

Securities & Futures Bill Part IV

Supplement to the Comparison Table for Part IV (Annex A to LC Paper No. CB(1) 485/00-01(01))

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

PIO = Protection of Investors Ordinance (Cap. 335).

SO = Securities Ordinance (Cap. 333)

Blue Bill Clause Ref.	PIO section	Other Ordinances	Comments
101(1) "advertisement"	2(2)(a) "advertisement"	-	The new provision does not specify the means of notification or publishing but refers generally to the nature or the means of producing, e.g. orally, mechanically, electronically etc.
101(1) "document"	2(2)(b) "document"	-	The new provision equates document with publication and also refers to the means of producing such.
101(1) "exempted body" Part 4 of Schedule 4	2(1) "exempted body" Parts IV & IVA of Schedule	-	Airport Authority is added as an exempted body.
101(1) "invitation"	2(1) "invitation"	-	The new provision expressly states that an invitation may be produced mechanically etc. or by other means.
101(2)(a)	2(2)(c)	-	The issue of advertisement etc. is regarded as issue by a person on every day on which he caused or authorized the issue. The subsection is extended to cover invitation or document.
101(2)(b)	2(2)(e)	-	Both the principal and agent are regarded as issuer. When read with the definition of "issue", it may have the effect of making every person who has taking any part in the process of issuing any advertisements etc. potentially liable under this Part.

102	4	-	In <i>ss.</i> (1), description of derivatives is replaced by a reference to "regulated investment agreement" and reference to investment arrangement in respect of property other than securities is replaced by "collective investment scheme". In <i>ss.</i> (2), paragraphs (b), (c) & (d) referring respectively to futures contracts, leveraged foreign exchange contracts, & services provided by the recognized exchange company or recognized clearing company are added. In <i>ss.</i> (3), the exclusion in respect of collective investment scheme is provided in new paragraphs (i) & (j). Differing from the existing legislation, contravening <i>ss.</i> (1) can also be a summary offence. A daily fine for continuing offence is added in respect of the indictable & summary offence. In <i>ss.</i> (5), the circumstances under which an intermediary would not be held liable under <i>ss.</i> (1) are more precisely set out. <i>Ss.</i> (7) & (8) are new. They aim at protecting those whose business is to provide services of issuing or receiving materials provided by others & the broadcasters. New <i>ss.</i> (9) affords a defence of taking reasonable steps and exercise all due diligence. New <i>ss.</i> (12) is added to make clear "issue" in <i>ss.</i> (7) has the same meaning as it has in <i>ss.</i> (1). A definition of "registered company" is added to <i>ss.</i> (13). Please note that authorised financial institutions, brokers of leveraged foreign exchange contracts & their representatives are excepted from clause 102(1).
103	-	SO 15	The section now refers to "collective investment scheme" instead of "mutual fund corporation & unit trust". <i>Ss.</i> (2) to (9) are new and set out in detail the conditions of authorization, powers of the Commission & other procedural provisions.
104	4(2)(g) & (7)	-	What are implied under the existing legislation are spelt out in detail.

106	3	-	<p>In ss. (1), description of derivatives is replaced by a reference to "regulated investment agreement" and reference to investment arrangement in respect of property other than securities is replaced by "collective investment scheme". The offence may be indictable or summary. The penalties for summary conviction are a fine at \$100,000 & imprisonment for 6 months. In ss. (3)(b)(iii), in respect of "any promise" is added the requirement of not capable of being fulfilled. In ss. (3)(d) are added a reference to "promise" & a sub-paragraph (ii) stating the result of an intentional or reckless omission of a material fact in respect of a promise. Please note the possible effect of making all journalists & columnists liable. Also the criteria for liability may be less certain than they may appear to be.</p>
107	8	-	<p>In ss. (1), description of derivatives is replaced by a reference to "regulated investment agreement" and reference to investment arrangement in respect of property other than securities is replaced by "collective investment scheme". In ss. (2), a person who is a director of a corporation would be liable unless he can prove that he did not authorize the making of any misrepresentation. The deeming provision in the existing legislation is abolished. A new ss. (3) is added to avoid any doubt that the courts may grant an injunction in addition to, or in substitution for, damages under this section. In ss. (7)(b)(iii), in respect of "any promise" is added the requirement of not capable of being fulfilled. In ss. (7)(d) are added a reference to promise & a sub-paragraph (ii) stating the result of an intentional, reckless or negligent omission of a material fact in respect of a promise. It is not clear what meaning "reliance" has in the context.</p>

108	-	SO 72	In <i>ss.</i> (1)(a), specific references to languages are replaced by "document in an official language". In <i>ss.</i> (1)(b)(iv), the reference to the liability to pay stamp duty in respect of contract notes is replaced by a general reference to the liability under the Stamp Duty Ordinance (Cap. 117) in respect of the transaction. It is also further provided that the rate of the stamp duty payable by the person accepting the offer should be stated. Paragraph (v) is added requiring the specification of whether any fees will be payable to a dealer or adviser. Paragraph (vii) is added to provide for the case where the offer is communicated verbally. A new <i>ss.</i> (3) is added to make clear that any offer communicated verbally and contained an expert's report must obtain the prior unwithdrawn consent of the expert. In <i>ss.</i> (4), the fine is increased to \$100,000 and a daily fine of \$20,000 is imposed for continuing offence. In <i>ss.</i> (5), a new paragraph (a) is added to exclude offers complied with the listing rules, the Take-over & Merger Code, or Part II of Cap. 32. Paragraphs (f) & (g) are added to provide for exclusion of a class of offers or offer by a class of persons as prescribed by rules. A new <i>ss.</i> (9) is added to explain the expression "securities of a body". The definitions of "body", "type I intermediary or representative" & "type 4 intermediary or representative" are added.
109	5	-	<i>Ss.</i> (5) & (6) provide exception to persons carrying on business of providing the service of issuing or receiving materials provided to him by others or a broadcaster respectively. <i>Ss.</i> (7) is new and affords a defence of taking all reasonable steps & exercising all due diligence. <i>Ss.</i> (8) stipulates that "issue" in <i>ss.</i> (5) has the same meaning as in <i>s.</i> 101(1).
110	7A	-	In <i>ss.</i> (3), "authorized representative" includes the listed corporation whose wholly owned subsidiary incorporated outside Hong Kong is specified in item 15 of Part 4 of Schedule 4.
Part I of Schedule 5	-	SO Schedule 1	References to "corporation" are replaced by "body". "Body" is defined in the new clause 5. Clause 3 requires an offer to state the fact that any requirements in clauses 1 & 2 are not satisfied and the reasons therefor.

Part II of Schedule 5	-	SO Schedule 2	References to "corporation" are replaced by "body". "Body" is defined in the new clause 9. Paragraphs (b)(i) & (ii) are added to clause 2 to include securities issued by a multilateral agency & securities issued by a government or municipal government authority. "Multilateral agency" is defined in clause 9. Clause 7 is added to require an offer to state the fact that any requirements in clauses 1 to 6 are not satisfied and the reasons therefor.
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