

立法會
Legislative Council

LC Paper No. CB(1)1057/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/12

Bills Committee on Securities and Futures (Amendment) Bill 2013

Eighth meeting on
Friday, 20 December 2013, at 8:30 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Christopher CHEUNG Wah-fung, JP (Deputy Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Kin-por, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP

Members absent : Hon James TO Kun-sun
Hon Steven HO Chun-yin

Public officers attending : Financial Services and the Treasury Bureau

Miss Sara TSE
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)1

Miss Ada CHAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 2

Mr Jackie LIU
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)5

Mr Alex LEUNG
Assistant Secretary for Financial Services and the
Treasury (Financial Services)(2)2

Mr John TSE
Assistant Secretary or Financial Services and the
Treasury (Financial Services)(5)3

Department of Justice

Ms Rayne CHAI
Acting Senior Assistant Law Draftsman

Hong Kong Monetary Authority

Mr Daryl HO
Head (Market Development)

Ms Polly LEE
Senior Manager (Market Development) 3

Mr Andy CHEUNG
Senior Manager (Banking Policy)A3

Attendance by invitation : Securities and Futures Commission

Mr Rico LEUNG
Senior Director (Supervision of Markets)

Ms Daphne DOO
Director (Supervision of Markets)

Ms Thrity MUKADAM
Director (Supervision of Markets)

Ms Eunice CHENG
Senior Manager (Supervision of Markets)

Mr Derek SHEK
Director (Licensing, Intermediaries)

Ms Carolyn CHIU
Senior Manager (Licensing, Intermediaries)

Ms Amy LAM
Assistant Counsel (Legal Services)

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

Action

I Meeting with the Administration

Follow-up to issues arising from previous meeting and examination of the relevant clauses of the Bill

(LC Paper No. CB(1)582/13-14(01) — Administration's response dated 18 December 2013 to the issues arising from the meeting held on 15 October 2013

LC Paper No. CB(1)149/13-14(03) — List of follow-up actions arising from the discussion at the meeting on 15 October 2013)

Continuation on clause-by-clause examination of the Bill

(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)

Discussion

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

Admin Follow-up actions to be taken by the Administration

Clause 55 – Added Schedule 11 to the Securities and Futures Ordinance (Cap. 571)

2. In the light of comment of the Chairman, the Administration was requested to review the drafting of the Chinese text of section 33(4) of the proposed Schedule 11 relating to the deemed licensing of corporations for the expanded Type 7 regulated activity, with a view to enhancing the clarity and comprehensibility of the provision.

(Post-meeting note: The Administration's written response was issued to members on 13 February 2014 vide LC Paper No. CB(1)874/13-14(04).)

II Any other business

Date of next meeting

3. The Administration indicated that as it would take time to prepare Committee Stage Amendments ("CSAs") to some provisions in Part 3 of the Bill (i.e. Clauses 56 to 60 on amendments relating to protections under Part III of Securities and Futures Ordinance), the Bills Committee might consider deferring the next meeting scheduled to be held on 7 January 2014. The Chairman invited the Administration to liaise with the Clerk on its progress in preparing the CSAs and written responses to issues arising from the discussion at previous meetings so that he would decide on the date for the next meeting. Members would be notified in due course.

(Post-meeting note: With the concurrence of the Chairman, the meeting originally scheduled for 7 January 2014 was re-scheduled to 17 February 2014, at 10:45 am; and members were informed of the arrangement vide LC Paper No. CB(1)650/13-14 issued on 31 December 2013.)

4. There being no other business, the meeting ended at 9:55 am.

Council Business Division 1
Legislative Council Secretariat
10 March 2014

**Proceedings of the
Bills Committee on Securities and Futures (Amendment) Bill 2013
Eighth meeting on Friday, 20 December 2013, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000224 – 000416	Chairman	Introductory remarks	
000417 – 001140	Administration	Briefing by the Administration on its written response to the issues arising from the discussion at the meeting on 15 October 2013 in relation to amendments to Schedule 2 of the Organized and Serious Crimes Ordinance (Cap. 455)("OSCO") and amendments to section 303 of the Securities and Futures Ordinance (Cap. 571) ("SFO") (LC Paper No. CB(1)582/13-14(01))	
001141 – 001507	Administration Chairman Assistant Legal Adviser 7 ("ALA7")	<p>Members agreed to examine Clauses 65 to 68 on amendments relating to disgorgement orders for market misconduct offences before continuing to examine Clause 55.</p> <p>Part 5 of the Bill - Amendments Relating to Disgorgement Orders for Market Misconduct Offences</p> <p><u>Division 1—Amendments to Securities and Futures Ordinance</u></p> <p><i>Clause 65 – Securities and Futures Ordinance amended</i></p> <p><i>Clause 66 – Section 303 amended (penalties)</i></p> <p>Referring to the Chinese text of the proposed section 303(2)(d), ALA7 opined that the Administration might consider replacing "避免的損失的金額" by "避免的損失的金額".</p> <p>The Administration advised that the drafting had made reference to a similar provision in section 257(1)(d) of SFO. It was necessary to retain the word "的" in the reference "避免的" in order to indicate the loss that <u>had been</u> avoided by a person as a result of committing market misconduct offences. The expression "避免的損失" ran in parallel with "獲取的利潤" immediately preceding it in the same paragraph. The two expressions corresponded with their</p>	

Time Marker	Speaker	Subject(s)	Action Required
		English versions i.e. "loss avoided" and "profit gained".	
001508 – 001928	Mr SIN Chung-kai Chairman Administration	<p>In response to Mr SIN's enquiry about the need to amend OSCO to subject the six types of market misconduct offences to the confiscation regime, the Administration advised that –</p> <p>(a) the Financial Action Task Force ("FATF") had designated 20 categories of predicate offences that should be subject to FATF members' domestic confiscation regime. "Insider trading and market manipulation" was one of the categories;</p> <p>(b) the previous mutual evaluation conducted by FATF revealed that the set of specified offences subject to the confiscation provisions under OSCO did not fully cover FATF's designated predicate offences. The Administration therefore proposed to include the six types of market misconduct offences under SFO in the confiscation regime under OSCO such that restraint/charging/confiscation orders could be made against these offences;</p> <p>(c) to enhance the effectiveness of the regulatory regime in relation to the proceeds of market misconduct offences, amendments were also made to section 303 of SFO to empower the Court to make an disgorgement order to order a convicted person to pay to the Government an amount not exceeding the amount of any profit gained or loss avoided resulting from the market misconduct offences. There was a similar arrangement under the existing provisions for the Market Misconduct Tribunal; and</p> <p>(d) the proposed amendments to OSCO and SFO would demonstrate Hong Kong's commitment to strengthening its financial regime and fulfilling its international obligations on anti-money laundering and counter-financing of terrorism. That would be an area of assessment in the next FATF's mutual evaluation.</p>	

Time Marker	Speaker	Subject(s)	Action Required
001929 – 002047	Chairman Administration	<p><u>Division 2 — Amendment to Organized and Serious Crimes Ordinance</u></p> <p><i>Clause 67 – Organized and Serious Crimes Ordinance amended</i></p> <p><i>Clause 68 – Schedule 2 amended (other specified offences)</i></p>	
Continuation of Clause by Clause Examination of the Bill			
002048 – 002500	Chairman Administration	<p>Part 2 of the Bill – Amendments to Securities and Futures Ordinance for Regulation of OTC Derivative Transactions</p> <p>(Continuation of examination of Clause 55 – Schedule 11 added)</p> <p><u>Part 3 of Schedule 11 - Transitional Arrangements for New Type 9 Activity</u></p> <p><i>Division 4 — Corporations and Individuals Licensed for Existing Type 9 RA</i></p> <p><i>Division 5 — Authorized Financial Institutions Registered for Existing Type 9 RA</i></p>	
002501 – 004613	Chairman Administration Mr NG Leung-sing Securities and Futures Commission ("SFC")	<p><u>Part 4 of Schedule 11 - Transitional Arrangements for New Type 7 Activity</u></p> <p><i>Division 1 – No Restriction during Transitional Period</i></p> <p><i>Division 2 – Corporations and Individuals</i></p> <p>In the light of comment of the Chairman, the Administration was requested to review the drafting of the Chinese text of section 33(4) of the proposed Schedule 11 relating to the deemed licensing of corporations for the expanded Type 7 regulated activity, with a view to enhancing the clarity and comprehensibility of the provision.</p> <p>In reply to Mr NG, the Administration and SFC advised that –</p> <p>(a) "principal" was defined in Part 1 of the proposed Schedule 11 to mean the corporate applicant in relation to whom the application was made by the applicant concerned, whereas "responsible officer" was defined in</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Schedule 1 to SFO to refer to an individual who was approved by SFC as a responsible officer of a licensed corporation; and</p> <p>(b) if SFC was not satisfied that the requisite conditions had been met by an applicant for deeming to be licensed under the transactional arrangements, SFC would issue a written notice to the applicant concerned.</p>	
004614 – 011051	Administration Chairman Mr NG Leung-sing SFC	<p><u>Part 5 of Schedule 11 - Extension of Non-prosecution Period in Certain Circumstances</u></p> <p><i>Division 1 – Applicants for Licenses or Registration</i></p> <p>The Chairman noted that under section 44 of Schedule 11, an applicant for a new RA might apply to SFC for an extension of the non-prosecution period. He enquired about the circumstances which might give rise to the need for an extension.</p> <p>SFC advised that it was expected that an applicant could wind up its business that was connected to the new RA within three months. Nevertheless, in view of the complexity of over-the-counter ("OTC") derivative transactions, the extension would provide flexibility to allow more time for the applicant to wind up its business, including liquidating the OTC derivative positions.</p> <p><i>Division 2 – Individuals Assisting Licensed Corporations to Carry on New Regulated Activity</i></p> <p><u>Part 6 of Schedule 11 - Application of Ordinance during Deemed Status</u></p>	
011052 – 011209	Administration Chairman	<p>Part 3 of the Bill - Amendments Relating to Protections under Part III of Securities and Futures Ordinance</p> <p>Members noted that in the light of comments by the Hong Kong Exchanges and Clearing Limited, the Administration would propose Committee Stage Amendments ("CSAs") to some provisions in Clauses 56 to 60.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		Members agreed that the Bills Committee would examine the provisions in Clauses 56 to 60 together with the CSAs prepared by the Administration.	
011210 – 012429	Administration Chairman Mr NG Lueng-sing	<p>Part 4 of the Bill - Amendments to Securities and Futures Ordinance Relating to Electronic Filing</p> <p><u>Clause 61 – Securities and Futures Ordinance amended</u></p> <p><u>Clause 62 – Section 308 amended (interpretation of Part XV)</u></p> <p><u>Clause 63 – Section 374 substituted</u></p> <p><u>Clause 64 – Schedule 10 amended (savings, transitional, consequential and related provisions, etc.)</u></p> <p>Part 6 of the Bill – Consequential Amendment</p> <p><u>Clause 69 – Securities and Futures (Futures Contracts) Notice 2012 repealed</u></p>	
012430 – 012526	Chairman Administration	Meeting arrangements	