

Securities & Futures Bill Part XI & Schedule 7 Part I

Supplement to the Comparison Table for Part XI (Annex to LC Paper No. CB(1) 1034/00-01(01))

References to sections (*cl.*), subsections (*sc.*) or paragraphs in the comments column are to those of the Bill unless otherwise expressly stated.

CE = the Chief Executive

CFI = the Court of First Instance

Commission = the Securities and Futures Commission

FS = the Financial Secretary

Tribunal = the Securities and Futures Appeals Tribunal

SFCO = Securities and Futures Commission Ordinance (Cap. 24)

S(ID)O = Securities (Insider Dealing) Ordinance (Cap. 395).

Blue Bill Clause Ref.	S(ID)O section	SFCO section	Comments
210	-	-	New. <i>Sc.</i> (2) and section 7 of Part I of Schedule 7 contemplate only one chairman for the tribunal and the chairman shall preside over all sittings of the Tribunal. <i>Sc.</i> (5) provides that the Tribunal may be divided into 2 or more division It is not clear how the tribunal with one chairman may be divided into 2 or more divisions if the divisions are sitting simultaneously.
211	-	-	New. It is not clear why the decisions listed in Part 3 of Schedule 7 are excluded from appeal to the Tribunal.
212	-	-	New. It is not clear whether the role of the Tribunal is inquisitive or what is the nature of the proceedings before the Tribunal

213	17	20(1) & (2)	Sc. (1) incorporates section 17 of S(ID)O with paragraphs (e), (f) & (i) added. In sc. (2)(b) & (d), "wilfulness" is no longer a constituting element of an offence. The offences could now either be summary or indictable. The penalties for conviction on indictment are significantly increased.
215	21(1)(a)	-	The clause re-enacts section 21(1)(a) of S(ID)O.
216	-	21(9)	New.
217	-	-	New.
219	29(1)	-	The registration is to be done by CFI upon notice given by the Tribunal.
221(1)	31(1)	-	Appeal from the Tribunal is now permitted on a point of law only.
221(2) & (3)	32(1) & (3)	-	The provisions follow the existing legislation.
223	-	21(8)	The decision of the Tribunal shall be final except appeals permitted under clause 221 or on contempt under section 50 of the High Court Ordinance (Cap. 4).
224-225	-	-	New. It is not very clear whether a person concerned is bound by his own notification to the Commission of not making the application or the appeal. It is also unclear whether an appeal or application having been withdrawn may be made afresh.
226	-	-	New.

Schedule 7 Part I

Blue Bill Clause Ref.	S(ID)O Schedule section	SFCO section	Comments
2	-	18(2)(a)	The new provision models on section 15(2) of S(ID)O.
5	-	-	New. Under the existing legislation, neither the chairman of the Insider Dealing Tribunal nor that of the Securities and Futures Appeals Panel may be removed by the CE.
6	-	-	New. It is doubtful that it is appropriate for CE to authorize a chairman, who has resigned or vacated his office, to continue to act.
7	-	18(2)(b)	The existing legislation excludes employees and directors of the Commission from candidates for appointment. The new provision does not do so as they are not public officers..

9	4	-	No change.
15	7	-	It is doubtful that it is appropriate for FS to authorize a member, who has resigned or vacated his office, to continue to act.
16	8 & 9	-	Under the existing legislation, the power of appointing temporary members is exercisable exclusively by CE. It is also noted that the new provision does not exclude public officers or employees and directors of SCF from being appointed to be temporary members.

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