

立法會
Legislative Council

LC Paper No. CB(1)1095/20-21
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/20/1

**Bills Committee on Securities and Futures and
Companies Legislation (Amendment) Bill 2021**

**Minutes of the first meeting on
Monday, 12 April 2021, at 10:00 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Christopher CHEUNG Wah-fung, SBS, JP
(Chairman)
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Hon CHAN Chun-ying, JP

Member absent : Hon WONG Ting-kwong, GBS, JP

Public officers attending : Ms May CHAN, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)1

Mr George TSOI
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)2

Ms Emma WONG
Senior Assistant Law Draftsman
Department of Justice

Attendance by invitation : Mr Rico LEUNG
Executive Director (Supervision of Markets)
Securities and Futures Commission

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

Mr Derek SHEK
Director (Licensing, Intermediaries)
Securities and Futures Commission

Ms Eunice CHENG
Senior Manager (Supervision of Markets)
Securities and Futures Commission

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Mr Hugo CHIU
Senior Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

Ms Vivian CHAN
Clerical Assistant (1)4

Action

I Election of Chairman

Election of Chairman

Ms Starry LEE, 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 and invited nominations for the chairmanship of the Bills Committee.

2. Mr Christopher CHEUNG was nominated by Mr CHAN Chun-ying and the nomination was seconded by Mr CHAN Kin-por. Mr Christopher

Action

CHEUNG accepted the nomination. There being no other nomination, Ms Starry LEE declared that Mr Christopher CHEUNG was elected the Chairman of the Bills Committee. Mr CHEUNG then took the chair.

Election of Deputy Chairman

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

- (LC Paper No. CB(3)419/20-21 — The Bill
- File Ref: CO/2/10C(2021) — Legislative Council Brief
- LC Paper No. LS61/20-21 — Legal Service Division Report
- LC Paper No. CB(1)767/20-21(01) — Marked-up copy of the Securities and Futures and Companies Legislation (Amendment) Bill 2021 prepared by the Legal Service Division
- LC Paper No. CB(1)767/20-21(02) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)767/20-21(03) — Letter dated 9 April 2021 from the Legal Service Division to the Administration)

Discussion

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

(At 11:50 am, the Chairman announced that the meeting be extended for 15 minutes to 12:15 pm.)

Action

III Any other business

Invitation of views

5. Members agreed to post a notice on the website of the Legislative Council ("LegCo") to invite views on the Securities and Futures and Companies Legislation (Amendment) Bill 2021 ("the Bill").

(Post-meeting note: The notice was posted on LegCo website on 12 April 2021.)

Meeting arrangement

6. The Chairman said that the Bills Committee had completed clause-by-clause examination of the Bill. He instructed that the Legal Adviser to the Bills Committee's ("ALA") further letters to the Administration (if any) and the Administration's written responses to such letter(s) be circulated to members. Subject to any views members might have on the documents concerned, he would decide whether the Bills Committee should hold a further meeting.

(Post-meeting note: The Administration's written responses to ALA's letter dated 9 April 2021 was circulated to members vide LC Paper No. CB(1)850/20-21(01) on 30 April 2021. ALA indicated that she had no further issues to raise with the Administration in writing. No member raised request for a further meeting by the deadline on 5 May 2021. Members were informed vide LC Paper No. CB(1)879/20-21 on 6 May 2021 of the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting of 2 June 2021 and that the Chairman would report the deliberations of the Bills Committee at the House Committee meeting on 21 May 2021.)

7. There being no other business, the meeting ended at 12:00 pm.

Council Business Division 1
Legislative Council Secretariat
6 July 2021

**Proceedings of the first meeting of the
Bills Committee on Securities and Futures and
Companies Legislation (Amendment) Bill 2021
on Monday, 12 April 2021, at 10:00 am
in Conference Room 2A of the Legislative Council Complex**

| Time Marker | Speaker | Subject(s) | Action Required |
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| Agenda item I — Election of Chairman | | | |
| 000414 – 000651 | Ms Starry LEE Mr CHAN Chun-ying Mr CHAN Kin-por Mr Christopher CHEUNG | Election of Chairman | |
| Agenda item II — Meeting with the Administration | | | |
| 000652 – 001243 | Chairman Administration | Briefing by the Administration on Securities and Futures and Companies Legislation (Amendment) Bill 2021 ("the Bill") | |
| 001244 – 003644 | Chairman Mr CHAN Chun-ying Mr CHAN Kin-por Ms Starry LEE Administration The Securities and Futures Commission ("SFC") | <p><u>Timetable for the implementation of the uncertificated securities market regime</u></p> <p>Mr CHAN Chun-ying noted that the first phase of the uncertificated securities market ("USM") regime (which covered the initial public offerings of Hong Kong companies) would be implemented in 2022, and enquired about the timetable for implementing the subsequent phases of the regime as well as a full USM regime.</p> <p>The Chairman conveyed the industry's support for the implementation of a USM regime. He considered that the proposed timeframe for achieving a full USM regime (i.e. two years after the first phase) too optimistic.</p> <p>The Administration and SFC responded as follows:</p> <p>(a) the Administration's current target was to implement the USM regime in full within two years after the commencement of the first phase of the regime. The relevant</p> | |

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| | | <p>subsidiary legislation which would be tabled before the Legislative Council for negative vetting would stipulate the pace and timetable for implementing a full USM regime;</p> <p>(b) the actual timetable for achieving a full USM regime would be determined having regard to the then prevailing circumstances, market readiness, and the compatibility of the respective companies laws of the places of incorporation of non-Hong Kong companies; and</p> <p>(c) listed companies incorporated in the Mainland, Bermuda, Cayman Islands and Hong Kong accounted for over 96% of the market capitalization of all listed companies in Hong Kong as at end-2020. In order to implement the USM regime for non-Hong Kong companies, SFC had commenced discussion with the China Securities Regulatory Commission, and would continue to liaise with the relevant authorities of Bermuda and Cayman Islands on the matter. The relevant preparatory work for a full USM regime was expected to complete in two years.</p> <p><u>Details for implementing the uncertificated securities market regime</u></p> <p>Mr CHAN Chun-ying's enquiry about measures to facilitate investors in adopting various features under the USM regime (e.g. the USI feature) and to help investors, particularly the elderly, who preferred to hold securities in certificated form in adapting to the USM regime. The Chairman raised similar enquiries.</p> <p>The Administration responded that:</p> <p>(a) it fully understood that some investors might need time to adapt to the USM regime, and thus the Administration would take into account market readiness in deciding the specific pace and timetable for the full implementation of the regime. The Administration and SFC would conduct publicity work to promote the benefits of</p> | |

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| | | <p>the USM regime, and it was anticipated that investors would gradually adapt to the regime; and</p> <p>(b) it was envisaged that upon implementation of the USM regime, some investors might need to sign up for the USI feature with approved securities registrars ("ASRs"). The Federation of Share Registrars Limited ("FSR") was looking into establishing a centralized platform to facilitate investors so that it would not be necessary for them to approach individual ASRs.</p> <p><u>Consultation on the implementation of the uncertificated securities market regime</u></p> <p>Ms LEE enquired about details of the consultation on the implementation of the USM regime and the respondents' feedback.</p> <p>Mr CHAN Kin-por asked whether the Administration had consulted the securities industry on the implementation of the USM regime, particularly the small and medium-sized securities firms to understand their concerns and possible impact on their operation.</p> <p>The Administration and SFC responded that:</p> <p>(a) in view of the market concerns about the limitations of the operational model adopted in the Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015, SFC, the Hong Kong Exchanges and Clearing Limited ("HKEX") and FSR had developed a revised operational model ("the Revised Model") and consulted the market in 2019. The Revised Model could better align with the overall interests of the market including those of the small and medium-sized securities firms. The Revised Model received support from the market and the Bill was formulated on the basis of it;</p> <p>(b) during the 2019 consultation, the market was mainly concerned whether the USM</p> | |

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| | | <p>regime would lead to a surge in operating costs; and</p> <p>(c) HKEX would launch the next generation of securities clearing and settlement system ("the new HKEX System") to cater for its future development even without the implementation of the USM regime. The new HKEX System would incorporate functions to support the USM regime. If the new HKEX system and the USM regime were launched at the same time, it would minimize disruptions to the market.</p> <p><u>Cost impact of implementing the uncertificated securities market regime on investors and market participants</u></p> <p>Mr CHAN Chun-ying's enquiry about room for lowering the fees payable by investors upon implementation of the USM regime.</p> <p>The Chairman's enquiries about :</p> <p>(a) the Administration's assessment on the possible impact of implementing the USM regime on the income of small and medium-sized securities firms; and</p> <p>(b) whether the Administration would consider providing financial assistance to small and medium-sized securities firms to help them upgrade their systems to tie in with the implementation of the USM regime, as the Administration's proposal to increase the rate of stamp duty on stock transfers from 0.1% to 0.13% would increase the operating costs of such firms.</p> <p>Mr CHAN Kin-por concurred that the Administration should examine the need of providing financial assistance to small and medium-sized securities firms.</p> <p>The Administration and SFC responded as follows:</p> <p>(a) the existing operating procedures of securities firms would remain largely unchanged under the USM regime, and the</p> | |

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| | | <p>existing nominee structure in CCASS would also be retained. The cost implications on securities firms would be limited as the initial development costs of the new systems for supporting the USM regime would largely be borne by HKEX and FSR. The implementation of the USM regime would also help reduce some operating costs of securities firms through streamlining some of their administrative procedures; and</p> <p>(b) if investors maintained their existing practice in holding securities, there would be no additional cost involved upon implementation of the USM regime. It was also envisaged that there might be room for lowering the fees under the USM regime in the long run with increased adoption of the regime.</p> <p><u>Over-the-counter derivative licensing regime</u></p> <p>Mr CHAN Kin-por's enquiry about industry's view on the proposal to refine the scope of regulated activities ("RAs") under the over-the-counter ("OTC") derivative licensing regime.</p> <p>The Administration responded that the Bill sought to refine the scope of the existing Type 3 and expanded Type 9, as well as the new Type 11 and Type 12 RAs by carving out activities not intended to be covered by the OTC derivative licensing regime (say, activities that would unlikely cause systemic risks). The industry was supportive of the proposals.</p> | |
| 003645 – 003834 | Chairman Assistant Legal Adviser 10 ("ALA10") Administration | <p>ALA10 said that she had raised a number of legal and drafting issues in her letter dated 9 April 2021 to the Administration (LC Paper No. CB(1)767/20-21(03)). She was still scrutinizing the legal and drafting aspects of the Bill, and would raise other issues to the Administration if necessary.</p> <p>The Administration confirmed that it would provide written responses on the issues raised in ALA10's letter.</p> | |

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| Clause-by-clause examination of the Bill | | | |
| 003835 – 005100 | Chairman Administration ALA10 | <p>The Bill Committee examined the Bill clause-by-clause</p> <p><u>Clause 7 – Part IIIAA added</u></p> <p>Part IIIAA</p> <p>Uncertificated Securities Market</p> <p><i>Division 3 — Approved Securities Registrars</i></p> <p><i>10IAAF. Prohibition on providing securities registrar services other than by approved securities registrars etc.</i></p> <p><i>10IAAG. Approval for providing securities registrar services</i></p> <p><i>10IAAH. Provisions supplementary to section 10IAAG</i></p> <p>Regarding the handling of applications for providing securities registrar service ("SRS") by SFC (i.e. the enquiry raised in paragraph 3 of ALA10's letter), the Administration advised that:</p> <p>(a) on the applicant's opportunity of being heard before SFC would make a decision not to grant an approval, an oral hearing could be arranged if necessary and the applicant could invite his/her legal adviser to attend the hearing; and</p> <p>(b) if SFC was minded not to grant an approval for a person to provide SRS, it would inform the applicant of the reasons concerned in writing. While SFC might not be able to disclose the source of the information which it had made reference to in making the refusal (e.g. because the information was provided in confidence), it would inform the applicant of the substance of the information in order to enable the applicant to respond.</p> | |

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| 005101 – 010048 | Chairman Administration ALA10 SFC | <p><u>Clause 8 – Section 180 amended (supervision of intermediaries and their associated entities)</u></p> <p>In respect of the power of SFC's authorized persons to enter the premises of an approved securities registrar ("ASR") for inspecting information or data relating to the ASR's business or require any person (e.g. a domestic helper) residing in the premises to provide the relevant record (i.e. the enquiry raised in paragraph 4 of ALA10's letter), SFC advised that:</p> <p>(a) although neither the existing Securities and Futures Ordinance (Cap. 571) ("SFO") nor the Bill precluded (or sought to preclude) the relevant information/data to be stored/kept in domestic premises given the nature and operational requirements of ASRs' businesses, it was unlikely that domestic/residential premises would be used for storing the information or data concerned. It was also highly unlikely that domestic helpers would be present in an ASR's business premises; and</p> <p>(b) in practice SFC would make arrangement with ASRs on the inspection to their premises. Thus, it would not be necessary for SFC to apply for a magistrate's warrant in order to enter an ASR's business premises except under special circumstances (e.g. where there was a risk that the information or data for inspection would be destroyed).</p> | |
| 010049 – 011139 | Chairman Administration ALA10 SFC | <p><u>Clause 10 – Section 193 amended (interpretation of Part IX)</u></p> <p>On the enquiry raised in paragraph 5 of ALA10's letter, SFC advised that the proposed section 193(1)(da) and (3) of SFO provided that in determining whether an ASR's act or omission was or was likely to be prejudicial to the interest of the investing public or to the public interest, SFC must have regard to its relevant code or guideline published under section 399 of SFO. SFC planned to expand the existing code of conduct for share registrars for this purpose. It</p> | |

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| | | <p>was expected that the expanded code would cover conduct and operational matters of ASRs (such as honesty, fairness, diligence, capabilities, internal controls and risk management, etc.) and system-related matters (such as the security, reliability, availability, adequacy, etc. of the systems operated and used by ASRs).</p> <p><u>Clause 16 – Section 202 amended (requirement to transfer records upon revocation or suspension of licence or registration)</u></p> <p>On the definition of the term "client" under the proposed amended section 202(3) of SFO (i.e. enquiry raised in paragraph 6 of ALA10's letter), the Administration advised that the purpose of the proposed amendments to section 202 was to require that an ASR must, upon revocation of its approval for conducting SRS, return certain "records" (including registers of members) to its "client". The term "client" in the proposed amendments to section 202 of SFO referred to listed companies or issuers rather than ordinary investors because the ASR was acting as an agent of the listed companies in providing SRS. Having considered the above, the term "client" was defined by reference to paragraph (a) of the definition of SRS which was indeed the most fundamental SRS.</p> | |
| 011140 – 013458 | Chairman Administration | <p><u>Clause 57 – Section 36 substituted</u></p> <p><i>36. Restriction on registration of transfer of units</i></p> <p>The Chairman enquired about:</p> <p>(a) if adjustment in the rate of stamp duty on stock transfers would have any bearing on this Bill; and</p> <p>(b) the payment arrangement for stamp duty incurred in the private transfers of securities (i.e. transfers not through CCASS).</p> <p>The Administration responded as follows:</p> <p>(a) changes in the rate of stamp duty on stock transfers would be made by amending the</p> | |

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| | | <p>First Schedule to the Stamp Duty Ordinance (Cap. 117); and</p> <p>(b) stamp duty incurred in the private transfers of securities would be collected and paid to the Stamp Office of the Inland Revenue Department either directly or through ASRs.</p> | |
| 013459 – 014019 | Chairman Administration ALA10 | <p><u>The \$5 fixed stamp duty on the instrument of transfer of listed shares</u></p> <p>ALA 10 pointed out that according to paragraph 26 of the Legislative Council Brief, upon implementation of the USM regime, the current \$5 fixed stamp duty would no longer be applicable to prescribed securities transferred without a paper instrument of transfer but the relevant ad valorem stamp duty would continue to be collected. She further invited the Administration to explain if such arrangement would affect how legal titles of securities might be established for the purpose of Court proceedings.</p> <p>The Administration responded as follows:</p> <p>(a) the \$5 fixed stamp duty was chargeable per instrument of transfer of securities. Since instrument of transfer would no longer be required for the transfer of prescribed securities under the USM regime, the \$5 fixed stamp duty would not be chargeable on prescribed securities transferred without such instrument; and</p> <p>(b) upon implementation of the USM regime, the legal title of securities would continue to be reflected in the registers of members. A party wishing to transfer the legal title of securities could make a specified request to ASRs to record the relevant registers of members. Rectification of the registers of members could also be made by making applications to the Court of First Instance.</p> | |

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| 014020 – 014930 | Chairman Administration | <p data-bbox="603 264 1240 331"><u>Clause 69 – Section 596 amended (right to appoint proxy)</u></p> <p data-bbox="603 376 1240 622">Regarding the rationale for imposing a limit on the number of proxies that could be appointed by an individual shareholder of a listed company to prevent the appointment of multiple proxies by shareholders "not for genuine purposes" (i.e. enquiry raised in paragraph 7 of ALA10's letter), the Administration advised that:</p> <p data-bbox="603 667 1240 1171">(a) there had been market feedback in recent years of cases where some individual shareholders appointed numerous proxies not for the purposes of participating in discussions on proposed resolutions or voting at shareholders' meetings but for other attractions like doorgifts. Such multiple proxies appointed by shareholders might sometimes obstruct the proceeding of shareholders' meetings. The proposed amendment sought to address the issue, while taking into account the need for retaining shareholders' ability to exercise their rights and enjoy entitlements; and</p> <p data-bbox="603 1216 1240 1395">(b) the restriction only applied to individual shareholders. The number of proxies to be appointed by non-individual shareholders (e.g. brokerage firms) would not be affected.</p> | |
| 014931 – 015155 | Chairman Mr CHAN Kin-por Clerk | Invitation of views | |
| 015156 – 020102 | Chairman Administration ALA10 | <p data-bbox="603 1590 1240 1657">Continuation of the clause-by-clause examination of the Bill</p> <p data-bbox="603 1691 887 1724"><u>clause 75 to clause 90</u></p> <p data-bbox="603 1769 1240 1836">Members did not raise questions on the above clauses.</p> | |
| Agenda item III — Any other business | | | |
| 020103 – 020153 | Chairman ALA10 | The Chairman said that members would be consulted on the need of holding a further meeting after perusing the Administration's written responses to ALA10's letter(s). He | |

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| | | would liaise with the Administration on the date of resumption of Second Reading debate on the Bill if no further meeting would be held. | |

Council Business Division 1
Legislative Council Secretariat
6 July 2021