

**Bills Committee  
on Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Securities and Futures Bill  
Penalty for offences under Part III**

**Introduction**

At the meeting on 12 January 2001, we undertook to provide Members with a comparison of the proposed penalties under Part III of the Securities and Futures Bill (SF Bill) and those under relevant existing law. At the **Annex** is a comparison table setting out relevant provisions in Part III of the SF Bill which would impose criminal penalties and, where applicable, the corresponding provisions in existing law. The general principles we have adopted in setting the penalty maxima for criminal offences under this Part of the Bill are highlighted below.

**General principles**

2. The SF Bill seeks to consolidate and modernize ten existing Ordinances governing the securities and futures market. In the process, we have reviewed and rationalized the penalties for offences in existing law. Experience of the Securities and Futures Commission (SFC) in administering the existing law has been taken into account in assessing the adequacy of the proposed penalty levels. We have also sought advice from the Director of Public Prosecutions (DPP) in drawing reference to similar offences in existing law.

3. The structure of the penalties for the offences in the SF Bill are generally specified in the form of a maximum amount of fine and, where applicable, imprisonment for a maximum duration of time. For serious offences, they can be tried on indictment with heavier penalties; whereas relatively less serious offences can be tried summarily in a Magistrate's Court with lighter penalties. Flexibility has been provided for in some cases to try offences either on indictment or summarily as in other Parts of the Bill.

4. In setting the penalty maxima for individual offences, we have adopted the following general principles –

- (a) ***Reference to similar offences in existing law*** : Greater weight has been put on the more recently enacted law. The most important reference is the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) which was enacted in February 2000 and provides for penalties for similar offences;
- (b) ***Proportionality of offences*** : The primary purpose of penalising an offence is to punish and deter wrongful conduct, and to send a clear signal to the community that such conduct is not to be tolerated. The penalty level should therefore be proportional to the severity of the wrongful conduct committed. In the context of the SF Bill, which is primarily for the regulation of the securities and futures market, wrongful conduct is calibrated having regard to the impact of the crime on the fair, orderly, transparent and efficient operation of the securities and futures market, and the interest of the investing public and the public as a whole; and
- (c) ***Price movements*** : Where appropriate, existing penalty levels are generally brought up to date with regard to price movements since they were last adjusted. The majority of existing offences in the Securities Ordinance (Cap. 333) and the Commodities Trading Ordinance (Cap. 250) have not had their penalty maxima revised since mid-1970s.

Securities and Futures Commission  
Financial Services Bureau  
15 May 2001

**Securities and Futures Bill  
Penalty maxima for offences in Part III  
Comparison with current law**

<b>Securities and Futures Bill</b>			<b>Existing ordinances</b>		<b>Remarks</b>
<b>Clause No.</b>	<b>Offence</b>	<b>Penalty</b>	<b>Section No.</b>	<b>Penalty</b>	
19(5)	Operating an exchange without recognition; or failure to comply with a condition to the recognition as an exchange.	Level 6 and 6 months on summary conviction; \$1,000,000 and 2 years on conviction on indictment	SO 20(2)	\$500,000 and \$50,000 a day for a continuing offence	Penalty levels are aligned with those for acting as unrecognized exchange controller in clause 59(5) which are the same as those in s.3(4) ECHMO enacted as recently as in February 2000.
30	Contravention of an SFC notice to cease to provide exchange facilities or services.	– ditto –	SO 27(4) and (6) CTO 23	\$50,000	Providing or operating facilities or providing services in contravention of a notice of withdrawal or a notice to cease providing these is tantamount to acting as an unrecognized exchange company. So, the contravention should carry a similar penalty as under clause 19(5).
34(2)	Unauthorized use of titles relating to stock exchanges, stock markets, etc.	Level 5 and 6 months on summary conviction; \$200,000 and 2 years on conviction on indictment	SO 21(2); CTO 106(3)	\$100,000 SO/\$50,000 CTO and, in both cases, \$5,000 a day for a continuing offence	The fine is the same as that in CTO for summary conviction; a higher penalty for conviction on indictment is added to align this provision with other penalty provisions in the Bill.

Securities and Futures Bill			Existing ordinances		Remarks
Clause No.	Offence	Penalty	Section No.	Penalty	
35(5)	Contravention of rules on contract limits and reportable open positions.	Level 3 and 6 months on summary conviction; Level 6 and 2 years on conviction on indictment	SO 146A	Level 1 and 3 months	The fines are revised with reference to price movements since mid-1970s when they were last set. A higher penalty for conviction on indictment is added to align this provision with other penalty provisions in the Bill.
59(5)	Being an exchange controller without recognition; or failure to comply with a condition to the recognition as an exchange controller.	Level 6 and 6 months on summary conviction; \$1,000,000 and 2 years on conviction on indictment	ECHMO 3(4)	Level 6 and 6 months summary conviction; \$1,000,000 and 2 years on conviction on indictment	No change.  ECHMO was enacted in February 2000.
59(13)	Failure to comply with an SFC notice on cessation to be an exchange controller	– ditto –	ECHMO 3(11)	– ditto –	– ditto –
61(4)	Being a minority controller of a recognized exchange controller without SFC approval; or failure to comply with a condition of the SFC approval	– ditto –	ECHMO 6(5)	– ditto –	– ditto –
61(13)	Failure to comply with an SFC notice on cessation to be a minority controller of a recognized exchange controller	– ditto –	ECHMO 6(12)	– ditto –	– ditto –
62(3)	Failure to comply with a condition to exemption from recognition as an exchange controller	– ditto –	ECHMO 7(3)	– ditto –	– ditto –

Securities and Futures Bill			Existing ordinances		Remarks
Clause No.	Offence	Penalty	Section No.	Penalty	
72(7)	Failure to comply with an SFC notice on production of records, etc. by a recognized exchange controller	– ditto –	ECHMO 4(7)	– ditto –	– ditto –
75(3)	Failure to comply with an SFC notice on remedying conflict of interest	– ditto –	ECHMO 14(3)	– ditto –	– ditto –
93(12)	Knowingly affecting the manner in which a function referred to in an SFC suspension order is performed	Level 6 and 6 months on summary conviction; \$1,000,000 and 2 years on conviction on indictment	SFCO 51(8) and 61(1)	\$100,000 and 6 months on summary conviction; \$1,000,000 and 2 years on conviction on indictment	No change.
99(3)	Contravention of rules on automated trading services	Level 6 and 6 months on summary conviction; \$500,000 and 2 years on conviction on indictment	New	N/A	Propose to introduce a Committee Stage Amendment to align the penalty level with clause 35(5), i.e. –  Level 3 and 6 months on summary conviction;  Level 6 and 2 years on conviction on indictment
100	Provision of automated trading services without authorization as required. Failure to comply with a condition to an authorization to provide such services	\$500,000 and 2 years on summary conviction and \$10,000 a day for a continuing offence;  \$5,000,000 and 7 years on conviction on indictment and \$100,000 a day for a continuing offence	New	N/A	Analogous to conducting regulated activities without a licence from SFC. See clause 114(7).

## **Legend**

SO = Securities Ordinance (Cap. 333) (enacted in 1974)

CTO = Commodities Trading Ordinance (Cap. 250) (enacted in 1976)

ECHMO = Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) (enacted in 2000)

SFCO = Securities and Futures Commission Ordinance (Cap. 24) (enacted in 1989)

## **References to pecuniary fine levels (specified under section 113B of and Schedule 8 to Criminal Procedure Ordinance (Cap. 221))**

Level 1 = \$2,000

Level 2 = \$5,000

Level 3 = \$10,000

Level 4 = \$25,000

Level 5 = \$50,000

Level 6 = \$100,000