

Comments on Parts 9, 10 and 11 of the Securities and Futures Bill (the Bill)

The comments following are made with the object of affording fairness to participants (formerly called members) of SEHK, who for convenience will be referred to as stock brokers.

Part 9 of the Bill

This chapter deals with the disciplinary functions and powers of the SFC and is said to base on 2 considerations : -

- (1) To protect investors by ensuring that intermediary licensed by the SFC conduct themselves properly and do not abuse their privileged position.
- (2) To put in safeguards to ensure SFC will exercise its powers fairly, transparently and consistently.

Comments

Section 193(1) of the Bill is objectionable and is contrary to the above stated consideration (2). It says the Commission in reaching a decision under the sections therein referred to (dealing with disciplinary action) can have regard to any information or material in its possession regardless of how the information or material has come into its possession.

Such wide and drastic powers if given to the Commission will allow it to use

evidence which its officers had obtained by unlawful means such as threats, deceit, false imprisonment or even torture. Evidence obtained by such means is not admissible in a court of law. Even the police in the investigation of a murder which is considered to be the worst crime cannot use unlawful means to obtain evidence. Why then should the Commission be given such wide and drastic powers. The rights of our citizens must be protected against abuse. This sub-clause must be deleted.

Part 10 - no comment

Division 2 of Part 11 of the Bill

Deals with the establishment of a Securities & Futures Appeals Tribunal (SFAT). SFAT is established to review a wide range of SFC decisions (but not all decision) that may affect a person's rights. It can only review decisions set out in Part 2 of Schedule 7.

The composition of SFAT is : -

- (a) a Judge, and
- (b) 2 lay members.

Comments

- (1) The Tribunal should have power to hear and review all decisions of SFC so that any stock broker aggrieved by the decision of the SFC can appeal

against the decision.

- (2) The persons to be appointed to the appeal panel of lay members should have a majority in number of stock brokers. The reason is that stock brokers are the persons who know the real life working of stock brokers, they understand market practice and the professional standard a stock broker is expected to maintain. In other professions such as doctors and lawyers those who sit on disciplinary hearings are mainly from the same profession. The 2 lay members who hear appeals by a stock broker should be stock brokers.
- (3) Under Section 211 the time for appeal is 21 days there is no provision that the SFAT can extend time even on good cause shown. Power to extend time should be given to the SFAT, after all whether to grant extension or not remains to be decided by the SFAT.

We read in the white bill that there was to be a Process Review Panel to scrutinize the internal operation of SFAT but cannot find such a section in the Bill for the setting up of a Process Review Panel and we would like to know the reason for not setting up such a Panel. This Panel was intended to be a part of the mechanism of checks and balance.