

立法會 *Legislative Council*

LC Paper No. CB(1)177/04-05(02)

Ref: CB1/PL/FA

Panel on Financial Affairs Special meeting on 10 November 2004

Background Brief on the proposal of splitting the post of the chairman of the Securities and Futures Commission into the chairman and the chief executive posts

Purpose

This paper sets out the background of the Administration's proposal of splitting the post of the chairman of the Securities and Futures Commission (SFC) into the chairman and the chief executive posts, and summarizes the major concerns expressed by Members on the subject at meetings of the Legislative Council (LegCo) and its committees.

Background

2. SFC was established under the then Securities and Futures Commission Ordinance (SFCO) in 1989 as the regulator of the securities and futures market.
3. In 2002, ten ordinances including SFCO, which govern the securities and futures market, were consolidated and modernized into one single ordinance, i.e. the Securities and Futures Ordinance (SFO) (Cap. 571). On 1 April 2003, SFO came into operation. The regulatory objectives, functions and powers, and general duties of SFC are set out in Part II of SFO, and the constitution and proceedings of SFC in Schedule 2 of the Ordinance. Concerns have been raised in recent two years on whether the post of the SFC chairman should be split into two, i.e. the non-executive chairman and the chief executive posts.

Constitution of SFC

4. The constitution of SFC is set out in Schedule 2 of SFO. Some of the relevant provisions are as follows:

- (a) SFC shall consist of a chairman and such number of executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows:
 - The number of members of SFC shall not be less than eight; and
 - The majority of the members of SFC shall be non-executive directors of SFC.
- (b) The chairman of SFC shall, by virtue of holding that office, be regarded as an executive director of SFC.
- (c) The Chief Executive may appoint an executive director of SFC as the deputy chairman of SFC.
- (d) The terms and conditions of the office of a member of SFC (whether as the chairman, deputy chairman or otherwise) shall be determined by the Chief Executive.

Major views and concerns expressed by Members at meetings of LegCo and its committees

5. During the scrutiny of the Securities and Futures Bill (SF Bill), the concerned Bills Committee stressed the need to put in place a proper mechanism for ensuring the checks and balances on various powers given to SFC, including the rule-making power, investigative and supervisory powers, and disciplinary and intervention powers. When considering the proposed amendments to Schedule 2 of the SF Bill during the Committee Stage at the LegCo meeting on 13 March 2002, a Member expressed his view that the part concerning the chairman and members of SFC as set out in Schedule 2 of the Bill should be reviewed. In his view, the structure of SFC where the chairman also acts as an executive director will possibly cause undue concentration of power. In order to put in place an effective governance structure for enhancing the transparency, accountability and responsibility of SFC, the Member suggested that the post of the chairman should be split into the non-executive chairman and the chief executive posts. He also quoted the example of the Kowloon-Canton Railway Corporation (KCRC) (Amendment) Ordinance passed in December 2001 which provided for the creation of the chief executive post in KCRC and the separation of the duties and functions of the chairman and the chief executive.

6. In his written question raised in respect of the LegCo meeting on 7 July 2004, a Member sought the Administration's clarification on whether it would change the present structure of SFC in which the chairman concurrently

performed the functions of both the chairman and the chief executive. In reply, the Administration advised that while such suggestion had been raised during the scrutiny of the SF Bill, no conclusion was reached on the subject at the time. The Administration would take into account the suggestion in its review and maintenance of SFO.

Recent developments

7. At the LegCo meeting on 13 October 2004, the Chief Secretary for Administration presented the Legislative Programme for the 2004-05 session. The Legislative Programme includes the Securities and Futures (Amendment) Bill 2004 which aims to enhance the governance of SFC by splitting the post of the chairman into the chairman and chief executive posts.

Council Business Division 1
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8 November 2004