

Securities & Futures Bill Part VIII

Supplement to the Comparison Table for Part VIII (Annex to LC Paper No. CB(1) 770/00-01(01))

References to clauses (cl.), subclauses (*sc.*) or paragraphs in the comments column are to those of the Bill unless otherwise expressly stated.

FS = the Financial Secretary

SFCO = Securities and Futures Commission (Cap. 24).

CTO = Commodities Trading Ordinance (Cap. 250)

LFETO= Leveraged Foreign Exchange Trading Ordinance (Cap. 451)

PIO = Protection of Investors Ordinance (Cap. 335)

SO = Securities Ordinance (Cap.333)

Blue Bill Clause Ref.	SFCO section	CTO section	LFETO section	Comments (Only new provisions & those at variance with the existing legislation are mentioned.)
171	-	-	-	New. The meaning of "audit working papers" is defined.
172	29A & 61(1)	-	-	The power to direct production of records etc., which was previously exercisable by the Commission and on delegation by an authorized person, is now exercisable exclusively by an authorized person. Under <i>sc.</i> (4), a person who cannot provide the explanation or statement as required because it was not in his knowledge, may be required to make a statutory declaration to verify it. In the existing legislation, it is a defence if a person does not comply with a direction because he is not in possession or control of the record or document or it is not reasonably practicable for him to comply with the requirement. It is not clear whether such defences are included in "reasonable excuse". It is also not clear whether legal privilege is a reasonable excuse. Under <i>sc.</i> (7), an auditor may, upon the Commission certifying in writing that an authorized person has the requisite reasonable cause to believe, be given a direction under <i>sc.</i> (1) requiring him to produce audit working papers or other records or documents. <i>Sc.</i> (16) contains the definition of "authorized person" and "relevant time".

173	30 & 61(1)	-	41	<p>The powers of the authorised person is extended in the following aspects: (i) for the purpose of determining the future ability of an intermediary or its associated entity to comply with the applicable statutory or licensing requirements; (ii) to enter premises include those of an associated entity of an intermediary; (iii) to inspect the documents & records relating to any transaction carried out by a related corporation of an intermediary or an associated entity; or any transaction or activity in the course of, or which may affect, the business of an intermediary or an associated entity; (iv) to make inquiries of an associated entity or a related corporation of an associated entity; (v) to require all person concerned to answer questions; (vi) to require the relevant person to verify his/its answer by statutory declaration. The powers seem no longer exercisable in respect any person who has since ceased to be an intermediary. <i>Sc. (7) & (8)</i> respectively stipulate that the powers under <i>sc. (1)(c)(iii)</i> or <i>(3)(c)</i> shall not be exercised except where the authorised person has reasonable cause to believe that the record or document or information sought cannot be obtained by the exercise of the other powers under <i>sc. (1)</i> or <i>(3)</i>. <i>Sc.(10)</i> requires the authorized person to consult the MA or the Insurance Authority respectively before exercising any power under this clause in respect of a corporation that is an authorized financial institution or a controller of an authorized financial institution or has as its controller an authorized financial institution or has the same controller as an authorised financial institution. In respect of the offences arising from a failure to comply with a requirement or produce any false or misleading answer, record or document in purported compliance with a requirement under this clause, a further distinction is made with respect to the offence being committed with intent to defraud. <i>Sc.(17)</i> is added to define the expressions: "authorized person", "controller" & "relevant authority".</p>
-----	------------	---	----	--

174	31 & 61(1)	-	42	The Commission no longer exercises any of the powers under this section. Only an authorized person may exercise those powers for the purpose of performing a function of the Commission. Information of the consideration for the securities, futures contract, leveraged foreign exchange contract, or any interest therein and in the collective investment scheme may be required to be furnished (<i>sc.</i> (2)(b)). A person would be required to verify the information or his lack of knowledge thereof by a statutory declaration (<i>sc.</i> (3) & (4)). <i>Sc.</i> (5) & (6) provide for respectively the authorization of an authorized person & the furnishing of a copy of such authorization to such person. <i>Sc.</i> (9) adds offences for failure to comply with a requirement or furnishing false information with intent to defraud. <i>Sc.</i> (10) defines the meaning of "authorized person" & "interest".
177	33(12) & (15)	-	44(12), (13) & (15)	The fines for offence committed without reasonable excuse has been reduced. Offences for producing false documents or records or false information recklessly or with intend to defraud are created with heavier penalties.
178	32, 33(13) & (14)	-	43, 44(13) & (14)	The failure is to be certified by originating summons or originating motion. <i>Sc.</i> (2) stipulates the form of originating summons to be used. Instead of a straight forward statement of no double jeopardy as is the case in the existing legislation, <i>sc.</i> (3) now stipulates in a convoluted way to apparently the same effect.
179	59A	-	63A	<i>Sc.</i> (7) is added to provide for payment to FS of any amount of reimbursement of costs and expenses incurred in providing assistance received by the Commission to the extent that the sum has already been paid out of moneys provided by the Legislative Council. <i>Sc.</i> (8) makes clear that any publication under <i>sc.</i> (5) is not subsidiary legislation. <i>Sc.</i> (9) defined "companies inspector" in relation to a place outside Hong Kong.
180	29A(6) & (7), 33(6)	-	44(6)	The application of the rule against self incrimination appears to have been restricted. <i>Sc.</i> (2) now requires a person to provide self incriminating information notwithstanding such information may be used in criminal proceeding in respect of an offence under clause 172 or 177 and also in civil & criminal proceedings under Part XIII (market misconduct).

181	29A(3)	-	-	Paragraph (b) makes clear that no fee shall be payable for or in respect of the production of any record or document by any person claims a lien thereon.
184	36 & 61(1)	-	47	The clause follows the provisions of s.36 of SFCO. The power to retain under <i>sc.</i> (3) is extended to record or document may be required for criminal proceedings or is or may be required for any proceedings under the Ordinance to be enacted pursuant to the Bill.
185	37 & 61(1)	-	48	The burden to prove intent to conceal is now on the prosecution.

Prepared by

Legal Service Division
 Legislative Council Secretariat
 9 March 2001