

Securities & Futures Bill Part XII

Supplement to the Comparison Table for Part XII (Annex to LC Paper No. CB(1) 1095/00-01(01))

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

Commission = the Securities and Futures Commission

SFS = the Secretary for Financial Services

CTO = Commodities Trading Ordinance (Cap. 250)

SO = Securities Ordinance (Cap. 333).

| Blue Bill Clause Ref. | SO section | CTO section | Comments |
|--------------------------|---------------|----------------|---|
| 228-229 | - | - | New. Although nothing in this Part has expressly so provided, the reading in conjunction with sections 72-74 of Part I of Schedule 9 suggests that the new compensation fund would not be liable for any valid claim under Part X of SO or Part VIII of CTO. Under the existing legislation, each of the exchange companies is required to deposit and keep deposited with SFC a sum of HK\$50,000 in respect of each holder of a trading right. Under the Bill, the licensed persons, whose liabilities are covered by the new compensation fund, would not be required to contribute to the compensation fund. Members may wish to consider whether there would be any issue of moral hazard. Since the licensed persons would not be congruent with the holders of trading rights who have made the requisite deposits, Members may also wish to consider whether it is equitable to require the amounts in Unified Exchange Compensation Fund and Futures Exchange Compensation Fund to be paid into the compensation fund. |
| 230 | 101 | 79 | It seems that the SAR Government would ultimately be responsible for sums borrowed by the Commission. It is not clear whether the situation would be different after the Compensation Fund is being administered by an Investor Compensation Company recognized under clause 79 and the transfer of functions to it in accordance with clause 80. |
| 231 | 102 | 80 | No substantive change. |

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|---------------|-----|----|---|
| 232 | 103 | 81 | <i>Sc.</i> (2) now expressly authorizes the Commission to maintain separate accounts for the existing compensation funds, and for compensation for different exchange companies etc. and also to maintain sub-accounts in respect of the aforesaid separate accounts. <i>Sc.</i> (3) expressly requires the Commission to prepare a consolidated financial statement in respect of the separate accounts or sub-accounts and a separate financial statement in respect of each separate account or sub-account all made up to the last date of each financial year. <i>Sc.</i> (7) expressly requires an auditor's report to contain a statement whether in the auditor's opinion the financial statement gives a true and fair view of the matters to which the statement relates. <i>Sc.</i> (10) adds a definition of "financial statement". |
| 233 | 105 | 83 | The section follows the wording of section 83 of CTO. |
| 234(1) | 108 | 86 | Paragraphs (a)(iv), (c) & (d) are new. |
| 234(2) to (4) | - | - | New. <i>Sc.</i> (2) seems to anticipate a situation in which the transitional provisions in Schedule 9 are still in force and there is a shortfall in Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund. In view of <i>sc.</i> (3), it is not apparent how "equitable" in <i>sc.</i> (2) is to be understood. <i>Sc.</i> (3) makes clear that any payment out of the compensation fund pursuant to <i>sc.</i> (2) is limited to the total amount paid into the compensation fund. It is not clear what would happen if the compensation fund does not have enough cash to make any repayment required by <i>sc.</i> (2). <i>Sc.</i> (4) provides for the eventuality of the dissolution of the compensation fund. It is not clear how the respective proportions derived from the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund are to be calculated. Members may wish to consider whether it is appropriate that such amounts should form part of the assets of the respective exchanges, which would ultimately benefit the shareholders of the Hong Kong Exchanges and Clearing Limited, who may not have made any direct contribution to the Compensation Funds at all. |
| 235 | 118 | 95 | <i>Sc.</i> (1) incorporates the existing legislation. <i>Sc.</i> (2) stipulates that all amounts recovered shall form part of the compensation fund. |

Schedule 9 Part I

| section reference | Comments |
|-------------------|---|
| 72 | The appointment by SFS of a date for the purpose of this provision would have the effect of limiting time wise a claimant's right to claim compensation. It is not clear how this <i>appointed date</i> stands in relation to the commencement of Part XII and the repeal of Part X of SO. |
| 73 | The appointment by SFS of a date for the purpose of this provision would have the effect of limiting time wise a claimant's right to claim compensation. It is not clear how this <i>appointed date</i> stands in relation to the commencement of Part XII and the repeal of Part VIII of CTO. |
| 74 | The appointment by SFS of a date for the purpose of this provision would have the effect of limiting time wise a claimant's right to claim compensation. It is not clear how this <i>appointed date</i> stands in relation to the commencement of Part XII and the repeal of the relevant existing legislation. |

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