

立法會
Legislative Council

LC Paper No. CB(1)1202/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/8/14/2

Bills Committee on Securities and Futures (Amendment) Bill 2015

Minutes of first meeting
held on Tuesday, 7 July 2015, at 2:45 pm
in Conference Room 2B of the Legislative Council Complex

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Starry LEE Wai-king, JP
Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP

Public Officers attending : **For item II**

Financial Services and the Treasury Bureau

Miss Salina YAN, JP
Deputy Secretary (Financial Services)1

Ms Joyce HO
Principal Assistant Secretary (Financial Services)1

Securities and Futures Commission

Mr Ashley ALDER
Chief Executive Officer

Mr Andrew YOUNG
Chief Counsel, Legal Services

Ms Clara CHIU
Director, Licensing, Intermediaries

Mr Paul YEUNG
Commission Secretary

Department of Justice

Ms Leonora IP
Senior Assistant Law Draftsman (Laws Publication)

Ms Phyllis POON
Senior Government Counsel

Clerk in Attendance : Ms Angel SHEK
Chief Council Secretary (1)1

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Mr Ken WOO
Senior Council Secretary (1)5

Ms Mandy LI
Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Ms PANG Yin-shan
Clerical Assistant (1)1

Action

I. Election of Chairman

Mr CHAN Kam-lam, 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.

Action

2. Mr CHAN Kam-lam was nominated by Mr Andrew LEUNG and the nomination was seconded by Mr Christopher CHEUNG. Mr CHAN Kam-lam accepted the nomination. There being no other nominations, Mr CHAN Kam-lam was declared Chairman of the Bills Committee.
3. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

(LC Paper No. CB(3)755/14-15	—	The Bill
File Ref: LM to SF&C/1/2/11/4/1C(2015)	—	Legislative Council Brief
LC Paper No. LS74/14-15	—	Legal Service Division Report)

Discussion

4. The Deputy Secretary (Financial Services)1, Financial Services and the Treasury Bureau and the Chief Executive Officer, Securities and Futures Commission ("CEO/SFC") briefed members on the Securities and Futures (Amendment) Bill 2015 ("the Bill").
5. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

(Post-meeting note: The speaking note of CEO/SFC was issued vide LC Paper No. CB(1)1104/14-15(01) on 14 July 2015).

Follow-up actions to be taken by the Administration

Provision of supervisory assistance by the Securities and Futures Commission ("SFC") to regulators outside Hong Kong

- Admin
6. The Administration was requested to –
 - (a) clarify whether SFC, in considering a request for supervisory assistance from a regulator outside Hong Kong under section 186 of the Securities and Futures Ordinance (Cap. 571) and the proposed amendments under the Bill, would take into account whether the request was compliant with the domestic laws of the requesting regulator; and how SFC would deal with the situation where the requesting regulator circumvented legal requirements in its own jurisdiction and obtained information via the supervisory

Action

assistance mechanism;

- (b) explain the legal rights and protections for licensed corporations ("LCs") regulated by SFC and the actions LCs might take if, for legitimate reasons or practical difficulties, they could not provide information to SFC for rendering supervisory assistance to a regulator outside Hong Kong upon request; or they felt aggrieved by SFC's decision to provide information to the requesting regulator; and
- (c) address members' concerns about the potential ineffectiveness of the safeguards against onward disclosure or unauthorized use of information provided by SFC to a regulator outside Hong Kong if there was no legal sanction against the requesting regulator for breaching of its undertakings on the safeguards.

Supervisory memorandum of understanding ("MoU")

Admin 7. The Administration was requested to provide the following information –

- (a) the mechanism and process for SFC to enter into supervisory MoUs with regulators outside Hong Kong, and a template of supervisory MoU;
- (b) whether the Administration/SFC would consider subjecting supervisory MoUs to negative vetting by the Legislative Council ("LegCo") as suggested by a member in the light of the present arrangement that a tax information exchange agreement entered into between the Government and another jurisdiction was subject to LegCo's negative vetting;
- (c) the mechanism in place/to be put in place to ensure that SFC would fully comply with the relevant legislation and guidelines when entering into supervisory MoUs, and to facilitate LegCo's monitoring of such;
- (d) how the Process Review Panel ("PRP") for SFC could help monitor SFC's work in the signing of supervisory MoUs and related exchange of information with regulators outside Hong Kong, in particular whether PRP was vested with the powers to look into individual cases of information exchange, and the circumstances that might trigger a case review by PRP; and
- (e) a copy of PRP's latest annual report for members' reference.

Action

Invitation of public views

8. Members agreed to post a notice on the website of LegCo 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 views on the Bill at the second meeting.

(Post-meeting note: The notice was posted on the LegCo website on 15 July 2015 and letters were sent to DCs and relevant organizations on the same day.)

Date of next meeting

9. Members agreed that the second meeting to meet with deputations be held in September 2015. The Chairman said that he would work out the date of next meeting with the Clerk and inform members accordingly.

(Post-meeting note: With the concurrence of the Chairman, the second meeting was scheduled for Tuesday, 15 September 2015 from 2:30 pm to 6:30 pm to meet with deputations, the Administration and other relevant parties. The notice of meeting was issued to members vide LC Paper No. CB(1)1102/14-15 on 14 July 2015.)

III. Any other business

10. There being no other business, the meeting ended at 4:04 pm.

Council Business Division 1
Legislative Council Secretariat
25 August 2015

Bills Committee on Securities and Futures (Amendment) Bill 2015

**Proceedings of the first meeting
on Tuesday, 7 July 2015, at 2:45 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Election of Chairman</i>			
000115 – 000211	Mr CHAN Kam-lam Mr Andrew LEUNG Mr Christopher CHEUNG	Election of Chairman	
<i>Agenda Item II - Meeting with the Administration</i>			
000212 – 000329	Chairman	Opening remarks	
000330 – 001622	Chairman Administration Securities and Futures Commission ("SFC")	Briefing by the Administration and SFC on the Securities and Futures (Amendment) Bill 2015 ("the Bill")	
001623 – 002542	Chairman Mr Christopher CHEUNG SFC	<p>Mr CHEUNG made the following enquiries –</p> <p>(a) whether SFC would provide supervisory assistance to the China Securities Regulatory Commission ("CSRC") upon the latter's request for reason of suspected malicious short selling by licensed corporations ("LCs") regulated by both SFC and CSRC, if the misconduct in question was not unlawful in Hong Kong;</p> <p>(b) the legal remedies that an LC could seek if supervisory information in relation to the LC provided by SFC to a regulator outside Hong Kong was inadvertently disclosed; and</p> <p>(c) SFC's latest position in respect of the suggestion on making reference to the tax information exchange regime in Hong Kong and introducing a mechanism to allow LCs to seek a review, if necessary, of SFC's decisions to provide information relevant to the LCs to regulators outside Hong Kong ("review mechanism").</p> <p>SFC responded that –</p> <p>(a) the issues raised by members concerned investigatory assistance and were not directly related to the Bill. In accordance with the multilateral memorandum of understanding</p>	

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		<p>("MoU") of the International Organization of Securities Commissions ("IOSCO") for enforcement cooperation, SFC and other signatories, including CSRC, would provide mutual assistance upon request;</p> <p>(b) pursuant to the enhanced MoU between SFC and CSRC under Shanghai-Hong Kong Stock Connect, the cooperation between SFC and CSRC was further strengthened as market connectivity increased across the border;</p> <p>(c) there were explicit provisions in the MoUs to ensure confidentiality of information exchanged between regulators for supervisory/enforcement purposes. Such confidentiality obligations had been honoured by the regulators concerned;</p> <p>(d) while information provided by SFC in respect of an LC for providing investigation assistance to a regulator outside Hong Kong could be used in legal proceedings, there were provisions under the Securities and Futures Ordinance (Cap. 571) ("SFO") to protect LC's rights to claim privilege against self-incrimination, and legal professional privilege ("LPP") also applied;</p> <p>(e) the appeal mechanism currently in place for tax information exchange concerned checking of the accuracy of tax information transmitted, whereas in the case of SFC providing supervisory information to a regulator outside Hong Kong under the Bill, the information would be obtained by SFC from the LCs directly. The LCs should have ample opportunity to satisfy themselves that the information they provided to SFC was correct; and</p> <p>(f) as there was no review mechanism in the securities laws of other major comparable jurisdictions, a review mechanism imposed locally might hinder SFC from engaging regulators outside Hong Kong to negotiate supervisory MoUs.</p> <p>Mr CHEUNG commended the Administration and SFC for putting forth the proposal to amend the levy payable for a sale and purchase of mini futures and options and stock futures contracts from "\$0.108" to "\$0.10" as it would help minimize the operational burden on the brokers whose electronic system could</p>	

Time marker	Speaker	Subject(s)	Action required
		only support collection of levies up to two decimal places.	
002543 – 003634	Chairman Mr Kenneth LEUNG SFC	<p>Mr LEUNG made the following enquiries –</p> <p>(a) whether "an authority or regulatory organization outside Hong Kong" under the proposed new section 186(2A) of SFO referred only to the signatories to the IOSCO multilateral MoU ("MMoU") for enforcement cooperation;</p> <p>(b) whether the scope of supervisory information to be provided by SFC to regulators outside Hong Kong was confined to information already in the possession of SFC;</p> <p>(c) whether SFC, in considering a request for supervisory assistance from a regulator outside Hong Kong, would take into account whether the request was compliant with the domestic laws of the requesting regulator; and how SFC would deal with the situation where the requesting regulator circumvented legal requirements in its own jurisdiction and obtained information via the supervisory assistance mechanism; and</p> <p>(d) the legal rights and protections for LCs regulated by SFC and the actions LCs might take if, for legitimate reasons or practical difficulties, they could not provide information to SFC for rendering supervisory assistance to a regulator outside Hong Kong upon request; or they felt aggrieved by SFC's decision to provide the information.</p> <p>SFC responded that –</p> <p>(a) as stipulated in section 186(5) of SFO, SFC's counterparts in supervisory cooperation should be an authority or regulatory organization performing similar functions as those performed by SFC and be subject to adequate secrecy provisions. The scope would likely cover signatories to the IOSCO MMoU for enforcement purpose and a few others provided they had secrecy provisions comparable to SFC's;</p> <p>(b) currently, SFC was empowered to collect information from LCs during its ongoing supervisory work and such information already in SFC's possession could be provided to a regulator</p>	<p>Admin (paragraph 6(a) of the minutes refers)</p> <p>Admin (paragraph 6(b) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>outside Hong Kong for supervisory purpose. The legislative amendments proposed would further enable SFC to obtain new information from LCs for this purpose subject to the relevant safeguards to prevent "fishing expedition";</p> <p>(c) it was incumbent upon a regulator outside Hong Kong to ensure that its request for supervisory assistance from SFC was compliant with its own law. Besides, SFC could provide supervisory assistance to the regulator only to obtain information about regulated activities ("RAs") supervised by SFC and under specified circumstances, such as where the assistance would enable the regulator in question to ascertain compliance with the securities law and regulations that it administered or to assess whether or not the corporation in question constituted a risk which might affect the financial stability of its jurisdiction. Written statements would also be required from the requesting regulator confirming that it had not been, and would not be, able to obtain the information by any other reasonable means; and</p> <p>(d) if an LC had a reasonable excuse not to provide information to SFC for providing supervisory assistance to a regulator outside Hong Kong, SFC would consider it on a case-by-case basis. In any case, the overarching protections, such as those pertaining to LPP and the privilege against self-incrimination, provided in SFO would be applicable to the LC.</p> <p>Mr LEUNG requested the Administration/SFC to consider imposing conditions under SFO to the effect that SFC could not provide supervisory assistance to a regulator outside Hong Kong if the request was not compliant with the domestic laws of the requesting regulator. The Administration took note of the suggestion.</p>	Admin
003635 – 004641	Chairman Mr SIN Chung-kai SFC	<p>Mr SIN made the following enquiries –</p> <p>(a) the type of supervisory MoUs (i.e. bilateral or multilateral) SFC planned to enter into with its overseas counterparts and the target parties which SFC would seek to sign MoUs with upon passage of the Bill;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) whether SFC would notify an LC of a request for information relevant to the LC from a regulator outside Hong Kong; and</p> <p>(c) whether sanctions could be imposed on a regulator outside Hong Kong if it breached its undertakings on the safeguards for the confidentiality and use of the information; and if not, a regulator outside Hong Kong might take advantage of information sought under supervisory cooperation, such as passing an LC's information onto the LC's overseas competitor operating in that regulator's jurisdiction.</p> <p>SFC responded that –</p> <p>(a) SFC would initially enter into bilateral MoUs with regulators outside Hong Kong for supervisory purposes, covering mainly the major international financial centres where the headquarters of the larger overseas firms were based and with branches in Hong Kong;</p> <p>(b) under the proposed arrangements, an LC would not need to be notified of a request for information from a regulator outside Hong Kong, given that the information would be obtained from the LC; and</p> <p>(c) it was a common practice for regulators to enter into MoUs for supervisory cooperation. These MoUs were non-legally binding undertakings but breach of undertakings under an MoU would jeopardize the international reputation of the regulator concerned and adversely impact on its future dealings with its overseas counterparts.</p>	<p>Admin (paragraph 6(c) of the minutes refers)</p>
<p>004642 – 005200</p>	<p>Chairman Mr Andrew LEUNG SFC</p>	<p>Mr LEUNG sought SFC's confirmation that –</p> <p>(a) supervisory information provided by SFC to a regulator outside Hong Kong should only be related to RAs supervised by SFC; and would not cover LCs operating only in Hong Kong (mainly smaller brokers); and</p> <p>(b) collection of information from LCs by SFC for providing supervisory assistance to a regulator outside Hong Kong would not create undue operational burden to LCs.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>SFC responded that the request for supervisory assistance from a regulator outside Hong Kong must be in relation to the RAs supervised by SFC. As the request must be relevant to an LC that was regulated both by SFC and the regulator outside Hong Kong, it should not affect small brokers operating only locally. The amount of new information that needed to be collected from the LC in addition to those already in SFC's possession should be limited.</p>	
<p>005201 – 010220</p>	<p>Chairman Mr SIN Chung-kai Mr Andrew LEUNG SFC Administration</p>	<p>Mr SIN and Mr LEUNG requested for the following information –</p> <ul style="list-style-type: none"> (a) the mechanism and process for SFC to enter into supervisory MoUs with regulators outside Hong Kong, and a template of supervisory MoU; and (b) whether the Administration/SFC would consider subjecting supervisory MoUs to negative vetting by the Legislative Council ("LegCo") in the light of the present arrangement that a tax information exchange agreement entered into between the Government and another jurisdiction was subject to LegCo's negative vetting. <p>The Administration and SFC responded that –</p> <ul style="list-style-type: none"> (a) unlike bilateral agreements for avoidance of double taxation or for exchange of tax information, supervisory MoUs were neither legislation nor legally binding. The general practice of SFC was to publish MoUs it had entered into with its overseas counterparts on its website. As such, subjecting supervisory MoUs to negative vetting by LegCo was not necessary. Nevertheless, the Administration/SFC would consider keeping LegCo informed of new supervisory MoUs reached between SFC and regulators outside Hong Kong; and (b) the safeguards to be put in place as set out in paragraphs 3 to 7 of the LegCo Brief (File Ref: LM to SF&C/1/2/11/4/1C(2015)) would apply to all supervisory MoUs to guard against requests for information that were excessive, and against onward disclosure or unauthorized use of the information. 	<p>Admin (paragraphs 7(a) and 7(b) of the minutes refer)</p>

Time marker	Speaker	Subject(s)	Action required
010221 – 011008	Chairman Mr SIN Chung-kai Administration SFC	<p>Mr SIN enquired about the mechanism in place/to be put in place to ensure that SFC would fully comply with the relevant legislation and guidelines when entering into supervisory MoUs, and to facilitate LegCo's monitoring of such.</p> <p>The Administration responded that SFC must act within the legal powers conferred on it. SFC's decisions, including those on the provision of supervisory information to regulators outside Hong Kong, were subject to judicial review. Apart from monitoring by the Board of SFC, the Process Review Panel ("PRP") for SFC also reviewed the internal procedures and operational guidelines of SFC.</p> <p>At the request of Mr SIN, the Administration agreed to provide supplementary information on how PRP could help monitor SFC's work in the signing of supervisory MoUs and related exchange of information with regulators outside Hong Kong, in particular whether PRP was vested with the powers to look into individual cases of information exchange, and the circumstances that might trigger a case review by PRP.</p>	<p>Admin (paragraph 7(c) of the minutes refers)</p> <p>Admin (paragraph 7(d) of the minutes refers)</p>
011009 – 011727	Chairman Mr Kenneth LEUNG SFC Administration	<p>In reply to Mr LEUNG, the Administration and SFC advised that –</p> <p>(a) as the necessary legal framework and safeguards were already provided in SFO, it was not a prerequisite to enter into MoU in order to enable SFC to exchange information with regulators outside Hong Kong for supervisory purpose. Indeed, supervisory MoUs were optional but customary for building trust and dealing with operational issues between the signatories. The MoUs, which were subject to local laws, had no extra-territorial effect on regulators outside Hong Kong;</p> <p>(b) future supervisory MoUs would be drawn up with reference to the master template published by IOSCO. The MoUs which SFC had signed with its overseas counterparts were generally available on SFC's website; and</p> <p>(c) PRP was set up by the Government and independent from SFC. Chaired by a non-official member, PRP comprised non-official representatives from different sectors and two ex-officio members, namely the SFC Chairman and a representative of the Secretary for Justice.</p>	

Time marker	Speaker	Subject(s)	Action required
		The Administration undertook to provide a copy of PRP's latest annual report for members' reference.	Admin (paragraph 7(e) of the minutes refers)
011728 – 011944	Chairman Mr SIN Chung-kai Mr Kenneth LEUNG	Invitation of public views Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
25 August 2015