

立法會
Legislative Council

LC Paper No. CB(1)250/15-16
(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 third meeting
held on Monday, 5 October 2015, at 2:30 pm
in Conference Room 2A 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 : **For item I**
attending

Financial Services and the Treasury Bureau

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

Miss Selina LAU
Acting Senior Assistant Law Draftsman

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

Action

I. Meeting with the Administration

Matters arising from previous meeting

(LC Paper No. CB(1)1274/14-15(01) — List of follow-up actions arising from the meeting on 15 September 2015

LC Paper No. CB(1)1274/14-15(02) — Administration's response to the issues arising from the meeting held on 15 September 2015 and to the views provided by organizations at the meeting or in their submissions

LC Paper No. CB(1)1274/14-15(03) — Assistant Legal Adviser's letter dated 23 September 2015 to the Administration

Action

LC Paper No. CB(1)1290/14-15(01) Administration's reply to Assistant Legal Adviser's letter dated 23 September 2015)

Clause-by-clause examination of the Bill

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

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

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

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)

Discussion

The Bills Committee deliberated (index of proceedings attached at the **Annex**).

Clause-by-clause examination of the Bill

2. The Chairman concluded that the Bills Committee had completed scrutiny of the Securities and Futures (Amendment) Bill 2015 ("the Bill"). The Bills Committee and the Administration would not propose any Committee Stage amendment ("CSA") to the Bill.

Action

3. Members noted that the Administration would advise the Bills Committee on the proposed date for resumption of the Second Reading debate on the Bill in due course. The Chairman would report the deliberations of the Bills Committee to the House Committee ("HC") in accordance with the legislative timetable.

(Post-meeting note: The Administration had subsequently given notice to resume the Second Reading debate on the Bill at the Council meeting of 4 November 2015, and the Chairman reported the deliberations of the Bills Committee to HC on 23 October 2015. The deadline for giving notice to move CSAs, if any, to the Bill was 26 October 2015. Members were informed of the above arrangements vide LC Paper No. CB(1)13/15-16 issued on 16 October 2015.)

II. Any other business

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

Council Business Division 1
Legislative Council Secretariat
3 December 2015

Bills Committee on Securities and Futures (Amendment) Bill 2015

**Proceedings of the third meeting
on Monday, 5 October 2015, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000235 – 000419	Chairman	Introductory remarks	
000420 – 000926	Chairman Administration	Briefing by the Administration on its response to the issues arising from the discussions at the meeting held on 15 September 2015 and to the views provided by deputations at the meeting or in their submissions [LC Paper No. CB(1)1274/14-15(02)]	
000927 – 002337	Chairman Mr Christopher CHEUNG Mr SIN Chung-kai Mr Kenneth LEUNG Administration Securities and Futures Commission ("SFC")	Discussion on – (a) the mechanism put in place by the United States ("US") to enable its securities and futures regulator(s) to sign supervisory memoranda of understanding ("MoUs") with their overseas counterparts; and (b) the powers for a regulator outside Hong Kong to conduct "cross-border on-site visit" in Hong Kong for the purposes of ongoing supervision and oversight. Mr CHEUNG and Mr LEUNG enquired about – (a) whether the cross-border on-site visits would only affect licensed corporations ("LCs") which had a physical presence in foreign jurisdiction(s); and (b) the role of SFC in the conduct of such visits, in particular if LCs or their related corporations refused the visits. The Administration and SFC responded that – (a) some authorities outside Hong Kong such as US had extra-territorial powers under their domestic laws to conduct cross-border on-site visits on entities which were under their jurisdictions or had otherwise submitted themselves to their jurisdiction. Such extra-territorial powers would not extend to an LC in	

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		<p>Hong Kong which had no jurisdictional nexus to an authority outside Hong Kong; and</p> <p>(b) the cross-border on-site visits would be arranged directly between the regulator outside Hong Kong and the LC concerned. SFC would not be involved in facilitating or enforcing the visits. As observed, it was rare for LCs in Hong Kong to refuse such visits given their submission to that jurisdiction. Nevertheless it was usual for non-Hong Kong regulators to give SFC notice of their planned inspection in Hong Kong.</p>	
<p>Clause-by-clause examination of the Bill [The Bill (LC Paper No. CB(3)755/14-15)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)1231/14-15(05)]</p>			
<p>002338 – 002635</p>	<p>Chairman Mr SIN Chung-kai Administration</p>	<p>Part 1 – Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Enactments amended</u></p> <p>Part 2 – Amendments Relating to Printed Licences and Certificates of Registration</p> <p><u>Division 1 – Amendments to Securities and Futures Ordinance (Cap. 571)</u></p> <p><i>Clause 3 – Section 116 amended (corporations to be licensed for carrying on regulated activities)</i></p> <p><i>Clause 4 – Section 117 amended (grant of temporary licences to corporations for carrying on regulated activities)</i></p> <p><i>Clause 5 – Section 120 amended (representatives to be licensed)</i></p> <p><i>Clause 6 – Section 121 amended (temporary licences for representatives)</i></p> <p>Members raised no query to the above clauses.</p> <p><i>Clause 7 – Section 122 amended (approval and transfer of accreditation)</i></p> <p>In response to Mr SIN's enquiry, the Administration clarified the purposes of the proposed amendments to the Securities and Futures Ordinance (Cap. 571) ("SFO") under Part 2 of the Bill.</p>	

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002636 – 002723	Chairman Administration	<p><i>Clause 8 – Section 123 amended (Commission to be notified, etc. if licensed representative ceases to act for principal)</i></p> <p><i>Clause 9 – Section 124 amended (duplicate licence, etc.)</i></p> <p><i>Clause 10 – Section 127 amended (variation of regulated activity specified in licence or certificate of registration)</i></p> <p><i>Clause 11 – Section 397 amended (rules by Commission)</i></p> <p>Members raised no query to the above clauses.</p>	
002724 – 002903	Chairman Mr Kenneth LEUNG Administration	<p><i>Clause 12 – Schedule 1 amended (interpretation and general provisions)</i></p> <p>Mr LEUNG's enquiry and the Administration's explanation on the reasons for dispensing with printed licences for licensed representatives [paragraph 9 of the Legislative Council ("LegCo") Brief (File Ref: LM to SF&C/1/2/11/4/1C(2015))]</p>	
002904 – 003214	Chairman Administration	<p><i>Clause 13 – Schedule 8 amended (Securities and Futures Appeals Tribunal)</i></p> <p><u>Division 2 – Amendments to Securities and Futures (Licensing and Registration) (Information) Rules (Cap. 571 sub. leg. S)</u></p> <p><i>Clause 14 – Section 3 amended (information to be provided with applications to Commission)</i></p> <p><i>Clause 15 – Schedule 4 amended (particulars to be contained in register)</i></p> <p><u>Division 3 – Amendments to Securities and Futures (Miscellaneous) Rules (Cap. 571 sub. leg. U)</u></p> <p><i>Clause 16 – Section 3 amended (licence or certificate of registration to be exhibited)</i></p> <p><i>Clause 17 – Section 4 amended (return of licence or certificate of registration)</i></p> <p><u>Division 4 – Amendments to Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF)</u></p> <p><i>Clause 18 – Schedule 1 amended (fees prescribed for purposes of section 395(1)(a)(i), (iii) and (iv) of Ordinance)</i></p>	

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		<p><i>Clause 19 – Schedule 3 amended (fees prescribed for purposes of section 395(1)(b) of Ordinance)</i></p> <p><u>Division 5 – Amendments to Securities and Futures (Amendment) Ordinance 2014 (6 of 2014)</u></p> <p><i>Clause 20 – Section 55 amended (Schedule 11 added)</i></p> <p>Members raised no query to the above clauses.</p>	
003215 – 013245	<p>Chairman Assistant Legal Adviser Mr SIN Chung-kai Mr Christopher CHEUNG Mr Kenneth LEUNG Administration SFC</p>	<p>Part 3 – Amendments to Securities and Futures Ordinance (Cap. 571) Relating to Supervisory Assistance to Regulators outside Hong Kong</p> <p><u>Clause 21 – Section 179 amended (power to require production of records and documents concerning listed corporations, etc.)</u></p> <p><u>Clause 22 – Section 180 amended (supervision of intermediaries and their associated entities)</u></p> <p><u>Clause 23 – Section 182 amended (investigations by Commission)</u></p> <p><u>Clause 24 – Section 186 amended (Commission's assistance to regulators outside Hong Kong)</u></p> <p>Assistant Legal Adviser raised queries on whether there would be sufficient protections for an LC or its related corporation which had provided information to SFC under the proposed supervisory assistance mechanism if legal exemptions or privileges were not available under the laws of the jurisdiction of the requesting regulator.</p> <p>The Administration and SFC explained that –</p> <p>(a) under the proposed section 186(2E)(d)(ii) of SFO, a requesting regulator must provide a written undertaking to the effect, among other matters, that the regulator would, on receiving a demand legally enforceable for disclosure of information, assist in preserving the confidentiality of the information by taking all appropriate measures as might be available, including but not limited to asserting legal exemptions or privileges under the laws of the jurisdiction of the requesting regulator. The measures available would depend on the laws of the jurisdiction of the regulator; and</p>	

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		<p>(b) the legal provisions pertaining to legal privileges and exemptions in major jurisdictions like US and those in the European Union were comparable to those in Hong Kong.</p> <p>In response to the enquiries from Mr SIN, Mr CHEUNG and Mr LEUNG, the Administration and SFC advised that –</p> <p>(a) the term "related corporation" of an LC was defined in the existing section 3 of Part 1 of Schedule 1 to SFO;</p> <p>(b) where SFC's request for new information from LCs was made on behalf of a regulator outside Hong Kong, SFC would make this clear to the LCs by specifying that the request was pursuant to the proposed new section 180(4A) of SFO;</p> <p>(c) if the information requested by a regulator outside Hong Kong was already in the possession of SFC (e.g. information relating to risk assessment of an LC) at the time of request, SFC may disclose such information to the regulator through the gateway under the existing section 378(3)(g)(i) of SFO, without notifying the relevant LC or its related corporation;</p> <p>(d) if an LC considered that it had a legitimate reason for not providing information to SFC pursuant to a supervisory assistance request, it could submit such reasons to SFC which would consider such submissions on a case-by-case basis;</p> <p>(e) while there would not be any appeal mechanism for LCs to seek a review, if necessary, of SFC's decision to provide supervisory information to regulators outside Hong Kong, the decisions were nevertheless subject to judicial review;</p> <p>(f) the proposed supervisory assistance mechanism would only give SFC a discretion to provide supervisory assistance to a regulator outside Hong Kong and would not mandate SFC to provide the assistance. The proposed scope of supervisory information was confined</p>	

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		<p>and subject to the restrictions and safeguards set out in paragraphs 4 to 7 of the LegCo Brief;</p> <p>(g) internal guidelines would be put in place by SFC to operate the proposed supervisory assistance mechanism. These guidelines would be subject to review by the Process Review Panel for SFC; and</p> <p>(h) SFC was required under the proposed revised section 186(5) of SFO to publish in the Gazette the names of the regulators outside Hong Kong with which SFC entered into supervisory MoUs and other MoUs. SFC would usually publish the full texts of the signed MoUs on its website.</p>	
013246 – 013909	Chairman Administration Mr SIN Chung-kai	<p>Part 4 – Amendments to Securities and Futures Ordinance (Cap. 571) Relating to Carrying on Business Operations upon Revocation or Suspension of Licence or Registration</p> <p><u>Clause 25 – Section 203 amended (permission to carry on business operations upon revocation or suspension of licence or registration)</u></p> <p><u>Clause 26 – Schedule 8 amended (Securities and Futures Appeals Tribunal)</u></p> <p>Part 5 – Amendments to Securities and Futures Ordinance (Cap. 571) Relating to Disclosure of Information by Recognized Exchange Company</p> <p><u>Clause 27 – Section 378 amended (preservation of secrecy, etc.)</u></p> <p>Part 6 – Amendment to Securities and Futures Ordinance (Cap. 571) Relating to Delegation of Function</p> <p><u>Clause 28 – Schedule 2 amended (Securities and Futures Commission)</u></p> <p>Part 7 – Amendments Relating to Rounding of Levy Amounts</p> <p><u>Division 1 – Amendments to Securities and Futures (Levy) Order (Cap. 571 sub. leg. Z)</u></p> <p><i>Clause 29 – Section 2A added – Rounding of levy amounts</i></p>	

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		<p><i>Clause 30 – Section 10 amended (Mini-Hang Seng Index Futures Contracts, Mini-Hang Seng Index Options Contracts and Mini-Hang Seng China Enterprises Index Futures Contracts)</i></p> <p><i>Clause 31 – Section 13 amended (stock futures contracts)</i></p> <p>Members raised no query to the above clauses.</p> <p><u>Division 2 – Amendment to Securities and Futures (Investor Compensation – Levy) Rules (Cap. 571 sub. leg. AB)</u></p> <p><i>Clause 32 – Section 2A added – Rounding of levy amounts</i></p> <p>In reply to Mr SIN, the Administration confirmed that the current drafting of the proposed section 2A of the Securities and Futures (Levy) Order (Cap. 571Z) and the proposed section 2A in the Securities and Futures (Investor Compensation – Levy) Rules (Cap. 571AB), which had taken into account similar provisions in other ordinances, would be sufficient to give the effect that the levies concerned would be rounded to the nearest cent.</p>	
013910 – 014214	Chairman Administration	<p>Part 8 – Minor Amendments</p> <p><u>Division 1 – Amendment to Securities and Futures Ordinance (Cap. 571)</u></p> <p><i>Clause 33 – Section 307 amended (no further proceedings after Part XIII market misconduct proceedings)</i></p> <p><u>Division 2 – Amendment to Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Cap. 571 sub. leg. Q)</u></p> <p><i>Clause 34 – Section 11 amended (preparation and provision of monthly statements of account)</i></p> <p>Schedule – Amendments Relating to Voting Shares</p> <p>Members raised no query to the above clauses.</p> <p>Completion of scrutiny of the Bill</p>	

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item II – Any other business</i>			
014215 – 014324	Chairman Administration	Legislative timetable	

Council Business Division 1
Legislative Council Secretariat
3 December 2015