

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

**Securities and Futures Bill  
Part XVII on repeals and related provisions  
Part 1 of Schedule 9 on savings, transitional, and related provisions**

## INTRODUCTION

This paper outlines the major elements of Part XVII and Part 1 of Schedule 9 to the Securities and Futures Bill (the “SF Bill”).

2. Part XVII deals with the repeal of the existing ten Ordinances<sup>1</sup> that are consolidated and rationalized in the SF Bill. Part 1 of Schedule 9 specifies the savings, transitional and supplemental arrangements that apply on, or relate to the commencement of the Securities and Futures [Ordinance] (the “SFO”) or any part thereof.

### **PART XVII – Repeals and Related Provisions**

3. Part XVII repeals generally the existing ten Ordinances from a day to be appointed by the Secretary for Financial Services, subject to individual provisions in Part 1 of Schedule 9. The Chief Executive in Council is empowered to amend Schedule 9 by order published in the Gazette to enable prompt correction of any inadvertent omission or inaccuracy. The primacy of section 23 of the Interpretation and General Clauses Ordinance (Cap.1), which deals with the effect of repeals generally in legislation<sup>2</sup> is maintained.

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<sup>1</sup> The ten Ordinances are the Securities and Futures Commission Ordinance (Cap.24), Commodities Trading Ordinance (Cap.250), Securities Ordinance (Cap.333), Protection of Investors Ordinance (cap.335), Stock Exchanges Unification Ordinance (Cap.361), Securities (Insider Dealing) Ordinance (Cap.395), Securities (Disclosure of Interests) Ordinance (Cap.396), Securities and Futures (Clearing Houses) Ordinance (Cap.420), Leveraged Foreign Exchange Trading Ordinance (Cap.451) and Exchanges and Clearing Houses (Merger) Ordinance (Cap.555).

<sup>2</sup> Section 23 of the Interpretation and General Clauses Ordinance provides as follows:  
“Where an Ordinance repeals in whole or in part any other Ordinance, the repeal shall not-  
(a) revive anything not in force or existing at the time at which the repeal takes effect;  
(b) affect the previous operation of any Ordinance so repealed or anything duly done or suffered under any Ordinance so repealed;  
(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any Ordinance so repealed;  
(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any Ordinance so repealed; or  
(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance had not been passed.”

## **Part 1 of Schedule 9 – Savings, Transitional and Supplemental Arrangements**

4. The transitional provisions are crucial for ensuring continuity and a smooth migration of concerned parties from the existing regulatory framework to the new regime and are equally significant for both the Securities and Futures Commission (the “SFC”) and persons regulated by it. The following paragraphs highlight the principles adopted in developing the transitional arrangements in connection with matters dealt with under the various Parts, as well as some of the more important transitional arrangements.

### *In relation to Part II*

5. Clause 2 deals with the existence and constitutional framework of the SFC. The clause seeks to ensure the continued operation of the SFC and all committees formed under existing legislation, through providing for -

- (a) continued recognition of all actions taken or in the process of being taken by the SFC under existing legislation;
- (b) continued recognition of all committees created by or formed pursuant to existing legislation; and
- (c) continued appointment or employment of all existing office holders, committee members and employees of the SFC and of committees created by or formed pursuant to existing legislation.

### *In relation to Part III*

6. Clauses 3 to 15 deal with the recognition of existing market operators<sup>3</sup> for continuation of their operation and related matters. The clauses mainly provide for -

- (a) deemed recognition of the existing market operators as a recognized exchange company, a recognized clearing house or a recognized exchange controller, as the case may be;
- (b) continued effect of rules and constitutions (where applicable) of these existing market operators;
- (c) continued effect of the appointment of key personnel of an exchange company and an exchange controller which themselves have been deemed recognized, in the former case the chief executive and in the latter case the chairman and the chief executive / chief operating officer;
- (d) continued effect of approval of minority shareholders of an exchange controller which itself has been deemed recognized;
- (e) continued existence of the Risk Management Committee established under the Exchanges and Clearing Houses (Merger) Ordinance;
- (f) continued effect of action under the Securities and Futures (Clearing Houses) Ordinance and the Exchanges and Clearing Houses (Merger)

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<sup>3</sup> Existing market operators are the Hong Kong Exchanges and Clearing Limited, Hong Kong Futures Exchange Limited, the HKFE Clearing Corporation Limited, the Hong Kong Securities Clearing Company Limited, the Stock Exchange of Hong Kong Limited and the SEHK Options Clearing House Limited.

Ordinance, and the continuation of action initiated thereunder prior to the commencement of Part III; and

- (g) continued effect of restriction notice and suspension order (if any) served under the Securities and Futures Commission Ordinance (“SFC Ordinance”) and the continuation of the process relevant to their service initiated thereunder prior to the commencement of [sections] 92 and 93 of the SFO.

*In relation to Part IV*

7. Clauses 16 to 21 concern the authorization of unit trusts, mutual corporations, other investment arrangements and the issue of advertisements, etc approved under the Protection of Investors Ordinance and related matters. The clauses mainly provide for -

- (a) continued authorization granted by the SFC in respect of unit trusts, mutual fund corporations and other investment arrangements, as well as issue of advertisements, invitations and documents;
- (b) continued recognition and effect of any conditions imposed on such authorizations;
- (c) a reasonable grace period for the imposition of the new condition of each such authorization that an individual must be nominated by the person applying for authorization; and
- (d) smooth continuation in the processing of applications for any such authorization outstanding at the time Part IV commences.

*In relation to Part V*

8. Clauses 22 to 59 deal with the arrangements to transit existing intermediaries into the new licensing regime. The principles and key transitional arrangements have been set out in paragraphs 16 to 17 of Paper No. 5/01.

*In relation to Part VI*

9. Clauses 60 and 61 provide for the continued validity of an auditor appointed by the SFC prior to the commencement of Part VI to look into the affairs of a registered or licensed entity as if he had been appointed under clauses 155 or 156 of the SF Bill, as the case may be.

*In relation to Part VIII*

10. Clause 62 provides that inquiries and investigations begun under powers conferred by relevant provisions of the SFC Ordinance and the Leveraged Foreign Exchange Trading Ordinance (“LFETO”) before commencement of Part VIII, shall continue to have force and effect, and relevant provisions of the SFC Ordinance and LFETO shall continue to apply in relation to the exercise of power and any matter relating thereto. That is, the new powers conferred by Part VIII would not be exercisable in those circumstances.

*In relation to Part IX*

11. In relation to an incident that has occurred prior to the commencement of Part IX in respect of which disciplinary power has yet to be exercised, clause 63 requires such to be dealt with under existing legislation. The key difference is that those new disciplinary sanctions such as civil fines and partial suspension would not be exercisable. In the event that exercise of such disciplinary power results in suspension or revocation of the licence of a person deemed under the relevant Schedule 9 provisions to be licensed, clause 64 allows the suspension or revocation to take effect nonetheless, as these sanctions are available under the existing regime. Further, any person so disciplined may appeal to the Securities and Futures Appeals Tribunal, which may deal with the matter as if the power had been exercised under Part IX.

*In relation to Part X*

12. Clauses 66 and 67 provide that any notice (such as a restriction notice) issued by the SFC under specified provisions of the existing SFC Ordinance or the LFETO before the commencement of Part X, the prohibition or requirement to which the notice relates shall continue to have force and effect. Where a person has lodged an appeal against the prohibition or requirement before the commencement of Part X, such appeal shall be dealt with as if the SFO had not been enacted. However, where the person appeals after the commencement of Part X before expiry of the time within which the appeal can be made, the appeal may be made to the Securities and Futures Appeals Tribunal as if the restriction relevant prohibition or requirement had been imposed under clauses 196, 197, 198, 199 and 201 of the SF Bill.

*In relation to Part XI*

13. Under clauses 68 and 69, appeals to the Securities and Futures Appeals Panel that are still pending, or a right of appeal thereto has not expired, at the time of commencement of Part XI, the relevant appeals would be dealt with in accordance with existing legislation. Clause 70 provides for the continued existence of the existing appellate mechanism for carrying into effect the aforesaid transitional arrangement.

*In relation to Part XII*

14. Clauses 71 to 74 deal with the transitional arrangements in relation to investor compensation. The principles and key transitional arrangements have been set out in paragraph 20 of Paper 11/01.

*In relation to Part XIII*

15. Clause 75 provides that any insider dealing that occurs before the commencement of Part XIII shall continue to be dealt with under the Securities (Insider Dealing) Ordinance (Cap. 395). Clause 76 similarly provides for continuity of appointments to the Insider Dealing Tribunal (“IDT”) and the existence of the IDT in cases where clause 75 applies.

*In relation to Part XV*

16. Clause 77 provides that duties of disclosure arising prior to the repeal of the Securities (Disclosure of Interests) Ordinance (“S(DI)O”) shall not be affected by its repeal. Similarly uncompleted applications, ongoing investigations, restrictions and orders imposed under S(DI)O shall continue to be dealt with under the S(DI)O (clauses 79-81). Exemptions granted and registers or reports kept under S(DI)O shall be regarded as having been granted, or kept, under the relevant provision of Part XV (clauses 78, 82 and 83).

*General provisions*

17. Clauses 85 to 87 deal with the general matters set out below -

- (a) preservation of the validity of documents, etc issued, given or served to, or by the SFC under any provision of the repealed Ordinances, through regarding them as issued, given or served under the corresponding provisions of the SFO;
- (b) specification that where any of the repealed Ordinances stipulates a period of time which is still running and there is a corresponding provision in the SFO, then such original period of time shall continue to apply; and
- (c) specification that any pending judicial proceedings commenced under or by virtue of any provision of the repealed Ordinances shall be disposed of in accordance with existing legislation.

**MARKET COMMENTS**

18. The comments received during the White Bill consultation on the transitional arrangements were mostly of a technical nature for closing any gaps that would affect a smooth transition. We have, where appropriate, reflected the amendments in Schedule 9 to the SF Bill. Summary of public comments on Schedule 9 in relation to Part V was set out in Paper No. 5A/01.

**Securities and Futures Commission  
Financial Services Bureau  
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