

**Letterhead of DEPARTMENT OF JUSTICE Law Drafting Division**

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Legislative Council Building,  
8 Jackson Road,  
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Dear Mr. Lee,

**Securities and Futures Bill**

Your letter of 12 February 2001 to the Secretary for Financial Services refers. It was agreed that I reply for the Administration.

Under section 10B(1) of the Interpretation and General Clauses Ordinance (Cap. 1), both the English text and the Chinese text of an Ordinance are equally authentic. The Chinese text is not subsidiary. It should be regarded as a piece of original legislation rather than a mere translation of the English text.

Chinese texts prepared in the early years of the Bilingual Legislation Programme have been criticized by some as incomprehensible and ungrammatical. Some provisions are described as being rigid translation of English provisions, with extremely long (and therefore unreadable) sentences, anglicized style and convoluted structure.

In the recent years, we have gradually changed the style of Chinese text of legislation. Counsel are expected to change their mindset from that of a translator to that of a drafter.

The present drafting policy is that the Chinese text must convey absolutely the same policy to a reader of it as the English text to an English reader. Soundness of Chinese text is assessed in terms of its effectiveness in conveying the meaning, not its syntactic resemblance of the English equivalent. To cater for Chinese readers, the Chinese text must be able to convey the idea in a clear and unequivocal fashion.

Chinese and English are two totally different languages. When they are used to express complex ideas which require the highest order of accuracy, the writer must bear the characteristics of the language in mind. As the comprehensibility of Chinese legal sentences drops rapidly with the growth in length, we endeavour to make the sentences short and concise. Words and phrases are put in only when their omission will result in failure to convey the intended policy. We believe conciseness brings clarity. Besides clarity, the grammatical correctness of the Chinese text of a provision may also require its structure or presentation to be different from that of its English equivalent.

Under the said policy, we sometimes omit elements that can be found in the English text when we are satisfied that their omission make the provision more concise without suffering depletion in meaning. Sometimes definitions are added to the Chinese text to simplify sentences. Sometimes the sentence is structured in a form different from the English text to address grammatical concerns.

That said, we are totally committed to avoid actual or perceived discrepancy in meaning between the two texts. The two texts must bear the same meaning. They should preferably look alike. However, if similar appearance can only be achieved by making the Chinese provision less concise or grammatical, we will not shun our duty to depart, in form, not in substance, from the English version for the sake of the Chinese readers. Three examples are set out in Annex I for illustration purposes.

The approach described above has been adopted for some time. It is the result of an evolutionary, rather than revolutionary, process. There is no question of a new approach or departure from existing practice. The style of Chinese text of the Bill is not different from legislation enacted in the last few years.

We have examined the provisions of the Bill set out in your letter to the Secretary for Financial Services dated 13 February 2001. While there are differences in form, we are not aware of any difference in substance. Our comments on the differences are set out in Annex II.

I will attend the coming meeting of the Bills Committee to explain our drafting policy in respect of Chinese text of legislation. As regards the Bill, we are open to any suggestion. If there is or may be a difference between the two texts in terms of legal effect, we will advise the Bureau to move necessary amendments at the Committee Stage.

Yours sincerely,

(Gilbert Mo)  
Deputy Law Draftsman  
(Bilingual Drafting and Administration)

c.c. Ms. LEUNG SIU-KAM, Clerk to Bills Committee  
SFS (Ms. K. C. Au,  
Miss Vivian Lau)  
Internal: Mr. Michael Lam,  
Ms. Vicki Lee,  
Ms. Francoise Lam

Encls.

例句一

**Example 1**

英文文本

**English text**

A licensed corporation, and associated entity of a licensed corporation, shall -

- (a) in the case of the licensed corporation, within one month after it becomes licensed; or
- (b) in the case of the associated entity, within one month after it becomes such an associated entity,

notify the Commission by notice in writing of the date on which its financial year ends.

中文文本：翻譯版

**Chinese text: Translator's version**

持牌法團及持牌法團的有聯繫實體須—

- (a) 就該持牌法團而言，在它獲發牌後一個月內；或
- (b) 就該有聯繫實體而言，在它成為該有聯繫實體後一個月內，

以書面將其財政年度結束的日期通知證監會。

中文文本：草擬版

**Chinese text: Drafter's version**

- (a) 持牌法團須在獲發牌後一個月內，以書面將其財政年度結束的日期通知證監會。
- (b) 持牌法團的有聯繫實體須在它成為該實體後一個月內，以書面將其財政年度結束的日期通知證監會。

註： 《證券及期貨條例草案》第 151(1)條採納草擬版。

Notes: The Drafter's version is adopted in clause 151(1) of the Securities and Futures Bill.

例句二

**Example 2**

英文文本

**English text**

A trade mark shall not be registered if -

- (a) the trade mark is identical to an earlier trade mark; and
- (b) the goods or services for which the application for registration is made are identical to those for which the earlier trade mark is protected.

中文文本：翻譯版

**Chinese text: Translator's version**

在以下情況下，商標不得註冊—

- (a) 該商標與某在先商標相同；及
- (b) 註冊申請所關乎的貨品或服務與該在先商標受保護所關乎的貨品或服務相同。

中文文本：草擬版

**Chinese text: Drafter's version**

符合以下情況的商標不得註冊—

- (a) 該商標與某在先商標相同；及
- (b) 該商標的註冊申請是為某些貨品或服務（“前者”）提出，該在先商標則是為某些貨品或服務（“後者”）而受保護，而前者與後者相同。

註： 《商標條例》（第 559 章）第 12(1)條採納草擬版。

Notes: The Drafter's version is adopted in s.12(1) of the Trade Marks Ordinance (Cap. 559).

### 例句三

#### Example 3

英文文本

#### **English text**

The following applies without limiting the operation of subsection (1) and to the extent that it is consistent with this Ordinance -

- (a) any licence, permit, registration, permission, approval, authorization, delegation, exemption, appointment, declaration, determination, designation, specification, notice, notification, prohibition, direction or requirement, granted, given, made or imposed by a former authority or having effect as if so granted, given, made or imposed, or a similar exercise of a power by or on behalf of the former authority which is in force immediately before the commencement date or which is to take effect on or after that date, has effect as if granted, given, made or imposed or done by the new authority in so far as that is required for continuing its effect after that date;

中文文本：翻譯版

#### **Chinese text: Translator's version**

下述條文在不限制第(1)款的施行下以及在其不抵觸本條例的範圍內適用—

- (a) 任何由前主管當局批出、發出、訂立、作出或施加的牌照、執照、許可證、註冊、登記、准許、同意、批准、授權、轉授、豁免、委任、宣布、聲明、裁定、決定、釐定、指定、指明、通知、通知書、告示、通告、公告、禁止、禁制、指示、要求或規定，或猶如是由前主管當局批出、發出、訂立、作出或施加般具有有效力的牌照、執照、許可證、註冊、登記、准許、同意、批准、授權、轉授、豁免、委任、宣布、聲明、裁定、決定、釐定、指定、指明、通知、通知書、告示、通告、公告、禁止、禁制、指示、要求或規定，或由前主管當局作出或由他人代其作出的相類權力的行使，如在緊接生效日期前是有效的，或是在該日期當日或之後生效的，則它們所具有的效力，猶如它們是由新主管當局批出、發出、訂立、作出或施加的一樣，但此規定僅限於為在生效日期後延續該等牌照、執照、許可證、註冊、登記、准許、同意、批准、授權、轉授、豁免、委任、宣布、聲明、裁定、決定、釐定、指定、指明、通知、通知書、告示、通告、公告、禁止、禁制、指示、要求或規定的效力而需予應用的範圍內適用；

中文文本：草擬版

#### **Chinese text: Drafter's version**

下述條文在不限制第(1)款的施行下以及在其不抵觸本條例的範圍內適用—

- (a) 任何由前主管當局批出、發出、訂立、作出或施加的有關項目，或猶如是由前主管當局批出、發出、訂立、作出或施加般具有有效力的有關項目，或由前主管當局作出或由他人代其作出的相類權力的行使，如在緊接生效日期前是有效的，或是在該日期當日或之後生效的，則它們所具有的效力，猶如它們是由新主管當局批出、發出、訂立、作出或施加的一樣，但此規定僅限於為在生效日期後延續該等有關項目的效力而需予應用的範圍內適用，在本段中，“有關項目”指牌照、執照、許可證、註冊、登記、准許、同意、批准、授權、轉授、豁免、委任、宣布、聲明、裁定、決定、釐定、指定、指明、通知、通知書、告示、通告、公告、禁止、禁制、指示、要求或規定；

註： 《提供市政服務（重組）條例》（1999年第78號）第8(2)(e)條採納草擬版。

Notes: The Drafter's version is adopted in s.8(2)(e) of the Provision of Municipal Services (Reorganization) Ordinance (78 of 1999).

## (a) clause 105(1) and (3)

An authorization under section 103 is an authorization of a collective investment scheme; an authorization under section 104 is an authorization of the issue of an advertisement, invitation or document. When it is necessary to refer to such authorization in the Chinese text of section 105(1), one way to do so is to refer to "根據第 103 或 104 條給予的認可". This reference is in effect the same as the reference in the English text to "an authorization of a collective investment scheme under section 103, or an authorization of the issue of an advertisement, invitation or document under section 104". They convey the same meaning and reflect the same policy.

The above also applies to the case in section 105(3).

## (b) clause 151(1), (2)(a) and 3(a)

A licensed corporation, and an associated entity of a licensed corporation, are required under section 151(1) to notify the Commission of the date on which their respective financial year ends. When it is necessary to refer to such date in the Chinese text of section 151(2)(a) and (3)(a), one way to do so is to refer to "根據第(1)款通知的日期". This reference is in effect the same as the reference in the English text to "the date notified to the Commission under subsection (1) as the date on which its financial year ends". They convey the same meaning and reflect the same policy.

## (c) clause 153(2)(a) and (b)

In the Chinese text, the reference to "該核數師" in paragraphs (a) and (b) can only be the auditor of the licensed corporation or the associated entity (as the case may be). There is no ambiguity.

## (d) clause 210(6) and (7)

Under paragraph (a) of the definition of "judge" in section 209, a judge means a judge or a deputy judge of the Court of First Instance. The Chinese text of section 210(6) and (7) reflects that meaning, and there is no discrepancy between the Chinese text and the English text.

(e) clause 224(2)(b) and (c)

A time is referred to section 224(2)(a) as "the time specified in section 211(3) as that within which an application for review of the decision shall be made". When it is necessary to refer to such time in the Chinese text of the subsequent paragraphs of section 224(2), one way to do so is to refer to "該段提述的限期". This reference is in effect the same as the reference in the English text to "the time specified in section 211(3) as that within which the application shall be made". They convey the same meaning and reflect the same policy.

(f) clause 237(2) "securities" (b) and (c)

Paragraph (a) of the definition of "securities" refers to "shares, stocks, debentures, loan stocks, funds, bonds or notes". When it is necessary to refer to such items in the Chinese text of the subsequent paragraphs, one way to do so is to refer to "(a)段所述各項目". This reference is in effect the same as the reference in the English text to "such shares, stocks, debentures, loan stocks, funds, bonds or notes". They convey the same meaning and reflect the same policy.

(g) clause 319(1)(d)

Section 312 requires a person to secure the giving of notification by his agent. When it is necessary to refer to any failure to comply with such requirement in the Chinese text of section 319(1)(d), one way to do so is to refer to "沒有遵守第 312 條". This reference is in effect the same as the reference in the English text to "fails to comply with section 312 to secure the giving of notification to him by the agent". They convey the same meaning and reflect the same policy.

(h) clauses 319(2) and 342(2)

Section 315(2) requires that a notification be given in such manner so as to ensure that it is received by the listed corporation concerned and the relevant exchange company at the same time or, if it is not practicable to do so, that it is received by the listed corporation and the relevant exchange company one immediately after the other. When it is necessary to refer to any failure to comply with such requirement in the Chinese text of section 319(2), one way to do so is to refer to "沒有遵守第 315(2)條". This reference is in effect the same as the reference in the English text to "failure to comply with section 315(2) in that the notification

referred to in that section was received by the listed corporation concerned and the relevant exchange company not at the same time or not one immediately after the other". They convey the same meaning and reflect the same policy.

The above also applies to the case in section 342(2).

(i) clause 366(3)(f)(i)(B)

The sentence structure of the Chinese text is different from that of the English text, but the two texts convey the same meaning and reflect the same policy.

(j) clause 369(2)

As both "法團" and "上市法團" are used in this subsection, "有關法團" is used as a short form to refer to "曾屬上市法團的法團". This achieves the same purpose as "the first-mentioned corporation" used in the English text.

(k) clause 372(2)

The sentence structure of the Chinese text is different from that of the English text, but the two texts convey the same meaning and reflect the same policy.