

立法會
Legislative Council

LC Paper No. CB(1)550/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/13/1

**Bills Committee on Securities and Futures and Companies Legislation
(Uncertificated Securities Market Amendment) Bill 2014**

**Minutes of the third meeting on
Monday, 17 November 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Christopher CHEUNG Wah-fung, SBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Starry LEE Wai-king, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP

Members absent : Hon CHAN Kam-lam, SBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Charles Peter MOK, JP

Public officers attending : Financial Services and the Treasury Bureau

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

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

Department of Justice

Ms Frances HUI
Senior Assistant Law Draftsman

Mr Manuel NG
Senior Government Counsel

Attendance by invitation : Securities and Futures Commission

Mr Rico LEUNG
Senior Director (Supervision of Markets)

Ms Thrity MUKADAM
Director (Supervision of Markets)

Ms Mary Therese AHERN
Consultant

Hong Kong Exchanges and Clearing Limited

Mr Calvin TAI
Head of Global Clearing (Asia)

Ms Catharine WONG
Senior Vice President
Depository and Nominee Services
Global Clearing Division

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

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Angel SHEK
Senior Council Secretary (1)4

I Meeting with the Hong Kong Exchanges and Clearing Limited

(LC Paper No. CB(1)220/14-15(01) — Paper provided by the Hong Kong Exchanges and Clearing Limited)

Discussion

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

Admin/
SFC Follow-up actions to be taken by the Administration and/or the Securities and Futures Commission

2. Noting that the Securities and Futures Commission ("SFC") was working out with the Hong Kong Exchanges and Clearing Company Limited ("HKEx") and the Federation of Share Registrars on the details of the operation of the proposed uncertificated securities market ("USM") regime, the Administration and/or SFC were requested to provide updated information to the Bills Committee on the subject in due course, including –

- (a) the role of the Hong Kong Securities Clearing Company Limited ("HKSCC") (i.e. a subsidiary of HKEx) and share registrars in the operation of the USM regime, highlighting the differences, if any, between the existing and future arrangements;
- (b) division of work between HKSCC and share registrars with regard to corporate action issues (such as dividend payment arrangements and the relevant fees), and how the arrangements would (i) ensure protection of the interests of both institutional and retail investors; (ii) ensure fair competition between HKSCC and share registrars in the provision of services; and (iii) address concern about possible conflict in roles of HKEx as the frontline regulator of Hong Kong listed companies and a service provider in the USM regime;
- (c) matters for the operation of USM regime which would be specified in subsidiary legislation to be made under the Securities and Futures Ordinance (Cap. 571) and other relevant ordinances, or by other legal instruments (e.g. memorandum of understanding to be signed between HKSCC and share registrars), and the major proposals under such subsidiary legislation and legal instruments; and
- (d) detailed arrangements to enable shares to be charged or mortgaged for margin financing under the USM regime.

II Meeting with the Administration

Matters arising from previous meeting

(LC Paper No. CB(1)2035/13-14(11) — Letter dated 27 August 2014 from Legal Service Division to the Administration

LC Paper No. CB(1)220/14-15(02) — Administration's response to the letter from Legal Service Division of the Legislative Council Secretariat on the Bill)

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)720/13-14 — The Bill

LC Paper No. CB(1)1790/13-14(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)

File Ref: CO/2/10C (2014) — Legislative Council Brief

LC Paper No. LS67/13-14 — Legal Service Division Report

LC Paper No. CB(1)1790/13-14(02) — Background brief on Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Bill 2014 prepared by the Legislative Council Secretariat)

Other relevant papers

(LC Paper No. CB(1)2035/13-14(09) — List of follow-up actions arising from the discussion at the meeting on 18 July 2014

LC Paper No. CB(1)2035/13-14(10) — Administration's response to the issues arising from the meeting held on 18 July 2014)

Discussion

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

III Any other business

Date of next meeting

4. The Chairman remarked that the next meeting would be held on 5 December 2014 at 10:45 am.

(Post-meeting note: The meeting on 5 December 2014 was subsequently rescheduled to 15 December 2014, at 10:45 am so as to avoid clashing with continuation of the Council meeting of 3 December 2014.)

5. There being no other business, the meeting ended at 12:42 pm.

Council Business Division 1
Legislative Council Secretariat
16 February 2015

**Proceedings of the Bills Committee on Securities and Futures and
Companies Legislation (Uncertificated Securities Market Amendment) Bill 2014
Third meeting on Monday, 17 November 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000341 – 000449	Chairman	Introductory remarks	
000450 – 001721	Hong Kong Exchanges and Clearing Limited ("HKEx")	Briefing by HKEx on its written response to the issues raised at the meeting on 20 October 2014 in relation to the operation of the proposed uncertificated securities market ("USM") regime and the division of work between the Hong Kong Securities Clearing Company Limited ("HKSCC") and share registrars. (LC Paper No. CB(1)220/14-15(01))	
001722 – 004312	Chairman Mr Andrew LEUNG Mr SIN Chung-kai Administration HKEx Securities and Futures Commission ("SFC")	<p>Mr LEUNG considered that the Administration should make reference to experience of USM regimes of other places (e.g. Shanghai and London), and take the lead to resolve corporate action issues between HKSCC and share registrars, with a view to protecting the interests of both institutional and retail investors, ensuring fair market competition and avoiding overlap in roles thus minimizing the system costs/fees of the USM regime in Hong Kong.</p> <p>The Chairman and Mr LEUNG sought confirmation as to whether investors would be given the option to choose the provider of corporate action services (i.e. HKSCC or share registrars) under the proposed USM regime.</p> <p>HKEx explained that –</p> <p>(a) during the market consultation in 2009, banks and brokers expressed the view that HKSCC should continue to provide corporate action services after implementation of the USM regime;</p> <p>(b) under the proposed USM regime, HKSCC would provide corporate action services to the Central Clearing and Settlement System ("CCASS") Participants and investors who held securities through HKSCC ("Investor Participants") if they chose to use HKSCC's services;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) if CCASS Participants and Investor Participants opted to use HKSCC's services, after an issuer declared a dividend, HKSCC would facilitate the payments to be credited to their bank accounts electronically. HKSCC would not itself receive any dividend payments into its own accounts; and</p> <p>(d) alternatively, investors might choose to open an Issuer Sponsored Account with the share registrar, which was a new type of account in which investors' names would appear as registered shareholders and they would interact with the share registrars directly.</p> <p>The Administration and SFC advised that –</p> <p>(a) the USM regime aimed to facilitate and enhance investor protection, and ensure orderly and effective implementation of the system;</p> <p>(b) the working group set up by SFC with HKEx and the Federation of Share Registrars ("FSR") would continue to discuss the operational details of the proposed USM regime, including the corporate action services; and</p> <p>(c) the rules governing the operation of the proposed USM regime would be set out in subsidiary legislation which would be subject to the negative vetting procedure of the Legislative Council, and SFC would consult the market before finalizing the relevant rules.</p> <p>At the request of Mr SIN, the Administration and/or SFC agreed to provide in due course updated information on the operation of the proposed USM regime, including matters which would be specified in subsidiary legislation or by other legal instruments (e.g. memorandum of understanding between the relevant parties), and the major proposals under such subsidiary legislation and legal instruments.</p>	<p>The Administration/ SFC to take actions as required in paragraph 2(a) to (c) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
004313 – 004841	Chairman Mr Kenneth LEUNG Administration SFC	<p>In reply to Mr LEUNG's enquiry on the time table for implementing a fully USM regime in Hong Kong, the Administration advised that its aim was to modernize the financial infrastructure of Hong Kong and implement a fully USM regime as soon as practicable, taking into account market readiness and investors' adaptation, etc. Consideration would be given to requiring all companies seeking initial public offering in Hong Kong to adopt the uncertificated operational model.</p> <p>At the request of Mr LEUNG, SFC agreed to provide in due course updated information on the detailed arrangements to enable shares to be charged or mortgaged for margin financing under the USM regime.</p>	SFC to take action as required in paragraph 2(d) of the minutes.
004842 – 005541	Chairman Assistant Legal Adviser ("ALA") Administration	<p>Briefing by the Administration on its response to questions raised by ALA in his letter dated 27 August 2014 (pages 1 and 2 of LC Paper No. CB(1)2035/13-14(11)) with regard to application of the Electronic Transactions Ordinance (Cap.553) ("ETO"), and relationship between the USM system and automatic trading services ("ATS"). (Paragraphs 2 to 4 of LC Paper No. CB(1)220/14-15(02))</p> <p>In reply to ALA, the Administration confirmed that –</p> <p>(a) the key provisions of ETO would have effect on the proposed USM regime if they did not conflict with the statutory requirements of the regime;</p> <p>(b) it was considering the need to amend the relevant provisions in Schedule 1 to ETO for the purpose of the new stamping arrangement under the proposed USM regime; and</p> <p>(c) there was no overlap on the services provided by an ATS provider with those by a USM operator. An ATS excluded services provided by means of facilities provided by a recognized clearing house ("RCH").</p>	

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Clause-by-clause examination of the Bill			
005542 – 005834	Chairman Administration Mr Kenneth LEUNG	<p>Members agreed to examine the Chinese text of the provisions first.</p> <p>Long title</p> <p>Part 1 – Preliminary</p> <p><u>Clause 1 - Short title and commencement</u></p> <p>In reply to Mr LEUNG, the Administration advised that the long title did not expressly specify amendments to the Stamp Duty Ordinance (Cap. 117) ("SDO") as the purpose of the Bill was to provide for the establishment and implementation of the proposed USM regime, and the amendments to SDO were only consequential amendments.</p>	
005835 – 010511	Chairman Administration Mr Kenneth LEUNG ALA	<p><u>Clause 2 - Enactments amended</u></p> <p>Part 2 – Amendments to Securities and Futures Ordinance</p> <p><u>Clause 3 - Section 38 amended (duties of recognized clearing house)</u></p> <p>In reply to Mr LEUNG, the Administration explained that –</p> <p>(a) while the existing provisions of SFO already required an RCH to ensure proper operation of its system, as an RCH might also act as a USM system operator in future, it would be appropriate to set out the statutory duties of RCH in respect of the USM system in the new section 38(1A)(b) of SFO; and</p> <p>(b) although the Bill did not provide for sanctions on an RCH's failure to discharge its duties as operator of the USM system, SFC was conferred with powers under sections 92 and 93 of SFO to issue restriction notices on an RCH or make suspension orders relating to the functions of the board/officers of an RCH if it failed to discharge its duties.</p>	

Time Marker	Speaker	Subject(s)	Action Required
010512 – 010935	Chairman Administration Mr Kenneth LEUNG SFC	<p><u>Clause 4 - Section 40 amended (rules by recognized clearing houses)</u></p> <p><u>Clause 5 - Section 42 amended (production of records, etc. by recognized clearing house)</u></p> <p>In reply to Mr LEUNG, SFC advised that there was no express provision under SFO specifying the retention period for the books and records required to be kept by an RCH in connection with or for its business but the RCH could make reference to the relevant requirements of the Companies Ordinance (Cap. 622) in this regard.</p> <p><u>Clause 6 - Section 43 amended (withdrawal of recognition of clearing house and direction to cease to provide facilities)</u></p> <p><u>Clause 7 - Section 63 amended (duties of recognized exchange controller)</u></p>	
010936 – 011151	Chairman Administration Mr SIN Chung-kai	<p><u>Clause 8 - Section 71 amended (production of records, etc. by recognized exchange controller)</u></p> <p><u>Clause 9 - Section 76 amended (fees to be approved by Commission)</u></p> <p>In reply to Mr SIN, the Administration clarified that an RCH had to specify in its rules the fees to be imposed in its capacity as a USM operator, and such rules were subject to SFC's approval. The rules were not subsidiary legislation.</p>	
011152 – 012213	Chairman Administration Mr SIN Chung-kai Mr Andrew LEUNG SFC	<p><u>Clause 10 - Section 91 amended (supply of information)</u></p> <p><u>Clause 11 - Section 92 amended (additional powers of Commission—restriction notices)</u></p> <p>In reply to Mr SIN and Mr LEUNG on the amendments to section 92(13), the Administration and SFC explained that –</p> <p>(a) the definition of "system participant" was provided in Schedule 1 to SFO and the term covered mainly brokers. It was necessary to add reference to "system participants" in section 92(13) in view of their duties/obligations under the USM system (e.g. collecting instructions from direct shareholders); and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(b) legal protection given to a system participant in section 92(13) from incurring civil liability covered its role and actions in respect of the USM system only.	
012214 – 012734	Chairman Administration ALA	<p><u>Clause 12 - Part IIIAA added</u></p> <p>Part IIIAA - Uncertificated Securities Market</p> <p>Division 1—Preliminary</p> <p><i>101AA. Interpretation of Part IIIAA</i></p> <p><i>101AAB. What are prescribed securities</i></p> <p><i>101AAC. What is an uncertificated securities market system</i></p> <p>Administration's response (paragraph 5 of LC Paper No. CB(1)220/14-15(02)) to ALA's suggestion to define the term "instrument" under the new section 101AAC.</p>	
012735 – 013740	Chairman Administration ALA Mr SIN Chung-kai Mr Jeffrey LAM Mr Andrew LEUNG SFC	<p><u>Clause 12 - Part IIIAA added</u></p> <p>Division 2—General Principles</p> <p><i>101AAD. Evidence and transfer of title to prescribed securities without instrument</i></p> <p>ALA's enquiry and the Administration's response (paragraph 7 of LC Paper No. CB(1)220/14-15(02)) on the use of notes under the new sections 101AAD and 101AAE, and application of the new section 101AAD in relation to the new sections 101AAE and 101AAF.</p> <p><i>101AAE. Conflict or inconsistency between section 101AAD and certain provisions and terms of corporations</i></p> <p><i>101AAF. Conflict or inconsistency between section 101AAD or 101AAE and laws of places outside Hong Kong</i></p> <p>Division 3—Uncertificated Securities Market Regime</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Subdivision 1—Powers of Commission</i></p> <p><i>101AAG. Commission to approve recognized clearing house to operate and maintain uncertificated securities market system</i></p> <p><i>101AAH. Power of Commission to impose conditions, or to amend or revoke conditions</i></p> <p>Discussion on whether express provisions should be made under the new section 101AAH to give a USM system operator an opportunity to be heard before SFC imposed, amended or revoked conditions with regard to an approval granted to the system operator, for upholding the principle of natural justice under the Common Law and ensuring protection of the system operator's rights.</p> <p>The Administration's and SFC's views that –</p> <p>(a) although it was not expressly provided in the provision, SFC would in practice give the USM system operator an opportunity to be heard before imposing or amending its conditions of approval;</p> <p>(b) the legislation should allow sufficient flexibility for SFC to take prompt action without delay in appropriate cases in imposing, amending, or revoking conditions with regard to the approval granted to a USM system operator so as to minimize systemic risks and possible adverse impact on the financial market infrastructure; and</p> <p>(c) an aggrieved USM system operator might seek judicial review of SFC's decision made under the new section 101AAH.</p>	
014741 – 015619	Chairman Administration ALA SFC	<p><u>Clause 12 - Part IIIAA added</u></p> <p>Division 3—Uncertificated Securities Market Regime</p> <p><i>Subdivision 1—Powers of Commission</i></p> <p><i>101AAI. Power of Commission to withdraw approval granted under section 101AAG</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>101AAJ. Notification of Commission's intention to withdraw approval under section 101AAI</i></p> <p><i>101AAK. Power of Commission to direct recognized clearing house to cease operating uncertificated securities market system etc.</i></p> <p>ALA's enquiry and Administration/SFC's response (paragraphs 10 to 14 of LC Paper No. CB(1)220/14-15(02)) on the following matters –</p> <p>(a) circumstances under which SFC would withdraw an approval granted to an RCH for acting as a USM system operator vis-à-vis directing it to cease operating the USM system, and vice versa; and</p> <p>(b) the reasons for not including provision in the Bill on sanction for operating a USM system without SFC's approval.</p>	
015620 – 015729	Chairman	Date of next meeting	