



SECURITIES AND FUTURES AND COMPANIES LEGISLATION (UNCERTIFICATED SECURITIES MARKET AMENDMENT) BILL 2014

The Law Society's Submissions

1. Introduction

- 1.1 Hong Kong Exchanges and Clearing Limited ("HKEx"), Securities and Futures Commission ("SFC") and Federation of Shares Registrars conducted a Joint Consultation on a Proposed Operational Model for implementing a Scripless Securities Market in Hong Kong in 2009 (*"the Joint Consultation Paper"*). The Consultation Conclusions were released in 2010 and a vast majority of the respondents in principle supported the initiative to implement an uncertificated (i.e. scripless) securities regime.¹
- 1.2 In order to implement an uncertificated securities regime, it involves necessary amendments to, inter alia, the Securities and Futures Ordinance Cap.571 ("SFO") and the Companies Ordinance Cap.622 ("CO").
- 1.3 The Securities and Futures and Companies Legislations (Uncertificated Securities Market Amendment) Bill 2014 ("Bill") was published in the gazette on 13 June 2014 and introduced into the Legislative Council on 25 June 2014.
- 1.4 Subject to the comments and observations below, the Law Society in principle supports the proposed uncertificated securities regime.

2. Comments

- 2.1 The proposed amendments to the SFO are enabling provisions to allow the implementation of the proposed dual system as described in the Consultation Conclusions. The proposed amendments empower the SFC to make rules for the operation of an uncertificated securities system and regulate the system.
- 2.2 These proposed amendments cover neither the operational details of the system nor the technical details such as allotment or transfer of prescribed securities; they will be dealt with in the Uncertificated Securities Market Rules ("Rules") to be prepared by the SFC.

¹ The Joint Consultation Paper can be viewed at
<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/doc?refNo=09CP5>
and its Consultation Conclusions can be viewed at
<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=09CP5>

- 2.3 We urge the Administration to release the relevant operational and technical details as early as possible, with adequate consultation with stakeholders in the industry. Our comments on the Bill set out below have to be regarded as tentative as we have yet to see such details.
- 2.4 The Bill contemplates a participating company's register of members will be maintained in two parts (the certificated shares part and the uncertificated shares part). We note the Notes to sections 626B, 628, 630, 631, 632, 633 and 635 of the CO (Clause 34 of the Bill) state that the requirements for keeping the register of members, index of members, the evidence of title etc will be set out in the Rules which are yet to be issued. It is not clear from the provisions of the Bill as to who will maintain each part of the register of members. Assuming the Rules will provide that the company (or its agent) will maintain the "certificated register" and the system operator will maintain the "uncertificated register", it is paramount that the Rules are clear as to how the two parts will be maintained and in the event of inconsistency which part of the register will prevail.
- 2.5 Members may choose to hold shares in certificated or uncertificated form and may convert from one to another. As the two parts of the register of members are separately maintained, during a conversion between the two forms it is possible that there may be a point in time when a member's name will have been removed from one part before it is entered into the other part. The Rules will need to be clear that a member will retain legal title until the new entry is made in the relevant part of the register of member.
- 2.6 We observe there are provisions in the CO subsidiary legislations which relate to the transfer of title to shares or the holding of shares in certificated form only. The Bill has not addressed these provisions. Examples include transfer of shares (see paragraph 80 of schedule 1 to the Companies (Model Articles) Notice (Cap. 622H) and the issue of share certificates upon issue of shares (see paragraph 64 of the Model Articles).
- 2.7 Specific comments on Part 3 of the Bill

Section 2(1) ... participating shares – means shares that are permitted by the system operator of an uncertificated securities market system to be transferred through the system;

- consider changing the word from "permitted" to "admitted" as the term "admitted" contemplates that following the event constituting "admission" the shares will continuously be treated as shares to be dealt with in the uncertificated securities market system, whereas the word "permitted" does not convey the same degree of continuity.

Section 2(3A) – add "participating" in front of "company" in paragraphs (a) and (b).

Section 143B – add "participating" in front of "company".

Section 159(1) - amend the substitute wording as follows "~~gives a refusal~~refuses registration referred to in section 158(3) or 158A(5) or refuses to give a notice referred to in section 158A(5)".

Section 626A

- "626A. ~~Each~~ **A company must have a register of members**

~~For each A company, there is to be a register of its members must keep a register of members.~~

**The Law Society of Hong Kong
17 September 2014**

