

Securities & Futures Bill Part III

Supplement to the Comparison Table for Part III (Annex A to LC Paper No. CB(1)413/00-01(01))

References to sections (s.), subsections (ss.) or paragraphs in the comments column are to those of the Bill unless otherwise expressly stated.

CE = the Chief Executive.

FS = the Financial Secretary.

Commission = the Securities and Futures Commission

CTO = Commodities Trading Ordinance (Cap. 250)

ECHMO = Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555)

SEUO = Stock Exchanges Unification Ordinance (Cap. 361)

SFCHO = Securities and Futures (Clearing Houses) Ordinance (Cap. 420)

SFCO = Securities and Futures Ordinance (Cap. 24)

SO = Securities Ordinance (Cap. 333)

Blue Bill Clause Ref.	ECHMO section	SFCHO section	Other Ordinances	Comments
18 "controller"	2 "controller"	-	-	"Corporation" is substituted for "company".
18 "market charge"	-	2 "market charge"	-	There is no longer any restriction on the type of property that may be charged.
18(6)	-	-	-	New.

19	-	-	SO 20 SEUO 3 CTO 13	A total revision. <i>Ss.</i> (1) is a prohibition against operating any stock market or futures market. Contravening the prohibition is an indictable offence. The requirements for recognition of which the Commission must be satisfied is no longer spelled out. The Commission may impose conditions when recognising an exchange company and subsequently amend or revoke the conditions or impose new conditions. <i>Ss.</i> (4) stipulates when such amendment, revocation or imposition is to take effect. <i>Ss.</i> (6) requires the Commission to give notice in Gazette of the recognition of an exchange company. <i>Ss.</i> (7) ensures a company seeking to be recognized a reasonable opportunity of being heard. Exceptions are provided in <i>ss.</i> (8) for authorised, licensed or exempt persons carrying on a business of providing automated trading services or dealing in futures contracts that constitutes an operation of a futures market. <i>Ss.</i> (9) excludes interests in collective investment schemes from the definition of "securities" when applying the definition in the interpretation of "stock market" in <i>ss.</i> (1).
20	-	-	CTO 16	Clause 20(2) takes the place of <i>s.</i> 16, 115 & Schedule 1 of CTO. Under <i>s.</i> 16 of CTO, only futures contracts on commodities specified in Schedule 1 of CTO or approved by the Commission may be traded in a commodity market. CE is empowered under <i>s.</i> 115 of CTO to amend the list of commodities specified in Schedule 1. Under clause 20(2), only the futures contract of commodities approved by the Commission may be traded.
21	8(1) & (2)	-	-	In <i>ss.</i> (1), the duty of a recognized exchange company is extended to ensure an informed market. <i>Ss.</i> (3) adds the obligation to follow own rules. <i>Ss.</i> (4) imposes the duty to formulate & implement procedures to ensure its participants' compliance with its rules.
21(6)	-	-	SEUO 29(1)	Under <i>ss.</i> (6), the recognized exchange company is also required to provide at all times competent personnel & automated systems with adequate capacity etc.
22	8(3) & (4)	17	SFCO 56	The immunity is now expressly limited to civil liabilities only. <i>Ss.</i> (3) is added to preserve the validity of anything done by the recognized exchange company without complying with its rules when the rights of persons concerned are not substantially affected.
23	-	-	SEUO 34	<i>Ss.</i> (1) & (5) are added. <i>S.</i> 34(1)(b) of SEUO is not incorporated.

24	-	-	SEUO 35 CTO 14	Ss. (2) requires the rules or amendments submitted for approval to be accompanied by detailed explanation of purpose & effect. Ss. (4) empowers the Commission to give its approval subject to requirements which are to be conditions precedent to the taking effect of the rules or amendments. Ss. (7) enables the Commission to declare by notice in the Gazette any rules to be a class of rules that are not required to be approved. Ss. (8) states that a notice under ss. (7) is not subsidiary legislation.
25	-	-	SFCO 47	In ss. (3), the Commission is now empowered to subject any transfer to conditions that it considers appropriate. Ss. (7) enables the CE to order the resumption of a function by the Commission if it is in the public interest to do so.
28	-	-	SEUO 36 CTO 18 & 19 SO 26	In ss. (1), the Commission is now empowered to direct the relevant exchange company to cease to provide the specified facilities or the specified services. Ss. (3) guarantees the relevant exchange company's right to be heard. Ss. (5) is added to impose a duty on the Commission to publish in Gazette any notice of withdrawal of recognition. Ss. (6) now expressly provided that a notice of withdrawal will not take effect until any appeal is disposed of. Ss. (7) states that a notice under ss. (6) is not subsidiary legislation.
29	-	-	SO 27 (1) to (3) CTO 21	In ss. (1), the Commission is no longer empowered to close a stock exchange but to serve notice to direct an exchange company to cease to provide or operate the specified facilities or services. Ss. (3) now permits more than one extension. Ss. (4) is added to make clear that a notice shall take effect immediately.
30	-	-	SO 27 (4) & (6)	The contravention of a notice under s. 28(1), 29(1) or (3) is an indictable as well as a summary offence. The penalties are quite heavy.
31	-	-	SO 27 (5) & (6) CTO 23 &24	The mere use of any facilities or services or the entry into premises is an offence.
33	-	-	SO 29 CTO 25 SEUO 37	How CE may deal with the direction under appeal is not provided. Ss. (2) states that the decision of CE is final.

34	-	-	SO 21 CTO 106(1) & (3)	The titles mentioned in s. 21 of SO are not expressly prohibited. In ss. (2), the fine for continuing offence is deleted but imprisonment terms are imposed for indictable and summary offence.
35	-	-	SO 146(1)(p) CTO 59, 60 & 65	Under ss. (1)(c), (d) & (e), the Commission is empowered to make rules requiring lodging of notice of reportable position & prescribing the manner of lodging such notice & information to accompany it. Ss. (2) requires the Commission to consult FS before making such rules. Ss. (4) enables the Commission to make rules prohibiting trading or holding specified class in excess of a specified amount. Rules may be made imposing fines & imprisonment terms for indictable offences & summary offences (ss. (5)). Ss. (6) is added to define "reportable position".
36	-	-	SO 14	In ss. (1), the reference to the type of business (original paragraph (e)) is removed. The original provision for penalties (ss. (1A)) and the requirements of CE approval and publication in Gazette (ss. (2)) are deleted. A new ss. (2) is added requiring consultation of FS & the relevant exchange company before any rules being made.
37	-	3	-	In ss. (1), the Commission needs only to consult FS & not have his consent when recognizing a clearing house and may specify conditions as it may consider appropriate & the effective date. The new ss. (2) & (3) are added to empower the Commission to amend or revoke conditions or to impose new conditions. The new ss. (5) ensures that a company is given a reasonable opportunity of being heard before a decision is made not to recognize it.
39(1) & (2)	8(3) & (4)	-	-	The immunity is now expressly limited to civil liabilities only.
39 (3) to (5)	-	17(3) to (5)	-	The references to "functions" are replaced by "duty".
41	-	4(1), (4), (5), (6), (7), (8) & (9).	-	Ss. (2) requires the rules or amendments submitted for approval to be accompanied by detailed explanation of purpose & effect. Ss. (4) empowers the Commission to give its approval subject to requirements which are to be conditions precedent to the taking effect of the rules or amendments. Ss. (8) states that a notice under ss. (7) is not subsidiary legislation.

46	-	6	-	A new <i>ss.</i> (2) is added to provide for the construction of the expression "functions of the relevant office-holder". In <i>ss.</i> (3), "s. 20" has replaced "s. 20A to 20K" of the Bankruptcy Ordinance (Cap. 6).
51	-	11	-	The original <i>ss.</i> (1)(a) becomes <i>ss.</i> (2). The reference to "grounds exist for a creditor to present a bankruptcy petition" is replaced by "a bankruptcy order made".
56	-	16	-	At the end of <i>ss.</i> (1) the words "or its nominees" are added.
59	3	-	-	A new <i>ss.</i> (4) is added to prescribe that any revocation or amendment of conditions or imposition of new condition shall take effect at the time of service of the notice or at the time specified in the notice. <i>Ss.</i> (7) requires a person who has unknowingly become a controller to give notice of his so becoming within 14 days after he has become aware of that fact. <i>Ss.</i> (8) empowers the Commission to recognize or refuse to recognize such a person as a recognized controller. The new paragraphs (a) & (b) of <i>ss.</i> (9) empowers the Commission to declare any vote cast by an unrecognized controller void and direct a meeting to be reconvened to vote on business on which any vote cast has been declared void and to prohibit such person to exercise his rights in securities. <i>Ss.</i> (19) excludes the application of the section to a controller of a recognized exchange company or a recognized clearing house which itself is a recognized exchange controller. Thus, the <i>Ss.</i> (20) makes clear that a notice under <i>ss.</i> (9)(a) is not subsidiary legislation.
61	6	-	-	The original <i>ss.</i> (1) has become <i>ss.</i> (20). <i>Ss.</i> (6) requires a person who has unknowingly become a minority controller to give notice of his so becoming within 14 days after he has become aware of that fact. <i>Ss.</i> (7) empowers the Commission to recognize or refuse to recognize such a person as a recognized minority controller. <i>Ss.</i> (8) empowers the Commission to declare any vote cast by an unrecognized minority controller void and direct a meeting to be reconvened to vote on business on which any vote cast has been declared void. A new paragraph (a) is added in <i>ss.</i> (9) to prohibit such unrecognized minority controller to exercise his rights in securities. <i>Ss.</i> (19) makes clear that a notice under <i>ss.</i> (8) is not subsidiary legislation.

63	8(1) & (2)	-	-	In <i>ss.</i> (1), the duty of a recognized exchange company is extended to ensure an informed market. A new paragraph (b) is added to include the duty to ensure orderly, fair & expeditious clearing & settlement arrangements for any transactions in securities or futures contracts cleared or settled through the facilities of the recognized clearing house.
64(1)	8(3)	-	-	The immunity is now expressly limited to civil liabilities only.
65	9	-	-	The time limit for establishing the Risk Management Committee previously specified is removed.
67	10	-	-	<i>Ss.</i> (2) requires the rules or amendments submitted for approval to be accompanied by detailed explanation of purpose & effect. <i>Ss.</i> (4) empowers the Commission to give its approval subject to requirements which are to be conditions precedent to the taking effect of the rules or amendments. To <i>ss.</i> (8) is added a reference to rules made under <i>s.</i> 66(1), which are not subsidiary legislation.
68	-	-	SFCO 47	In <i>ss.</i> (3), the Commission is now empowered to subject any transfer to conditions that it considers appropriate. <i>Ss.</i> (7) enables the CE to order the resumption of a function by the Commission if it is in the public interest to do so.
71	-	-	SFCO 48(2)	Under <i>ss.</i> (1), the information required is now more particularly specified. A new <i>ss.</i> (2) is added to make non-compliance a criminal offence with a fine of \$50,000.
72	4	-	-	<i>Ss.</i> (5) is added to impose a duty on the Commission to publish in Gazette any notice of withdrawal of recognition. <i>Ss.</i> (6) now expressly provided that a notice of withdrawal will not take effect unless there is no appeal or any appeal is disposed of. The right to appeal to CE is incorporated in <i>s.</i> 73.
73	3(10), 4(6), 6 (11), 12(3), 14(2)	-	-	How CE may deal with the direction under appeal is not provided. <i>Ss.</i> (2) states that the decision of CE is final.
74	13	-	-	The definitions of "relevant company" & "relevant stock exchange controller" are covered in <i>s.</i> 18(1). The definition of "Stock Exchange Company" is incorporated in <i>s.</i> 1 of Part 1 of Schedule 1. In this clause, references to "relevant company" are replaced by "relevant corporation", and "listed company" by "listed corporation".

75	14	-	-	In this clause, references to "relevant company" are replaced by "relevant corporation". The right to appeal to CE against the notice is incorporated in s. 73(1).
76	15	-	-	References to "Exchange company" & "clearing house" are replaced by "recognized exchange company" & "recognized clearing house" respectively.
77	20	-	-	References to "HKEC"(=Hong Kong Exchanges & Clearing Limited) are replaced by "recognized exchange controller".
78	16	-	-	Previously amendment was made by CE by notice in the Gazette. Now it is made by CE by order in the Gazette.
79-90	-	-	-	These clauses constitute Division 5 of Part III. It is not clear what the nature of an investor compensation company is and why it needs to be recognized. It is also unclear whether the "framework" established by this Division would limit the alternatives open to the Administration in deciding upon a new investor compensation scheme.
87	-	-	SO 118	A new ss. (2) is added to make clear that all amounts recovered shall become part of the compensation fund.
91	-	-	SFCO 48	A new ss. (4) is added to prohibit disclosure of information by the recipients to any other person without the consent of the Commission.
92	-	-	SFCO 50	A restriction notice may now require supplementing a specified provision of any rules or other specified instrument.
93	-	-	SCFO 51	The clause refers to "a suspension order", which is not defined. Ss. (1) as it is now drafted may have narrowed the scope of a suspension order Ss. (2) seems to suggest that a suspension order may be more than merely suspending a function of a regulated entity. A new ss. (9) is added to enable a suspension order being enforced by the Court of First Instance
Schedule 3 Part 5	-	Schedule 2	-	References to "participants" are substituted by references to "clearing participants". In paragraph (a), the words "or closing-out by offset" are added before "of all the contracts".

Schedule 3 Part 6	Schedule 2	-	-	References to "shares" are substituted by "securities".
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Prepared by
Legal Service Division
Legislative Council Secretariat
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