

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

**Securities and Futures Bill
Part VIII - Supervision and Investigations**

INTRODUCTION

This paper summarises the major features of Part VIII of the Securities and Futures Bill (“Bill”) which concerns the inquiry, inspection, surveillance and investigatory powers of the Securities and Futures Commission (“SFC”). These powers would enable the SFC to gather, if necessary under the force of law, the information it needs to perform its regulatory functions.

2. Part VIII principally consolidates existing provisions on the above powers in the Securities and Futures Commission Ordinance (Cap.24) (“SFCO”) and the Leveraged Foreign Exchange Trading Ordinance (Cap.451) (“LFETO”) and standardises some features of such powers. This process has involved some reorganisation of existing provisions. While the new provisions do not always appear to be exactly like the existing ones, they retain the same substance in most major respects. Significant reforms are mainly confined to preliminary inquiries into listed corporations, supervisory inspections of licensed or exempt intermediaries and their associated entities, and investigations into possible grounds for disciplinary action against licensed intermediaries and those involved in their management. At **Annex** is a table comparing provisions in Part VIII of the Bill with existing law.

POLICY OBJECTIVES AND MAJOR PROPOSALS

3. Part VIII gives the SFC the power to obtain information, under the force of law if necessary, so that it can perform its regulatory functions. In particular, the SFC is empowered to:

- (a) conduct preliminary inquiries into suspected crime or misconduct in a listed corporation;
- (b) conduct supervisory inspections of licensed and exempt intermediaries and their associated entities;

- (c) obtain information on transactions in financial products regulated by the SFC;
- (d) conduct investigations into suspected crime or misconduct relating to financial products; securities margin financing; compliance with conditions on authorisation of collective investment schemes or issue of advertisements, invitations or documents relating to investment in securities, investment agreements and collective investment schemes; and such crime or misconduct involving licensed intermediaries and their management;
- (e) assist foreign authorities in matters similar to the above; and
- (f) execute search warrants.

4. In exercise of its powers over the last ten years, the SFC has revealed some deficiencies that inhibit it from discharging fully its regulatory roles. In the case of preliminary inquiries into listed corporations, experience has shown that the SFC's powers are too limited to enable it to efficiently conduct a relatively fast and limited preliminary inquiry. In the case of supervisory inspections, experience has revealed gaps in, or doubts about, the powers of the SFC, making it difficult to properly monitor the intermediaries concerned. Lastly, the SFC in most instances lacks a direct power to obtain information for disciplinary proceedings against licensed intermediaries or those involved in their management and generally has to rely on voluntary co-operation. Part VIII addresses these deficiencies and puts those areas of doubt beyond question.

Power to require production of records and documents concerning listed corporations

5. Clause 172 is derived from section 29A of the SFCO which enables the SFC to conduct a relatively quick and limited preliminary inquiry into suspected crime and misconduct in a listed company to protect the interests of the investing public. Section 29A of the SFCO empowers the SFC to obtain documents from the listed company under inquiry and its group companies, as well as explanation of such documents from past and present officers and employees of those companies.

6. Previous inquiries have shown that the SFC's ability is generally rather limited in verifying the information it obtains from the listed company under inquiry and its group companies. In most instances, the SFC found it difficult to form meaningful conclusions from an inquiry as to what has occurred. Clause 172 seeks to extend the SFC's power to obtain documents and

explanations to the parties most closely connected with the listed corporation concerned and its group corporations: their banks, auditors and those who have done business with them (“transaction counterparties”). This is intended to enable the SFC to verify with these parties the information it obtains from the listed corporation under inquiry and its group corporations.

7. During the consultation exercise in 1999 on the policy proposals, the accountancy profession expressed concerns over the scope of the power of the SFC to obtain audit working papers under the now clause 172, and that the power should be sufficiently and clearly restricted. We have taken on board the profession’s comments in shaping the current proposals. Clause 172 therefore restricts SFC’s power to obtain record or document which is in the nature of “audit working papers” relating to the affairs of the listed corporation under inquiry, a term with which the profession is familiar. The definition of “audit working papers” is in line with the definition under the code of conduct issued by the Hong Kong Society of Accountants (HKSA).

8. To balance the extension of the SFC’s inquiry powers, safeguard the interests of those under inquiry and confine the inquiry to a relatively limited one, clause 172 imposes checks and balances on the SFC’s powers. To summarize, the SFC has to certify in writing that it has “reasonable cause to believe” that the documents sought are –

- (a) related to the affairs of the listed corporation under inquiry or one of its group corporations and, in the case of transaction counterparties, to a transaction with such a corporation;
- (b) in the person’s possession (possession is given an extended meaning in Part 1 of Schedule 1 to include custody, control or power); and
- (c) relevant to the grounds for the inquiry.

In the case of the power exercised upon transaction counterparties of the listed corporation concerned, the SFC has to certify apart from the above matters, that the information cannot be obtained from the listed corporation under inquiry, any of its group corporations, and the auditors or bankers of any such corporation. In addition, before issuing a direction to a person which is itself an authorized financial institution (AI) (not being the banker to the listed corporation or one of its group corporations) or an insurer, the SFC shall consult the Hong Kong Monetary Authority or the Insurance Authority as appropriate.

9. Clause 172 further clarifies existing law that the SFC may require from the parties concerned an explanation of a document, its contents and the surrounding circumstances.

10. The SFC's powers to require information under section 29A of the SFCO are not, hitherto, used lightly. There have been only 13 enquiries conducted under section 29A since 1994. The SFC will continue to exercise similar powers most prudently under the proposed regulatory regime.

11. We wish to reiterate that auditors perform an important role in corporate regulation. In particular, they are required to form an opinion on a company's financial affairs and in doing so will have performed certain verification checks. Access to an auditor's records and documents therefore can assist the SFC in conducting a preliminary listed company inquiry. More specifically, such access may forestall the need to pursue certain avenues of inquiry, supplement the information obtained from a listed company and its group companies, and confirm the veracity of such information.

Supervision of intermediaries and their associated entities

12. Section 30 of the SFCO and section 41 of the LFETO empower the SFC to conduct supervisory inspections of licensed intermediaries to ensure that they comply with regulatory requirements. Specifically, the SFC may enter the premises of the intermediaries and require access to and the production of documents relating to their business. The SFC may also require others whom it reasonably consider to have such documents to give access to them or to produce them.

13. In the light of experience, the SFC considers that, in order to supervise properly licensed intermediaries, its supervisory powers need to cover associated entities (as defined in Part 1 of Schedule 1) of licensed intermediaries. This aligns Part VIII with Parts VI-VII of the Bill. The revised regulatory regime for exempt AIs also requires the HKMA to be empowered, as a "relevant authority" under clause 173, to conduct supervisory inspections of exempt AIs and their associated entities. This enables the HKMA to perform its front-line regulatory functions in respect of the regulated activities of exempt AIs in an equally effective manner as that by the SFC in respect of licensed securities firms. We consider that this is an important aspect of the proposed regulatory regime for exempt AIs to level the playing field between exempt AIs and licensed securities firms.

14. Clause 173 also clarifies and, in some minor respects, extends the SFC's existing power to obtain information from third parties, where it is

relevant to the inspection. This power is necessary to ensure that an inspection covers all the matters of regulatory importance. The clause also regularises the existing and necessary practice of asking questions during an inspection. To limit the inspection powers and safeguard the interests of third parties, clause 173 has put in place a set of checks and balances on the exercise of those powers, including that the powers can only be exercised if the information cannot be obtained from the intermediary, its related corporations or its associated entities in the first place.

Investigations, conduct of investigations and related offences

15. Section 33 of the SFCO and section 44 of the LFETO give the SFC its main powers to investigate possible crime, misconduct or conduct prejudicial to the public interest or the interest of the investing public, relating to securities, futures contracts, property investment arrangements, leveraged foreign exchange trading and securities margin financing. Under these powers, the SFC may require documents, explanations of documents, answers to questions during interviews and other reasonable assistance.

16. These sections are largely reproduced in clauses 175 and 176, but have been split up, with the grounds to start an investigation in clause 175 and the investigatory powers in clause 176. Clause 175 mainly reiterates the existing grounds of investigation. The major changes are related to the provision of a civil option for dealing with all forms of market misconduct, not just insider dealing, to allow the SFC to investigate any form of possible market misconduct¹.

17. Sections 56, 121S and 121U of the Securities Ordinance (Cap.333), section 36 of the Commodities Trading Ordinance (Cap.250) and section 12 of the LFETO give the SFC the power to discipline licensed intermediaries and those involved in their management. However, except under the LFETO, the SFC does not have any express power to investigate possible grounds for disciplinary action and must generally rely upon voluntary co-operation. Clause 175 seeks to close this regulatory gap by giving the SFC an express power to investigate possible grounds for disciplinary proceedings.

18. Despite the SFC's powers to regulate collective investment schemes (and invitations and so on to invest in them) and other securities and investment arrangements (to be replicated in Part IV) by imposing conditions on

¹ The six forms of market misconduct are: insider dealing, stock market manipulation, false trading, price rigging, disclosure of information about prohibited transactions and disclosure of false or misleading information inducing transactions.

them, the SFC has no express power to investigate non-compliance with such conditions. Clause 175 would give the SFC such an express power.

Certification to Court of First Instance relating to non-compliance with requirements

19. Clauses 178 to 185 provides for matters ancillary to the exercise of the SFC's inquiry, inspection, surveillance and investigation powers. The major changes to existing law are outlined below.

20. Clause 178 gives the SFC one means to enforce compliance with its information-gathering requirements (the other being criminal prosecution under the criminal offences in respect of non-compliance). This is by certifying a failure to comply to the courts, which may order such compliance or punish non-compliance as if it were a contempt of court. A person who does not comply with information-gathering powers is protected from the "double jeopardy" of criminal prosecution and certification to the courts.

21. Clause 180 largely reproduces and clarifies the law on privilege against self-incrimination² in relation to explanations and further particulars given in respect of documents sought, and answers to questions posed, in a limited inquiry into a listed corporation under clause 172 or an investigation under clause 176. The major change is that clause 180 will now provide expressly that the information so given is admissible in proceedings under the market misconduct regime in Part XIII in relation to any category of market misconduct and not just insider dealing. This is in line with the goal of providing, through Part XIII, an expeditious civil means of dealing with all forms of market misconduct by specified civil sanctions.

22. Clause 183 is taken from section 18(3) of the Securities (Insider Dealing) Ordinance (Cap. 395) and grants a person who would be entitled to inspect the information had the SFC not taken possession of it, the right to inspect and copy the information at reasonable times subject to reasonable conditions as to security of the information or otherwise.

23. Clause 184 largely reproduces the existing law on the right of a person authorised to exercise Part VIII powers to apply to a magistrate for a search warrant to enter identified premises, by force if necessary, and seize documents that might be obtained under those powers. The major change is that the SFC may retain those documents for 6 months or until no longer needed for

² Article 11 (2)(g) of the Bill of Rights Ordinance (Cap. 383) provides that a person shall not be compelled to testify against himself or to confess guilt, in the determination of any criminal charge against him.

the purposes of any proceedings under the Bill (e.g. disciplinary proceedings) and not merely criminal proceedings.

24. Clause 185 reproduces an existing offence of destroying, falsifying, concealing or disposing of documents to frustrate the exercise of the Part VIII powers. However, unlike current law, the burden of proving the required mental element would be upon the prosecution.

MARKET COMMENTS

25. Most of the comments received are from the accountancy profession on preliminary inquiry into a listed company and the need for the SFC to seek assistance from the company's auditors in such an inquiry, now stipulated in clause 172 of the Bill. Our responses to such comments are set out below.

26. The HKSA proposed that it would be a good practice for the SFC to provide an auditor with a "statement of relevance" when requesting for his working papers. Under existing law, SFC officers authorised to conduct an inquiry are required to include in their request for documents a written statement which gives the grounds for the appointment of the authorised officer and includes the grounds for the commencement of the inquiry. This will continue under the Bill. The proposed power is not intended for "fishing expeditions". The SFC is prepared to particularise the nature of any documents requested and modify the scope of the request if an auditor has genuine and reasonable concerns about the scope of documents requested.

27. The SFC has also undertaken to work with the HKSA to prepare guidelines to its members on compliance with requests from the SFC for audit working papers.

28. We understand from members of the accountancy profession that making non-compliance with clause 172 an offence would help auditors explain to their clients that they are compelled under the law to provide information to the SFC and thus may help them manage their relationship with their clients. We note that the HKSA is concerned about the criminal liability that an auditor could possibly face. The offences in clause 172 are standard provisions in similar regulatory powers both in this jurisdiction and other major international financial centres. Their objective is to deter non-compliance and they are adapted from existing law. They are not targeted at auditors. They apply to any person from whom SFC may request information under clause 172. To secure a conviction for a failure to produce documents, the prosecution must prove

beyond reasonable doubt that an auditor has failed to produce the required documents and that there is no reasonable excuse for the failure to do so. In its defence, the auditor would only need to prove on balance of probabilities that there is a reasonable excuse. These offences have not been controversial since the introduction of the inquiry power in 1994.

29. However, in seeking assistance from auditors in an inquiry, the SFC's primary concern is to obtain relevant records and documents. In case of non-compliance, the SFC will usually first go to court for an order to compel compliance and it will be up to the court to decide what amounts to a reasonable excuse. If a person fails to comply with a court order compelling compliance after the SFC has certified non-compliance to the court, the court may punish non-compliance as if it were contempt of court. Similar systems for dealing with non-compliance are found in the regulatory regimes of the US, UK and Australia.

30. The HKSA also expressed concern that an auditor should be protected from the SFC using audit working papers obtained in an inquiry against it in any court proceedings. We consider that there are already sufficient protections in relation to the limited circumstances in which this is possible. The SFC is obliged to keep the information it obtains from an auditor secret under the secrecy provisions stipulated in clause 366. Further, clause 368 provides that any person, such as an auditor, will not incur any civil liability by reason only of complying with a requirement to produce or to explain records or documents, including audit working papers.

INTERNATIONAL COMPARISONS

United States

31. The Securities and Exchange Commission ("SEC") has broad authority to investigate actual or potential violations of the securities laws it administers.³ It also has broad authority to determine the scope of its investigations and persons subject to investigation. Once an investigation is started, the SEC has broad powers to administer oaths and affirmations, subpoena witnesses, compel their attendance, take testimony and compel the production of documents.⁴ The SEC has wide latitude in how it exercises these

³ Sections 8(e) and 20(a) Securities Act, ss 21(a)(1) and (2) Securities Exchange Act, ss 42(a) and s 209(a) Investment Advisers Act, s 42(a) Investment Company Act, s 18(a) Public Utility Holding Company Act and s 321(a) Trust Indenture Act.

⁴ Section 19(b) Securities Act, s 21(b) Securities Exchange Act, s 209(b) Investment Advisers Act, s 42(b) Investment Company Act and s 321(a) Trust Indenture Act.

powers and against whom, as long as the investigation is commenced under relevant authority and the information sought relevant to the investigation. Owing to the breadth and simplicity of the provisions according the SEC its investigatory powers, much of the relevant law is in case law, but its extent is relatively similar to that of the SFC's powers. The SEC may inquire into possible crime or misconduct in a listed corporation relating to a breach of US securities laws. The SEC may also conduct supervisory inspections of intermediaries it regulates.⁵ We understand that the stock exchanges generally conduct surveillance of trading in the securities markets, and that the SEC can obtain information about securities transactions. In effect, the SEC's powers are broadly co-extensive with the SFC's.

32. The Commodity Futures Trading Commission investigates breaches or anticipated breaches of the futures laws it administers⁶. It conducts supervisory inspections of the futures intermediaries it regulates⁷ and may obtain surveillance information about futures transactions.⁸ Its powers are very similar to the SEC's.

United Kingdom

33. The UK is in the process of fundamentally reforming regulation of its financial markets. The legislation to achieve this, the Financial Services and Markets Act ("FSMA"), has been enacted and will commence later this year. The discussion which follows is of the powers under the FSMA as they are the result of a significant review of UK regulation and are scheduled to come into operation later this year. The Financial Services Authority ("FSA") has extensive powers to obtain information. These are similar to those of the SFC.⁹ However, the FSA shares investigatory powers with the Department of Trade and Industry ("DTI") in relation to some aspects of financial market crime and misconduct. The Serious Fraud Office, DTI and company inspectors appointed under UK company law, have powers to investigate crime or misconduct in a company. The FSA's powers are focussed on the financial markets.

34. The FSA may demand information and documents from intermediaries it regulates and from persons connected with such intermediaries for supervisory purposes or for an investigation. The FSA may also require intermediaries it regulates and certain related parties to appoint a skilled person

⁵ For example, s 17(b) Securities Exchange Act.

⁶ Section 6(d), 12(a), 12(d), 15 and 16(f) Commodity Exchange Act and regulations 11.1-11.8.

⁷ Sections 6g(a) Commodity Exchange Act and regulation 1.31.

⁸ Section 6(a)(3) Commodity Exchange Act and regulation 1.31

⁹ Sections 97, 165-177 and 284 FSMA.

to report to the FSA on a matter. Further, the FSA has the power to conduct an investigation of an intermediary it regulates in the present or past and certain related parties in relation to their business or ownership/control. The FSA also has a power to investigate crimes under the FSMA and related market crimes, market abuse (equivalent to market misconduct), breach of certain regulations and rules made under the FSMA, grounds for disciplinary action against an intermediary the FSA regulates and so on. The FSA may assist overseas regulators. The FSA may also investigate certain aspects of the affairs of a collective investment scheme. Lastly, the FSA may apply for search warrants.

35. The FSA's powers are similar to those of the SFC (though they differ in detail) and include powers to require information, require the production of documents and require people to attend examinations and answer questions. There is also provision for search warrants to be obtained. The FSA also exercises its powers in a generally similar manner to the way the SFC exercises its powers.

Australia

36. The Australian Securities and Investments Commission ("ASIC") also has extensive powers to obtain information roughly similar to the SFC's powers.¹⁰

37. The ASIC has the power to investigate any suspected breach of the securities, futures and corporate laws it administers and many other suspected crimes relating to the affairs of corporations. It may require a person to attend an interview and answer questions in connection with an ongoing or anticipated investigation. The ASIC also has many powers that it can exercise, not only during an investigation but also in connection with its regulatory functions. For example, the ASIC may at any time inspect any documents required to be kept under the laws it administers. It may also at any time require written information from licensed securities and futures dealers about the businesses for which they are licensed.

38. Further, the ASIC may require a corporation or body that operates a collective investment scheme and people connected with either to produce documents relating to the affairs of the corporation or collective investment scheme. The ASIC has similar powers in relation to stock and futures exchanges and clearing houses, members of such bodies, licensed securities and futures intermediaries and their nominees and parties to dealings in securities or futures. The ASIC has similar powers in relation to providers of financial

¹⁰ Sections 13-41, 43-44, 46-48 and 67-83 ASIC Act, ss 788, 1154 and 1317R Corporations Law and the Mutual Assistance in Business Regulation Act.

services and people connected with them. The ASIC can obtain many of these documents and much of such information from any person who possesses them. The ASIC may apply for search warrants where documents it has sought are not produced. The ASIC may require a person to identify a corporation's property and explain how a corporation has kept account of it. The ASIC may also exercise surveillance powers to obtain information about transactions in securities and futures from licensed dealers, parties to such transactions and stock and futures exchanges and futures clearing houses. Lastly, the ASIC may assist foreign regulators with their investigations.

39. In general, the ASIC's information-gathering powers are greater than those of the SFC and exercisable on lower thresholds.

Securities and Futures Commission
Financial Services Bureau
7 March 2001

**Securities and Futures Bill
Part VIII**

Comparison Table

Legend:

- CTO - Commodities Trading Ordinance (Cap. 250)
- LFETO - Leveraged Foreign Exchange Trading Ordinance (Cap. 451)
- SO - Securities Ordinance (Cap. 333)
- SFCO - Securities and Futures Commission Ordinance (Cap. 24)
- SIDO – Securities (Insider Dealing) Ordinance (Cap. 395)
- sc. - subclause

Clause	Contents	Derivation	Notes
PART VIII - SUPERVISION AND INVESTIGATIONS			
Division 1 – Interpretation			
171	Interpretation of Part VIII	New; SFCO s.33(2); LFETO s.44(2) [“person under investigation”]	
Division 2 – Powers to require information, etc.			
172	Power to require production of records and documents concerning listed corporations	SFCO ss.29A & 61(1)	Subclause (1) essentially reflects existing law, save that sc.(1)(b) is new; sc.(1)(c) uses a different formula from “formation” as that word was considered imprecise; sc.(1)(e) refers additionally to any part of its members; the

Clause	Contents	Derivation	Notes
173	Supervision of intermediaries and their associated entities	SFCO ss.30 & 61(1); LFETO s. 41	<p>power being subject to the condition specified in subclause (5) is new; sc.(iv) and (v) are new. The hanging paragraph of subclause (2)(a) is new in making explicit the extent of the person's obligation to provide an explanation. Subclause (3) follows existing law; sc.(4) is new in regard to the statutory declaration requirement. Subclauses (5) – (8), (15) & (16) are new, whereas sc.(9) – (12) follow existing law. Subclause (13) derives from s.29A(9)(b), whereas sc. (14) derives from s.29A(9)(a).</p> <p>The main innovation in this clause is its application to a person authorized by the HKMA and its broader scope of application.</p> <p>Subclause (1) enlarges upon the existing law by applying to exempt persons and the associated entities of both licensed and exempt persons; sc.(1)(b) is new in its description of the matters to which the document must relate and sc.(1)(c) is new. Subclause (2) essentially follows existing law, whereas sc.(3) & (4) are mainly new. Subclauses (5) - (8) & (10) are new, whereas sc.(9), (11), (12) & (13) mainly follow existing law. Subclauses (14) & (15) follow existing law, save that the scope of the provisions is broader, and subclauses (16) and (17) are new.</p>
174	Information relating to transactions	SFCO ss.31 & 61(1); LFETO s. 42	<p>Subclauses (1) and (2) essentially follow the existing law, save that the provision extends to all financial products regulated by the SFC and sc.(2)(a) has been updated. Subclauses (3), (4), (6) & (10) are new, whereas sc.(5) is newly explicit. Subclauses (7) - (9) are derived from the existing law, consistent with the like provisions in other</p>

Clause	Contents	Derivation	Notes
			clauses in this Part.
Division 3 – Powers of Investigations			
175	Investigations	SFCO s. 33(1), (3) & (7); SO s.56(1); CTO s.36(1); LFETO ss. 12(1) & (2) & 44(1), (3) & (7)	Subclause (1)(a), (b) & (d) substantially follow the existing law, whereas sc.(1)(c) is new in its application beyond insider dealing. Subclause (1)(e) derives from s.56(1) of SO and s.36(1) of CTO; sc.(1)(f) is new, whereas sc.(1)(g), (2) & (3) reflect current law.
176	Conduct of investigations	SFCO ss.33(4), (8), (9), (10) & (11) & 61(1); LFETO ss.44(4), (8), (9), (10) & (11)	This clause essentially reflects existing law.
177	Offences in relation to investigations	SFCO s.33(12) & (15); LFETO s.44(12), (13) & (15)	Subclause (1) follows existing law, save that the penalty has been reduced. Subclauses (2) & (3) are new, whereas sc. (4) & (5) reflect current law.
Division 4 – Miscellaneous			
178	Certification to Court of First Instance relating to non-compliance with requirements under section 172, 173, 174 or 176	SFCO ss.32, 33(13) & (14); LFETO ss.43, 44(14) & (15)	Subclause (1) follows existing law; sc.(2) is new. Subclause (3) represents an enlargement upon ss.32(2) & 33(14) of SFCO.
179	Assistance to regulators outside Hong Kong	SFCO s. 59A; LFETO s.63A	Subclauses (1) - (6) rationalize the existing law, whereas sc.(7) – (9) are new.
180	Use of incriminating answers in proceedings	SFCO ss. 29A(6) & 33(6); LFETO s. 44(6); New	This provision rationalizes the existing law.
181	Lien claimed on records or documents	SFCO s. 29A(3)	Modelled upon existing law but clarified that the requirement to produce the document shall not be affected by the lien and that no fee shall be paid for the production

Clause	Contents	Derivation	Notes
			of document.
182	Production of computerized information	SFCO s.35; LFETO s.46	This provision reflects existing law, save that paragraph (b) is new.
183	Inspection of records or documents seized, etc.	SIDO s.18(3)	This provision whilst based on s. 18(3) of the SIDO is new in its application beyond insider dealing.
184	Magistrate's warrants	SFCO ss.36 & 61(1); PIO s.6; LFETO s.47	Subclauses (1), (2), (4) & (5) – (7) essentially follow existing law, whereas sc.(3) is new to the extent that it relates to any proceedings under the Ordinance.
185	Destruction of documents, etc.	SFCO ss.37 & 61(1); LFETO s.48	Subclause (1) is new to the extent that it is an offence of specific intent. Subclause (2) follows existing law.