

Securities & Futures Bill Part XVI

Supplement to the Comparison Table for Parts XVI (Annex to LC Paper No. CB(1) 1267 /00-01(01)) (Revised)

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

CE = the Chief Executive Commission = the Securities and Futures Commission

MMT = the Market Misconduct Tribunal

SFAT= the Securities and Futures Appeals Tribunal

CTO = Commodities Trading Ordinance (Cap. 250)

ECH(M)O = Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555)

LFETO= Leveraged Foreign Exchange Trading Ordinance (Cap. 451)

PIO = Protection of Investors Ordinance (Cap. 335)

SEUO = Stock Exchanges Unification Ordinance (Cap. 361)

SFCO = Securities and Futures Commission (Cap. 24).

SF(CH)O = Securities and Futures (Clearing Houses) Ordinance (Cap. 420)

SO = Securities Ordinance (Cap. 333)

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

S(ID)O = Securities (Insider Dealing) Ordinance (Cap. 395).

Blue Bill Clause Ref.	SFCO section	LFETO section	SO section	Other Ordinance section	Comments (Only new provisions & those at variance with the existing legislation are mentioned.)
366(1)	59(1)	63(1)	-	-	References to "relevant Ordinances" are replaced by references to "relevant provisions". "In carrying out a provision of" any of the relevant ordinances is replaced by "for the purpose of carrying into effect or doing anything required or authorized under" any of the provisions. In para. (a) & (c), the words "or carrying into effect" are added before "any of the relevant provisions".

366(2)	59(2)(b) & (n)	63(2)(b) & (m)	-	-	Exceptions to the preservation of secrecy listed in para. (c) include the communication to the Commission in the manner described in <i>cl.</i> 369(1) and the communication to the Insurance Authority or the Monetary Authority in the manner described in <i>cl.</i> 369(4).
366(3)	59(2)(a), (c), (e), (g), (i), (ia), (ib), (k), (l) & (m)	63(2)(a), (c), (d), (e), (f), (g), (h), (i), (j), (k) & (l)	-	-	Further exceptions for disclosure to various bodies: (I) Para.(b) is extended to cover all judicial or other proceedings other than criminal proceedings; (ii) para. (c)(liquidator), (d)(MMT) & (e)(SFAT) are added; & (iii) in para. (g), the Chief Executive, the Secretary for Justice, the Privacy Commissioner for Personal Data; the Ombudsman, a recognized investor compensation company; & an authorized automated trading services provider are added. In para. (h)(ii), it is provided that the professional or semi-professional bodies need not be in Hong Kong. In para. (j), there are added MMT & SFAT.
366(4)	-	-	94 & 121BA	CTO 57	In relation to the disclosure by auditors or their employees, the express references to the Commission & the purposes of carrying into effect or complying with any provision of the ordinance are not included. The reference to "for the purpose of any legal proceedings" is refined to "for the purposes of any judicial or other proceedings arising out from the performance of his duty".
366(5)	59(2)(e)(i) & (ii) & (g)(i) & (ii)	63(2)(d) (i) & (ii) & (f)(i) & (ii)	-	-	The contents are the same but the layout is different.
366(6)	59(2A)	63(3)	-	-	No substantive change.
366(7)	59(3)	63(4)	-	-	In addition to consent, there is added at the end a further exception to provide for the situation in which the information has already been disclosed to the public and is not precluded by this clause.
366(9)	59(7) & 61(1)	63(7)	-	-	The penalties are much heavier than those imposed under section 63(7) of LEFTO.

366(10)	59(7)(a) & 61(1)	63(7)			The penalties are much heavier than those imposed under section 63(7) of LEFTO.
366 (12)	59(2)(e)	63(2)(d)-	-	-	The power of the Financial Secretary to authorize public officers is made explicit. It appears to be implied in section 59(2) (e)of SFCO & section 63(2)(d) of LFETO.
366(8), (11), & (13)-(15)	-	-	-	-	New
367(1)	59(4)	63(5)	-	-	Reference to "the chairman or any director" in existing legislation" of the Commission is replaced by "any member" and any person "employed in the administration of this Ordinance" is replaced by "performing any function under any of the relevant provisions". In <i>sc.</i> (1)(a), it is added after "which transaction he knows is" the following: "or is connected with a transaction or a person that is".
367(2)	59(5)	-	-	-	No substantive change.
367(3)	59(6)	63(6)	-	-	Para. (iii) is new to the extent that the requirement of issued by the same issuer is included.
367(4)	59(7) & 61(1)	63(7)(b)	-	-	The reasonable excuse defence would now be available to all contravention of the prohibitions in <i>sc.</i> (1) & (3).
368(1)	56(1)	62(1)	-	SF(CH)O 17(1)-(3)	Para. (b) is added to provide immunity for any act done or any omission made pursuant to or consequent upon any written direction given by CE under <i>cl.</i> 11. The immunity is expressly restricted to civil liability.
368(2)	-	-	-	-	New. An exception to <i>sc.</i> (1) is made in respect of person appointed as an auditor under <i>cl.</i> 149.
368(3)-(5)	56(2)-(4)	62(2)-(4)	-	-	"Any liability " in <i>sc.</i> (3) is replaced by "any civil liability, whether arising in contract, tort, defamation, equity or otherwise".
369	-	-	-	-	New.

370	-	64(a)	145(a)	CTO 108(a)	The wording of the provision is close to that of LFETO. The fine for conviction upon indictment has been increased from \$200,000 to \$1,000,000 and the imprisonment term is increased from 1 to 2 years. The penalties for summary conviction are doubled.
371(1)-(2)	-	10(1)	62(1) & 121F(4)	CTO 40(1)	The criminal liability is extended to cover making false or misleading representation recklessly. The imprisonment term for conviction on indictment under section 62(1) & 121F(4) of SO is reduced from 5 to 2 years.
371(3)	-	10(2)	62(2) & 121F(5)	CTO 40(2)	No substantive change.
372(1)-(3)	56A(1)-(3)	-	-	CTO 109A(1)-(3) SEUO 38A(1)-(3) SF(CH)O 15A(1)-(3) ECH(M)O 17A(1)-(3)	The recipient of the information is called "specified recipient", which is defined in <i>sc.</i> (8).
372(4)-(5)	56A(4)	-	-	CTO 109A(4) SEUO 38A(4) SF(CH)O 15A(4) ECH(M)O 17A(4)	No substantive change.

372(6)	61(3)	-	-	CTO 109A(6)(a) SEUO 38A(6)(a) SF(CH)O 15A(6)(a) ECH(M)O 17A(6)(a)	Ditto.
372(7)	61(4)	-	-	CTO 109A(6)(b) SEUO 38A(6)(b) SF(CH)O 15A(6)(b) ECH(M)O 17A(6)(b)	Ditto.
372(8)	-	-	-	-	New.
376	62	65	148	CTO 114	The wording follows those of section 62 of SFCO & section 65 of LEFTO. In <i>sc.</i> (1), there is added a reference to "an offence of conspiracy to commit such an offence".
377	-	67	148A(1)	CTO 114A(1) PIO 7B(1) S(ID)O 35 S(DI)O 50	The alternative of "within 12 months after the first discovery of the offence by the prosecutor" is no longer included. The existing limitation under S(ID)O is 2 years only. <i>Sc.</i> (2) is new.

378(1)	-	-	147(1)	CTO 110(1) PIO 7(1) S(ID)O 34(1) S(DI)O 48(1)	There is added a reference to "aided, abetted, counselled, procured or induced by" before "committed with consent or connivance". Reference to "neglect" is replaced by "recklessness".
378(2)	-	-	147(4)	S(ID)O 34(2)	There is added a reference to "aided, abetted, counselled, procured or induced by" before "committed with consent or connivance". Reference to "neglect" is replaced by "recklessness".
381	52(1), (2), (3)(a) & (b), (4), (7) & (8)	-	-	CTO 79A	In <i>sc.</i> (4) & 6(c), a reference to "each person authorized to provide authorized automated trading services" is added.
382	54	72			In <i>sc.</i> (1)(a)(iii), (2), (3) & (4), there is added a reference to a committee "established under section 8 or the Monetary Authority".
384(1)	-	45 & 73(1)	146(1)	CTO 109(1)	Due to the changes in the licensing and regulatory regime, the wording of the paragraphs has been altered to fit the new regime and to apply, where appropriate, generally to all regulated persons.
384(2)-(7)	-	-	-	-	New.
384(8)	-	-	146A	CTO 109(2)	The subclause empowers CE in Council to create offences and make regulations to provide for criminal sanctions against contravention of rules made by the Commission. Under the existing legislation, only CE in Council may prescribe such sanction against breach of rules. The new provision leaves CE in Council a residual power to prescribe offences and penalties where the principal ordinance has not made the contravention of rules made by the Commission an offence. The level of penalties that CE in Council may impose under the new provision has been increased in respect of fines from \$2,000 to \$500,000 and as for imprisonment from 3 months to 2 years.
384(9)	-	-	146(3)(a) & (d)	-	Para. (c) is new.

384(10)	-	-	146(2)	-	Para. (d) & (e) are new.
386	60	61	-	-	The issuance or service in accordance with the provisions would for all purposes be regarded as duly issued or served.
387	58	68	-	-	Reference to "chairman or other director" of the Commission is replaced by "any member". Any person "employed in the administration of this Ordinance" is replaced by any person "performing under any function under any of the relevant provisions".
389	-	-	-	ECH(M)O 2(4)	In para. (a), the Commission may specify conditions in giving the approval. In the existing legislation, the conditions are described "as the Commission may think fit".
390	-	70	-	CTO 116	The Gambling Ordinance will not apply to a transaction on the condition that it is carried out in compliance with the provisions of the Bill. Existing legislation does not have such condition.

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22 May 2001