the Administration should clarify whether the splitting proposal would also be implemented in other public bodies in future to enhance their transparency and accountability.

53. On the practices of other local regulators, DSFST advised that the governance of HKMA was subject to the oversight of the Exchange Fund Advisory Committee (EFAC), with the Financial Secretary (FS) as the ex-officio chairman and independent members appointed in a personal capacity by FS under delegated powers from CE. Among other things, EFAC advised FS on the governance of HKMA, including HKMA's annual administration budget and the terms and conditions of service of HKMA staff. On OFTA, DSFST said she was given to understand that it was in the process of formulating a proposal for separation of the roles and responsibilities of the chairman and the executive arm. As regards IA, DSFST said that the Administration had briefed the Panel on the review on the institutional set-up of IA at the meeting held on 6 November 2003. She added that the governance issue would no doubt be considered as and when the proposal of turning IA into an independent authority of the Government was pursued.

54. Mr Albert CHENG considered that the Administration's response had not addressed the concern about the need to adopt a consistent approach for enhancing the governance practice for SFC and other local regulators. Quoting HKMA as an example, Mr CHENG considered that if its governance practice was a good model, it would give rise to the question of why the Administration had not proposed that the same model be applied to SFC; if it was not a good model, the Administration should consider how its governance practice could be enhanced. Ms Emily LAU opined that

the operation of EFAC lacked transparency and was not a good model to follow. Mr CHENG added that as the Deputy Chairman of the LegCo Panel on Information Technology and Broadcasting, he was not aware of any plan of OFTA for implementing a proposal similar to the current splitting proposal for SFC. DSFST clarified that as far as she understood, OFTA was working on a proposal on the regulatory organizational structure which might involve issues such as re-structuring and governance and might put forward the proposal for public consultation in 2005.

55. As regards the practices of overseas regulators, Ms Emily LAU pointed out that the separation of roles and responsibilities of the chairman and CEO posts of the Financial Services Authority (FSA) in the United Kingdom (UK) took effect from September 2003 and the effectiveness of such practice had yet to be assessed. Given the differences in regulatory structures and powers between FSA and SFC, Ms LAU queried whether it was relevant and appropriate for the Administration to make reference to the experience of FSA in this regard. Mr SIN Chung-kai also pointed out that overseas experience did not show that the separation of roles and responsibilities of the chairman and CEO was a global practice commonly adopted by securities and futures regulators.

56. Referring to paragraph 2.5 of the information note prepared by the LegCo Secretariat, DSFST pointed out that the recommendation for separating the posts of the chairman and CEO and appointing a non-executive chairman for FSA had been made in 1998 by the committee set up to study the draft Financial Services and Market Bill which provided the legal framework for the operation of FSA in UK. The merits seen by the committee in putting forward the recommendation were shared by the Administration, which were, in brief, to enhance the internal checks and balances for good governance of the organization and to prevent concentration of powers. DSFST further pointed out that apart from FSA in UK, the practice of separating the duties and responsibilities of chairman and CEO was also adopted in other overseas regulators such as the Monetary Authority of Singapore (MAS) and the Swedish Financial Supervisory Authority (SFSA).

57. Ms Emily LAU and Mr SIN Chung-kai pointed out that like FSA in UK, the practice of separating the duties and responsibilities of the chairman and CEO posts in SFSA had only been implemented for a short period of time. As regards MAS, Ms LAU pointed out that it not only performed the role of a financial regulator, but also acted as a banker to and financial agent of the Singaporean Government. She queried whether it was relevant and appropriate for the Administration to make reference to the experiences of FSA, SFSA and MAS. She maintained her view that the Administration should further examine the merits of the splitting proposal taking full account of the role of SFC as a statutory regulator and the need to adopt a consistent practice for all local regulators.

58. Ms CHEN Po-sum, Vice Chairman of ISD opined that instead of making reference to overseas practices, Hong Kong should be capable of developing a regulatory structure that suited the needs of the local securities and futures market.

Impact of the splitting proposal on SFC's international status and its participation in IOSCO

59. Referring to paragraphs 21 and 22 of SFC's submission, the Chairman enquired about the impact of the splitting proposal on SFC's international status and its participation in IOSCO. Given that all chairmen of the member organizations of the Technical Committee of IOSCO were executive chairmen, the Chairman was concerned whether the implementation of the splitting proposal would result in a situation where the non-executive chairman of SFC would no longer be appointed as the chairman of the Technical Committee. Ms Emily LAU shared the Chairman's concern. She drew members' attention to the information provided by Professor LOW Chee-keong in his submission that the splitting of the chairman and CEO posts of securities and futures regulators had not been considered by IOSCO.

60. DSFST pointed out that IOSCO was tasked to facilitate the cooperation, exchange of information and mutual assistance among its member organizations from various jurisdictions for the promotion of high standards of regulation of the securities and futures market and development of domestic markets. Hence, the internal governance structures of the regulatory bodies had not been the focus of its discussion.

61. Mr Andrew SHENG, Chairman of SFC advised that as far as he knew, issues relating to the splitting of the chairman post of a securities and futures regulator had not been discussed within IOSCO as the subject was not considered as a priority issue. Nevertheless, the operational independence and accountability of the regulator, as well as the observance of the highest professional standards by staff of the regulator, were among the principles endorsed by IOSCO.

62. Mr Andrew SHENG, Chairman of SFC also pointed out that all past chairmen and the current chairman (i.e. chairman of SFC) of the Technical Committee of IOSCO were executive chairmen, and the nomination of a non-executive chairman to the Technical Committee might not be considered by other member organizations as an equal. Mr SHENG considered that it was of paramount importance to maintain the status of SFC and of its chairman within the international community. He further pointed out that the chairman of SFC's leading counterpart, i.e. the chairman of the Chinese Securities Regulatory Commission, was an executive chairman. Responding to the Chairman's further enquiry on whether the non-executive chairman of FSA would not be treated as an equal amongst the members of IOSCO, Mr SHENG explained that as shown in FSA's annual report, its chairman post was not classified as non-executive. He said that from his personal contacts with the incumbent of the post, it was noted that the incumbent spent most of his time performing the roles and responsibilities of the chairman post and de facto acted as a full-time chairman with executive responsibilities. As regards SFSA, the splitting arrangement was, like FSA, implemented since 2003. Moreover, Sweden was no longer a member of the Technical Committee.

63. To address the concern about the impact of the splitting proposal on SFC's international status and its participation in IOSCO, Ms Emily LAU requested the Administration to provide information on any views or criteria adopted by IOSCO or its Technical Committee on whether and how the chairman post of a regulatory body of the securities and futures industry should be split for the purpose of enhancing its governance structure, and whether a non-executive chairman would be considered for appointment as chairman of the Technical Committee.

(Post-meeting note: The letter dated 8 January 2005 from the Administration to IOSCO and IOSCO's reply dated 12 January 2005 were issued to members vide LC Paper Nos. CB(1)755/04-05(01) and (02) respectively on 18 January 2005.)

Recruitment and appointment of the chairman

64. Given that the chairman of SFC would be appointed by CE, Ms Emily LAU and Mr Albert CHENG were concerned that it would be a political appointment. As CE was elected by an Election Committee comprising only 800 members, Mr CHENG doubted the independence and accountability of the chairman appointed by CE. Referring to Mr David WEBB's submission, Ms LAU shared Mr WEBB's observation that "the Government has a habit of appointing tycoons and businessman, often from among its narrow electorate, to chair government-appointed entities such as the Airport Authority, Hospital Authority, MTRC, KCRC...". Noting that the chairman of the Securities and Exchange Commission (SEC) in the United States (US) was appointed by the US President with the advice and consent of the Senate, Ms LAU considered that reference should be made to this practice in the appointment of the chairman of SFC. Mr CHENG shared her view and opined that before CE made the appointment, the Administration should obtain LegCo's endorsement on the appointment.

65. Mr SIN Chung-kai shared the views of Ms Emily LAU and Mr Albert CHENG. He considered that if the appointment of the chairman of SFC was endorsed by LegCo, it would be conducive to public support and credibility of the appointment.

66. Mr LEE Cheuk-yan opined that appointments to public offices made by CE as rewards or favours given to a limited pool of candidates had become an issue of wide public concern. Mr LEE was concerned whether the proposed non-executive chairman post of SFC was tailor-made by the Administration for a particular candidate of its choice. He therefore stressed that the recruitment and appointment should be conducted in a transparent, fair and impartial manner, and supported the proposed arrangement that the appointment should only be made after LegCo's endorsement.

67. Mr James SOUTAR, Director of HKSFSA supported members' proposed arrangement for the Administration to obtain LegCo's endorsement on the appointment of the chairman of SFC. He said that as long as a transparent recruitment process would be put in place with clearly stipulated selection criteria and requirements for the chairman post, there should be no great difficulties for the Administration to obtain LegCo's endorsement.

68. Professor Simon HO opined that while the proposed arrangement for the Administration to obtain LegCo's endorsement on the appointment of the chairman of SFC might alleviate concerns about the transparency and credibility of the appointment, detailed consideration should be given to the implications of the proposed arrangement on the current appointment mechanism of public bodies. Professor HO said that the concern about political appointment could be addressed by an independent and open process of global recruitment. An independent committee could be set up for considering the eligible candidates and making recommendation to CE for appointment.

69. Ms Jeanne LEE, Vice Chairman of HKSPA pointed out that political appointment should not be an issue of concern if the recruitment and appointment were conducted in a transparent and fair manner. She stressed the importance of identifying the suitable candidate who possessed profound knowledge of the local securities and futures market.

70. DSFST explained that under the law, the chairman of SFC had all along been appointed by CE or the then Governor. This was a procedural requirement rather than a political appointment. Referring to the information note prepared by the LegCo Secretariat, DSFST said that similar appointment practices were also adopted in almost all other jurisdictions such as UK, Singapore, Sweden and Australia. DSFST said that the US appointment arrangement was designed having regard to the characteristics of its congressional structure. SEC was established under the Securities Exchange Act of 1934 with the requirement for the appointment of the five Commissioners (one of them designated as the chairman of SEC) to be made by the US President with the advice and consent of the Senate. To ensure that SEC remained non-partisan, no more than three Commissioners might belong to the same political party. The consent of the Senate was required given the political background of the Commissioners as members coming from different political parties. DSFST pointed out that having regard to the smooth operation of government appointment of the chairmen of other overseas regulators, the Administration did not consider that there was a need to follow the US practice and make changes to the existing appointment arrangements in Hong Kong, which had been operating efficiently and effectively all these years.

71. Mr CHAN Kam-lam opined that appointments to statutory and/or public bodies made by CE in accordance with the legislation should not be considered as political appointments. He was concerned that the proposed arrangement for the

Administration to obtain LegCo's endorsement on the appointment of the chairman of SFC might make the appointment political.

72. Given the importance of SFC in maintaining the status of Hong Kong as an international financial centre, Mr Ronny TONG stressed that a transparent and prudent process for recruitment and appointment of its chairman was necessary. Referring to the public criticisms against the Government's approach in handling the appointment of the chairman of the Equal Opportunity Commission, Mr TONG expressed his concern about Government appointments to public bodies and urged the Administration to avoid the recurrence of the same problem. However, while he considered that improvements should be made to enhance the appointment mechanism, he had reservation on the proposed arrangement for the Administration to obtain LegCo's endorsement on the appointment, as this might make the appointment more political. Mr TONG considered that an independent nomination/appointment committee comprising members from the industry, academia and the community should be set up for the selection of the chairman.

73. Mr Anthony ESPINA, Vice Chairman of HKSA and Mr Roger LEUNG, Vice Chairman of SFISU supported Mr TONG's proposal for the appointment of the chairman of SFC to be made on the basis of the recommendation of an independent nomination committee. Mr ESPINA considered that the proposal could address the concern that the appointment of the chairman would be a political appointment.

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74. DSTST undertook to consider Mr Ronny TONG's proposal of setting up an independent nomination/appointment committee comprising members from the industry, the academia and the public.

75. Mr Albert CHENG stressed that a transparent and open recruitment process should be put in place for recruitment of the right candidate from the widest possible pool of talents. As global recruitment was mentioned at the meeting, Mr CHENG requested the Administration to clarify whether global recruitment would be adopted for the chairman and CEO posts of SFC.

76. DSFST said that the Administration adopted an open mind on the recruitment process for the chairman and CEO posts of SFC and would take full account of the views expressed by members and deputations/academics in this regard. She also assured members that the Administration would endeavour to ensure that the best and most qualified candidate would be selected for appointment as the chairman of SFC.

77. Mr CHIM Pui-chung pointed out that as far as he knew, the Administration planned to recruit the CEO post of SFC, but not the chairman post, by global recruitment. He considered that the Administration should clarify this point. He also doubted whether it was practicable to identify the suitable candidate for the chairman post through open recruitment.

78. Mr Ronny TONG had reservation on global recruitment of candidates and pointed out that this might not be conducive to the identification of a suitable candidate with profound knowledge of the local securities and futures market to represent SFC in liaison with local and international financial institutions and other stakeholders.

79. Mr CHEUNG Wah-fung, Chairman of HKSPA supported the recruitment and appointment of the chairman of SFC through a transparent and fair process. He opined that in selecting candidates for the chairman post, priority should be given to local talents who possessed the necessary market knowledge. Mr Henry CHAN, Chairman of HKSA held similar views and expressed reservation on global recruitment of the chairman of SFC. Mr Edward CHOW, President of HKICPA also opined that the chairman of SFC should be selected among the local talents who were familiar with the local and Mainland markets and proficient in both English and Chinese. Given the technical nature of the post, Mr CHOW believed that the suitable candidate could be identified from the local talent pool, such as from retired professionals in the legal, accounting and/or financial fields.

80. Professor Simon HO opined that global recruitment could provide the largest pool of eligible candidates and cover those local candidates who were temporarily not in Hong Kong. It would not affect the requirement that the candidate must possess profound knowledge of the local market.

Requirements and remuneration of the chairman

81. Mr Ronny TONG opined that the chairman post of SFC should be non-executive and full-time, with clear separation of duties from the executive arm. He would not support the splitting proposal if the non-executive chairman was not a full-time post.

82. Mr Albert CHENG pointed out that SFC was a regulatory body with the authority of law enforcement. As far as he was aware, other law enforcement bodies in Hong Kong did not have non-executive chairmen. In this connection, he requested the Administration to clarify whether the proposed non-executive chairman post of SFC was a full-time or part-time post. Mr LEE Cheuk-yan also requested the Administration to clarify this point.

83. DSFST reiterated that a non-executive chairman was not the same as a part-time chairman. Mr LEE Cheuk-yan queried whether the non-executive chairman of SFC would be expected to work full-time or part-time. Mr LEE was concerned that the recruitment process would be unduly affected if there was no clear information on whether the post was full-time and what level of remuneration would be provided to the successful candidate. Referring to the information on the remuneration of the Chairman and the Chief Executive of FSA in UK provided in the written submission from the Law Society of Hong Kong, Mr LEE pointed out that there was only a small difference in the levels of remuneration provided for the two

posts (the annual remuneration of the former post was £314,000 and that of the latter post was £365,000). It appeared that the Chairman of FSA was in fact fully remunerated for taking up a full-time post.

84. In reply, DSFST pointed out that instead of putting the focus on whether the non-executive chairman post of SFC was a full-time post, the Administration considered it more important to look for a competent and suitable candidate who met the requirements and was willing to take up the roles and responsibilities of the chairman. DSFST also pointed out that according to the information obtained from the website of FSA, the remuneration of its Chairman was substantially lower than that of its Chief Executive. The Chairman of FSA only worked four days a week, bearing in mind the portfolio of FSA also covered bank supervision, insurance and public listing of corporations.

85. Professor Simon HO supported the proposal of a non-executive chairman and considered that any strict requirement for the chairman post of SFC to be full-time might unnecessarily limit the pool of candidates and would not be conducive to the identification of the suitable candidate for the post. Mr Henry CHAN, Chairman of HKSA opined that the chairman post should be a non-executive post but it was not necessary to impose strict requirement on whether it should be a full-time or part-time post at this stage. This issue and the level of remuneration for the post should be considered by the recruitment/nomination committee to be established for selection of the chairman. Mr Edward CHOW, President of HKICPA opined that flexibility should be allowed in the amount of time required for the chairman to perform his roles and responsibilities, which might vary under normal or special circumstances. He believed that the level of remuneration would not be the prime factor of consideration by potential candidates.

86. Mr James SOUTAR, Director of HKSFA reiterated HKSFA's view that given the important role of SFC and the complexity and amount of work involved in performing its functions, both its chairman and CEO should be executive, full-time and fully remunerated. The levels of remuneration of the two posts should commensurate with the accountability expected of the post-holders.

87. Miss TAM Heung-man considered it more preferable to have the chairman of SFC working on a full-time basis. She enquired whether there was any mechanism for determining the level of remuneration for the chairman post. In response, DSFST explained that SFC was financially independent. It was expected that the proposed model of a non-executive chairman and a CEO would have minimal financial implications to SFC. The remuneration package for the chairman would be worked out between the selected candidate and SFC through negotiation. In this connection, she pointed out that the remuneration package for the Chairman of FSA was also worked out in a similar manner. Responding to Miss TAM's further enquiry on the criteria for determining the level of remuneration, DSFST said that in deciding the appropriate level of honorarium/remuneration for the chairman and CEO, reference would be made to the principles governing the honorarium/remuneration of chairmen

and senior executives of statutory and other bodies, and the recommendations in the Hay Consultancy Report. She further pointed out that a description of the duties for the chairman and CEO had already been included in the Administration's paper submitted to the Panel in November 2004.

88. Mr Albert CHENG was dissatisfied with the Administration's response on the requirement of and remuneration for the chairman post of SFC. He pointed out that in the absence of concrete proposals on the number of working days required of the chairman, the qualification requirements and the level of remuneration, the discussion of the splitting proposal would not be fruitful and would be a waste of time. Mr CHENG was gravely concerned that if the chairman was not required to work full-time and not fully remunerated, the candidate to be appointed would only come from the limited pool of tycoons or businessmen who did not need the financial support of a fully remunerated full-time job. Referring to the number of working days of the Chairman of FSA in UK, Mr CHENG opined that a four-day week should be considered as a full-time job in UK as a number of companies in UK were working only four days a week.

89. Noting the differences in the information on the remuneration level of the Chairman and the Chief Executive of FSA provided by the Administration and in the submission from the Law Society of Hong Kong, Ms Emily LAU requested the Administration to make clarification and provide the Panel with the up-to-date information in this regard. Ms LAU stressed the importance of putting in place a transparent mechanism and setting out clearly the criteria for determining the levels of remuneration for the chairman and CEO posts. She was of the view that the remuneration packages for the two posts had to be at reasonable levels to attract candidates of high calibre. In response, DSFST agreed to provide after the meeting the information that the Administration possessed on the remuneration levels for the Chairman and the Chief Executive of FSA.

Merits and timing for implementing the splitting proposal

90. Mr Albert CHENG stated that while he had no objection to the enhancement of corporate governance, he queried whether the current splitting proposal could enhance the governance structure and practice of SFC. He did not see any strong justifications for the Administration to introduce the splitting proposal for SFC. He was concerned whether the splitting proposal was targeted at Mr Andrew SHENG, current chairman of SFC. With due respect to Mr SHENG and recognition of his good performance during his service as the chairman of SFC, Mr CHENG considered that the proposal should not be targeted at Mr SHENG and if it was, the proposal should no longer be taken forward in the light of his anticipated departure upon expiry of his current contract in September 2005.

91. The Chairman reminded members that the subject under discussion was the Administration's proposal for splitting the chairman post of SFC into a non-executive chairman post and a CEO post, and that the discussion should not be focused on any individuals. Reference to the current chairman should only be made to illustrate views and concerns on the splitting proposal and should not be seen as comments on or evaluation of the work of the current chairman.

92. Mr CHAN Kam-lam supported the Chairman's remarks. He said that Members of the Democratic Alliance for Betterment of Hong Kong supported the splitting proposal in principle. While noting that the splitting proposal was supported by the majority of the organizations/academics who had provided views to the Panel, Mr CHAN urged the Administration to take full account of the concerns expressed by the industry, academics and members of the Panel in working out the details of the proposal. DSFST said that if the proposal was supported by members, the Administration would work out the details of the various points raised.

93. Mr SIN Chung-kai said that Members of the Democratic Party had reservation on the splitting proposal. While it was noted that the industry was supportive of the proposal in general, there was no strong justification for making such a significant change to the governance structure of SFC shortly after the commencement of the Securities and Futures Ordinance (SFO) (Cap. 571) in 2003. In fact, the powers of SFC were subject to various checks and balances. Mr SIN considered it more prudent for the Administration to put forward the splitting proposal after SFO had been implemented for a longer period of time. If the Administration insisted to put forward the splitting proposal in the form of an amendment bill at the present stage, a bills committee would likely be formed by LegCo to scrutinize the bill and the bills committee would face a very difficult task in resolving the controversies over the details of the proposal.

94. DSFST pointed out that while PRP and existing advisory committees to SFC provided external checks and balances, the splitting proposal would provide internal checks and balances between the governing Board and the executive arm, which

would enhance the corporate governance of SFC through preventing concentration of powers and strengthening the role of non-executive directors in the Board.

95. Mr CHIM Pui-chung said that as the LegCo Member representing the finance services constituency, he must point out that the splitting proposal was put forward by the Administration, and not the securities and futures industry. In response, DSFST said that the proposal was put forward by the Administration after consideration of the suggestion raised during the scrutiny of the Securities and Futures Bill for the splitting of the post of the chairman of SFC into the non-executive chairman and CEO posts back in 2002. Subsequently, a Member also raised a written question at a LegCo meeting in July 2004 on the Administration's plan in this regard.

96. Mr CHIM Pui-chung further pointed out that deputations of the industry were invited to attend this meeting to give views on the Administration's proposal. They supported the proposal in principle with a common objective of strengthening the status of Hong Kong as an international financial centre. As regards the details of the proposal, Mr CHIM expressed strong dissatisfaction that the Administration's unclear responses given at the meeting had caused confusion. He requested the Administration to work out the details of the proposal and report back to the Panel in due course.

97. Ms Emily LAU and Mr Albert CHENG had reservation on the splitting proposal. Ms LAU requested the Administration to reconsider the proposal and report to the Panel at a future meeting on the Administration's plan on the way forward. If the Administration decided that the original proposal should be pursued, it should provide details of the proposal for the Panel's consideration, including the respective duties, responsibilities, qualification requirements, recruitment procedures (whether global or local recruitment), appointment procedures and authority, and remuneration levels for the chairman post and CEO post.

98. In summing up the discussion, the Chairman said that in view of the diversified views expressed by members as well as the deputations/academics on the details of the Administration's proposal, it would not be feasible to decide at this meeting whether the Panel would support the proposal in principle. He invited the Administration to examine the details of the proposal having regard to the views and concerns expressed.

(Post-meeting note: In response to members' requests mentioned in paragraphs 44, 63, 89 and 97 above, the Administration provided a paper for discussion at the Panel meeting on 17 February 2005. The paper (LC Paper No. CB(1)880/04-05(08) was circulated to members on 7 February 2005.)

VI. Any other business

99. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 1
Legislative Council Secretariat
16 February 2005