

**立法會**  
**Legislative Council**

LC Paper No. LS61/20-21

**Paper for the House Committee Meeting  
on 26 March 2021**

**Legal Service Division Report on  
Securities and Futures and Companies Legislation (Amendment) Bill 2021**

**I. SUMMARY**

**1. The Bill**

The Bill seeks to amend the Securities and Futures Ordinance (Cap. 571), the Companies Ordinance (Cap. 622) and other enactments to:

- (a) facilitate the establishment and implementation of an uncertificated securities market ("USM") regime in Hong Kong;
- (b) provide for a regulatory regime for persons providing securities registrar services;
- (c) refine the scope of certain regulated activities ("RAs") relating to over-the-counter ("OTC") derivative transactions;
- (d) make minor miscellaneous amendments; and
- (e) provide for related matters.

**2. Public Consultation**

The Securities and Futures Commission, the Hong Kong Exchanges and Clearing Limited and the Federation of Share Registrars Limited conducted a joint consultation on the USM regime in 2019 and received support from the market. In December 2020, the Standing Committee on Company Law Reform was consulted and it supported the proposed amendments to Cap. 622. The market was also consulted on the proposed refinements to the scope of RAs under the OTC regime and the proposed fees arrangements.

**3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on the proposal for implementing a USM regime on 19 March 2019 and members had no objection to the proposal. In November 2020, an information paper was issued to the Panel on the proposal to refine the scope of RAs under the OTC regime.

**4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to change the manner in which investors may hold and transfer title to securities and the scope of RAs under the OTC regime, Members may consider forming a Bills Committee to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 24 March 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: CO/2/10C(2021)) issued by the Financial Services and the Treasury Bureau on 17 March 2021 for further details.

### **Object of the Bill**

2. The Bill seeks to amend the Securities and Futures Ordinance (Cap. 571), the Companies Ordinance (Cap. 622) and other enactments to:
  - (a) facilitate the establishment and implementation of an uncertificated securities market ("USM") regime in Hong Kong;
  - (b) provide for a regulatory regime for persons providing securities registrar services;
  - (c) refine the scope of certain regulated activities ("RAs") relating to over-the-counter ("OTC") derivative transactions;
  - (d) make minor miscellaneous amendments; and
  - (e) provide for related matters.

### **Background**

3. At present, Hong Kong adopts a paper-based securities regime under which the law requires companies to issue paper certificates as evidence of legal title and investors to use paper instruments to transfer legal title to the securities. The Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2015 (Ord. No. 5 of 2015) was enacted in March 2015 to, among others, provide for a USM system, i.e. a digitized system enabling title to certain securities to be evidenced and transferred without paper. However, certain parts of Ord. No. 5 of 2015 have not come into operation in view of market participants' concerns about the operational model initially proposed. To address these concerns, the Securities and Futures Commission ("SFC"), the Hong Kong Exchanges and Clearing Limited ("HKEX") and the Federation of Share Registrars Limited ("FSR") have proposed a revised model for the USM regime ("Revised Model").

4. As regards OTC transactions, the existing Schedule 5 to Cap. 571 specifies the types of RAs which are regulated under Cap. 571. Certain parts of

the Securities and Futures (Amendment) Ordinance 2014 (Ord. No. 6 of 2014) and the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571AN) also relate to RAs concerning OTC transactions.

5. The Bill, among others, seeks to provide for the framework of the revised USM regime and to refine the scope of certain RAs relating to OTC transactions under Cap. 571. Key provisions of the Bill are summarized in the ensuing paragraphs.

## **Provisions of the Bill**

### Regulatory framework for the USM regime and persons providing securities registrar services (Part 2 of the Bill)

#### *Proposed amendments to Cap. 571*

6. Part 2 of the Bill seeks to amend Cap. 571 to, among others, provide for a computer-based uncertificated securities registration and transfer ("UNSRT") system, under which title to any securities specified in the proposed new Schedule 3A to Cap. 571 (such as certain types of shares and depositary receipts) ("Prescribed Securities") could be evidenced and transferred without an instrument by or through the UNSRT system operated by a securities registrar approved by SFC (approved securities registrar) ("ASR"). SFC would be empowered under the proposed new section 101AAM of Cap. 571 to make rules for various matters, including those in respect of Prescribed Securities, the UNSRT system and the regulation of ASRs. These rules would be subsidiary legislation subject to scrutiny of LegCo pursuant to the negative vetting procedure.

7. Under Part 2 of the Bill, it is proposed that SFC must keep a register of ASRs and make it available for public inspection, and regulate these ASRs including conducting investigations into any suspected fraud or misconduct<sup>1</sup> and taking appropriate disciplinary action (such as revoking or suspending the ASR's approval).<sup>2</sup>

8. A person who is not an ASR (or an ASR's employee/agent) and without reasonable excuse provides, or offers to provide, any securities registrar service (such as the provision and operation of a UNSRT system in respect of prescribed securities) would commit an offence punishable on conviction on indictment by a maximum fine of \$5 million and imprisonment for seven years,

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<sup>1</sup> E.g. an act or omission relating to the provision of any securities registrar service which, in SFC's opinion, is or is likely to be prejudicial to the interest of the investing public or the public interest (see the proposed revised section 193 of Cap. 571).

<sup>2</sup> See the proposed revised section 194 of Cap. 571.

and a further fine of \$100,000 per day in the case of a continuing offence (proposed new section 101AAF).

*Proposed amendments to Cap. 622*

9. At present, listed companies must issue paper share certificates to shareholders to evidence the legal title to such shares. Part 2 of the Bill seeks to amend Cap. 622 to, among others: (a) provide for the allotment and transfer of shares in uncertificated form, with the effect that listed companies could transfer title to any Prescribed Securities by or through the UNSRT system, and would no longer be required to issue paper certificates to evidence the legal title to such securities; (b) provide that if a certificate for shares in a listed company has been lost and such shares may be held in uncertificated form, the registered holder of the shares could apply to the company for the shares to be held in uncertificated form; and (c) repeal section 908 of and Schedule 8 to Cap. 622 concerning paperless holding and transfer of shares and debentures (which would be superseded by the Bill after its passage).

*Other proposed amendments relating to the UNSRT system*

10. Part 2 of the Bill also seeks to amend, among others: (a) the Stamp Duty Ordinance (Cap. 117) to provide for a new stamping method for the collection of ad valorem stamp duty for certain kinds of contract note made in respect of the sale and purchase of Prescribed Securities; (b) the Securities and Futures (Fees) Rules (Cap. 571AF) to provide for certain fees including the application fee payable to SFC for approval to provide securities registrar services; and (c) Cap. 622 to provide for a limited number of proxies that could be appointed by an individual member of a listed company.

Amendments relating to the OTC regime (Part 3 of the Bill)

11. Schedule 5 to Cap. 571 specifies the types of RAs which are regulated under Cap. 571. Part 3 of the Bill mainly seeks to refine the scopes of certain RAs, such as leveraged foreign exchange trading (Type 3 RA) or dealing in or advising on OTC derivative products (Type 11 RA), so as to carve out certain acts that are not intended to be covered by the OTC derivative licensing regime under Cap. 571. It also seeks to add new definitions (such as the definitions of "affiliate" and "financial group") to Schedule 5 to Cap. 571, and make consequential amendments to Cap. 571AN relating to RAs concerning OTC transactions.

Other miscellaneous and related amendments (Parts 4 and 5 of the Bill)

12. Part 4 of the Bill mainly seeks to provide for: (a) the savings and transitional arrangements that apply on or relate to the commencement of Part 4 of Ord. No. 6 of 2014 concerning electronic filing of certain notifications and reports;

and (b) the waiver of fees relating to certain RAs under Cap. 571AF. Part 5 of the Bill seeks to repeal the uncommenced provisions of Ord. No. 5 of 2015 because those provisions would be superseded by the Bill (if enacted as an Ordinance).

## **Commencement**

13. The Bill, if passed, would come into operation in the following manner:

- (a) Part 2 (except section 9(2))<sup>3</sup> and Part 5 of the enacted Ordinance (mainly relating to the USM regime) would come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury ("SFST") by notice published in the Gazette;
- (b) Division 4 of Part 4 (mainly relating to the waiver of fees concerning certain RAs under Cap. 571AF) would come into operation on the day on which section 53(3) of Ord. No. 6 of 2014<sup>4</sup> comes into operation (i.e. on a day to be appointed by SFST by notice published in the Gazette); and
- (c) the remaining provisions (including the said section 9(2)) would come into operation on the day on which the enacted Ordinance is published in the Gazette.

## **Public Consultation**

14. According to paragraphs 28 and 29 of the LegCo Brief, SFC, HKEX and FSR conducted a joint consultation on the Revised Model from January to April 2019, and the market supported the proposal. SFC also consulted the market on the proposed refinements to the scope of certain RAs relating to the OTC regime and the proposed fees arrangements between December 2017 and February 2018, and the respondents generally supported the refinements. The Administration also consulted the Standing Committee on Company Law Reform on proposed amendments to Cap. 622 in December 2020 and the latter supported the proposal. According to the Administration, they have taken into account the responses in finalizing the proposals in the Bill.

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<sup>3</sup> Clause 9(2) of the Bill relates to a textual amendment to section 182(1)(d) of Cap. 571 which provides for SFC's function of investigating suspected defalcation, fraud or other misconduct in connection with activities such as dealing in any securities.

<sup>4</sup> Section 53(3) of Ord. No. 6 of 2014 adds a new type of activity in respect of the definition of "advising on futures contracts" under Schedule 5 to Cap. 571.

## **Consultation with LegCo Panel**

15. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel on 19 March 2019 on the legislative proposal for implementing a USM regime in Hong Kong under a revised operational model. Members had no objection to the proposal and discussed various issues, including the timetable for implementing a full USM regime, room for lowering the fees and charges payable by investors after implementing the USM regime, and possible impacts on the existing operation of securities firms. Further, the Administration's information paper (LC Paper No. CB(1)306/20-21(01)) on the legislative proposal to refine the scope of RAs under the OTC regime and the related fees proposals was circulated to Panel members on 1 December 2020. No member raised any enquiries on the paper.

## **Conclusion**

16. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to change the manner in which investors may hold and transfer title to securities and the scope of RAs under the OTC regime, Members may consider forming a Bills Committee to study the Bill in detail.

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