



Proposed amendments to the Securities and Futures Ordinance
The proposal of splitting the post of chairman of Securities and Futures Commission
into a chairman post and a chief executive officer post

We are of the view that there should not be a part-time chairman for the SFC although we support a split between the functions of the chairman of the SFC and the CEO. It is important that monetary considerations should not dictate whether the chairman should be part-time or full-time. We support a non-executive chairman, although as a matter of law, there is no difference in the duties and liabilities of a non-executive, as opposed to an executive director. We feel that the market perception may be that the regulations are not taken seriously with a part-time chairman.

Split between the functions of the Chairman of the SFC and the CEO

Generally, we agree that the role of the chairman and the chief executive officer should be separate and not be performed by the same individual and that the divisional responsibilities between the chairman and the chief executive officer should be clearly established and set out in writing.

This reflects the Code on Corporate Governance (“Code”) published by the Stock Exchange in November 2004 and is in accordance with international best practices for listed companies, although not necessarily for regulators.

Indeed, as late as in the reports and accounts of the UK Financial Services Authority (“FSA”) for the year ended 31 March 2003, it was stated (in Appendix 4) that “The Combined Code indicates that a decision to combine the posts of Chairman and Chief Executive Officer in one person should be publicly justified. The government has previously stated its view, endorsed by the Board, that a combined Chairman and Chief Executive was the best structure for meeting the FSA’s objectives at the time, in order to ensure clear accountabilities and speed of decision making.” (On 22 September 2003 Callum McCarthy was appointed as Chairman of the FSA (Appendix 3 to the FSA accounts for the year ended 31 March 2004).)

There is no requirement that the chairman be non-executive under the Code. As a matter of law there is no difference in the duties and liabilities of a non-executive, as opposed to an executive director. However, to differentiate the roles, we support the proposal that the chairman be non-executive.

Timing of the legislative changes

We are of the view that the timing is rushed and more time should be devoted to considering how the functions should be undertaken in the event of an actual split and whether or not the Chairman should be non-executive or executive and full-time or part-time.

How actual functions of the Commission should be split between the chairman and the CEO

We note (see paragraph 8 of the proposal dated 4 November 2004 (the “Proposal”)) that the role of the chairman should focus on representing the SFC publicly, in liaison with local and international financial institutions and other stakeholders. However for the overseeing the day-to-day regulatory work of the Commission, the CEO will be in charge. In other words, it would appear that the chairman will be the public face of the SFC. Whilst we have no problem in principle with that approach, we feel that it is important that if the Chairman is to be the public face of the SFC, that the Chairman should be full-time.

Part-time or full-time

Although we agree that a non-executive chairman is not the same as a part-time chairman, the implication in paragraph 17 of the Proposal is that the non-executive chairman will be part-time as it says that “If the Government proposed model is adopted (ie non-executive chairman) we expect the financial implications to the SFC as a result of the creation of a CEO post would be minimal. Should the chairman as well as the CEO are (sic) both executive, there may be considerable cost implications.”

The following extract from the press release dated 30 June 2004 (available from the FSA website) appears relevant:

“The FSA Chairman, Callum McCarthy, and Chief Executive, John Tiner, were both appointed to their posts mid-way through the financial year so their current salaries are not disclosed in this Report.

Mr McCarthy's current salary is £314,000 and during the Report Year he was paid £159,131, together with other emoluments and benefits valued at £64,638. At his own request, Mr McCarthy does not participate in the performance-related bonus scheme.

Mr Tiner's current salary is £365,000 and in the Report Year he was paid £310,971 compared with £260,000 in 2002/03. This reflects the additional responsibilities he took on when promoted from Managing Director to Chief Executive on 21 September 2003. His performance-related bonus in 2003/04, set by the FSA's Remuneration Committee, was £52,000 compared with £24,000 in the previous year. During the Report Year Mr Tiner received other emoluments and benefits valued at £108,685 including a supplement of £47,741 paid towards the funding of his personal pension.”

We agree with the SFC's view that to make the chairman of the SFC a part-time position will send the wrong message to the market. We agree that it would not be easy to find a suitable part-time candidate who had absolutely no conflicts of interest.

**The Law Society of Hong Kong
Securities Law Committee
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