



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2529 2075) and
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9 April 2021

Mr George TSOI
Prin AS for Financial Services & the Treasury
(Financial Services) 2
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Mr TSOI,

Securities and Futures and Companies Legislation (Amendment) Bill 2021

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To that end, we would be grateful if you would provide the following information mainly in relation to the proposed Uncertificated Securities Market ("USM") regime.

Subsidiary legislation relating to the USM regime

2. According to paragraphs 10 and 13 of the Legislative Council ("LegCo") Brief, while the Administration intends to adopt a phased approach to implement the USM regime, the pace and time-table for full dematerialization of securities would be stipulated in subsequent subsidiary legislation. Further, operational and technical matters under the USM environment would be set out in new items of subsidiary legislation to be made by the Securities and Futures Commission ("SFC"). In this regard, please provide a brief outline of the relevant plan for the implementation including the matters to be covered by the proposed subsidiary legislation and when the relevant subsidiary legislation is anticipated to be tabled for LegCo's scrutiny.

Approved securities registrars

3. Under clause 7 of the Bill, SFC could approve an application for providing securities registrar service ("SRS") after considering, among others, any information in its possession whether or not provided by the applicant (the proposed section 101AAG(5) of Cap. 571). Further, SFC would also be required to give the applicant a reasonable opportunity of being heard before refusing the application (see the proposed section 101AAH(2) of Cap. 571). In this regard, please confirm:

- (a) in terms of the applicant's opportunity of being heard, whether an oral hearing would be arranged and whether the applicant would have the right to be legally represented at the hearing; and
- (b) whether SFC in informing the applicant of the reasons for refusing the application under the proposed section 101AAH(3) of Cap. 571 would disclose to the applicant any information (and its source) which forms the basis (or part of the basis) of SFC's refusal of the application if such information is not provided by the applicant.

If the answer to (b) above is in the negative, please explain whether and how the applicant could effectively respond to such information when the applicant is being heard by SFC under (a).

4. According to the proposed section 180(1)(a)(iii)(B), 180(1)(b)(i) and 180(3)(c) of Cap. 571 (clause 8(7), (8) and (11) of the Bill refers), a person duly authorized by SFC ("AP") may, at any reasonable time and for the purposes of ascertaining whether an approved securities registrar ("ASR") has complied with Cap. 571, enter the premises at which information or data relating to the SRS provided by the ASR is stored to inspect and make copies of any record relating to the business conducted by the ASR; and the AP may also require any person (whether or not connected with the ASR) whom the AP has reasonable cause to believe has information relating to such record to give him access to such record. In this regard, please confirm:

- (a) whether such premises may include any domestic/residential premises owned or occupied by an ASR at which a portable hard disk containing the relevant data or information is located;
- (b) whether an AP may, for the purposes of section 180 of Cap. 571, require any person residing at the above domestic/residential premises to give him access to the relevant record (such as the portable hard disk mentioned in (a) above) if the AP has reasonable

cause to believe that the person (such as a domestic helper) has information relating to the relevant record (for example, the key which may open the drawer or the room in which the portable hard disk is located); and

- (c) whether and, if so, in what circumstances SFC/AP would apply to a magistrate for a warrant under section 191 of Cap. 571 before entering any domestic/residential premises for the purposes of performing the duty under the proposed new section 180(1)(a)(iii).

5. According to the proposed section 193(1)(da) and (3) of Cap. 571 (clause 10 of the Bill refers), SFC in forming any opinion that an ASR's act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest must have regard to certain code or guideline published under, among others, section 399 of Cap. 571 as is in force at the material time. Under section 399(8), any code or guideline published under section 399 of Cap. 571 is not subsidiary legislation. Please provide examples of the kinds of conduct which SFC may consider to be prejudicial to the interest of the investing public or to the public interest in respect of ASRs.

6. According to the proposed section 202(3) of Cap. 571 (clause 16(6) of the Bill refers), a "client" is defined to include a person for whom an ASR provided a service specified in paragraph (a) of the definition of SRS, i.e. the maintenance in Hong Kong of a register of holders of the prescribed securities (see clause 27(4) of the Bill). However, two other types of activities would also be considered SRS under clause 27(4) of the Bill, namely, the provision and operation of an uncertificated securities registration and transfer system (UNSRT system) in respect of the prescribed securities, and any other service specified in the rules made by SFC under the proposed new section 101AAM of Cap. 571 (see paragraphs (b) and (c) of the definition of SRS). In the light of the above, please clarify why a person for whom an ASR provides the services mentioned in paragraph (b) or (c) of the proposed definition of SRS would not be considered a "client" under the proposed section 202(3)(b) of Cap. 571.

Proxies and "genuine purposes"

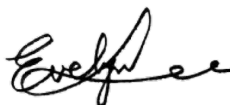
7. According to paragraph 15(c) of the LegCo Brief, the Bill proposes to amend section 596 of the Companies Ordinance (Cap. 622) by imposing a limit on the number of proxies that could be appointed by an individual shareholder of a listed company to prevent the appointment of multiple proxies by shareholders "not for genuine purposes". In this regard, would the Administration please

explain what purposes are not considered genuine and how the proposed amendment would provide an appropriate remedy for the situation.

As the first Bills Committee meeting is scheduled for 12 April 2021, would the Administration please let us have the reply in both Chinese and English as soon as possible.

Meanwhile, as our scrutiny of the Bill continues, our further enquiries including those concerning the regulatory regime of over-the-counter derivative products, amendments to Ordinances other than Cap. 571 and Cap. 622, and the Chinese text of the Bill, may follow in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Evelyn Lee', written in a cursive style.

(Evelyn LEE)
Assistant Legal Adviser

c.c. Department of Justice
(Attn: Ms. Emma WONG, Sr Asst Law Draftsman (Fax: 3918 4613))
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SALA 3
Clerk to the Bills Committee