

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

Part XI of and Schedule 7 to the Securities and Futures Bill  
Clause-by-clause examination

**Part XI**

At Annex A is the updated mark-up version of Part XI of the Securities and Futures Bill, with the proposed amendments thereto. The reasons for the amendments are set out in the footnotes.

**Schedule 7**

2. At Annex B is the updated mark-up version of Schedule 7 to the Securities and Futures Bill, with the proposed amendments thereto. The reasons for the amendments are set out in the footnotes.

**Securities and Futures Commission  
Financial Services Bureau  
31 July 2001**

## PART XI

## SECURITIES AND FUTURES APPEALS TRIBUNAL

## Division 1 - Interpretation

## 209. Interpretation of Part XI

In this Part, unless the context otherwise requires -  
"application for review" (覆核申請) means an application made  
under section 211(1);

~~<sup>1</sup>"excluded decision" (豁除決定) means a decision made in respect  
of an authorized financial institution as an exempt  
person or as an associated entity of an intermediary  
which~~

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<sup>1</sup> As mentioned in Paper 8D/01 issued on 28 May, we accept Members' comments made at the meetings on 27 April and 2 May that the decisions made by the SFC and the HKMA in relation to an exempt AI should also be appealable to the Securities and Futures Appeals Tribunal (the "SFAT"). To reflect this revised proposal, we have removed the distinction in Part XI of the Blue Bill between decisions made by the SFC which is appealable to the SFAT and referred to as "specified decisions", and by the HKMA which is appealable to the Chief Executive in Council and referred to as "excluded decisions". In this revised draft, all appealable decisions are itemized in part 2 of Schedule 7 as "specified decisions" and the relevant appeals are to be determined by the SFAT. Accordingly, we propose the amendment to delete the definition of "excluded decision".

~~(a) is made by the Commission under or pursuant to any of the provisions set out in column 2 of Part 3 of Schedule 7; and~~

~~(b) is within the description set out, opposite such provisions, in column 3 of Part 3 of Schedule 7;~~

"judge" (法官) means -

- (a) a judge or a deputy judge of the Court of First Instance;
- (b) a former Justice of Appeal of the Court of Appeal;
- (c) a former judge or a former deputy judge of the Court of First Instance;

<sup>2</sup>"parties" (各方), in relation to a review, means -

- (a) the ~~Commission~~ relevant authority making the specified decision in question; and
- (b) the person making the application for review in question;

<sup>2</sup>"relevant authority" ( ) -

- (a) in relation to a specified decision within the meaning of paragraph (a) of the definition of

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<sup>2</sup> Under the Blue Bill, all decisions appealable to the SFAT are made by the SFC.

As mentioned in note 1 above, we accept Members' comment that decisions made in relation to an exempt AI, whether made (a) **by the SFC** under the SF Bill or (b) **by the HKMA** under the Banking Ordinance, should be appealable to the SFAT.

Moreover, at the meeting of 12 January 2001, members expressed the view that "compensation decisions" made by (c) **the SFC or the recognized investor compensation company** should also be appealable to the SFAT. We also accept this comment.

As such, there are now three groups of authorities (i.e. the aforesaid (a) to (c)) whose decisions may be appealable to the SFAT. We have introduced a short hand reference of "relevant authority" to cover collectively the three authorities which replaces all references to the "Commission" in Part XI of the Blue Bill; and a short hand reference of "specified decisions" to cover collectively the decisions made by them which are being itemized separately under Divisions 1, 2 and 3 of Part 2 of Schedule 7. The exact authority referred to is to be interpreted by reference to the decision under appeal.

"specified decision" in this section, means the Commission;

(b) in relation to a specified decision within the meaning of paragraph (b) of the definition of "specified decision" in this section, means the Monetary Authority; or

(c) in relation to a specified decision within the meaning of paragraph(c) of the definition of "specified decision" in this section, means the Commission or the recognized investor compensation company by which the decision is made (as the case may be);

"review" (覆核) means a review of a specified decision by the Tribunal under section 212(1);

<sup>2</sup>"specified decision" (指明決定) means =

~~(a) a decision which -~~

~~(a) is made by of the Commission which -~~

~~(i) is made under or pursuant to any of the provisions set out in column 2 of Division 1 of Part 2 of Schedule 7;~~

~~and~~

~~(b) (ii) is within the description set out, opposite such provisions, in column 3 of Division 1 of Part 2 of Schedule 7;~~

~~but does not include an excluded decision~~

(b) a decision of the Monetary Authority which -

(i) is made under or pursuant to any of  
the provisions set out in column 2 of  
Division 2 of Part 2 of Schedule 7;  
and

(ii) is within the description set out,  
opposite such provisions, in column 3  
of Division 2 of Part 2 of Schedule  
7; or

(c) a decision of the Commission or a recognized  
investor compensation company which -

(i) is made under or pursuant to any of  
the provisions set out in column 2 of  
Division 3 of Part 2 of Schedule 7;  
and

(ii) is within the description set out,  
opposite such provisions, in column 3  
of Division 3 of Part 2 of Schedule  
7;

"Tribunal" (審裁處) means the Securities and Futures Appeals  
Tribunal established by section 210.

**Division 2 - Securities and Futures Appeals Tribunal**

**210. Securities and Futures Appeals Tribunal**

(1) There is established a Tribunal to be known as the Securities and Futures Appeals Tribunal which shall have jurisdiction to review specified decisions in accordance with this Part and Schedule 7.

(2) Subject as otherwise provided in this Part or in Schedule 7, the Tribunal -

(a) shall consist of a chairman and 2 other members; and

(b) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the ~~2 other~~ members<sup>3</sup> of the Tribunal shall not be public officers.

(4) Part 1 of Schedule 7 shall have effect in relation to the appointment of members and temporary members of the Tribunal, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

(5) The Tribunal may, where the Chief Executive considers appropriate, be divided into 2 or more divisions, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each division of

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<sup>3</sup> Technical amendment for greater clarity.

the Tribunal (including all matters relating to such division)<sup>4</sup>  
as they apply to the Tribunal.

(6) With the exception of the chairman of the Tribunal who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 209, a member of the Tribunal may be paid, as a fee for his services, such amount as the Financial Secretary considers appropriate, and that amount shall be a charge on the general revenue.

(7) Where a person who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 209 is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects -

- (a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;
- (b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;
- (c) the terms and conditions to which the person is subject as a holder of that office.

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<sup>4</sup> Technical amendment for greater clarity.



**211. Applications for review of specified decisions**

(1) Subject to subsections (2) and (3), a person aggrieved by a specified decision of the ~~Commission~~relevant authority<sup>5</sup> made in respect of him may, by notice in writing served on the Tribunal, apply to the Tribunal for a review of the decision.

(2) A notice served on the Tribunal under subsection (1) shall set out the grounds for the application to which the notice relates.

(3) An application for review of a specified decision of the ~~Commission~~relevant authority<sup>6</sup> shall be made within 21 days after -

(a) subject to paragraph (b) -

(i) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(ii) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made;

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<sup>5</sup> Please see Note 2 above.

<sup>6</sup> Please see Note 2 above.

(b) where the decision is a specified decision which is described in column 2 of Division 1 of Part 3 of Schedule 7 and to which the provision set out, opposite such description of the specified decision, in that to which section 142(8) or 143(6) column 3 of that Division<sup>7</sup> applies, a notice in respect of the decision has been given to the person in respect of whom it is made.

(4) Where the Tribunal receives a notice served on it under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the ~~Commission~~relevant authority<sup>8</sup>.

## **212. Proceedings before Tribunal**

(1) Following the submission of an application for review, the Tribunal shall review the specified decision to which the application relates.

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<sup>7</sup> We have relocated the exact references in relation to the relevant specified decisions to Part 3 of Schedule 7. This change is to supplement the whole scheme for flexible update of the decisions under the SF Bill and the Banking Ordinance that can be appealed against, through putting details of all specified decisions in Schedule 7.

<sup>8</sup> Please see Note 2 above.

(2) Following the review of a specified decision under subsection (1), the Tribunal may -

~~(a)~~(a) \_\_\_\_\_ confirm, vary or set aside the decision, and substitute for the decision any other decision which the Tribunal considers appropriate, (whether more or less onerous)÷ \_\_\_\_\_, being any decision that the relevant authority had power to make in respect of the person making the application for review in question, whether or not under the same provision as that under which the specified decision has been made;<sup>9</sup>

(b) remit the matter in question to the ~~Commission~~relevant authority<sup>10</sup> with the directions it considers appropriate, which may include a direction to the ~~Commission~~relevant authority<sup>10</sup> to make a decision afresh in respect of any matter specified by the Tribunal.

<sup>11</sup>(2A)Without limiting the generality of subsection (2)(a) but subject to subsection (3A) -

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<sup>9</sup> Technical amendment for greater clarity.

<sup>10</sup> Please see Note 2 above.

<sup>11</sup> This amendment affords the SFAT the same range of disciplinary sanctions that can be ordered upon a relevant employee or an executive officer of an exempt AI (despite that the imposition of some of those sanctions is by the

(a) where the specified decision in question is a specified decision described in column 2 of Division 2 of Part 3 of Schedule 7, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Monetary Authority had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division; and

(b) where the specified decision in question is a specified decision described in column 2 of Division 3 of Part 3 of Schedule 7, the

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SFC and others the HKMA) as that upon a licensed representative or a responsible officer of a licensed corporation (whereby the imposition of all disciplinary sanctions is by the SFC). To illustrate, while reviewing an appeal against the SFC decision under the SF Ordinance to fine an executive officer of an exempt AI, the SFAT may substitute the appealed decision with a decision to suspend the consent given to the executive officer for a specified period, a decision exercisable by the HKMA under the Banking Ordinance.

decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Commission had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division.

(3) Notwithstanding anything in this section, the Tribunal shall not determine a review without first giving the parties to the review a reasonable opportunity of being heard.

<sup>11</sup>(3A) Without limiting the generality of subsection (3), the Tribunal shall not exercise any power pursuant to subsection (2A)(a) or (b) without first giving a reasonable opportunity of being heard to -

(a) in the case of subsection (2A)(a), the Monetary Authority; or

(b) in the case of subsection (2A)(b), the Commission.

(4) Subject to section 214(3), where the Tribunal is required to determine any matter of fact, it shall do so on the balance of probabilities from the evidence before it.

### 213. Powers of Tribunal

(1) Subject to the provisions of Part 1 of Schedule 7 and any rules made by the Chief Justice under section 226, the Tribunal, for the purposes of a review, may, on its own motion or on the application of any of the parties to the review -

- (a) receive and consider any material by way of oral evidence, written statements, documents or otherwise, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;
- (b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting relating to the review and to give evidence and produce any article, record or document in his possession relating to the subject matter of the review;
- (c) administer oaths ~~and affirmations~~;<sup>12</sup>
- (d) examine or cause to be examined on oath ~~or affirmation~~<sup>12</sup> or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal

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<sup>12</sup> We propose to delete references to "affirmations" as the term is covered in the defined meaning of "oaths" under the Interpretation and General Clauses Ordinance (Cap.1).

considers appropriate for the purposes of the review;

- (e) order a witness to provide evidence in a truthful manner for the purposes of the review by affidavit or affirmation;
- (f) order a person not to publish or otherwise disclose any material the Tribunal receives;
- (g) prohibit the publication or disclosure of any material the Tribunal receives at any<sup>13</sup> sitting, or any<sup>13</sup> part of a sitting, which is held in private;
- (h) determine the manner in which any material referred to in paragraph (a) is received;
- (i) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;
- (j) determine the procedure to be followed in connection with the review;
- (k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the carrying out of its functions.

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<sup>13</sup> Technical amendment for greater clarity.

(2) A person commits an offence if he, without reasonable excuse -

- (a) ~~refuses or~~<sup>14</sup> fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);
- (b) disrupts or otherwise misbehaves during any sitting of the Tribunal;
- (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;
- (d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of a review;
- (e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or
- (f) threatens, insults or causes any loss to be suffered by any member of the Tribunal at any time on account of the performance of his functions in that capacity.

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<sup>14</sup> Technical amendment for consistency throughout the Bill.



(3) A person who commits an offence under subsection (2) is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

**214. Contempt dealt with by Tribunal**

(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, commits any conduct falling within the description of section 213(2)(a), (b), (c), (d), (e) or (f).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section and any other provisions of this Ordinance -

- (a) no proceedings may be instituted against any person under this section in respect of any conduct if -

- (i) criminal proceedings have previously been instituted against the person under section 213(2) in respect of the same conduct; and
  - (ii) (A) those criminal proceedings remain pending; or  
(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;
- (b) no criminal proceedings may be instituted against any person under section 213(2) in respect of any conduct if -
- (i) proceedings have previously been instituted against the person under this section in respect of the same conduct; and
  - (ii) (A) those proceedings remain pending; or  
(B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted

against that person under this section in respect of the same conduct.

#### **215. Privileged information**

Nothing in this Part and Schedule 7 requires an authorized financial institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information as to the affairs of any of its customers other than that person.

#### **216. Costs**

(1) The Tribunal may, in relation to a review, by order award to -

- (a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the review;
- (b) any party to the review,

such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the party (as the case may be) in relation to the review and the application for review in question.

(2) Any costs awarded under subsection (1) shall be paid by and recoverable as a civil debt from -

- (a) where the costs are awarded to any person under subsection (1)(a), such of the parties to the

review in question as the Tribunal considers appropriate; or

- (b) where the costs are awarded to any party to the review under subsection (1)(b), the other party to the review.

(3) Subject to any rules made by the Chief Justice under section 226, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

(4) The Tribunal may order that any costs awarded under subsection (1) shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.).

#### **217. Notification of Tribunal determinations**

(1) The Tribunal shall, as soon as reasonably practicable after the conclusion of a review, deliver -

- (a) its determination in respect of the review, and the reasons for making the determination; and
- (b) any order made under section 216 in relation to the review, and the reasons for making the order.

(2) Where any sitting of the Tribunal relating to a review, or any part thereof, is held in private, the Tribunal may by order prohibit the publication or disclosure of any determination or order, or any reasons for any determination

or order, referred to in subsection (1)(a) or (b), or any part thereof.

(3) A person commits an offence if he, without reasonable excuse, ~~refuses or~~<sup>15</sup> fails to comply with an order of the Tribunal made pursuant to subsection (2) and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

#### **218. Form and proof of orders of Tribunal**

(1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal when the order is made.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

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<sup>15</sup> Technical amendment for consistency throughout the Bill.

**219. Orders of Tribunal may be registered in Court of First Instance**

The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 226, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

**220. Applications for stay of specified decisions**

(1A) Subject to subsections (1) and (2), the making of an application for review does not by itself operate as a stay of the specified decision to which the application relates.<sup>16</sup>

(1) A person who has made an application for review may, at any time before the review is determined by the Tribunal, apply to the Tribunal for a stay of the specified decision to which the application relates.

(2) On an application made under subsection (1), the Tribunal shall as soon as reasonably practicable conduct a hearing to determine the application, and may, where it considers appropriate, grant a stay of the specified decision to which the application relates, subject to such conditions

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<sup>16</sup> Technical amendment for greater clarity.

as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

### **Division 3 - Appeals**

#### **221. Appeal to Court of Appeal**

(1) A party to a review who is dissatisfied with a finding or determination of the Tribunal relating to the review (whether or not it is a determination in respect of the review, or an order made under section 216 or 220) may appeal to the Court of Appeal against the finding or determination on a point of law.

(2) In an appeal under subsection (1), the Court of Appeal may -

- (a) allow the appeal;
- (b) dismiss the appeal;
- (c) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the review in question afresh for the purpose of determining any question specified by the Court of Appeal.

(3) In an appeal under subsection (1), the Court of Appeal may make such order as to costs as it considers appropriate.

**222. No stay of execution on appeal**

The lodging of an appeal under section 221 does not operate as a stay of execution of a finding or determination of the Tribunal (whether or not it is a determination in respect of a review, or an order made under section 216 or 220) unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

**223. No other right of appeal**

Subject to section 221 and section 50 of the High Court Ordinance (Cap. 4), any decision of the Tribunal shall be final and shall not be subject to appeal.

**Division 4 - Miscellaneous**

**224. Time when specified decisions  
to take effect**

(1) Notwithstanding subsections (2) and (3) and any other provisions of this or any other Ordinance, no specified decision, other than a specified decision which is described in column 2 of Division 4 of Part 3 of that to which section 142(8) or 143(6) Schedule 7 and to which the provision set out,



opposite such description of the specified decision, in column 3 of that Division<sup>17</sup> applies, takes effect at any time before -

- (a) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or
- (b) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made.

(2) A specified decision, other than a specified decision which is described in column 2 of Division 5 of Part 3 of Schedule 7 and to which the provision set out, opposite such description of the specified that to which section 97(2), 98(4), 115(6), 116(4), 119(8), 120(6), 142(8), 143(6), 187(4), 195(3) or 202(1) decision, in column 3 of that Division<sup>17</sup> applies, takes effect -

- (a) where, prior to the expiration of the time specified in section 211(3) as that within

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<sup>17</sup> We have relocated the exact references in relation to the relevant specified decisions to Part 3 of Schedule 7. This change is to supplement the whole scheme for flexible update of the decisions under the SF Bill and the Banking Ordinance that can be appealed against, through putting details of all specified decisions in Schedule 7.

which an application for review of the decision shall be made, the person in respect of whom the decision is made notifies the ~~Commission~~relevant authority<sup>18</sup> that he will not make the application, at the time when he so notifies the ~~Commission~~relevant authority<sup>18</sup>;

(b) subject to paragraph (a), where the person does not make an application for review of the decision within the time specified in section 211(3) as that within which the application shall be made, at the time when the time so specified expires; or

(c) where the person makes an application for review of the decision within the time specified in section 211(3) as that within which the application shall be made -

(i) where the decision is confirmed by the Tribunal, at the time when the decision is so confirmed;

(ii) where the decision is varied, or substituted by another decision, by the Tribunal, at the time when the decision is so varied or substituted,

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<sup>18</sup> Please see Note 2 above.

subject however to the terms of the variation or substitution; or

(iii) where the application is withdrawn, at the time when it is so withdrawn.

(3) Notwithstanding subsection (2) and any other provisions of this or any other Ordinance, but subject to subsection (1), the ~~Commission~~ relevant authority<sup>19</sup> may, where it considers appropriate in the interest of the investing public or in the public interest to do so, specify in the notice served in respect of a specified decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

(4) Nothing in this section affects the power of the Tribunal to grant a stay of a specified decision under section 220.<sup>20</sup>

~~225. Appeals to Chief Executive in Council in respect of excluded decisions~~<sup>21</sup>

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<sup>19</sup> Please see Note 2 above.

<sup>20</sup> Technical amendment for greater clarity.

<sup>21</sup> As set out in Note 2 above, all decisions are now appealable to the SFAT. Accordingly, clause 225 should be deleted.

~~(1) A person aggrieved by an excluded decision of the Commission made in respect of him may appeal to the Chief Executive in Council against the decision.~~

~~(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.~~

~~(3) Notwithstanding subsections (4) and (5) and any other provisions of this or any other Ordinance, no excluded decision takes effect at any time before—~~

~~(a) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or~~

~~(b) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made.~~

~~(4) An excluded decision, other than that to which section 118(6) or 195(3) applies, takes effect—~~

~~(a) where, prior to the expiration of the time specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which a written memorandum in respect of the decision shall be submitted, the person in respect of whom the decision is made notifies the Commission that he will not submit the~~

~~written memorandum, at the time when he so notifies the Commission;~~

~~(b) subject to paragraph (a), where the person does not submit a written memorandum in respect of the decision within the time specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which the written memorandum shall be submitted, at the time when the time so specified expires; or~~

~~(c) where the person submits a written memorandum in respect of the decision within the time specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which the written memorandum shall be submitted—~~

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~~(i) where the decision is confirmed by the Chief Executive in Council, at the time when the decision is so confirmed;~~

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~~(ii) where the decision is varied or reversed, or substituted by another decision, by the Chief Executive in Council, at the time when the decision is so varied, reversed or substituted, subject however to the~~

~~terms of the variation, reversal or substitution; or~~

~~(iii) where the written memorandum is withdrawn, at the time when it is so withdrawn.~~

~~(5) Notwithstanding subsection (4) and any other provisions of this or any other Ordinance, but subject to subsection (3), where the Commission considers appropriate in the interest of the investing public or in the public interest to do so, it may, after consultation with the Monetary Authority, specify in the notice served in respect of an excluded decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified~~

## **226. Rules by Chief Justice**

The Chief Justice may make rules -

- (a) providing for the award of costs under section 216 and the taxation of those costs;
- (b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 219;
- (c) regulating the procedure for the hearing of appeals under section 221;

- (d) requiring the payment of the fees specified in the rules for any matter relating to applications for review;
- (e) providing for matters of procedure or other matters relating to applications for review or reviews, which are not provided for in this Part or in Part 1 of Schedule 7;
- (f) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

**227. Amendment of Parts 2 and 3 of Schedule 7**

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2 and 3 of Schedule 7.

SCHEDULE 7 [ss. 209, 210, 211,  
212, 213, 215, 224, 226 & 227]

SECURITIES AND FUTURES APPEALS TRIBUNAL

PART 1

APPOINTMENT OF MEMBERS AND PROCEEDINGS OF TRIBUNAL, ETC.

1. In this Schedule, unless the context otherwise requires -
- "appeal panel" (上訴委員會) means the panel of persons appointed under section 71A<sup>1</sup>;
- "application for review" (覆核申請) has the meaning assigned to it by section 209 of this Ordinance;
- "chairman" (主席) means the chairman of the Tribunal;
- "judge" (法官) has the meaning assigned to it by section 209 of this Ordinance;
- "member" (成員) means a member of the Tribunal;
- "ordinary member" (普通成員) means a member other than the chairman;
- "panel member" (上訴委員) means a member of the appeal panel;
- "parties" (各方) has the meaning assigned to it by section 209 of this Ordinance;

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<sup>1</sup> Technical amendment to relocate the original clauses 7 - 10 of the Blue Bill as the new clauses 1A - 1D.



"relevant authority" ( ) has the meaning assigned to it by section 209 of this Ordinance;<sup>2</sup>

"review" (覆核) has the meaning assigned to it by section 209 of this Ordinance;

"Secretary" (局長) means the Secretary for Financial Services;

"specified decision" (指明決定) has the meaning assigned to it by section 209 of this Ordinance;<sup>3</sup>

"temporary member" (暫委成員) means a temporary member of the Tribunal appointed under section 16;

"Tribunal" (審裁處) has the meaning assigned to it by section 209 of this Ordinance.

#### **Appointment of appeal panel**

<sup>4</sup>1A. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.

<sup>4</sup>1B. Subject to sections 1C and 1D, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and

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<sup>2</sup> Technical amendment consequential to the introduction of the new reference to "relevant authority" (Please see Note 2 of Annex A).

<sup>3</sup> Technical amendment for greater clarity.

<sup>4</sup> Technical amendment to relocate the original clauses 7 - 10 of the Blue Bill as the new clauses 1A - 1D.

may, subject to the other provisions of this Ordinance, from time to time be reappointed.

<sup>4</sup>1C. A panel member may at any time resign his office by notice in writing to the Chief Executive.

<sup>4</sup>1D. A panel member may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

<sup>5</sup>1E. For the avoidance of doubt, section 210(5) of this Ordinance does not require the appointment of persons to more than one panel under section 1A.

#### **Appointment of chairman**

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

3. Subject to sections 4 to 6, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

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<sup>5</sup> Technical amendment for greater clarity.

4. The chairman may at any time resign his office by notice in writing to the Chief Executive.

5. The chairman may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

6. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office or before the resignation from or vacation of office by the chairman takes effect, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

**~~Appointment of appeal panel~~**

~~<sup>6</sup>7. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.~~

~~<sup>6</sup>8. Subject to sections 9 and 10, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.~~

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<sup>6</sup> Technical amendment to relocate the original clauses 7 - 10 of the Blue Bill as the new clauses 1A - 1D.

~~9. A panel member may at any time resign his office by notice in writing to the Chief Executive.~~

~~10. A panel member may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.~~

### **Appointment of ordinary members**

11. For the purpose of determining a review, the Secretary shall appoint 2 panel members as ordinary members in relation to the review.

12. Subject to sections 13 to 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

13. An ordinary member may at any time resign his office by notice in writing to the Secretary.

14. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

15. If a review has been commenced by the Tribunal but not completed before the resignation from or vacation of office by an ordinary member takes effect, the Secretary may authorize the ordinary member to continue to act as an ordinary member for the purpose of completing the review.

#### **Appointment of temporary members**

16. Where any member is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to any specified matter -

- (a) where such member is the chairman, the Chief Executive may, subject to sections 17 and 18, appoint a judge to act as a temporary member of the Tribunal in the place of the chairman for such period as he considers appropriate, and he may, subject to the other provisions of this Ordinance, from time to time be reappointed; or
- (b) where such member is an ordinary member, the Secretary may, subject to sections 17 and 19, appoint a panel member to act as a temporary member of the Tribunal in the place of the ordinary member for such period as he considers appropriate, and he may, subject to the other provisions of this Ordinance, from time to time be reappointed.

17. A temporary member appointed by the Chief Executive or the Secretary may at any time resign his office by notice in writing to the Chief Executive or the Secretary (as the case may be).

18. A temporary member appointed by the Chief Executive may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

19. Where a temporary member appointed by the Secretary ceases to be a panel member, he ceases to be such temporary member.

20. A temporary member who acts in the place of the chairman or an ordinary member in accordance with an appointment under section 16 shall be deemed for all purposes to be the chairman or the ordinary member (as the case may be) of the Tribunal.

### **Sittings**

21. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.

22. Before convening a sitting under section 21 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties

and the time within which the parties are required to comply with such matters.

23. Subject to section 24, at any sitting of the Tribunal -

- (a) the chairman and 2 ordinary members shall be present;
- (b) the chairman shall preside; and
- (c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

24. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 34 or 35, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

25. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

26. Where an application is made pursuant to section 25 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

27. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard<sup>7</sup> -

- (a) ~~to be present~~<sup>7</sup> in person or, in the case of the ~~Commission~~relevant authority<sup>8</sup> or a corporation, through an officer of the ~~Commission~~relevant authority<sup>8</sup> or the corporation (as the case may be); and
- (b) ~~through~~to be represented by a<sup>7</sup> counsel or a solicitor or, with the leave of the Tribunal, ~~by~~through<sup>7</sup> any other person.

28. In section 27, "sitting" (聆訊) does not include any sitting of the Tribunal which is held solely for the purpose of deliberating on any question before the Tribunal.

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<sup>7</sup> In drafting the Blue Bill, we have inadvertently narrowed the rights of the parties to a review, i.e. from "to be heard in person" under the existing law to "to be present in person". The amendment is proposed to rectify this accordingly.

<sup>8</sup> We propose this amendment as the SFC is no longer the only authority which decision can be reviewed by lodging an appeal with the SFAT, but also the Monetary Authority and the recognized investor compensations company.



29. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

30. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

**Preliminary conferences and consent orders**

31. At any time after an application for review has been made, the chairman may -

- (a) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application by the parties to the review; and

- (b) if the parties agree,

direct that a conference, to be attended by the parties or their representatives and presided over by the chairman or such ordinary member or other person as he may specify, shall be held.

32. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether

or not the requirements otherwise applicable to the making of the order have been complied with, if -

- (a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and
- (b) the parties consent to all of the terms of the order.

33. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 32 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

#### **Chairman as sole member of Tribunal**

34. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing served on the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.

35. Where an application is made to the Tribunal under section 220(1) of this Ordinance for a stay of a specified decision, the

chairman may determine the application as the sole member of the Tribunal.

36. Where section 34 or 35 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

37. Where -

- (a) there is an application described in section 35;
- (b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application; and
- (c) no temporary member is appointed under section 16 to act in the place of the chairman in relation to the application,

a judge within the meaning of paragraph (a) of the definition of "judge" in section 209 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application described in section 35 as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

38. Without limiting the generality of sections 215 and 368 of this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

## PART 2

## SPECIFIED DECISIONS

Division 1Specified decisions made by the Commission

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
1.	Section 93(10) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2)(a) <del>or (b)</del> <sup>9</sup> of this Ordinance	Refusal to grant an authorization, <u>or imposition of any condition</u> <sup>10</sup> .
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
5.	Section 103(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.

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<sup>9</sup> The amendment is consequential to the Committee Stage Amendment proposed to Part III for merging clause 95(2)(a) and (b) into one single sub-clause for uniform application to all persons wishing to be authorized for providing automated trading services.

<sup>10</sup> We propose the amendment such that SFC's decision to impose condition upon giving the authorization would also be appealable to the SFAT.

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
6.	Section 103(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
7.	Section 103(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.
8.	Section 103(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
9.	Section 104(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.
10.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.
12.	Section 104(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
13.	Section 105(1) of this Ordinance	Withdrawal of an authorization.
14.	Section 105(3) of this Ordinance	Refusal to withdraw an authorization <del>upon</del> request. <sup>11</sup>
15.	Section 105(4)	Imposition of any condition.

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<sup>11</sup> Technical amendment for consistency with other items in this part of the Schedule.

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	of this Ordinance	
16.	Section 115(1) of this Ordinance	Refusal to grant a licence.
17.	Section 115(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
18.	Section 116(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
19.	Section 116(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
<sup>12</sup> 19A.	<u>Section 118(1) of this Ordinance</u>	<u>Refusal to grant a declaration of exemption.</u>
<sup>12</sup> 19B.	<u>Section 118(5) of this Ordinance</u>	<u>Imposition, amendment or revocation of any condition, or imposition of any new condition.</u>
20.	Section 119(1) of this Ordinance	Refusal to grant a licence.
21.	Section 119(5) of this Ordinance	Imposition of any condition.
22.	Section 119(7) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
23.	Section 120(1)	Refusal to grant a licence for a period not

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<sup>12</sup> The amendments are to merge the formerly "excluded decisions" (itemized in Part 3 of Schedule 7 to the Blue Bill) which are all made by the SFC, under Division 1 of Part 2 of Schedule 7.

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	of this Ordinance	exceeding 3 months.
24.	Section 120(3) of this Ordinance	Imposition of any condition.
25.	Section 120(5) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
26.	Section 121(1) of this Ordinance	Refusal to approve an accreditation.
27.	Section 121(2) of this Ordinance	Refusal to approve a transfer of an accreditation.
28.	Section 123(1) of this Ordinance	Refusal to issue a duplicate licence <u>or</u> <u>exemption</u> <sup>12</sup> .
29.	Section 125(1) of this Ordinance	Refusal to approve a person as a responsible officer.
30.	Section 125(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
31.	Section 126(1) of this Ordinance	Refusal to vary any regulated activity.
32.	Section 129(1) of this Ordinance	Refusal to approve premises.



Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
<sup>13</sup> 33.	Section 130(2)A(1) of this Ordinance	Refusal to approve a person to become <u>or remain</u> a substantial shareholder.
<sup>13</sup> 34.	Section 130(5)A(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
<sup>13</sup> 34A.	<u>Section 130B(1) of this Ordinance</u>	<u>Direction to a licensed corporation.</u>
<sup>13</sup> 34B.	<u>Section 130B(2) of this Ordinance</u>	<u>Direction to a person.</u>
<sup>14</sup> 35.	Section 131(1)(a), (b),	Refusal to grant a modification or waiver.

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<sup>13</sup> As set out in Paper CE04/01 dated 5 July 2001 and discussed by Members on 10 July, we have substantially revised clause 130 on the regulatory arrangements in respect of substantial shareholders of a licensed corporation. Moreover, we have proposed that the direction issued by the SFC under clause 130B(1) and (2) to a person who has become a substantial shareholder without prior approval of the SFC is to be appealable to the SFAT. The amendments reflect the changes and the intention.

<sup>14</sup> This amendment is to merge the formerly "excluded decisions" (itemized in Part 3 of Schedule 7 to the Blue Bill) which are all made by the SFC, under Division 1 of Part 2 of Schedule 7.

Item	Provision	<del>Decision subject to review</del>
		<u>Description of decision</u>
	(c), (d), (e), (f), (g), (h), (i) or (j) of this Ordinance	
36.	Section 131(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
37.	Section 142(2) or (5)(b) of this Ordinance	Imposition of any condition.
38.	Section 142(5)(a) of this Ordinance	Suspension of a licence.
39.	Section 142(6) or (7) of this Ordinance	Amendment of any condition.
40.	Section 143(3)(a) of this Ordinance	Suspension of a licence.
41.	Section 143(3)(b) of this Ordinance	Imposition of any condition.
42.	Section 143(4) or (5) of this Ordinance	Amendment of any condition.
43.	Section 155(1) of this Ordinance	Appointment of an auditor.
44.	Section 155(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
45.	Section 156(1)	Appointment of an auditor.

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	of this Ordinance	
46.	Section 156(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
47.	Section 187(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or <del>to prohibit a person from applying to be licensed or to be approved as a responsible officer</del> <u>impose a prohibition on a person.</u> <sup>15</sup>
48.	Section 187(2) of this Ordinance	Order requiring payment of a pecuniary penalty.
49.	Section 188(1)(a), (b), <del>or (c) or (d)</del> <sup>16</sup> of this	Revocation or suspension of a licence.

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<sup>15</sup> This amendment is consequential to the proposed Committee Stage Amendment to Part IX (Paper CE08/01) for enabling the imposition of prohibition orders with industry-wide effect.

<sup>16</sup> This amendment is consequential to the proposed Committee Stage Amendment to Part IX (Paper CE08/01) that deletes clause 188(1)(d) of the Blue Bill.

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	Ordinance	
50.	Section 188(2) of this Ordinance	Revocation of a licence.
51.	Section 188(7) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
<sup>17</sup> 51A.	<u>Section 189A(1)(i), (ii) or (iii) of this Ordinance</u>	<u>Exercise of power to revoke or suspend an exemption, to publicly or privately reprimand a person, or to impose a prohibition on a person.</u>
<sup>17</sup> 51B.	<u>Section 189A(2) of this Ordinance</u>	<u>Order requiring payment of a pecuniary penalty.</u>
<sup>17</sup> 51C.	<u>Section 190(1)(d) or (e) of this Ordinance</u>	<u>Revocation or suspension of an exemption.</u>
52.	Section 194(1) of this Ordinance	Requirement to transfer records.
53.	Section 195(1) of this Ordinance	Imposition of any condition.
54.	Section 196(1)(a) or	Prohibition or requirement imposed on a licensed corporation concerning transactions,

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<sup>17</sup> The amendments are consequential to the revised package that provides the SFC with additional disciplinary tools in relation to the regulation of exempt AIs. The intention is such that the aggrieved party can lodge an appeal with the SFAT to review also decisions involving those newly proposed disciplinary tools.

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	(b) of this Ordinance	etc.
<sup>18</sup> 55.	Section 197(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning <u>relevant</u> property.
56.	Section 198(1) of this Ordinance	Requirement imposed on a licensed corporation to maintain property.
57.	Section 201(1)(b) of this Ordinance	Substitution or variation of a prohibition or requirement under section 196, 197 or 198 of this Ordinance.
58.	Section 201(1) of this Ordinance	Refusal to withdraw, substitute or vary a prohibition or requirement under section 196, 197 or 198 of this Ordinance.
59.	Section 300(2) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
60.	Section 300(3) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
61.	Section 300(4)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition.
62.	Section 389 of this Ordinance	Imposition of any condition.
63.	Section 38A(1) of the Companies	Refusal to issue a certificate of exemption, or imposition of any condition.

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<sup>18</sup> Technical amendment for greater clarity.

Item	Provision	<del>Decision subject to review</del>	<u>Description of decision</u>
	Ordinance (Cap. 32)		
64.	Section 342A(1)	Refusal to issue a certificate of exemption,	
	of the	or imposition of any condition.	
	Companies		
	Ordinance (Cap.		
	32)		

PART 3<sup>19</sup>~~EXCLUDED DECISIONS~~

<del>Item</del>	<del>Provision</del>	<del>Decision subject to appeal</del>
<del>1.</del>	<del>Section 118(1)</del> <del>of this</del> <del>Ordinance</del>	<del>Refusal to grant a declaration of exemption.</del>
<del>2.</del>	<del>Section 118(5)</del> <del>of this</del> <del>Ordinance</del>	<del>Imposition, amendment or revocation of any condition, or imposition of any new condition.</del>
<del>3.</del>	<del>Section 123(1)</del> <del>of this</del> <del>Ordinance</del>	<del>Refusal to issue a duplicate exemption.</del>
<del>4.</del>	<del>Section 126(1)</del> <del>of this</del> <del>Ordinance</del>	<del>Refusal to vary any regulated activity.</del>
<del>5.</del>	<del>Section</del>	<del>Refusal to grant a modification or waiver.</del>

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<sup>19</sup> As mentioned in Note 2 of Annex A, all appealable decisions are now defined collectively as "specified decisions" and grouped under Divisions 1, 2 and 3 of Part 2 of Schedule 7 to cover decisions made by the SFC, the HKMA and the SFC/recognized investor compensation company, respectively.

Item	Provision	Decision subject to appeal
	131(1)(c), (d) or (j) of this Ordinance	
—6.	Section 131(4) of this Ordinance	<del>Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.</del>
—7.	Section 155(1) of this Ordinance	<del>Appointment of an auditor.</del>
—8.	Section 155(4) of this Ordinance	<del>Direction to pay any of the costs and expenses of any examination and audit.</del>
—9.	Section 156(1) of this Ordinance	<del>Appointment of an auditor.</del>
—10.	Section 156(8) of this Ordinance	<del>Direction to pay any of the costs and expenses of any examination and audit.</del>



<u>Item</u>	<u>Provision</u>	<u>Decision subject to appeal</u>
<del>11.</del>	<del>Section 190(1)(a), (b), (c), (d) or (e) of this Ordinance</del>	<del>Revocation of an exemption.</del>
<del>12.</del>	<del>Section 194(1) of this Ordinance</del>	<del>Requirement to transfer records.</del>
<del>13.</del>	<del>Section 195(1) of this Ordinance</del>	<del>Imposition of any condition.</del>

<sup>20</sup>Division 2

Specified decisions made by the Monetary Authority

<u>Item</u>	<u>Provision</u>	<u>Description of decision</u>
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<sup>20</sup> The amendments are to include those decisions made by the HKMA under the Banking Ordinance and are appealable to the SFAT, in relation to the relevant individuals engaged by, and the executive officers of, an exempt AI. Please see Note 2 of Annex A.

1.        Section 58A(1)(c) or (d) of the Banking Ordinance (Cap. 155)        Removal or suspension of relevant particulars of a relevant individual from the register.
2.        Section 71C(1) of the Banking Ordinance (Cap. 155)        Refusal to give consent.
3.        Section 71C(2)(b) of the Banking Ordinance (Cap. 155)        Attachment of any condition.
4.        Section 71C(4)(c) or (d) of the Banking Ordinance (Cap. 155)        Withdrawal or suspension of consent.
5.        Section 71C(5) of the Banking Ordinance (Cap. 155)        Attachment or amendment of any condition.
6.        Section 71E(3) of the Banking Ordinance (Cap. 155)        Attachment or amendment of any condition.

Division 3

Specified decisions made by the Commission or a recognized investor  
compensation company<sup>21</sup>

<u>Item</u>	<u>Provision</u>	<u>Description of decision</u>
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<sup>21</sup> As set out in Note 2 of Annex A, "compensation decisions" made by the SFC or the recognized investor compensation company are to be itemized in Division 3 of Part 2 of Schedule 7. As the "compensation decisions" refers to those made under the subsidiary legislation to be prescribed under clause 236 of the SF Bill, this Division of the Schedule is to be updated by way of subsidiary legislation together with the relevant subsidiary legislation to be prescribed under Part XII.

PART 3<sup>22</sup>

Division 1

Specified decisions referred to in section 211(3)(b)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provision</u>
<u>1.</u>	<u>A specified decision set out in item 37 or 39 of Division 1 of Part 2.</u>	<u>Section 142(8) of this Ordinance.</u>
<u>2.</u>	<u>A specified decision set out in item 41 or 42 of Division 1 of Part 2.</u>	<u>Section 143(6) of this Ordinance.</u>

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<sup>22</sup> As set out in Note 7 of Annex A, we have relocated the exact references in relation to the relevant specified decisions to Part 3 of Schedule 7. This change is to supplement the whole scheme for flexible update of the decisions under the SF Bill and the Banking Ordinance that can be appealed against, through putting details of all specified decisions in Schedule 7.

Division 2<sup>23</sup>

Specified decisions referred to in section 212(2A)(a)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provisions</u>
<u>1.</u>	<u>A specified decision set out in item 51A or 51B of Division 1 of Part 2.</u>	<u>Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap. 155).</u>

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<sup>23</sup> This Division of Schedule 7 supplements clause 212(2A)(a), which together afford the SFAT the same range of disciplinary sanctions that can be ordered upon a relevant employee or an executive officer of an exempt AI (despite that the imposition of some of those sanctions is by the SFC and others the HKMA) as that upon a licensed representative or a responsible officer of a licensed corporation (whereby the imposition of all disciplinary sanctions is by the SFC).

Division 3<sup>24</sup>

Specified decisions referred to in section 212(2A)(b)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provisions</u>
<u>1.</u>	<u>A specified decision set out in item 1 or 4 of Division 2 of Part 2.</u>	<u>Section 189A(1) and (2) of this Ordinance.</u>

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<sup>24</sup> This Division of Schedule 7 supplements clause 212(2A)(b), which together afford the SFAT the same range of disciplinary sanctions that can be ordered upon a relevant employee or an executive officer of an exempt AI (despite that the imposition of some of those sanctions is by the SFC and others the HKMA) as that upon a licensed representative or a responsible officer of a licensed corporation (whereby the imposition of all disciplinary sanctions is by the SFC).

Division 4<sup>25</sup>

Specified decisions referred to in section 224(1)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provision</u>
<u>1.</u>	<u>A specified decision set out in item 37 or 39 of Division 1 of Part 2.</u>	<u>Section 142(8) of this Ordinance.</u>
<u>2.</u>	<u>A specified decision set out in item 41 or 42 of Division 1 of Part 2.</u>	<u>Section 143(6) of this Ordinance.</u>

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<sup>25</sup> As mentioned in Note 17 of Annex A, we have relocated the exact references in relation to the relevant specified decisions to Part 3 of Schedule 7. This change is to supplement the whole scheme for flexible update of the decisions under the SF Bill and the Banking Ordinance that can be appealed against, through putting details of all specified decisions in Schedule 7.

Division 5<sup>26</sup>Specified decisions referred to in section 224(2)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provision</u>
<u>1.</u>	<u>A specified decision set out in item 3 of Division 1 of Part 2.</u>	<u>Section 97(2) of this Ordinance.</u>
<u>2.</u>	<u>A specified decision set out in item 4 of Division 1 of Part 2.</u>	<u>Section 98(4) of this Ordinance.</u>
<u>3.</u>	<u>A specified decision set out in item 17 of Division 1 of Part 2.</u>	<u>Section 115(6) of this Ordinance.</u>
<u>4.</u>	<u>A specified decision set out in item 19 of Division 1 of Part 2.</u>	<u>Section 116(4) of this Ordinance.</u>
<u>5.</u>	<u>A specified decision set out in item 19B of Division 1 of Part 2.</u>	<u>Section 118(6) of this Ordinance.</u>
<u>6.</u>	<u>A specified decision set out in item 22 of Division 1 of Part 2.</u>	<u>Section 119(8) of this Ordinance.</u>
<u>7.</u>	<u>A specified decision set out in item 25 of Division 1 of Part 2.</u>	<u>Section 120(6) of this Ordinance.</u>
<u>8.</u>	<u>A specified decision set out in item 34 of Division 1 of Part 2.</u>	<u>Section 130A(4) of this Ordinance.</u>
<u>9.</u>	<u>A specified decision set out in item 38 of Division 1 of Part 2.</u>	<u>Section 142(7B) of this Ordinance.</u>
<u>10.</u>	<u>A specified decision set out in item 37 or 39 of Division 1 of Part 2.</u>	<u>Section 142(8) of this Ordinance.</u>

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<sup>26</sup> Please refer to Note 24 immediately above.

Also, as mentioned in Paper CE05/01 dated 5 July 2001, SFC's decisions to suspend the licence of a licensed corporation not in compliance with the Financial Resources Rules should take effect prior to the determination of the relevant appeals.



<u>Item</u>	<u>Description of specified decision</u>	<u>Provision</u>
<u>11.</u>	<u>A specified decision set out in item 40 of Division 1 of Part 2.</u>	<u>Section 143(5B) of this Ordinance.</u>
<u>12.</u>	<u>A specified decision set out in item 41 or 42 of Division 1 of Part 2.</u>	<u>Section 143(6) of this Ordinance.</u>
<u>13.</u>	<u>A specified decision set out in item 53 of Division 1 of Part 2.</u>	<u>Section 195(3) of this Ordinance.</u>
<u>14.</u>	<u>A specified decision set out in item 54, 55, 56 or 57 of Division 1 of Part 2.</u>	<u>Section 202(1) of this Ordinance.</u>
<u>15.</u>	<u>A specified decision set out in item 6 of Division 2 of Part 2.</u>	<u>Section 71E(3A) of the Banking Ordinance (Cap. 155).</u>