

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

**Subsidiary legislation, codes and guidelines
for commencement of Securities and Futures Bill**

At the Bills Committee meetings on 2 March, 30 March and 4 May 2001 respectively, Members asked that more information be provided on the subsidiary legislation, and non-statutory codes and guidelines to be made by the Securities and Futures Commission (SFC) to enable the enacted Securities and Futures Bill to commence.

2. We have now set out the information at **Annexes 1 and 2** for Members' reference. The Annexes are as complete as possible at this time but may be subject to changes in the light of market developments and the final form of the Securities and Futures Bill (when enacted).

Financial Services Bureau
12 May 2001

Securities and Futures Bill
Subsidiary legislation to be made for commencement of new legislation

Serial No.	Clause in SF Bill	Subsidiary legislation	Derivation	Authority to make Sub Leg	Remarks
Part III					
1	25(1)	Transfer of Functions – Stock Exchange Company Order	SFCO Sub Leg H	CE in Council	Adapted from existing subsidiary legislation – no significant policy change involved.
2	35(1)	Contracts Limits and Reportable Positions Rules	CTO Sub Leg E SO Sub Leg K	SFC	Adapted from existing subsidiary legislation – no significant policy change involved.
3	36(1)	Stock Market Listing Rules	SO Sub Leg C	SFC	Adapted from existing subsidiary legislation – no significant policy change involved.
4	61(16)	Minority Controllers – Exemptions Rules	ECHMO Sub Leg (being drafted)	SFC (after consultation with FS)	Rules are to be made in the near future under s.6(15) ECHMO, which is the equivalent of clause 61(16). The intention would be to remake the ECHMO rules under clause 61(16) with minimal amendment. Consultation has taken place with HKEx and custodians which are affected.
5	80(1)	Transfer of Functions – Recognized Investor Compensation Company Order	Based on SFCO Sub Leg H	CE in Council	Similar to item 1. Consultation in late 2001
6	88(1) + 384	Investor Compensation (Financial Statements) Rules	New	SFC	Technical provisions on the format, substance, manner, etc. of the financial statements which a recognized investor compensation company is required to prepare. Consultation in late 2001

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Part V					
7	115(4)	Security Deposits Rules	SO Sub Leg A	SFC	Adapted from existing subsidiary legislation – no significant policy change involved.
8	117(2)	Leveraged Foreign Exchange Trading – Arbitration Rules	LFETO Sub Leg C	SFC	Adapted from existing subsidiary legislation – no significant policy change involved.
Part VI					
9	141(1)	Financial Resources Rules	SFCO Sub Leg D LFETO Sub Leg G	SFC (after consultation with FS)	Adapted from existing subsidiary legislation. Consultation on policy issues in 3Q 2001.
10	144(1)	Client Securities Rules	81, 81A, 121AB SO	SFC	Technical operational requirements regarding the manner in which intermediaries and their associated entities must treat client securities and securities collateral received or held in Hong Kong. These include a requirement for registration or deposit, circumstances in which withdrawal is permitted and the extent of the right of disposal of such securities and collateral. Most of the requirements are currently in primary legislation. Experience demonstrates that these technical requirements will have to be updated from time to time to meet latest market development. They are all technical operational requirements which will be prescribed in subsidiary legislation under the SF Bill to allow for expeditious updating. Consultation started in April 2001.

Serial No.	Clause in SF Bill	Subsidiary legislation	Derivation	Authority to make Sub Leg	Remarks
11	145(1)	Client Money Rules	84, 121AJ-AP SO 46 CTO 23 LFETO	SFC	<p>Technical operational requirements regarding the manner in which licensed corporations and certain associated entities must treat and deal with client money received or held in Hong Kong. There are provisions for the payment of client money into segregated trust accounts or client accounts, payments out of such accounts and payment of interest. Most of the requirements are now in primary legislation. Experience demonstrates that these technical requirements will have to be updated from time to time to reflect latest market development. They are all technical operational requirements which will be prescribed in subsidiary legislation under the SF Bill to allow for expeditious updating.</p> <p>Consultation started in April 2001.</p>
12	147(1)	Keeping of Accounts and Records Rules	83, 121AG SO 45 CTO LFETO Sub Leg D	SFC	<p>Technical operational requirements regarding the accounting and other records that intermediaries and their associated entities must keep e.g. to explain transactions undertaken; account for client assets; reflect their financial positions; enable true and fair profit and loss accounts and balance sheets to be prepared. The requirements are now being treated differently – under primary law in the case of securities and commodities but by way of subsidiary legislation for leveraged foreign exchange trading. Under the SF Bill, all the requirements, which are technical in nature, are to be prescribed under subsidiary legislation to allow for expeditious updating. This helps meet market expectation of a more responsive and flexible regulatory regime, capable of timely adjustment to cater for market needs.</p> <p>Consultation scheduled for mid 2001.</p>

Serial No.	Clause in SF Bill	Subsidiary legislation	Derivation	Authority to make Sub Leg	Remarks
13	148(1)	Contract Notes, Statements of Account and Receipts Rules	75 SO 45A CTO 21,22,73 LFETO	SFC	<p>Technical operational requirements prescribing the manner in which contract notes, statements of account and receipts must be prepared by and delivered to clients by intermediaries or their associated entities. In particular, the rules set out the detailed information that must be included in such documents and the periods within which they must be delivered to clients. The requirements are now in primary legislation. They are technical in nature and will be prescribed in subsidiary legislation under the SF Bill to allow for expeditious updating.</p> <p>Consultation scheduled for mid 2001.</p>
14	152(1) + 384(1)	Accounts and Audit Rules	SO Sub Leg B CTO Sub Leg D LFETO Sub Leg A	SFC	<p>Adapted from existing subsidiary legislation.</p> <p>Consultation scheduled for mid 2001.</p>
15	161(1) + 384(1)	Associated Entities Rules	New	SFC	<p>Technical provisions prescribing the particulars that must be contained in a notice given to the Commission by an associated entity when it becomes such an entity and when it ceases to be one. These technical requirements are to be prescribed in subsidiary legislation for expeditious updating. There will be consultation with the HKMA in mid 2001, and through the HKMA with the banking industry which would be most affected.</p>
Part VII					
16	165(3)(e) + 384(1)	Short Selling Exemptions Rules	SO Sub Leg A SO Sub Leg K	SFC	Adapted from existing subsidiary legislation – no significant policy change involved.

Serial No.	Clause in SF Bill	Subsidiary legislation	Derivation	Authority to make Sub Leg	Remarks
17	169(3)(d) + 384(1)	Unsolicited Calls – Exemption Rules	LFETO Sub Leg H	SFC	To be based on new rules on cold calling made by the UK Financial Services Authority. Consultation scheduled for mid 2001.
Part IX					
18	187(5) + 384(1)	Registration of Disciplinary Orders Rules	Based on SIDO Sub Leg A	SFC	Adapted from existing analogous subsidiary legislation – no significant policy change involved.
Part XI					
19	226(d)	Appeals Tribunal (Fee) Order	SFCO Sub Leg I	Chief Justice	Adapted from existing subsidiary legislation – no significant policy change involved.
20	219 + 226(b)	Appeals Tribunal – Registration of Orders Rules	Based on SIDO Sub Leg A	Chief Justice	Adapted from existing analogous subsidiary legislation – no significant policy change involved.
Part XII					
21	236(1)	Investor Compensation Rules	New	CE in Council	Technical provisions specifying among other matters the maximum amount that can be paid to a claimant and the framework for funding the compensation fund. Consideration is now being given to specify in greater detail the scope of the rules to be made by CE in Council but generally it is appropriate to provide for the matters concerned by way of subsidiary legislation to allow for expeditious updating. Consultation scheduled for mid 2001.

Serial No.	Clause in SF Bill	Subsidiary legislation	Derivation	Authority to make Sub Leg	Remarks
22	236(2)	Investor Compensation – Miscellaneous Rules	New	SFC (FS to be consulted on certain items)	<p>Technical provisions specifying among other matters the circumstances where a claim may be made on the compensation fund, those who may not make a claim and the procedure for making a claim by those entitled to do so. These technical requirements are to be prescribed in subsidiary legislation to provide for expeditious updating.</p> <p>Consultation scheduled for mid 2001.</p>
Part XIII					
23	256 + 260(b)	Market Misconduct Tribunal – Registration of Orders Rules	SIDO Sub Leg A	Chief Justice	Adapted from existing subsidiary legislation – no significant policy change involved.
24	273(1) + 297(1)	Stabilization Rules	New	SFC (after consultation with public and FS)	<p>Technical provisions to define permitted stabilization activities (to match those adopted internationally). They are technical in nature and will be prescribed in subsidiary legislation for expeditious updating.</p> <p>Consultation scheduled for late 2001.</p>
Part XV					
25	365(1)(b)	Disclosure of Interests – Exclusions Regulations	SDIO Sub Leg A	CE in Council	Updated on the basis of existing subsidiary legislation to reflect changes required in the proposed regime for disclosure of securities interests. Market consultation started in 1998 and is an on-going process in the context of the overall package of proposals.

Serial No.	Clause in SF Bill	Subsidiary legislation	Derivation	Authority to make Sub Leg	Remarks
Part XVI					
26	380	Gold Purchase Notice	PIO Sub Leg A	FS	Adapted from existing subsidiary legislation – no significant policy change involved.
27	381(1)	Levy Order (on levy payable to SFC)	SFCO Sub Leg A & B	CE in Council	Adapted from existing subsidiary legislation – no significant policy change involved.
28	381(6)	Levy Rules (on payment, collection etc. of levy in item 28)	SFCO Sub Leg G	CE in Council	Adapted from existing subsidiary legislation – no significant policy change involved.
29	382	Fees Rules (on payment of fees to SFC)	SFCO Sub Leg C LFETO Sub Leg F	CE in Council	Adapted from existing subsidiary legislation – no significant policy change involved.
30	384	Annual Returns Rules (on timing, particulars, manner, circumstances, etc. of submission of returns to SFC)	SFCO Sub Leg F LFETO Sub Leg B	SFC	Adapted from existing subsidiary legislation – no significant policy change involved.
31	384 & 168	Miscellaneous Rules	SO Sub Leg A	SFC	Adapted from existing subsidiary legislation – no significant policy change involved.
32	384(8)	Offence and Penalty Regulations	SO Sub Leg D CTO Sub Leg B	CE in Council	Adapted from existing subsidiary legislation – updated to reflect penalties elsewhere in the SF Bill. There will be consultation on the revised penalties. Consultation scheduled for late 2001.
33	384(1)	Licensed and Exempt Persons Rules	SO Sub Leg G CTO Sub Leg A	SFC	Adapted from existing subsidiary legislation; some policy changes are expected. Consultation scheduled for late 2001.
34	384(1)	Leveraged Foreign Exchange Trading – Exemption Rules	LFETO Sub Leg E	SFC	Adapted from existing subsidiary legislation – no significant policy change involved.

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35	384(1)	Professional Investor Rules	New	SFC	<p>To define a class of persons who will be considered as professional investors for the purposes of paragraph (i) of the definition of “professional investor” in Part 1 of Schedule 1 to the SF Bill.</p> <p>Consultation scheduled for late 2001.</p>

Legend

- CTO – Commodity Trading Ordinance (Cap. 250)
- ECHMO – Exchanges and Clearing Houses (Merger) Ordinance (Cap.555)
- LFETO – Leveraged Foreign Exchange Trading Ordinance (Cap. 451)
- PIO – Protection of Investors Ordinance (Cap. 335)
- SFCO – Securities and Futures Commission Ordinance (Cap. 24)
- SIDO – Securities (Insider Dealing) Ordinance (Cap. 395)
- SO – Securities Ordinance (Cap. 333)
- Sub Leg – Subsidiary legislation
- CE in Council – Chief Executive in Council
- FS – Financial Secretary
- SFC – Securities and Futures Commission

**Non-statutory Codes and Guidelines to be made by SFC for commencement
of the Securities and Futures Bill**

Serial No.	Clause in SF Bill	Code/Guideline	Derivation
Part III			
1	95(5)	Guidelines for the Regulation of Automated Trading Services	New. Consultation underway.
Part VI			
2	164(1)	Code of Conduct for Persons licensed [or exempted] by the SFC (including those serving the Professional or Sophisticated Market)	Code of Conduct for Persons Registered with the SFC issued in April 2001 after consultation with the market.
3	164(1)	Corporate Finance Adviser Code of Conduct	Corporate Finance Adviser Code of Conduct to be issued in mid-2001 after consultation with the market.
4	164(1)	Guidance Notes Regarding Money Laundering	Revised Guidance Notes Regarding Money Laundering issued in July 1997 after consultation with market.
5	164(1)	Code of Conduct for Fund Managers	Code of Conduct for Fund Managers issued in December 1997 after consultation with market.
Part IX			
6	187(7)	SFC Disciplinary Fining Guidelines	New. Consultation underway.
Part XV			
7	300(1)	Disclosure of Interests Exemption Guidelines	Guidelines for the Exemption of Listed Companies from the Securities (Disclosure of Interests) Ordinance (Cap.396) published in July 1991.

Serial No.	Clause in SF Bill	Code/Guideline	Derivation
Part XVI			
8	385(1)	Fit and Proper Criteria	Fit and Proper Criteria issued in December 2000 after consultation with market.
9	385(1)	Guidance Note on Incidental Investment Advice Provided by Solicitors and Accountants	Guidance Note on Incidental Investment Advice Provided by Solicitors and Accountants issued in July 2000 after consultation with market.
10	385(1)	Code on Takeovers and Mergers and Share Repurchases	The Code on Takeovers and Mergers and Share Repurchases has been revised after consultation with the market, and the amendments became effective on 1 May 2001. In addition, consultation on an overall review of the Code will conclude on 31 May 2001 and it is intended to issue a revised Code with effect from 1 January 2002.
11	385(1)	Code on Investment-Linked Assurance Schemes	Code on Investment-Linked Assurance Schemes issued in January 1998 after consultation with market.
12	385(1)	Code on Pooled Retirement Funds	Code on Pooled Retirement Funds issued in January 1998 after consultation with market.
13	385(1)	Code on Collective Investment Schemes	Code on Unit Trusts and Mutual Funds (3rd Edition) issued in December 1997 after consultation with market.
14	385(1)	Code on Immigration-Linked Investment Schemes	Code on Immigration-Linked Investment Schemes issued in February 1993 after consultation with market.
15	385(1)	Guidance Note on Internet Regulation	Guidance Note on Internet Regulation issued in March 1999 after consultation with market.
16	385(1)	Management, Supervision and Internal Control Guidelines for Persons Licensed by the SFC	Management, Supervision and Internal Control Guidelines for Persons Registered with or Licensed by the SFC issued in May 1997 after consultation with market.
17	385(1)	Guidance Note on Transitional Arrangements	New but based on Schedule 9 provisions in relation to Part V.