

立法會
Legislative Council

LC Paper No. CB(1)1794/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/12

Bills Committee on Securities and Futures (Amendment) Bill 2013

**First meeting on
Wednesday, 24 July 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Christopher CHEUNG Wah-fung, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Kin-por, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP

Members absent : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Starry LEE Wai-king, JP

Public officers attending : Miss Salina YAN
Deputy Secretary for Financial Services and the
Treasury (Treasury) 1

Mr Jerry CHEUNG
Acting Principal Assistant Secretary for Financial
Services and the Treasury (Financial Services) 2

Mr Howard LEE
Executive Director (Monetary Management)
Hong Kong Monetary Authority

Ms Polly LEE
Senior Manager (Market Development) 3
Hong Kong Monetary Authority

Attendance by invitation : Mr Rico LEUNG
Senior Director (Supervision of Markets)
Securities and Futures Commission

Ms Thrity MUKADAM
Director (Supervision of Markets)
Securities and Futures Commission

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Angel SHEK
Senior Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

Action

I Election of Chairman

Election of Chairman

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr CHAN Kam-lam was nominated by Mr WONG Ting-kwong and the nomination was seconded by Mr NG Leung-sing. Mr WONG Ting-kwong said that Mr CHAN Kam-lam was outside Hong Kong at the moment and could not attend the meeting, and he had sought Mr CHAN's acceptance of the nomination before the meeting.

3. Mr Kenneth LEUNG was nominated by Mr SIN-Chung kai and the nomination was seconded by Mr CHAN Kin-por. Mr Kenneth LEUNG accepted the nomination.

4. On Mr James TO's enquiry whether the absence of Mr CHAN Kam-lam from the meeting would affect his eligibility for the nomination, the Clerk advised that, according to Rule 21(e) of the House Rules ("HR") of the Legislative Council ("LegCo"), a member who nominated an absent member for chairmanship/deputy chairmanship was required to state that the absent member's acceptance of the nomination had been secured. In the current case, Mr WONG Ting-kwong had stated that he had secured Mr CHAN's acceptance of the nomination.

5. Mr James TO announced a vote by secret ballot. After all members had cast their votes and before counting of the votes, Mr SIN Chung kai pointed out that Mr CHAN Kam-lam was a serving non-executive director of the Securities and Futures Commission ("SFC"), and asked whether there would be conflict of interests for Mr CHAN to be the Chairman of the Bills Committee given that the Bill was directly related to the Securities and Futures Ordinance (Cap. 571) ("SFO").

6. Mr James TO was concerned that it might be unfair to Mr CHAN Kam-lam and other members as Mr CHAN could not declare his interests in person at the meeting, in particular his pecuniary interests if any, for members' consideration before casting their votes. He also considered it more appropriate that the declaration of interests should be dealt with before the voting.

7. In view of Mr James TO's concern, Mr WONG Ting-kwong spoke on behalf of Mr CHAN Kam-lam that Mr CHAN was a non-executive director of SFC without emolument. Mr SIN Chung-kai said that according to his understanding, the non-executive director of SFC was a remunerative position.

8. Mr NG Leung-sing enquired whether there were any rules in the Rules of Procedure ("RoP") of LegCo or HR preventing Members who had interests related to a bill, similar to the interests which Mr CHAN had in the present case, to take up the chairmanship of the concerned bills committee. Mr James TO sought the advice of the Legal Adviser on whether the director's fee, if any, received by Mr CHAN Kam-lam for his service as a non-executive director of SFC was a pecuniary interest, and whether this would constitute conflict of interests for Mr CHAN to be elected as the chairman of the Bills Committee.

9. The Legal Adviser of the Bills Committee ("the Legal Adviser") said that the rules in RoP relating to disclosure of Members' interests in the Council or its committees concerned interests of pecuniary nature. Rule 83A of RoP concerning disclosure of Members' personal pecuniary interest stated that "In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he had a pecuniary interest, whether direct or indirect, or speak on such matter, except where he disclosed the nature of that interest".

10. Before the meeting proceeded to the counting of votes, Mr WONG Ting-kwong said that he had just made verification with Mr CHAN Kam-lam and clarified that Mr CHAN received an annual director's fee ("董事袍金") of about \$300,000 as a non-executive director of SFC. The relevant information was also recorded in the Register of Members' Interests provided by Mr CHAN. Mr WONG opined that Rule 83A of RoP did not appear to impose any restriction on Mr CHAN taking up the chairmanship of the Bills Committee. He added that Mr CHAN had previously served as the chairman of a number of bills committees/subcommittees of LegCo on legislative proposals relating to financial services or securities market while he was serving as a non-executive director of SFC.

11. As members had cast their votes in the absence of information on Mr CHAN Kam-lam's service as a non-executive director of SFC and receiving a fee for the service, Mr James TO sought members' views on whether the cast votes should be rescinded and whether the voting should be conducted afresh. He also requested the Legal Adviser and the Clerk to clarify whether it would be procedurally in order to do so.

12. The Clerk advised that there was no provision in RoP or HR preventing a Member who might have interests relating to a bill from being elected as the chairman or deputy chairman of the relevant bills committee nor were there any rules governing the handling of situations of possible conflict of interests in the election procedures. The Legal Adviser re-iterated that Rule 83A of RoP required that, if a Member considered that he had a direct or indirect pecuniary interest relating to a matter, he had to disclose the nature of such interest, otherwise he could not move a motion or amendment relating to the matter or speak on it. The Rule in question did not restrict a Member with conflict of interests to be nominated or elected as the chairman of a bills committee.

13. Mr CHAN Kin-por said that, while he did not object to casting the votes again if it was procedurally in order, he did not consider the fee received by Mr CHAN Kam-lam for his service as a non-executive director of SFC an issue related to the Bill. He pointed out that the requirement in Rule 83A of RoP was that a Member had to make the necessary declaration of interests. The

declaration so made would not prevent the Member from taking up the chairmanship of a committee. He further considered that the election procedures should follow the existing rules of RoP and HR, and matters relating to conflict of interests of chairmanship/deputy chairmanship of a committee should be referred to the Committee on Rules of Procedure ("CRoP") for consideration if members so wished.

14. Sharing Mr CHAN Kin-por's view, Mr Steven HO referred to the LegCo Brief on the Bill and pointed out that the objects of the Bill were to provide for a regulatory framework for the over-the-counter derivative market in Hong Kong and to improve the regulation of the financial market. The matters covered by the Bill were not related to the remuneration received by Mr CHAN Kam-lam from SFC.

15. Mr WONG Ting-kwong said that as Members might be involved in business of their trades (e.g. commercial or securities business, the legal or accounting profession), they might hold different interests from time to time. He opined that it would be difficult and unreasonable to prevent Members from participating in LegCo business whenever there were interests related to their trades. For instance, Mr WONG said that although he had served as a non-executive director of the Mandatory Provident Fund Schemes Authority ("MPFA") for six years before and was currently the Chairman of MPF Schemes Advisory Committee, this should not prevent him from exercising the role as a LegCo Member in monitoring the policies and measures of the Government/MPFA on MPF-related matters. Mr WONG considered that the performance of Members, including whether Members had exercised fairness in handling the relevant LegCo business, was subject to public monitoring. Mr Christopher CHEUNG relayed the views of the securities industry that the prospective chairman of the Bills Committee should be familiar with SFO to ensure the bill to be enacted could strike a proper balance between market regulation and development of the securities business.

16. Mr NG Leung-sing said that the main responsibility of the chairman of a bills committee was to conduct meetings, and considered that Mr CHAN Kam-lam's role as a serving non-executive director of SFC should have no impact on his impartiality in chairing meetings for scrutinizing the Bill. He agreed that a Member would be subject to public monitoring as to whether he had exercised fairness in handling LegCo business. Mr NG further said that it was not uncommon for the non-executive directors of an organization to receive remuneration for their post. He also observed that the Bill would not result in any increase in Mr CHAN's director's fee from SFC.

17. Mr SIN Chung-kai and Mr James TO however considered that Mr CHAN Kam-lam's service as a non-executive director of SFC and the Chairman of the Bills Committee might constitute potential conflict of interests as it was among the proposals in the Bill to enhance SFC's powers. Mr TO further said that it seemed unclear to members before the voting as to whether Mr CHAN received remuneration as a non-executive director of SFC, and this point was not clarified until the verification and provision of supplementary information by Mr WONG Ting-kwong. In order to ensure procedural fairness and given that the votes had not been counted and announced, Mr SIN considered it appropriate to rescind the voting in the light of fresh information on Mr CHAN Kam-lam's interests. Conducting the voting afresh would provide members with the opportunity to make an informed decision.

18. Mr Kenneth LEUNG said that reference could be made to the established practice that the Member in charge of a Private Member's Bill should not serve as the chairman or deputy chairman of the relevant bills committee. Mr LEUNG considered that, as SFC was one of the sponsors of the Bill, the fact that Mr CHAN Kam-lam was a serving non-executive director of SFC should be taken into account in considering the potential conflict of interests of Mr CHAN in his nomination or election as the Chairman of the Bills Committee. That said, Mr LEUNG emphasized that he had not taken any position as to whether Mr CHAN should take up the chairmanship for the Bills Committee.

19. At the invitation of the Chairman, the Clerk advised that CRoP had issued a paper in May 2013 on "Role of the Member in charge of a bill in the relevant Bills Committee" (LC Paper No. CROP 36/12-13) which invited the House Committee to note, amongst others, the CRoP's view that the established practice where the Member in charge of a bill would not serve as the chairman or deputy chairman of the relevant bills committee should continue. Nevertheless, she said that the Bill was not a Member's Bill.

20. At this juncture, Mr James TO directed that the meeting be suspended for five minutes for his consultation of relevant advice on the matter, in particular, whether the information on the above interests of Mr CHAN Kam-lam was material information, and if so, whether the voting for the chairmanship of the Bills Committee should be conducted afresh.

(The meeting was suspended for five minutes)

21. When the meeting resumed, Mr James TO said that, after thorough consideration, he had decided that it would be fairer to conduct the voting afresh so as to allow members to take into consideration the information on the interests of individual candidates before casting their votes. He then announced that the votes cast earlier at the meeting be rescinded.

22. Mr James TO announced a vote by secret ballot for the chairmanship of the Bills Committee and that all members present at the meeting at the juncture could participate in the voting. Mr TO invited Mr WONG Ting-kwong and Mr SIN Chung-kai who had nominated the two candidates respectively to observe the counting of votes.

23. Mr James TO announced that 4 and 3 members voted for Mr CHAN Kam-lam and Mr Kenneth LEUNG respectively, and 1 member abstained. Mr James TO declared that Mr CHAN Kam-lam was elected the Chairman of the Bills Committee.

Election of Deputy Chairman

24. Members agreed to elect a deputy chairman for the Bills Committee. As Mr CHAN Kam-lam, the newly elected Chairman, was not present at the meeting, members agreed that Mr James TO should continue to preside over the election of the deputy chairman. Mr James TO invited nominations for the deputy chairmanship. Mr Kenneth LEUNG was nominated by Mr SIN Chung-kai and the nomination was seconded by Mr NG Leung-sing. Mr LEUNG accepted the nomination.

25. Mr Christopher CHEUNG was nominated by Mr WONG Ting-kwong and the nomination was seconded by Mr CHAN Kin-por. Mr CHEUNG accepted the nomination.

26. As there was no other nomination, Mr James TO announced a vote by secret ballot. After all members had cast their votes, Mr James TO invited Mr WONG Ting-kwong and Mr SIN Chung-kai who had nominated the two candidates to observe the counting of votes.

27. Mr James TO announced that 3 and 4 members voted for Mr Kenneth LEUNG and Mr Christopher CHEUNG respectively, and 1 member abstained. Mr James TO declared that Mr Christopher CHEUNG was elected the Deputy Chairman of the Bills Committee.

28. In the absence of the Chairman of the Bills Committee, Mr Christopher CHEUNG, the Deputy Chairman, took over the chair.

II Meeting with the Administration

(LC Paper No. CB(3)742/12-13 — The Bill

LC Paper No. CB(1)1584/12-13(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

File Ref: SUB 12/2/7 (2013) — Legislative Council Brief

LC Paper No. LS71/12-13 — Legal Service Division Report

LC Paper No. CB(1)1584/12-13(02) — Background brief on the Securities and Futures (Amendment) Bill 2013 prepared by the Legislative Council Secretariat)

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

(Post-meeting note: The powerpoint presentation materials provided by the Administration (LC Paper No. CB(1)1608/12-13(01)) were issued to members vide Lotus Notes e-mail on 24 July 2013.)

III Any other business

Invitation of views

30. Members agreed to post a notice on LegCo's website and write to the 18 District Councils ("DCs") to invite views from the public and DCs on the Bill. Members also decided that the Bills Committee would meet with deputations to receive their views on the Bill at the second meeting. Mr NG Leung-sing suggested that The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies be invited to give views on the Bill. Mr Dennis KWOK suggested to include the Hong Kong Bar Association and The Law Society of Hong Kong on the invitation list. Members agreed.

(Post-meeting note: The notice was posted on LegCo website on 1 August 2013 and letters were sent to DCs and relevant organizations on 2 August 2013.)

Date of next meeting

31. The Deputy Chairman invited views from members on the date of the next meeting. Mr SIN Chung-kai suggested that the next meeting be held in early September 2013. The Deputy Chairman said that members would be informed of the date of the next meeting after it had been fixed.

(Post-meeting note: With the concurrence of Mr CHAN Kam-lam, Chairman of the Bills Committee, the second meeting was scheduled for Monday, 30 September 2013 from 2:30 pm to 6:30 pm to meet with deputations, the Administration and the relevant parties. The notice of meeting was issued vide LC Paper No. CB(1)1649/12-13 on 1 August 2013.)

32. There being no other business, the meeting ended at 12:20 pm.

Council Business Division 1
Legislative Council Secretariat
16 September 2013

**Proceedings of the
Bills Committee on Securities and Futures (Amendment) Bill 2013
First meeting on Wednesday, 24 July 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000151 – 000458	Mr James TO Mr WONG Ting-kwong Mr NG Leung-sing Mr SIN Chung-kai Mr Kenneth LEUNG Mr CHAN Kin-por	Election of Chairman	
000459 – 003202	Mr James TO Mr WONG Ting-kwong Mr SIN Chung-kai Mr CHAN Kin-por Mr Steven HO Mr Kenneth LEUNG Mr Christopher CHEUNG Mr NG Leung-sing Clerk ALA7	Declaration of interests Discussion on procedural matters relating to the election of the Chairman	
003203 – 003841	Mr James TO	Suspension of meeting for five minutes	
003842 – 004219	Mr James TO	Election of Chairman	
004220 – 005016	Mr James TO	Election of Deputy Chairman	
005017 – 005213	Deputy Chairman	Introductory remarks	
005214 – 012604	Deputy Chairman Administration Hong Kong Monetary Authority ("HKMA") Securities and Futures Commission ("SFC")	Briefing by the Administration on the Securities and Futures (Amendment) Bill 2013 ("the Bill"). (Notes of powerpoint presentation materials (LC Paper No. CB(1)1608/12-13(01)) tabled at the meeting and issued to members vide Lotus Notes email on 24 July 2013.)	
012605 – 012947	Deputy Chairman Mr SIN Chung-kai Administration HKMA	Mr SIN suggested that the Bills Committee should hold a meeting to receive views from deputations on the Bill. In reply to Mr SIN's enquiry about forecast on the trading volume and number of transactions	

Time Marker	Speaker	Subject(s)	Action Required
		<p>involving OTC derivatives after implementation of the proposed regulatory framework, the Administration advised that –</p> <ul style="list-style-type: none"> (a) as currently there was no mandatory reporting requirement on OTC derivative transactions, no precise estimation on the trading volume and number of transactions could be made at this stage. Based on the findings of a pervious survey, OTC derivative transactions in Hong Kong accounted for about 1% of the global volume; (b) with the implementation of the proposed mandatory reporting requirements under the Bill, relevant parties were required to report OTC derivative transactions to the trade repository to be established by HKMA and there would be more accurate information on the trading volume and number of transactions of OTC derivatives; and (c) although foreign exchange derivatives constituted the greatest share of the local OTC derivative market, this kind of derivatives involved relatively simple structure and posed lower risks to the market. As such, it was proposed that the mandatory reporting and clearing obligations would initially cover certain types of interest rate swaps and non-deliverable forwards only, and foreign exchange derivatives would not be included at the initial stage. <p>SFC advised that major global financial centres were pursuing regulation over their OTC derivative markets. The proposed regulatory framework for the OTC market in Hong Kong was in line with the requirements and practices of international financial markets. The financial services industry was abreast of latest developments in the proposed regulatory framework for Hong Kong. SFC would continue to maintain dialogue with the industry in making preparation for implementation of the new regime and ensuring a smooth process.</p>	

Time Marker	Speaker	Subject(s)	Action Required
012948 – 013050	Deputy Chairman Mr NG Leung-sing Administration	<p>Mr NG suggested inviting The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies to give views on the Bill.</p> <p>The Administration advised that it would provide a list of respondents to the public consultations conducted by SFC for the Bills Committee's consideration for the invitation of public views.</p>	
013051 – 013308	Deputy Chairman Mr Dennis KWOK SFC	<p>Referring to the practices in Europe and the United Kingdom, Mr KWOK enquired whether the Bill had incorporated risk mitigation obligations on parties involved in OTC derivative transactions.</p> <p>SFC advised that it was an objective of financial regulators around the world to align the standards of regulatory requirements for their OTC derivative markets as far as practicable, with a view to mitigating conflicts among the regulatory requirements, and minimizing substantial differences in regulatory standards and practices. On the risk mitigation measures for OTC derivative transactions, SFC advised that –</p> <ul style="list-style-type: none"> (a) it was a requirement under the Bill to clear certain OTC derivative transactions through designated central counterparties (i.e. recognized clearing houses or authorized automated trading services ("ATS") providers); (b) the clearing of OTC derivative transactions would be subject to the risk management measures of the respective clearing houses and authorized ATS providers, for instance, measures to address margin and credit risks; and (c) as regards some derivatives (e.g. equity derivatives) not intended to be covered by the proposed regulatory framework in the initial stage due to difficulty in achieving standardization, Hong Kong might consider imposing requirements (e.g. margin requirements for uncleared transactions) on 	

Time Marker	Speaker	Subject(s)	Action Required
		such products in the light of regulatory developments in the international arena. Mr KWOK suggested inviting the Hong Kong Bar Association and The Law Society of Hong Kong to give views on the Bill.	
013309 – 013532	Deputy Chairman Mr SIN Chung-kai Mr Steven HO	Invitation of public views	
013533 – 013552	Deputy Chairman Mr SIN Chung-kai Mr Steven HO	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
16 September 2013