

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

Briefing on 18 July 2014

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Background

Introduction of uncertificated securities regime

Current Paper-based Securities Market

- The law requires issue of paper certificates and use of paper instruments of transfer

Uncertificated Securities Market Amendment Bill

- Enable the introduction of an uncertificated securities market regime
- Move towards a paperless securities market

Benefits of introducing an uncertificated securities regime

- Modernise Hong Kong's financial infrastructure and enhance overall efficiency in the securities market
- Enhance corporate governance, and secure an improved level of investor choice and protection
- Facilitate market development and enhance linkage with other leading markets, e.g. Mainland China, Australia, Japan and the UK

Legislative and Regulatory Framework

Legislative Amendments

- Mainly require amendments to the Securities and Futures Ordinance (SFO) and the Companies Ordinance (CO)
- Broad framework to be set out in the two pieces of primary legislation
- Details on operational matters and regulation of uncertificated securities market to be set out in new subsidiary legislation to be made under SFO
- Amend CO to dispense with the need for paper certificates and paper instruments of transfer
- Also need to make related amendments to a few other pieces of legislation, including the Stamp Duty Ordinance (SDO)

Statistics for Share Certificates

- As at 30th April 2014:

	Number of Share Certificates	Value (HKD)
Share Certificates kept in Central Clearing and Settlement System (CCASS)	7.3 million units	13 trillion
Share Certificates kept outside of CCASS	15.2 million units	8 trillion
Total:	22.5 million units	21 trillion

Enhance Corporate Governance:

Name on register

- Investors holding securities in uncertificated form will have the option to register their securities in their own names and enjoy the full benefits of legal ownership.
- Investors may also hold their securities in the name of a nominee.

Register of members of companies

- Register of members consists of two parts:
 - **Members register (uncertificated shares):**
Recording uncertificated shares. Kept and maintained by the system operator of the “uncertificated securities market system” (i.e. Hong Kong Securities Clearing Company Ltd.)
 - **Members register (certificated shares):**
Recording certificated shares. Kept and maintained by the relevant share registrar as the agent of company.

Register of members of companies

- Legislative Amendments:
 - Amend CO to re-define what constitutes the register of members of a participating company.
 - Amend SFO to enable the Securities and Futures Commission (SFC) to provide for how the two parts of register of members are to be kept, what matters may or must be entered in them and the extent to which they may be made available for inspection.

Regulatory oversight and rules

- SFC to oversee the regulatory and operational matters relating to the new uncertificated securities market environment.
- SFC to make rules to provide for the operation and regulation of the uncertificated securities market environment and prescribe penalties for breach.
- SFC to authorise and regulate share registrars who wish to provide share registrar services in respect of participating companies.
- All rules made by SFC are subsidiary legislation subject to negative vetting by the Legislative Council.

Phased approach for implementation

- Introduce new terms in the SFO and the CO to reflect status of securities and companies -
 - **Prescribed securities:** securities that are listed or to be listed, and that are eligible to be accepted into the uncertificated securities system.
 - **Participating shares:** shares which are specific prescribed securities and have actually been accepted into the uncertificated securities system for holding and transfer through that system.
 - **Participating company:** a company that has issued any shares that are participating shares.

Fees and charges

- Guiding principles:
 - Reasonable (for all parties concerned)
 - Commensurate with services provided
 - Conducive to encouraging innovation and market development
 - Contributing to the longer term benefits of a paperless environment
- Fees charged by the system operator of the “uncertificated securities market system” subject to SFC’s approval, i.e. in line with the existing legislation which requires fees charged by a recognized clearing house to be approved by SFC.

Stamp duty

- **\$5 fixed duty will not be chargeable** on shares transferred without an instrument of transfer.
- **Ad valorem stamp duty not affected:** -
 - Ad valorem stamp duty will continue to be collected electronically through SEHK for all on-exchange transfers
 - Setting up of a new stamping arrangement for the collection of ad valorem stamp duty for off-Exchange transfers involving shares where no instrument of transfer is needed

Structure of the Bill

1. Amendments to the SFO (Clauses 3 to 19 of the Bill)

- To amend provisions relating to the functions of a recognized clearing house (RCH) (and its controller) so that they also cover the operation of an uncertificated securities market system by an RCH (Part III of SFO amended under Clauses 3 to 11 of the Bill).
- To introduce a new Part IIIAA of the SFO that focuses on the new uncertificated securities market regime, and provides for -
 - interpretation of new words and expressions (such as “prescribed securities” and “uncertificated securities market system”)
 - general principles (such as the requirement for securities to be held and transferred through an uncertificated securities market system if they are to be held and transferred without paper)

Structure of the Bill

- a new power enabling the SFC to approve an RCH to operate and maintain an uncertificated securities market system, and to withdraw such approval
- a new power enabling the SFC to make subsidiary legislation for regulatory and operational matters (rules) (a new Part IIIAA of SFO added under Clause 12 of the Bill).
- To list the classes or descriptions of “prescribed securities” (a new Schedule 3A to SFO added under Clause 19 of the Bill) – The new Schedule 3A only specifies shares as it is proposed that the new regime should cover only shares at the initial stage.

Structure of the Bill

2. Amendments to the CO (Clauses 20 to 50 of the Bill)

- To provide for the interpretation of new words and expressions, including “participating shares” and “participating company” (section 2 of CO amended under Clause 20 of the Bill).
- To amend provisions relating to the allotment, transmission and transfer of shares so as to dispense with the need for paper share certificates and paper instruments of transfer (Clauses 21 to 33 of the Bill).

Structure of the Bill

- To amend provisions relating to the register of members of company so as to provide for the register being kept in two parts and by different bodies (Clauses 34 to 38 of the Bill).
- To repeal earlier amendments to the CO which have not yet come into effect (Clauses 49 to 50 of the Bill).

3. To amend other ordinances (Clauses 51 to 61 of the Bill)

- Including amending SDO for a new stamping method for the collection of ad valorem stamp duty for off-exchange transfers involving shares in uncertificated form (Clauses 52 to 58 of the Bill).

The End