

立法會
Legislative Council

LC Paper No. CB(1)766/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/11/10/2

Bills Committee on Securities and Futures (Amendment) Bill 2011

Third meeting on
Monday, 24 October 2011, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP

Members absent : Hon Albert HO Chun-yan
Hon Abraham SHEK Lai-him, SBS, JP

Public officers attending : Financial Services and the Treasury Bureau

Miss Salina YAN
Deputy Secretary for Financial Services and the
Treasury (Financial Services) 1

Miss Belinda KWAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 1

Mr Anthony LI
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 2

Ms Jane LEE
Assistant Secretary for Financial Services and the
Treasury (Financial Services)(2) 1

Ms Sanny CHAN
Chief Executive Officer (Support)

Department of Justice

Mr Paul O'BRIEN
Senior Assistant Law Draftsman

Ms Karmen KWOK
Senior Government Counsel (Acting)

Attendance by invitation : Securities and Futures Commission

Mr Brian HO
Executive Director, Corporate Finance Division

Ms Jennifer LEE
Associate Director, Corporate Finance Division

Hong Kong Investment Funds Association

Mr Sam YU
Executive Committee member and
Regulatory Subcommittee Vice-Chairman

中信泰富小股東關注組

Mr Bernad YIP
Representative

The Institute of Accountants in Management

Mr Albert LAW
President

Mr Godwin NG
Board Member

Economic Synergy

Mr Alan CHUI
Member

The Hong Kong Institute of Directors

Mr Henry LAI
Corporate Governance Policies Committee Chairman

Hong Kong Securities Professionals Association

Ms Jeanne LEE
Chairman

Individual

Mr Johnny CHAN

The Law Society of Hong Kong

Mr Patrick WONG
Chairman of the Company and Financial Law Committee

Hong Kong Bar Association

Mr Laurence LI
Barrister-at-Law

Ms Elizabeth CHEUNG
Barrister-at-Law

Debt and Financial Capability Project Service,
Caritas Family Crisis Line and Education Centre

Ms KWOK Chi-ying
Supervisor

Ms YUNG Lai-ping
Project Supervisor

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Noel SUNG
Senior Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)5

I Meeting with deputations and the Administration

Meeting with deputations

(LC Paper No. CB(1)18/11-12(01) — Submission from Hong Kong Investment Funds Association

LC Paper No. CB(1)18/11-12(02) — Submission from 中信泰富小股東關注組

LC Paper No. CB(1)135/11-12(02) — Submission from The Institute of Accountants in Management

LC Paper No. CB(1)18/11-12(03) — Submission from The Law Society of Hong Kong)

Submissions/letters from organizations not attending the meeting

(LC Paper No. CB(1)18/11-12(04) — Submission from Standing Committee on Company Law Reform

LC Paper No. CB(1)18/11-12(05) — Submission from The Chinese General Chamber of Commerce

LC Paper No. CB(1)18/11-12(06) — Submission from The Hong Kong Confederation of Insurance Brokers

LC Paper No. CB(1)18/11-12(07) — Submission from China Everbright Holdings Co. Ltd.

- LC Paper No. CB(1)18/11-12(08) — Submission from The Hong Kong Federation of Insurers
- LC Paper No. CB(1)18/11-12(09) — Submission from Association of Chartered Certified Accountants Hong Kong
- LC Paper No. CB(1)18/11-12(10) — Submission from The Hong Kong Society of Financial Analysts
- LC Paper No. CB(1)18/11-12(11) — Submission from Institute of Financial Planners of Hong Kong
- LC Paper No. CB(1)18/11-12(12) — Submission from The Chamber of Hong Kong Listed Companies
- LC Paper No. CB(1)18/11-12(13) — Submission from The Hong Kong Association of Banks
- LC Paper No. CB(1)18/11-12(14) — Submission from The Real Estate Developers Association of Hong Kong
- LC Paper No. CB(1)18/11-12(15) — Submission from SBI E2-Capital (HK) Limited
- LC Paper No. CB(1)18/11-12(16) — Submission from SFC's Public Shareholders Group
- LC Paper No. CB(1)18/11-12(17) — Submission from Hong Kong Institute of Certified Public Accountants
- LC Paper No. CB(1)18/11-12(18) — Submission from The DTC Association
- LC Paper No. CB(1)18/11-12(19) — Submission from Consumer Council)

Other relevant papers

- (LC Paper No. CB(3)952/10-11 — The Bill
- LC Paper No. CB(1)17/11-12(01) — Marked-up copy of the Bill prepared by the Legal Service Division

LC Paper No. CB(1)100/11-12(01) — Administration's powerpoint presentation materials for the meeting on 17 October 2011

LC Paper No. CB(1)109/11-12(01) — Paper on examples of announcements made by listed corporations provided by Hon Paul CHAN

LC Paper No. CB(1)135/11-12(01) — Administration's paper on "Draft Guidelines on Disclosure of Inside Information")

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

(Post-meeting Note: The submissions from the Hong Kong Bar Association and the Debt and Financial Capability Project Service, Caritas Family Crisis Line and Education Centre tabled at the meeting were circulated to members via a Lotus-Notes email on 25 October 2011. The submission from the Economic Synergy was issued to members vide LC Paper No. CB(1)186/11-12(01) on 26 October 2011.)

2. The deputations presented their views on the Bill.

Discussion

3. The Committee deliberated (Index of proceedings attached at **Appendix**).

II Any other business

4. There being no other business, the meeting ended at 5:58 pm.

**Proceedings of the
Bills Committee on Securities and Futures (Amendment) Bill 2011
Third meeting on Monday, 24 October 2011, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000145 – 000526	Chairman	Introductory remarks	
000527 – 000941	Hong Kong Investment Funds Association	Presentation of views	
000942 – 001500	中信泰富小股東關 注組	Presentation of views	
001501 – 002013	Mr Albert LAW, The Institute of Accountants in Management	Presentation of views	
002014 – 002113	Mr Godwin NG, The Institute of Accountants in Management	Presentation of views	
002114 – 002612	Economic Synergy	Presentation of views	
002613 – 003123	The Hong Kong Institute of Directors	Presentation of views	
003124 – 003315	Hong Kong Securities Professionals Association	Presentation of views	
003316 – 003344	Mr Johnny CHAN	Presentation of views	
003345 – 003645	The Law Society of Hong Kong	Presentation of views	
003646 – 004217	Hong Kong Bar Association (HKBA)	Presentation of views	
004218 – 004805	Debt and Financial Capability Project Service, Caritas Family Crisis Line and Education Centre	Presentation of views	
004806 – 005821	Administration	The Administration responded to the deputations' comments as follows –	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) The Administration noted that deputations generally supported the codification of the price sensitive information (PSI) disclosure requirements, so as to cultivate a continuous disclosure culture among listed corporations, with a view to protecting the interests of investors.</p> <p>(b) Having regard to the responses to the public consultation, the Administration proposed in the Bill that listed corporations be required to make disclosure of PSI "as soon as reasonably practicable", and an "objective test" in determining what would need to be disclosed under the statutory regime.</p> <p>(c) The term "officer", as defined in the Securities and Futures Ordinance (Cap. 571) (SFO), had been used over the years, and was intended to catch directors and the senior management staff of listed corporations, not middle management or low-ranked staff. In considering whether a person was an "officer", his actual responsibilities were more important than his formal title. The "officers" of a listed corporation would have the duty to put in place an effective mechanism to ensure that PSI was promptly identified and channelled to the board of directors for a decision of disclosure in a timely manner.</p> <p>(d) Regarding HKBA's suggestion of rephrasing proposed section 307G to express a "positive" duty rather than a "negative" duty, the Administration explained that the present formulation of the provision was based on similar provisions in the market misconduct regime already in use in SFO.</p> <p>(e) The Administration noted that there were divergent views among the deputations regarding the level of the maximum regulatory fine; some deputations considered that there should be no maximum limit of fine, and some others considered that the maximum fine of \$8 million was too high. Some deputations</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>even proposed that criminal sanctions should be introduced.</p> <p>(f) The sanctions proposed in the Bill had taken into account the views received during public consultation and had struck a balance. In addition to the regulatory fine of up to \$8 million, there was a series of other sanctions that could be imposed.</p> <p>(g) Small investors could seek redress through the Small Claims Tribunal, and legal aid was available to assist small investors to seek redress through legal proceedings.</p>	
005822 – 010231	Mr James TO HKBA	Mr James TO sought clarification for the point set out in paragraph 3.2 of HKBA's submission. Mr Laurence LI of HKBA explained that for instance, while a safe harbour was provided under the Bill for information concerning an incomplete negotiation or proposal, under the insider dealing regime of the SFO, making use of such information for trading in the relevant securities was an offence. Listed corporations should be reminded that despite the provision of a safe harbour covering incomplete negotiation or proposals, persons making use of such undisclosed information to trade in relevant securities would still be regarded as committing insider dealing.	
010232 – 010745	Mr Andrew LEUNG Chairman Law Society of Hong Kong (LSHK) Hong Kong Institute of Directors (HKID)	<p>Mr Andrew LEUNG sought the view of the deputations as to whether independent non-executive directors of listed corporations should have equal responsibility as the executive directors and other senior management staff for any breach of the disclosure requirements, given that independent non-executive directors were usually not involved in the day-to-day operation of the company. In this connection, Mr LEUNG also sought deputations' views regarding using a quantitative threshold to define what constituted PSI.</p> <p>Mr Patrick WONG of LSHK remarked that it might be difficult to specifically define what type of information in the daily operation of a</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>listed corporation was PSI, as the response of the market to a particular piece of information varied depending on the nature of the corporation and market circumstances. Instead, he suggested providing a safe harbour for "officers" to cover situations where the officers had considered reasonably and in good faith in coming to a conclusion that a piece of information was not PSI, even though the information turned out to have significant effect on the price of the relevant securities.</p> <p>Mr Henry LAI of HKID opined that given the wide definition of PSI and the ever-changing market situation, Securities and Futures Commission (SFC) should provide informal consultation service for listed corporations on an on-going basis, instead of for a 24-month period only.</p>	
010746 – 011233	Mr Paul CHAN HKBA SFC	<p>Mr Paul CHAN enquired whether the proposed statutory definition of PSI was narrower than the existing provision in Listing Rule 13.09 (paragraph 2.8 of Annex A to HKBA's submission).</p> <p>HKBA opined that the proposed statutory definition was narrower than the definition under Listing Rule 13.09 as the former did not encompass the phrase "major new developments in the group's sphere of activity". SFC supplemented that the statutory definition did not include "information necessary to avoid the establishment of a false market in the relevant listed securities", which was present under Listing Rule 13.09. The executives of SFC and the Hong Kong Exchanges and Clearing Limited (HKEx) considered that the proposed statutory definition of PSI was appropriate. The tentative thinking was that arrangement would be made to amend Listing Rule 13.09 to make it in line with the statutory disclosure requirement in the Bill, subject to the approval by the Listing Committee and SFC. For those elements which were in the original Listing Rule 13.09 but would fall outside the scope of the statutory regime, arrangement would be made to incorporate the provisions into other provisions of the Listing Rule, which would not give rise to legal consequences.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>SFC added that there was clear division of responsibilities between SFC and HKEx. For example, HKEx would continue to perform its regulatory duty under Listing Rules 13.10 by requiring the issuer concerned to issue an announcement concerning unusual movements in the price or trading volume of its listed securities.</p>	
<p>011234 – 011801</p>	<p>Mr CHIM Pui-chung SFC</p>	<p>Given that the proposals in the Bill aimed to protect investors, Mr CHIM Pui-chung asked whether the Government would consider introducing legislation to protect investors against listed corporations making use of the loopholes in the existing legislation to take advantage of investors through rights issue and merger/splitting of shares. Pointing out that listed corporations might be compelled under the proposed legislation to make very frequent disclosures of information, in light of the great volatility of the market, Mr CHIM also enquired whether detailed guidelines would be provided to listed corporations on the disclosure requirements. Mr CHIM pointed out that, as an example, many investors suffered in the Citic Pacific case when the listed corporation recorded heavy losses from its purchase of Australian-dollar related derivatives and made the disclosure at a relatively late stage.</p> <p>SFC responded that SFC would reflect Mr CHIM's concern regarding rights issue and merger/splitting of shares to HKEx for consideration of whether the Listing Rules would need to be revised in this respect. As regards the disclosure requirements, SFC remarked that where a listed corporation had disclosed specific information on a major investment, the listed corporation would not be required to make disclosures regarding subsequent market fluctuations, unless there had been a significant gain/loss in the investment having a particular impact on the corporation. Paragraph 84 of the draft Guidelines on Disclosure of Inside Information provided guidance on disclosure in relation to external developments.</p>	

Time Marker	Speaker	Subject(s)	Action Required
011802 – 012647	Mr Andrew LEUNG of Institute of Accountants of Management (IAM) The Hong Kong Institute of Directors (HKID) Hong Kong Securities Professionals Association (HKSPA) 中信泰富小股東關注組	<p>Mr Andrew LEUNG opined that if PSI was not defined in clear and specific terms, it would be difficult for independent non-executive directors who were not involved in the daily operation of the listed corporation to ensure that the disclosure requirements in the Bill would be met.</p> <p>In response to Mr Andrew LEUNG's enquiry about the deputations' views on the obligations of the "officers" of listed corporations, Mr Albert LAW of IAM remarked that it might be unfair to some level of senior management staff of listed corporations if they were liable for breach of the disclosure requirements, as they were not in the position to decide whether a piece of information should be disclosed. In some situations, a listed corporation might also be in a dilemma in meeting the disclosure requirements, as sometimes it might be possible to accuse, from hindsight, that a listed corporation had failed to disclose information which had materially affected the price of the relevant securities. For instance, a listed corporation might expect that it could secure sufficient orders to make up for the loss of a major order and did not make a disclosure on the information. When the corporation's efforts to find new orders were in vain, the corporation might be accused of failing to disclose the loss of a major order in a timely manner. When a listed corporation announced the loss of a major client/order, it might also face difficulty in obtaining loans from banks.</p> <p>Mr Henry LAI of HKID remarked that while legally, both executive directors and non-executive directors had the same responsibilities, the regulatory bodies should assess the liabilities of individual directors taking into account their respective roles in the corporation. A listed corporation should establish a proper internal control and reporting system to ensure that PSI was identified and disclosed in a timely manner. The Board of Directors of a listed corporation was ultimately responsible for ensuring that the corporation complied with the disclosure requirements.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Ms Jeanne LEE of HKSPA opined that since the Board of Directors of a listed corporation had the ultimate authority to decide whether a piece of information should be disclosed, it was unfair that the definition of "officer" included the managers and secretaries of a corporation as these officers were only employees of the corporation and did not have the authority to decide the disclosure of information.</p> <p>Mr Bernad YIP of 中信泰富小股東關注組 remarked that the Citic Pacific incident revealed the inadequacy of the existing regulatory arrangements. It was necessary to impose a statutory obligation on the directors and senior staff members of a listed corporation to make timely disclosure of PSI. The legislation should require the establishment of a proper mechanism whereby major operational activities of a listed corporation, which were often controlled by senior staff members, would be brought to the attention of the board of directors and timely decisions would be made by the listed corporation on the disclosure of relevant information.</p>	
012648 – 012738	Chairman	The Chairman requested the Administration to provide the information requested by members for discussion at the next meeting.	