

立法會
Legislative Council

LC Paper No. CB(1)138/15-16
(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 second meeting
held on Tuesday, 15 September 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

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

Mr Andrew YOUNG
Chief Counsel, Legal Services

Ms Clara CHIU
Director, Licensing, Intermediaries

Mr Derek SHEK
Director, Licensing, Intermediaries

Department of Justice

Ms Leonora IP
Senior Assistant Law Draftsman (Laws Publication)

Ms Phyllis POON
Senior Government Counsel

Attendance by invitation : For item II

Calf Company Limited

Mr LEUNG Hin-wah
Compliance Director

The Lion Rock Institute

Mr Laurence PAK
Director of Operations

Hong Kong Securities Professionals Association

Mr LUN Sheung-nim
Executive Committee

The Alternative Investment Management Association Limited

Mr Philip TYE
Chairman, AIMA Hong Kong

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

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Ms Mandy LI
Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Confirmation of minutes

(LC Paper No. CB(1)1202/14-15 — Minutes of the meeting held on
7 July 2015)

The minutes of the meeting held on 7 July 2015 were confirmed.

II. Meeting with deputations and the Administration

Meeting with the Administration

(LC Paper No. CB(1)1231/14-15(01) — List of follow-up actions
arising from the meeting on
7 July 2015

LC Paper No. CB(1)1231/14-15(02) — Administration's response to
the issues raised at the meeting
on 7 July 2015

LC Paper No. CB(1)1231/14-15(03) — Assistant Legal Adviser's letter
dated 19 August 2015 to the
Administration

LC Paper No. CB(1)1231/14-15(04) — Administration's reply to
Assistant Legal Adviser's letter
dated 19 August 2015

Other relevant papers

LC Paper No. CB(1)1231/14-15(05) — Marked-up copy of the Bill
prepared by the Legal Service
Division (Restricted to
Members)

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LC Paper No. CB(1)1231/14-15(06) — Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(3)755/14-15 — The Bill

File Ref: LM to — Legislative Council Brief
SF&C/1/2/11/4/1C(2015)

LC Paper No. LS74/14-15 — Legal Service Division Report

Meeting with deputations

Submission from organization attending the meeting

LC Paper No CB(1)1253/14-15(01) — Submission from The Alternative Investment Management Association Limited (English version only)

2. The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their written submissions provided to the Bills Committee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Disclosure

3. Mr Christopher CHEUNG said that he was the Honorary Chairman of the Hong Kong Securities Professionals Association.

Discussion

4. The Bills Committee received views from four deputations attending the meeting (index of proceedings attached at the **Annex**).

5. The deputations expressed diverse views on the proposal to enable the Securities and Futures Commission ("SFC") to obtain information from licensed corporations ("LCs") for providing supervisory assistance to regulators outside

Action

Hong Kong ("the proposed mechanism"). The major views and concerns were summarized as follows –

- (a) One deputation (i.e. the Alternative Investment Management Association Limited) indicated support for the proposed mechanism as it would –
 - (i) allow SFC to better adhere to international standards (e.g. the General Principles Relating to Cooperation in the International Organisation of Securities Commissions Report), and enter into reciprocal supervisory cooperation arrangements with regulators outside Hong Kong and obtain from them information concerning entities regulated by SFC. These would in turn facilitate SFC to perform its supervisory functions and help maintain the financial stability of Hong Kong;
 - (ii) enable LCs to have access to overseas markets which otherwise could be denied; and
 - (iii) incorporate existing and additional safeguards against requests for information that were excessive, including the requirement on the requesting regulator to provide a written statement to the effect that it would not use the requested information in any proceedings.
- (b) Other deputations queried or expressed objection to the proposed mechanism for the following reasons –
 - (i) the scope of information to be exchanged between SFC and regulators outside Hong Kong for non-enforcement purposes could be unduly broad, and the information might be mis-used for enforcement purposes;
 - (ii) empowering SFC to obtain new information from LCs for supervisory assistance to regulators outside Hong Kong would increase the compliance cost and burden of LCs; and
 - (iii) it was uncertain whether and how SFC could ensure that a requesting regulator (e.g. member states of the European Union ("EU") and China) would be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong.

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Follow-up actions to be taken by the Administration

Admin 6. The Administration was requested to –

- (a) explain how SFC would ensure that a regulator outside Hong Kong would be able and willing to provide reciprocal assistance in response to a comparable request from Hong Kong via the proposed mechanism, in particular if the regulator like China Securities Regulatory Commission refused to provide certain requested information on the ground of confidentiality obligation (e.g. the information is pertaining to state secrets) within its jurisdiction;
- (b) advise on the positive and negative impacts, if any, on investor protection, operation of LCs and maintenance of financial stability in Hong Kong, etc. if the proposed mechanism would or would not be put in place;
- (c) advise, by means of a comparison table (and compared with other jurisdictions like Australia, Singapore and United Kingdom), whether similar mechanisms were put in place by the EU member states to enable the regulators in the respective jurisdictions to provide supervisory assistance to their overseas counterparts on a reciprocal basis;
- (d) provide information on a comparison of the legal frameworks to enable the vetting/signing of relevant agreements for information exchange under the proposed mechanism and those regimes pertaining to (i) tax matters and (ii) mutual legal assistance (e.g. surrender of fugitive offenders) in the local legislation, and address a member's concern that the proposed mechanism was not sufficiently stringent if the relevant memoranda of understanding to be signed by SFC with its overseas counterparts for supervisory information exchange was not subject to negative vetting by the Legislative Council; and
- (e) provide written responses to the views and concerns raised by the deputations at the meeting.

(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)1274/14-15(02) on 2 October 2015.)

Action

III. Any other business

Date of next meeting

7. The Chairman informed members that the next meeting would be held on Monday, 5 October 2015, at 2:30 pm.

8. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 1
Legislative Council Secretariat
9 November 2015

Bills Committee on Securities and Futures (Amendment) Bill 2015

**Proceedings of the second meeting
on Tuesday, 15 September 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes</i>			
000106 – 000124	Chairman	The minutes of the meeting held on 7 July 2015 (LC Paper No. CB(1)1202/14-15) were confirmed.	
<i>Agenda Item II - Meeting with deputations and the Administration</i>			
000125 – 000426	Chairman	Introductory remarks	
000427 – 001207	Calf Company Limited ("CCL")	Presentation of views	
001208 – 001622	The Lion Rock Institute ("LRI")	Presentation of views	
001623 – 001809	Hong Kong Securities Professionals Association	Presentation of views	
001810 – 002326	The Alternative Investment Management Association Limited	Presentation of views [LC Paper No. CB(1)1253/14-15(01)]	
002327 – 002708	Chairman Mr SIN Chung-kai CCL LRI	Mr SIN invited deputations to express views on the possible positive and negative impacts if the proposed supervisory assistance mechanism in the securities field ("the proposed mechanism") would or would not be put in place in Hong Kong. CCL expressed concern that – (a) the scope of information exchange might be unduly wide if the proposed mechanism was not subject to adequate checks and balances; (b) it was uncertain whether the regulators in certain major jurisdictions like the United States and those of the European Union ("EU") adopted similar mechanisms for providing supervisory assistance to their overseas counterparts on reciprocal basis; and	Admin (paragraph 6(b) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>(c) there was no review or appeal mechanism in respect of SFC's decision to provide the requested information to an overseas regulator.</p> <p>LRI queried the benefits of putting in place the proposed mechanism to facilitate licensed corporations ("LCs") to gain access to overseas markets since, in its view, most LCs had already established their overseas offices or markets.</p>	
002709 – 004812	<p>Chairman Mr Christopher CHEUNG Administration Securities and Futures Commission ("SFC")</p>	<p>Disclosure of interest by Mr CHEUNG</p> <p>Mr CHEUNG enquired –</p> <p>(a) whether the proposed mechanism would only affect LCs which had a physical presence in foreign jurisdiction(s);</p> <p>(b) whether the enhanced memorandum of understanding ("MoU") between SFC and the China Securities Regulatory Commission ("CSRC") under the Shanghai-Hong Kong Stock Connect ("S-HK SC") would incorporate the supervisory assistance mechanism; and</p> <p>(c) whether an LC or its related corporation would be informed by SFC of a relevant request from a regulator outside Hong Kong for supervisory assistance.</p> <p>The Administration and SFC responded that –</p> <p>(a) the proposed mechanism would only apply to (i) an LC in Hong Kong that was regulated by SFC and was also regulated by a regulator outside Hong Kong; or (ii) a related corporation of an LC where that related corporation was regulated by the regulator outside Hong Kong;</p> <p>(b) SFC might only provide supervisory assistance in relation to regulated activities ("RAs") supervised by SFC 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. SFC would not be able to assist if the regulator outside Hong Kong requested information related to overseas tax matters;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) the enhanced MoU under S-HK SC was meant to strengthen cross-boundary enforcement cooperation between SFC and CSRC after implementation of the stock connect, and did not fall within the proposed mechanism for providing supervisory assistance;</p> <p>(d) supervisory cooperation was not predicated upon suspected misconduct, and involved exchange of information which was not intended for enforcement purposes or use in legal proceedings;</p> <p>(e) the safeguards as set out in paragraphs 3 to 7 of the Legislative Council ("LegCo") Brief (File Ref: LM to SF&C/1/2/11/4/1C(2015)) would apply to all supervisory MoUs and protocols relating to supervisory assistance envisaged by the Bill to guard against requests for information that were excessive, and against onward disclosure or unauthorized use of the information; and</p> <p>(f) when obtaining information from LCs, SFC would, in its notification to the LCs, cite the relevant provisions of the Securities and Futures Ordinance (Cap. 571) ("SFO") under which SFC was exercising its powers to seek the information, i.e. whether the information sought was pertaining to requests from regulators outside Hong Kong for supervisory or enforcement assistance.</p>	
004813 – 010250	Chairman Mr Kenneth LEUNG SFC	<p>Mr LEUNG expressed concern that the scope of information exchanged under the proposed mechanism might be loose as it would hinge to how stringent SFC considered a request for supervisory assistance. He sought clarification on –</p> <p>(a) the definition of the term "related corporation" of an LC for the purpose of the proposed mechanism, and whether the RAs in question referred only to those activities regulated under SFO;</p> <p>(b) whether the supervisory information to be provided by SFC to a regulator outside Hong Kong would be limited to information already in SFC's possession; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) the safeguards to prevent regulators outside Hong Kong from obtaining excessive information, i.e. "fishing expedition".</p> <p>SFC responded that —</p> <p>(a) the term "related corporation" was defined in section 3 of Part 1 of Schedule 1 to SFO to include a holding company, a subsidiary and a subsidiary of the same holding company. When an individual controlled the composition of the board of directors of one or more corporations, controlled more than half of the voting power at general meetings of one or more corporations; or held more than half of the issued share capital of one or more corporations, each of the corporations and each of their subsidiaries would be regarded as related corporations of each other;</p> <p>(b) if the requested information was already in the possession of SFC at the time of request, SFC might disclose it to a regulator outside Hong Kong through the existing gateway under section 378(3)(g)(i) of SFO, whereas the proposed mechanism would further enable SFC to obtain new information from LCs that was not already in the possession of SFC; and</p> <p>(c) the scope of information exchangeable under the proposed mechanism was narrow and confined to RAs supervised by SFC as defined in Schedule 5 to SFO. SFC must also be satisfied that the information sought was necessary for the regulator outside Hong Kong to perform its supervisory functions.</p>	
010251 – 011808	Mr SIN Chung-kai Administration	<p>Mr SIN enquired about –</p> <p>(a) the positive and negative impacts, if any, on investor protection, operation of LCs and maintenance of financial stability in Hong Kong, etc. if the proposed mechanism would or would not be put in place; and</p> <p>(b) whether similar mechanisms were put in place by EU member states to enable the regulators in the respective jurisdictions to provide supervisory assistance to their overseas counterparts on a reciprocal basis.</p>	Admin (paragraphs 6(b) and 6(c) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) it was vital for SFC to be empowered to provide assistance in a manner consistent with international norms to regulators outside Hong Kong on supervisory matters so that it could be in a position to enter into reciprocal supervisory cooperation arrangements with such regulators and obtain information concerning regulated entities. Besides, SFC should perform its supervisory functions in view of Hong Kong's open market architecture and the fact that many LCs in Hong Kong were part of international financial groups whose activities outside Hong Kong might have significant effect on LCs and the financial stability of Hong Kong; (b) the proposed mechanism would enhance market development by facilitating LCs to gain access to certain overseas markets which otherwise could be denied; and (c) 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. PRP would publish its reports for public information. <p>At the request of Mr SIN, the Administration agreed to provide information on a comparison of the legal frameworks of relevant agreements for information exchange under the proposed mechanism and those regimes pertaining to (a) tax matters and (b) mutual legal assistance (e.g. surrender of fugitive offenders).</p>	<p>Admin (paragraph 6(d) of the minutes refers)</p>
011809 – 012125	Chairman Administration	<p>Briefing by the Administration on its response to the issues arising from the discussions at the meeting on 7 July 2015 [LC Paper No. CB(1)1231/14-15(02)]</p>	
012126 – 013640	Chairman Mr SIN Chung-kai Administration SFC	<p>Mr SIN enquired how SFC would ensure that a regulator outside Hong Kong would be able and willing to provide reciprocal assistance in response to a comparable request from Hong Kong via the proposed mechanism, in particular if the regulator like CSRC refused to provide certain requested information on the ground of confidentiality obligation (e.g. the</p>	<p>Admin (paragraph 6(a) of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>information was pertaining to state secrets) within its jurisdiction.</p> <p>The Administration and SFC responded that –</p> <p>(a) the proposed mechanism would allow SFC to exercise a discretion, and not mandatory obligation, to provide supervisory assistance to regulators outside Hong Kong. As required under SFO, SFC had to take into account, inter alia, reciprocity when considering whether to provide the supervisory assistance; and</p> <p>(b) SFC would not ordinarily exercise its powers to provide supervisory assistance to a regulator outside Hong Kong unless it had entered into a relevant MoU or equivalent protocol with the regulator.</p>	
013641 – 014329	Chairman Mr Kenneth LEUNG SFC	<p>Mr LEUNG enquired about the respective penalty regimes if (a) an LC refused to provide information to SFC pursuant to SFO; and (b) an overseas regulator breached its undertakings under a supervisory MoU.</p> <p>SFC advised that –</p> <p>(a) if an LC considered that it had a legitimate reason for not providing information to SFC pursuant to a supervisory assistance request from a regulator outside Hong Kong, the LC might set out its response for SFC to consider on a case-by-case basis. If SFC considered that the reason constituted a "reasonable excuse" pursuant to SFO, SFC would not pursue that information further in fulfilling the request; and</p> <p>(b) in the context of securities market supervision, international regulators could only enter into non-legally binding MoU with each other. If a regulator breached its undertakings or any terms of an MoU, it would seriously damage its international reputation and affect its future dealings with other regulators.</p>	
014330 – 015856	Chairman Mr SIN Chung-kai Mr Kenneth LEUNG Mr Christopher CHEUNG Administration	<p>Mr SIN and Mr LEUNG expressed concern that compared to the regimes for information exchange in respect of tax matters or mutual legal assistance, the proposed mechanism was not sufficiently stringent if the relevant supervisory MoUs were not subject to negative vetting by LegCo.</p>	Admin (paragraph 6(d) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) it was the international norm in the securities field to enter into non-legally binding agreements for supervisory cooperation, which was different from the information exchange on tax matters or mutual legal assistance and warranted different considerations; (b) under the proposed mechanism, SFC would require the regulator outside Hong Kong to undertake in writing that it would use the requested information solely for ascertaining supervisory matters and would not use the information in any proceedings unless it had sought and SFC had agreed to provide such information; and (c) SFC would usually publish the texts of signed supervisory MoUs on its website so as to enhance the transparency of the proposed mechanism's operation. <p>The Chairman suggested SFC consider providing information to LegCo Members on a regular basis (e.g. in SFC's annual reports) about SFC's work in respect of supervisory information exchange, such as the number of supervisory MoUs signed between SFC and regulators outside Hong Kong, the scope of information exchanged, and any breach of undertakings under the MoUs, etc.</p> <p>The Administration took note of the suggestion.</p>	
<i>Agenda Item III – Any other business</i>			
015857 – 015954	Chairman Administration	Date of next meeting	