

Securities & Futures Bill Part IX

Supplement to the Comparison Table for Part IX (Annex B to LC Paper No. CB(1) 896/00-01(01))

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

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

MHO = Mental Health Ordinance (Cap. 136)

CTO = Commodities Trading Ordinance (Cap. 250)

SO = Securities Ordinance (Cap.333)

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

Blue Bill Clause Ref.	SO section	CTO section	LFETO section	Comments
186	56(5)	36(5)	12(7)	The definition of "misconduct" in <i>sc.</i> (1) has been reformulated. It no longer makes any express reference to non-compliance with rules made by the Commission. In <i>sc.</i> (1)(d), whether any omission is likely to be prejudicial to the interest of the investing public or to the public interest seems now to be decided by the subjective opinion of the Commission. A definition of "register of companies" is added. <i>Sc.</i> (2) is new and makes responsible officers and persons involved in the management of the business of a licensed person jointly guilty of misconduct if there was consent, connivance or neglect.

187	56(1) & (2), 121S(1) & (3), 121U(1) & (3), & 121V(1) & (3)	36(1) & (2)	12(1) to (4)	The existing legislation requires the Commission to first make inquiry before exercising any disciplinary power. The new provisions do not contain such requirement. The Commission has the additional power of prohibiting a regulated person from applying to be licensed or be approved as a responsible officer for a period specified by the Commission (<i>sc.</i> (1)(iv)). <i>Sc.</i> (2) empowers the Commission to order payment of a pecuniary penalty. The guidelines to be published pursuant to <i>sc.</i> (7) in relation to the exercise of the power to order pecuniary penalty will not be subject to scrutiny by the Legislative Council. <i>Sc.</i> (3) provides that the Commission may consider any present or past conduct of a regulated person when determining whether he is a fit or proper person. There is no time limit as to how far the Commission may trace past conduct. <i>Sc.</i> (4) to (9) are new.
188	55(1) & (2), 121R(1), (2), (4) & (5), &121T(1), (2), (4) & (5)	35(1) to (3)	11(1) to (3)(a)	Under <i>sc.</i> (1)(a)(iv) & (b)(v), the conviction of the licensed person of an offence in Hong Kong or else where would entitle the Commission to suspend or revoke the licence, if it is of the opinion that such conviction impugns the fitness & properness of the licensed person to be so licensed. The existing legislation requires that such conviction involves a finding of dishonesty or fraud on the part of the licensed person. Under <i>sc.</i> (1)(a)(iii) & (b)(vi), mental disorder is not a sufficient ground unless the person concerned is found by a court to be mentally incapacitated or is detained in a mental hospital under MHO. For a licensed corporation, the mental incapacity of one of its directors could be a ground for suspending or revoking its license. <i>Sc.</i> (2) is new. <i>Sc.</i> (4) to (6) are new provision empowering the Commission to revoke or suspend a licence if the licensed person fails to pay the annual fee or to submit the annual return. <i>Sc.</i> (7) empowers the Commission to revoke or suspend the approval of a responsible officer who has been convicted of an offence in Hong Kong or else where that in the opinion of the Commission impugns upon his fitness & properness to be approved as such officer.

189	55(2B), 56(3), 57(4), 121R(3), 121S(4), 121T(3), & 121U (4)	35(4) & (5), & 36(3) & (4)	11(3)(b) & 12(5) & (6)	The requirements remain the same.
193	-	-	-	New. <i>Sc.</i> (1) incorporates section 23(4) of SFCO. <i>Sc.</i> (3) allows the Commission to exercise its powers under clauses 187(1) or (2) and 188(1)(a) to (d), (2) or (7) by agreement with the regulated person. The person concerned will not be able to appeal against any such exercise of power. Where the exercise of power is pursuant to an agreement under <i>sc.</i> (3), the Commission needs not give the licensed person a reasonable opportunity to be heard (<i>sc.</i> (4)).
193(2)	57(2)	37(2)	11(5)	No substantive change.

Prepared by

Legal Service Division
Legislative Council Secretariat
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