

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

**Part V and Schedule 6 to the Securities and Futures Bill
Clause-by-clause examination**

Members are invited to consider the major amendments proposed to Clause 130 of the Securities and Futures Bill, which has been spilt into Clause 130 to 130B as at the Annex.

2. We have revisited Clause 130 of the Blue Bill with a view to rationalizing the mechanism to deal with cases where a person has become a substantial shareholder of a licensed corporation without the approval by the Securities and Futures Commission (the “SFC”). Major proposed changes in substance are: -

new Clause 130(2)

- (a) to make it a continuing offence to remain a substantial shareholder without the approval by the SFC - such is considered serious misconduct given the influence a substantial shareholder may have on the fitness and properness of a licensed corporation¹

new Clause 130(3)

- (b) to combine Clauses 130(3) and 130(7) of the Blue Bill to become the new Clause 130(3) – there is significant overlap between the first two clauses

new Clause 130(4)

- (c) not to void the transactions in the securities at issue by dropping

¹ Clauses 114(7) and 114(8) also create a continuing offence against a person who carries out a regulated activity without the proper authorization.

the relevant part in Clause 130(8) of the Blue Bill – the original approach could adversely affect legitimate share dealings and third party rights and there would in many cases be practical difficulties in unwinding the transactions

new Clause 130B(1) & (2)

- (d) to empower the SFC under Clause 130B(1) to issue direction for dealing with situations where an unapproved substantial shareholder has already exercised his voting rights and with his involvement in the management of the business of the corporation (and the clause in effect continues to allow the SFC to deem void and of no effect any votes cast by the relevant person and his associate, if any, at any meeting of the corporation)
- (e) in place of the part of Clause 130(8) of the Blue Bill that has not been carried down (paragraph (c) above), to empower the SFC under Clause 130B(2) to direct a person who has become a substantial shareholder without its approval to reduce his shareholding within a reasonable time

new Clause 130B(4)

- (f) to enable the SFC under Clause 130B(4) to compel compliance with its direction (paragraphs (d) and (e) above) through certification to the Court of First Instance

Part XI

3. A consequential amendment would be introduced to Part XI such that an aggrieved party can appeal to the Securities and Futures Appeals Tribunal against the direction issued by the SFC (paragraphs (d) and (e) above).

130. Restriction on substantial shareholdings, etc

(1) A person shall not become a substantial shareholder of a corporation licensed under section 115 without first being approved by the Commission under section 130A(1) to become a substantial shareholder.

(2) Any person who contravenes subsection (1) commits an offence and is liable -

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and to a further fine of \$5,000 for every day during which the person remains such substantial shareholder without the Commission's approval under section 130A(1);
or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and to a further fine of \$500 for every day during which the person remains such substantial shareholder without the Commission's approval under section 130A(1).

(3) It is a defence for a person charged with an offence under subsection (2) to prove -

- (a) that at the time he became a substantial shareholder of the licensed corporation concerned, he did not know and could not have by the exercise of reasonable diligence ascertained the existence of the act or circumstances by virtue of which he became such substantial shareholder; and
- (b) where he subsequently becomes aware that he has become such substantial shareholder, that he applies under section 130A(1), as soon as reasonably practicable and in any event within 3 business days after he becomes so aware, for approval to remain a substantial shareholder.

(4) If a person becomes a substantial shareholder of a corporation licensed under section 115 without the Commission's prior approval under section 130A(1) by virtue of -

- (a) a transfer of shares;
- (b) an issue of shares; or
- (c) a transfer of the right to be issued with shares,

then, unless or until the Commission approves the person as a substantial shareholder of the corporation, the voting rights conferred by the shares concerned are not exercisable.

(5) A person who purportedly exercises any voting right that is not exercisable under subsection (4) commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) It is a defence for a person charged with an offence under subsection (5) to prove that he -

- (a) did not know; and
- (b) could not have by the exercise of reasonable diligence known,

that the right which he purportedly exercised is by virtue of subsection (4) not exercisable.

130A. Approval to become or remain a substantial shareholder

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the applicant to become or remain (as the case may be) a substantial shareholder of a corporation licensed under

section 115.

(2) The Commission shall refuse to approve an applicant to become or remain (as the case may be) a substantial shareholder of the licensed corporation concerned unless the applicant satisfies the Commission that the corporation will remain a fit and proper person to be licensed if the application is approved.

(3) An approval under subsection (1) shall be subject to such reasonable conditions as the Commission may impose on the applicant and on the licensed corporation concerned, and the Commission may at any time by notice in writing served on the approved substantial shareholder and the corporation, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) The imposition, amendment or revocation of any condition pursuant to subsection (3) takes effect at the time when the notice is given in respect of it or at the time specified in the notice, whichever is the later.

(5) Without limiting the generality of subsection (3), it

shall be a condition of an approval granted under subsection

(1) that the approved substantial shareholder shall -

(a) at all times keep the Commission informed of the particulars of his contact details including, in so far as applicable, his business address, residential address, telephone and facsimile numbers and electronic mail address; and

(b) inform the Commission of any change in the particulars within 14 days after the change takes place.

130B. Commission's power to give directions

(1) Where a person became a substantial shareholder without the Commission's prior approval under section 130A(1), whether or not he has applied under that section for approval to remain as a substantial shareholder, and regardless of whether or not such approval is granted, the Commission may by notice in writing direct the licensed corporation

concerned -

- (a) not to permit or acquiesce in the involvement of the person in the management of the business of the corporation;
- (b) to deem void and of no effect any votes cast by the person and his associate, if any, at any meeting of the corporation;
- (c) to reconvene any such meeting for voting anew on the business on which the votes were cast;
and
- (d) to take such other reasonable steps as it may specify in the notice.

(2) Without prejudice to the operation of subsection (1), where the Commission refuses to approve an application to remain a substantial shareholder made under section 130A(1), it may by notice in writing direct the applicant -

- (a) to reduce, within such reasonable time as the Commission may require, the interest in shares by virtue of which he became a substantial

shareholder of the licensed corporation
concerned to the extent that he is no longer
a substantial shareholder of the corporation;
and

(b) to take such other reasonable steps as the
Commission may specify in the notice.

(3) If a person fails to comply with any direction under
subsection (1) or (2), the Commission may, by originating
summons or originating motion, certify the failure to the
Court of First Instance, and the Court may inquire into the
case and -

(a) order the person to comply with the direction
within the period specified by the Court; and

(b) if the court is satisfied that the failure was
without reasonable excuse, punish the person,
and any other person who appears to have been
involved in the failure, in the same manner
as if he and, where applicable, that other
person had been guilty of contempt of court.

(4) An originating summons under subsection (3) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).