

Securities & Futures Bill Part XV

Supplement to the Comparison Table for Parts XV (Annex 1 to LC Paper No. CB(1) 1210/00-01(01))

References to clauses (*cl.*), sub-clauses (*sc.*) or paragraphs (*para.*) 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

CO = Companies Ordinance (Cap. 32)

S(DI)O = Securities (Disclosure of Interests) Ordinance (Cap. 396).

| Blue Bill Clause Ref. | S(DI)O section | Comments (Only new provisions & those at variance with the existing legislation are mentioned.) |
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| 299(1) "associated corporation" | 2(1) "associated corporation" | References to "listed company" are substituted by "listed corporation". Para. (b) no longer defines associated corporation by reference to section 129(1) or (2) of the CO and the criteria of one fifth of the nominal value of the issued shares of a class is used instead. |
| 299(1) "register of interests in shares and short positions" | 2(1) "register of interests in shares" | The new definition makes references to different provisions. |
| 299(1) "relevant share capital" | 2(1) "relevant share capital" | Para. (b) is added to include unissued shares of listed corporation, which, if issued, would carry voting rights in all circumstances at general meetings of the corporation. |

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| 299(1) | 2(1) | The definitions of "cash settled equity derivatives", "contract multiplier", "custodian", "deliver", "duty of disclosure", "equity derivatives", "founder of the trust", "issued equity share capital", "notifiable percentage level", "off-exchange transaction", "on-exchange transaction", "physically settled equity derivatives", "register of directors' and chief executives' interests and short positions", "relevant event", "relevant exchange company", "relevant time", "short position", "specified percentage level", "stock futures contract", "target corporation", "trustee" & "underlying shares" are added. |
| 299(6) | - | New. The subclause provides that equity derivatives involving shares of more than one listed corporation shall be taken to have no underlying shares. |
| 300 | 2A | <i>Sc.</i> (3) enables the Commission to grant to applicants exemption from this Part subject to appropriate conditions. <i>Sc.</i> (5) makes clear that guidelines published pursuant to <i>sc.</i> (1) are not subsidiary legislation. |
| 301 | 3 | This clause imposes duty of disclosure in the specified situations. Unlike the existing legislation, the duty would arise once the relevant objective facts are established. The knowledge or awareness of the person having the relevant interest would only be relevant to time of notification as provided in clause 316. The duty of disclosure would be extended to cover short position in shares (<i>sc.</i> (4)-(6)). Since short position is defined (<i>cl.</i> 299(1)) in terms of holding, issuing or writing any equity derivatives and the borrowing of shares under a securities lending and borrowing agreement, any interest, and cessation of such interest, in equity derivatives of the relevant underlying shares as well as any borrowing of shares would have to be disclosed. <i>Sc.</i> (2) & (3) specifically provide for situations under which a duty would arise other than the acquisition or cessation of any interest in shares or any change in any existing interest. |
| 302 | 4(1) & (2) | <i>Sc.</i> (2) is new and stipulates that interest in shares include such interest that a person has or ceases to have, by virtue of the holding, writing or issuing of, the exercising of rights under, or the assignment or non-exercise of any rights under, any equity derivatives of which the shares are the underlying shares. Hence, all equity derivatives of the relevant shares need to be disclosed. |
| 303 | - | New. The short positions to be disclosed are only those in shares in the relevant share capital of the listed corporation concerned. |

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| 304 | 4(4) & (5) | The clause now specifies in respect of each of <i>sc.</i> (1) to (6) of clause 301 the circumstances under which a duty of disclosure would arise. Changes in nature of interest need to be disclosed (<i>sc.</i> (1)(d)). Percentage changes less than 0.5% need not be disclosed (<i>sc.</i> (7) & (8)). Acquisitions within related corporations need not be disclosed provided that there is 100% common shareholding or ownership relationship (<i>sc.</i> (9) & (10)). <i>Sc.</i> (11) provides for specific situations which are to be regarded or not to be regarded as having any change in the nature of interest. <i>Sc.</i> (12) defines what a qualified stock borrower and lender is. <i>Sc.</i> (13) explains the meaning of "percentage figure" in <i>sc.</i> (7)(b) & (8)(b). |
| 305 | 5 | <i>Sc.</i> (3) provides that short position would be disregarded in calculating the aggregate nominal value of shares in which a person is interested if such short position would reduce the aggregate nominal value. <i>Sc.</i> (4) & (5) mirror <i>sc.</i> (1) & (2) respectively in providing for short positions. |
| 306 | 6 | The notifiable percentage level is lowered from 10% to 5% (<i>Sc.</i> (1)). <i>Sc.</i> (2) sets the specified percentage level for the purposes of clause 301(6) & 304(4). |
| 307 | 8 | The clause would cover also short position (<i>sc.</i> (1)(b) & (2)(b)). <i>Sc.</i> (5) provides that a person would not be regarded under <i>sc.</i> (2)(b)(ii) as interested in shares owned by a corporation, if the corporation acts as an investment manager, a custodian or trustee and it deals with such shares in the ordinary course of its business and exercising rights and powers as such independently without reference to the person. <i>Sc.</i> (6) stipulates for cessation of interest under <i>sc.</i> (2). <i>Sc.</i> (7) appears to say that clause 313 would be applicable to a person's spouse or minor child or a corporation in which he controls over one third of the voting power as to the person. |
| 308 | 9(1) & (3) to (4) | The agreement would include an agreement by the controlling person or a director of the target corporation to provide a loan or security for a loan for acquisition of shares of the target corporation (<i>sc.</i> (1)(b)). <i>Sc.</i> (6) excludes from the application of <i>sc.</i> (1)(b) an agreement to make loans by an authorised financial institution, a licensed money lender, an exchange participant or an intermediary licensed or exempt for Type 1 regulated activity in the ordinary course of business. |
| 311 | 12 | In <i>sc.</i> (1), para. (b) & (c) are added to include change in the nature of an interest and short positions. |
| 312 | 15(1) | Para. (b) is added to cover short positions in shares of a listed corporation. Consequential amendments are made to accommodate the references to short positions. |
| 313-4 | - | New. |

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| 315 | 3(1), 7(1)(b) & (8)(b) & 54 | In <i>sc.</i> (1), reference to short position in shares has been added. <i>Sc.</i> (2) does not now require the relevant exchange company to be notified prior to the listed corporation. The notification may be so effected that both are notified at the same time or one immediately after the other. <i>Sc.</i> (4) to (7) are new. The duty of notification would only be discharged when the notification is in the form specified and is completed, signed, executed and authenticated in accordance with the instructions and directions included in the form and accompanied by requisite documents. |
| 316 | 7(1)(a), (3) & (8)(a) | <i>Sc.</i> (1) reduces the time of notification from the current 5 days to 3 business days. <i>Sc.</i> (2) to (4) stipulate 10 business days as the time limit for notification for other situations. |
| 317 | 7(5) to (7) & 15(2) | The particulars now required to be notified are very detailed. It is not clear why a person should be required to disclose the amount and nature of the consideration given or received for the interest he acquires or disposes of. |
| 318 | 20(2), (3), (5) & (6) | The existing legislation applies only to information received under section 18 of S(DI)O. The new provisions apply to all information received under Division 4 of Part XV. |
| 319 | 15(3) to (6) | <i>Sc.</i> (5) is added to cover the equity derivatives. |
| 320 | 18 | In <i>sc.</i> (1), the nature of interests that may be the subject of an investigation by a listed corporation are expressly stated. The power of investigation now extends to short positions in the shares of a listed corporation and any interest in equity derivatives of which the shares of the listed corporation are underlying shares. References to "equity derivatives" and "short positions" are added to <i>sc.</i> (1), (2) & (3). In <i>sc.</i> (2), para. (d) & (e) are added to cover short positions in the relevant shares whether present or past. <i>Sc.</i> (5) & (6) are added to give FS the power to exempt a person from the operation of this section by notice in Gazette. Such notice so published is not subsidiary legislation. In <i>sc.</i> (7), para. (a) (ii) & (b) are new. |
| 321 | 20(1)-(3), (5) & (6) | The failure to give the requisite notification in time is now an offence. Apart from that change and the slight alteration in some nomenclature, the clause follows the existing legislation. |
| 322 | 21 | No substantive change except that the signing requirement in <i>sc.</i> (2) is made subject to <i>sc.</i> (3). |
| 323 | 22 | In <i>sc.</i> (2), the time by which a report is to be made available at the listed corporation's registered office is reduced from 15 days to 10 business days. In <i>sc.</i> (6), the time for notifying the requisitionists that the report is available is extended to 3 business days. |

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| 324 | 23 | In <i>sc.</i> (1), the requirement in the existing provision that the report relates to listed shares is not included. In <i>sc.</i> (4), the time for the performance of the duty is to be before the end of the business day after the day on which the report is made available at the corporation's registered office. The failure to perform the duty within the time specified in <i>sc.</i> (4) is now an offence (<i>sc.</i> (5)). |
| 325 | 24 | In <i>sc.</i> (1), the reference to unissued shares which on issue are to be registered in Hong Kong. <i>Sc.</i> (2) is added to cover persons who is or was interested in equity derivatives. |
| 326 | 27 | In <i>sc.</i> (1), the right to inspect is extended to persons other than members of the corporation on payment of a sum less than \$10 per inspection. The copying charges is now \$2 or less per page instead of \$1 or less per 100 words (<i>sc.</i> (2)). The power to specify a sum in place of the one mentioned in <i>sc.</i> (1) & (2) is now vested in the Commission. Previously it was vested in CE in Council. |
| 327 | 16(1) to (10) & (12) | The register now includes interests in short positions (<i>sc.</i> (1)). The duty shall be performed in 3 business days instead of 3 days (<i>sc.</i> (3)). Reference to equity derivatives is added at the end of <i>sc.</i> (5). Any alteration in the index would have to be made within 10 business days after the day on which a name is recorded in the register (<i>sc.</i> (8)). Para.(a)(ii) & (iii) are added to cater for corporations whose register of members is not kept at its registered office or whose registered office is not in Hong Kong (<i>sc.</i> (10)). The corporation is under a duty to notify the Registrar of Companies of the place where the register is kept or any change thereof within 10 business days after occurrence of the relevant event (<i>sc.</i> (12) & (13)). |
| 328 | 19(1) & (3) | The duty to record must be performed before the end of the business day after the day on which the information to be recorded was received (<i>sc.</i> (3)). Any default in compliance is a criminal offence subject to a fine of \$2,000(<i>sc.</i> (4)). |
| 329 | 25 | References to short positions are added in <i>sc.</i> (1), (2), (3), 4) & (6). In <i>sc.</i> (2) & (6), the 15 and 14 days originally provided are replaced by 10 business days. |
| 330 | 26 | Apart from the addition of references to short positions, there is no substantive change. |
| 331 | 27 | In <i>sc.</i> (1), the right to inspect is extended to persons other than members of the corporation on payment of a sum less than \$10 per inspection. The copying charges is now \$2 or less per page instead of \$1 or less per 100 words (<i>sc.</i> (2)). The power of specifying a sum in place of the one mentioned in <i>sc.</i> (1) & (2) is now vested in the Commission. Previously it was vested in CE in Council. |

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| 332 | 28(1), (2), (5) & (7) | <i>Sc.</i> (1) expands the situations under which a current director or a chief executive of a listed corporation would come under a duty of disclosure to include situations where the nature of his interest in shares or debentures of the listed corporation or its associated corporation changes (para. (e)) and where the short position he has in shares of the listed corporation or its associated corporation changes (para. (f)). In <i>sc.</i> (2), para. (a), (b)(ii), (c)(ii) & (d) are new. <i>Sc.</i> (5) is added to explain the meaning of a change in the nature of the interest of a director or chief executive in shares or debentures. |
| 335 | 31(1) to (5) & (9), & Schedule Part I para. 5-6 | <i>Sc.</i> (6), (7) & (8) are added to attribute interest in shares or debentures or short position in shares of a listed corporation or any associated corporation to a person whose direction or instructions a corporation or its directors are accustomed to act or who controls one-third or more of the voting power at general meetings of a corporation. |
| 336 | Schedule Part I para. 1-3(1) & (2),6-8 | <i>Sc.</i> (3) provides for the disregard of any restriction or restraint of the exercise of a right or the settlement of an obligation by virtue of the short position. <i>Sc.</i> (8) & (9) are added to provide for interest in shares which are underlying shares of equity derivatives and how the number of shares are to be calculated for such cases. <i>Sc.</i> (10) provides for the circumstances when a person is regarded as having ceased to be interested in shares or debentures. <i>Sc.</i> (11) provides for the calculation of the number of shares a person is regarded to have ceased to be interested on cash settlement of equity derivatives. <i>Sc.</i> (12) provides for the calculation of number of shares a person is regarded to have ceased to be interested upon assignment of his rights under a stock futures contract to another person. <i>Sc.</i> (13) provides for the calculation of the number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives. <i>Sc.</i> (14) provides for the number of shares a person is regarded as having a short position under a securities borrowing & lending agreement. |
| 337 | 14(1)(b) & Schedule Part I para. 3(3), 9 & 10(2) | In <i>sc.</i> (1), para. (e) allows prescribing by regulation of interest or class of interest to be disregarded. <i>Sc.</i> (3) provides that where a holder, trustee or custodian of a collective investment scheme or approved overseas scheme who is also a manager of that scheme, his interest would not be disregarded. <i>Sc.</i> (4) defines "approved overseas scheme". <i>Sc.</i> (6) provides for matters relating to application of approval of an overseas scheme. <i>Sc.</i> (7) specifies arrangements which are not bona fide widely held investment scheme for the purposes of <i>sc.</i> (4)(c). <i>Sc.</i> (8) defines "constitution" in <i>sc.</i> (6). <i>Sc.</i> (9) defines "company" & "memorandum & articles" for the purposes of <i>sc.</i> (8). |

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| 338 | 31(5)(b) | Sc. (1) imposes the duty to notify the listed corporation & the relevant exchange company on a person who comes under a duty to disclose. Sc. (2) requires the notification to be given in such manner so that it either reaches the listed corporation & the relevant exchange company at the same time or one immediately after the other. The existing requirement is that the notification should reach the exchange company first. Sc. (3) to (7) provides for the giving of notification in form specified by the Commission. |
| 339 | Schedule Part II | The time for notification under a duty arising from one of the events described in clause 332(1) (a) to (f) is 3 business days after the occurrence of the relevant event or after it has come to the knowledge of the person concerned. The time for notification under a duty arising from one of the events described in clause 332(2) is 10 business days after the occurrence of the relevant event or after the person concerned becomes aware of his interest or short position. The present comparable provision allows only a uniform 5 days to give the requisite notification. |
| 340 | Schedule Part III | The existing legislation requires only the disclosure of the number or amount & class of shares or debenture and the consideration paid for or received. Only in respect of the grant of rights to subscribe for shares or debentures that particulars of such rights, e.g. date of grant, price to be paid for the shares or debentures, & period during which such right is exercisable, also need to be notified. The new provisions now require very detailed particulars to be disclosed. The rationale for sc. (9) is not immediately apparent. |
| 341 | 32 | In sc. (3), the time for notification is one business day after the day on which that duty arises. |
| 342 | 28(8) & (9) | No substantive change. |
| 343 | 16(1), 29(1) to (4), 30(4), (5) & (7), Schedule Part IV para. 19, 20, 22, 25-27 | Sc. (10) provides that a corporation shall continue to keep the register and any index for 6 years after ceasing to be listed. Sc. (11) requires any register and index to be kept at where the register of interests in shares and short positions are kept and subject to sc. (12) to be available for inspection in accordance with clause 346. Sc.(12) provides that neither the register nor the index would be available for inspection if the disclosure would be harmful to its business as stipulated in section 128(3) or 129(3) of CO. The notification to the Registrar of the Companies of the location of the register should be made within 10 business days after the day on which the register is so kept or the change takes place (sc. (14)). Sc. (17) extends the reference to books & papers in section 283 of CO to include the reference to the register & index required to be kept under this clause. |

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| 346 | 30(6) & Schedule Part IV para.23-24 | In <i>sc.</i> (1), the right to inspect is extended to persons other than members of the corporation on payment of a sum less than \$10 per inspection. The copying charges is now \$2 or less per page instead of \$1 or less per 100 words (<i>sc.</i> (2)). The power of specifying a sum in place of the one mentioned in <i>sc.</i> (1) & (2) is now vested in the Commission (<i>sc.</i> (6)). Previously it was vested in CE in Council. |
| 347 | 33 | In <i>sc.</i> (1), para. (b) & (c) are added to cover interest or short position in shares and equity derivatives. <i>Sc.</i> (6) & (7) are new. |
| 349 | 35 | References to equity derivatives and short positions are added. Para. (b), (c), (ii) & (iii) are added in <i>sc.</i> (1) to cover persons who have an interest or short position in shares or any equity derivatives. |
| 350 | 36 | References to books and documents in the existing legislation are replaced by references to records. In <i>sc.</i> (1), para. (b) (ii) & (iii) are added to cover persons who have an interest or short position in shares or any equity derivatives. In each of <i>sc.</i> (2) & (3), reference to "equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation" is added. In <i>sc.</i> (4), express reference is made to an offence under Part V of the Crimes Ordinance (Cap. 200). |
| 352 | 38 | References to books and documents in the existing legislation are replaced by references to records. In <i>sc.</i> (1), para. (b) (ii) & (iii) are added to cover persons who have an interest or short position in shares or any equity derivatives. In <i>sc.</i> (2)(c), reference to "equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation" is added. |
| 353 | 39 | In <i>sc.</i> (3)(a), a reference to "the other corporation which is the subject of the report" is added. In <i>sc.</i> (3)(b)(i), (iii) & (v), the reference to "corporation" is replaced by "the other corporation (as the case may be)". |
| 354 | 40 | In <i>sc.</i> (1)(d), references to "short position" & "or the other corporation" are added. <i>Sc.</i> (3) gives the person to whom a direction is given under <i>sc.</i> (1)(b), (c), (d) or (e) a right of appeal to CFI. <i>Sc.</i> (4) provides that, if there is an appeal, a direction given under <i>sc.</i> (1)(b), (c), (d) or (e) shall not take effect until the appeal is heard or otherwise disposed of. In <i>sc.</i> (6), a reference to the liabilities as determined by CFI is added. |
| 355 | 41(1) | <i>Sc.</i> (2) is added to allow FS to direct by order that equity derivatives be subject to the restrictions under Division 12 of this Part if there is difficulty in finding out the relevant facts about any equity derivatives. Members may wish to consider whether FS should have such power. |

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| 356 | 42 | In <i>sc.</i> (1), para. (a)(ii) & (iii) are added to cover short position & equity derivatives, & para. (b)(iii) & (iv) are inserted to include the present and past short positions in shares & names and addresses of persons having short positions and of persons who act or have acted on their half in respect of those short positions. In <i>sc.</i> (b)(i) & (ii), references to "or equity derivatives" are added. <i>Sc.</i> (3) is added to stipulate circumstances in which a person shall be deemed to have an interest in equity derivatives. |
| 357 | 43(b) | The express reference to legal professional privilege in the existing legislation is not included. |
| 358 | 44 | <i>Sc.</i> (3) & (4) are added to provide for equity derivatives directed to be subject to the restrictions under Division 12. |
| 359 | 45 | In <i>sc.</i> (1)(a)(i) & (ii) & (b), references to equity derivatives are added. <i>Sc.</i> (3) is added to provide for contravention in respect of equity derivatives. |
| 360 | 46 | <i>Sc.</i> (3), (7), (10) & (13) are added to give FS a right to be heard and to call evidence at the hearing of an application before CFI. <i>Sc.</i> (11), (12) & (14) are added to provide for equity derivatives. <i>Sc.</i> (15) defines "the corporation concerned". |
| 361 | 47 | In <i>sc.</i> (1) & (3), a reference to "equity derivatives" is added. <i>Sc.</i> (2) is added to cover equity derivatives when the same are cash settled or settled in kind. <i>Sc.</i> (4) is added to give FS the right to be heard and to call evidence. <i>Sc.</i> (5) elaborates on the orders that CFI may made under different circumstances. In <i>sc.</i> (6), a reference to the costs of FS is added. |
| 362 | 48(2) | Members of a corporation may not be liable for mere negligence. |
| 363 | 51 | The methods of giving notification or delivering report specified in the clause are imperative. The Commission and MA are covered in para. (c) & (d). |
| 364 | 52 | Default in taking reasonable precaution to guard against falsification and facilitate its discovery is made a criminal offence subject to a fine of \$ 2,000 and a daily fine of \$200 during the continuance of the offence. |

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| 365 | 53 | In <i>sc.</i> (1), para. (b) is added to allow CE in Council to make regulation to exclude the requirement to give notification under any provision of Part XV. The reference to impose requirements in relation to any of the methods of giving notification to listed company or exchange company is no longer included in <i>sc.</i> (2). |
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Prepared by

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