

立法會
Legislative Council

LC Paper No. CB(1)551/14-15
(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 fourth meeting on
Monday, 15 December 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 CHAN Kam-lam, SBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Starry LEE Wai-king, JP
Hon Charles Peter MOK, JP
Hon Kenneth LEUNG
Hon SIN Chung-kai, SBS, JP

Member absent : Hon Dennis KWOK

Public officers attending : Ms Ada CHAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)²

Ms Frances HUI
Senior Assistant Law Draftsman
Department of Justice

Mr Manuel NG
Senior Government Counsel
Department of Justice

Attendance by invitation : Agenda item I

Mr Rico LEUNG
Senior Director (Supervision of Markets)
Securities and Futures Commission

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

Ms Suet Peng SIEW
Associate Director (Supervision of Markets)
Securities and Futures Commission

Ms Mary Therese AHERN
Consultant
Securities and Futures Commission

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 Administration

Matters arising from previous meeting

(LC Paper No. CB(1)324/14-15(01) — Written responses from the Administration and the Securities and Futures Commission to comments given by deputations to the Bills Committee)

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)
- 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
- 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
- LC Paper No. CB(1)324/14-15(02) — List of follow-up actions arising from the discussion at the meeting on 17 November 2014)

Discussion

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

Follow-up actions to be taken by the Administration

Amendments to section 633 of the Companies Ordinance (Cap. 622) ("CO")

2. The Note proposed under section 633 of CO indicated that the rules to be made under new section 101AAO of the Securities and Futures Ordinance (Cap. 571) ("SFO") would deal with the Court's power to order a participating company (or other person) to pay damages for any loss caused by an act or omission of a system operator of an uncertificated securities market system other than an act or omission that met the conditions prescribed in section 633(2B) of CO. In the light of comment of the Legal Adviser to the Bills Committee that the new section 101AAO did not specifically authorize the Securities and Futures Commission to make rules relating to such power of the Court, the Administration was requested to review the relevant provisions of the Bill to provide for the Court's power referred to in the Note in SFO instead.

(Post-meeting note: The Administration has reviewed the relevant provisions and proposed Committee Stage amendments ("CSAs") to address the concerns raised by the Legal Adviser to the Bills Committee. The CSAs were issued to members on 21 January 2015 vide LC Paper No. CB(1)462/14-15(03).)

II Any other business

Date of next meeting

3. The Chairman remarked that the next meeting would be held on Friday, 2 January 2015 at 10:45 am.

(Post-meeting note: After taking into account the progress of work of the Bills Committee, the Chairman subsequently directed that the meeting on 2 January 2015 be cancelled. As the meeting scheduled for 19 January 2015 would clash with a policy briefing for the Panel on Public Service, the Chairman instructed that the fifth meeting of the Bills Committee be rescheduled for Thursday, 22 January 2015 at 8:30 am. Members were informed accordingly on 23 December 2014 vide LC Paper No. CB(1)363/14-15.)

4. There being no other business, the meeting ended at 12:18 pm.

**Proceedings of the Bills Committee on Securities and Futures and
Companies Legislation (Uncertificated Securities Market Amendment) Bill 2014
Fourth meeting on Monday, 15 December 2014, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000441 – 000609	Chairman	Introductory remark	
000610 – 001406	Chairman Administration	Briefing by the Administration on the paper entitled "Written responses from the Administration and the Securities and Futures Commission to comments given by deputations to the Bills Committee" [LC Paper No. CB(1)324/14-15(01)]	
<u>Clause by Clause Examination of the Bill</u>			
001407 – 001801	Chairman Administration	Part 2 – Amendments to Securities and Futures Ordinance <u>Clause 12 - Part IIIAA added</u> Part IIIAA - Uncertificated Securities Market Division 3—Uncertificated Securities Market Regime <i>Subdivision 1—Powers of Commission</i> <i>101AAL. Notification of Commission's intention to give direction under section 101AAK</i> <i>101AAM. Certain facts or particulars to be published in Gazette</i> <i>101AAN. Appeals</i>	
001802 – 003009	Chairman Administration Assistant Legal Adviser ("ALA") Mr SIN Chung-kai Securities and Futures Commission ("SFC")	<i>Subdivision 2—Uncertificated Securities Market Rules</i> <i>101AAO. Uncertificated Securities Market Rules</i> In reply to ALA, SFC clarified that the authorization under the new section 101AAO(2) (h) did not cover participating companies of the uncertificated securities market regime. In view of the complexity of the rules to be made by SFC under section 101AAO, which was	

Time Marker	Speaker	Subject(s)	Action Required
		<p>designed to be subject to the negative vetting procedure of the Legislative Council ("LegCo"), ALA and Mr SIN enquired whether it would be more desirable to subject the rules to the positive vetting procedure of LegCo in order to ensure LegCo would have sufficient time to scrutinize the rules in detail.</p> <p>The Administration advised that the existing section 398 of the Securities and Futures Ordinance (Cap. 571) ("SFO") required SFC to publish a draft of the proposed rules to consult the public and relevant parties. The same treatment would be provided to the rules in question. The Panel on Financial Affairs would also be consulted. Views and comments from all relevant stakeholders would be taken into account before the rules were finalized and submitted to LegCo for negative vetting.</p> <p><u>Clause 13 - Section 209 amended (general provisions relating to sections 204, 205, 206 and 208)</u></p> <p><u>Clause 14 - Section 212 amended (winding-up orders and bankruptcy orders)</u></p>	
003010 – 003822	Chairman Administration	<p><u>Clause 15 - Section 213 amended (injunctions and other orders)</u></p> <p><u>Clause 16 - Section 336 amended (register of interests in shares and short positions)</u></p> <p><u>Clause 17 - Schedule 1 amended (interpretation and general provisions)</u></p> <p><u>Clause 18 - Schedule 2 amended (Securities and Futures Commission)</u></p>	
003823 – 004531	Chairman Administration Mr SIN Chung-kai SFC	<p><u>Clause 19 - Schedule 3A added</u></p> <p>Mr SIN enquired about –</p> <p>(a) whether the term "shares" in the new Schedule 3A to SFO which specified the classes or descriptions of securities to be subject to the uncertificated securities market ("USM") regime would be sufficiently broad to cover all classes of shares applicable under the USM regime and</p>	

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		<p>shares traded under the Shanghai-Hong Kong Stock Connect ("S-HK SC"); and</p> <p>(b) the arrangement if a company only issued certain class of its shares in uncertificated form.</p> <p>The Administration and SFC advised that –</p> <p>(a) the USM regime would be implemented in phases, and the initial phase would cover shares that were listed or to be listed on a recognized stock market, but it would not cover shares listed outside Hong Kong (e.g. eligible shares listed on the Shanghai Stock Exchange and traded under S-HK SC);</p> <p>(b) the USM regime would apply to shares of companies registered in Hong Kong, and non-Hong Kong companies as and when the necessary approvals or laws of their home jurisdictions were in place. The participating companies under the regime or the applicable class of shares issued by individual companies would be prescribed through the Listing Rules (subject to SFC's approval) or with SFC imposing conditions on the USM system operator; and</p> <p>(c) the Administration would aim to cover as many jurisdictions and Hong Kong-listed companies as possible under the first phase of the USM regime. In this connection, the Administration had initiated discussions with the Mainland and the United Kingdom, and conducted legal analysis to identify the extent to which the laws of Cayman Islands and Bermuda would enable the implementation of the USM regime, as companies incorporated in these four jurisdictions had made up the vast majority of non-Hong Kong companies listed on the Hong Kong Stock Exchange.</p>	
004532 – 005825	Chairman Administration	<p>Part 3 – Amendments to Companies Ordinance</p> <p><u>Clause 20 - Section 2 amended (interpretation)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 21 - Section 134 amended (nature and transferability of shares)</u></p> <p><u>Clause 22 - Section 137 amended (share certificate to be proof of title in the absence of contrary evidence)</u></p> <p><u>Clause 23 - Section 143 amended (registration of allotment)</u></p> <p><u>Clause 24 - Sections 143A and 143B added</u></p> <p><u>Clause 25 - Section 144 amended (issue of share certificate on allotment)</u></p> <p><u>Clause 26 - Section 150 amended (requirement for instrument of transfer)</u></p> <p><u>Clause 27 - Section 151 amended (registration of transfer or refusal of registration)</u></p>	
005826 – 010357	Chairman Administration ALA	<p><u>Clause 28 - Section 152 amended (order of Court for registration)</u></p> <p>The Note proposed under section 152 of the Companies Ordinance ("CO") referred readers to the USM Rules for the power of the Court to make an order for the registration of a transfer of participating shares effected under the subsidiary legislation made under the new section 101AAO of SFO. ALA sought the reasons for providing the Court's power in question in the subsidiary legislation instead of in the principal Ordinance (page 4 of LC Paper No. CB(1)2035/13-14(11)).</p> <p>The Administration's response as set out in paragraphs 17 to 19 of LC Paper No. CB(1)220/14-15(02).</p> <p><u>Clause 29 - Section 153 amended (transfer by personal representative)</u></p>	
010358 – 011404	Chairman Administration	<p><u>Clause 30 - Section 155 amended (issue of share certificate on transfer)</u></p> <p><u>Clause 31 - Section 158 amended (registration or refusal of registration)</u></p> <p><u>Clause 32 - Section 158A added</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 33 - Section 159 amended (order of Court for registration)</u></p> <p><u>Clause 34 - Sections 626A and 626B added</u></p> <p><u>Clause 35 - Section 627 amended (register of members)</u></p> <p><u>Clause 36 - Section 627A added</u></p> <p><u>Clause 37 - Section 628 amended (place where register must be kept)</u></p> <p><u>Clause 38 - Section 629 amended (statement that company has only one member)</u></p> <p><u>Clause 39 - Section 630 amended (index of members)</u></p> <p><u>Clause 40 - Section 631 amended (right to inspect and request copy)</u></p> <p><u>Clause 41 - Section 632 amended (power to close register of members).</u></p>	
011405 – 012120	Chairman Administration ALA SFC	<p><u>Clause 42 - Section 633 amended (power of Court to rectify register)</u></p> <p>In the light of ALA's comments, the Administration agreed to review the relevant provisions of the Bill to provide for the Court's power referred to in the Note under section 633 of CO (i.e. the power to order a participating company or other person to pay damages for any loss caused by any act or omission of a system operator of a USM system other than those referred to in the new section 633(2A) and (2B) of CO) in SFO instead, given that section 101AAO of SFO did not specifically authorize SFC to make rules relating to such power of the Court.</p> <p>(pages 4 to 5 of LC Paper No. CB(1)2035/13-14(11) and paragraph 20 of LC Paper No. CB(1)220/14-15(02))</p> <p><u>Clause 43 - Section 635 amended (register to be proof in the absence of contrary evidence)</u></p>	The Administration to take action as required in paragraph 2 of the minutes.

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012121 – 012539	Chairman Administration	<p><u>Clause 44 - Section 637 amended (keeping of branch register)</u></p> <p><u>Clause 45 - Section 637A added</u></p> <p><u>Clause 46 - Section 654 amended (meaning of company records).</u></p> <p><u>Clause 47 - Section 655 amended (form of company records)</u></p> <p><u>Clause 48 - Section 696 amended (obligations of offeror with right to buy out minority shareholders)</u></p> <p><u>Clause 49 - Section 908 repealed (paperless holding and transfer of shares and debentures)</u></p> <p><u>Clause 50 - Schedule 8 repealed (amendments relating to paperless holding and transfer of shares and debentures)</u></p>	
012540 – 012744	Chairman Administration	<p>Part 4 – Related Amendments</p> <p>Division 1—Amendments to Companies (Winding-up) Rules (Cap. 32 sub. leg. H)</p> <p><u>Clause 51 - Appendix amended (forms)</u></p> <p>Division 2—Amendments to Stamp Duty Ordinance (Cap. 117)</p> <p><u>Clauses 52 to 58</u></p> <p>Members agreed that Clauses 52 to 58 of the Bill relating to amendments to the Stamp Duty Ordinance (Cap. 117) would be dealt with at the next meeting when representatives from the Inland Revenue Department would join the discussion.</p>	
012745 – 013309	Chairman Administration	<p>Division 3—Amendments to Mental Health Ordinance (Cap. 136)</p> <p><u>Clause 59 - Section 17 amended (committee to execute instruments)</u></p> <p>Division 4—Amendments to Crimes Ordinance (Cap. 200)</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<u>Clause 60 - Section 84 amended (making false entry in contract for sale of shares)</u> Division 5—Amendment to Companies Ordinance (Cap. 622) <u>Clause 61 - Section 632 amended (power to close register of members)</u>	
013310 – 013345	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
16 February 2015