

Securities and Futures Bill

Part XIII Market Misconduct Tribunal

Under paragraph XIII of the Securities and Futures Bill (Market Misconduct Tribunal), we found that paragraph 245, 246 and 259 to be objectionable.

Paragraph 245 sub-section (1)(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"*

If approved, this would represent a major step backward in our legal system towards the protection of the civil liberty of our citizens. The fact that certain materials would not be admissible as evidence in civil or criminal proceedings in a court of law is to protect the integrity of our civil rights. This paragraph is totally against the legal system of Hong Kong and should be deleted.

Under paragraph 246 Further powers of Tribunal concerning evidence

This whole paragraph removes an individual's right to remain silent. It forces a person to provide statement or evidence even if it is self-incriminating. A person who would not self-incriminate himself will be committing an offence under this section, which is subject to a fine and/or imprisonment terms. This is contrary to protection of civil liberty of people in Hong Kong. It should not be allowed.

Under paragraph 259 No stay of execution on appeal

Under this paragraph, an "innocent appellant" will not have the right of a stay of execution despite the fact that he may have been wrongly accused in the first place.

It is grossly unfair especially in the case where a business may have to be terminated as a result of a decision by the Tribunal. Even though such decision may be wrong and later overturned by the Court of Appeal, the damage done would be irreparable. We suggest that the Court of Appeal should be given the power to grant a stay of execution if it deems appropriate.

Part XIV Offences Relating to Dealings in Securities and Futures Contracts, etc.

Under part XIV, we found paragraph 291 Offence of stock market manipulation paragraph (2) to be questionable.

This paragraph deals with person manipulating stock market prices on a relevant overseas market. We are of the opinion that we should only be concerned with offences involving stock market manipulation in Hong Kong and not outside our jurisdiction for reason that it is neither practical nor cost effective for us to monitor and enforce. We should leave the policing of foreign market by those concerned with that market.

In addition, transactions that may be considered an offence in Hong Kong may not be considered an offence in other relevant markets. For example, it is quite common to have market makers in the United State whose sole businesses are to maintain or stabilize the prices of any securities that they specialized. Such activity would be considered an offence under 291 (2)(c).