

A BILL

To

Consolidate and amend the law relating to financial products, the securities and futures market and the securities and futures industry, the regulation of activities and other matters connected with financial products, the securities and futures market and the securities and futures industry, the protection of investors, and other matters incidental thereto or connected therewith, and for connected purposes.

Enacted by the Legislative Council.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Securities and Futures Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.

2. Interpretation

(1) Schedule 1 contains interpretation provisions which apply to this Ordinance in accordance with their terms.

(2) Individual Parts and provisions of this Ordinance contain interpretation provisions which have application in accordance with their terms.

(3) The Commission may, by notice published in the Gazette, amend Parts 2, 3, 3A¹ and 4 of Schedule 1.

¹ **A minor consequential amendment. Part 3A of Schedule 1 is the equivalent of Part 3 of Schedule 4 of the Blue Bill that specifies the multilateral agencies for the purpose of clauses 102 and 108, both of which fall under Part IV of the Blue Bill. With the relocation of clause 108 to Part VII as the new clause 169A (see Annex A to Paper CE03/01), the list of multilateral agencies is consequentially relocated to Schedule 1 for use in both Parts IV and VII. Accordingly, the power to update the list should be relocated from Part IV (clause 110) to here.**

PART II

SECURITIES AND FUTURES COMMISSION

Division 1 - The Commission

3. Securities and Futures Commission

(1) Notwithstanding the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 392, the body established by section 3 of that Ordinance as the Securities and Futures Commission shall continue in existence in its original name as a body corporate with power to sue and be sued in that name.

(2) Subject to the provisions of this Ordinance, the corporate identity of the Commission, and the rights, privileges, powers, obligations and liabilities of the Commission and those of others in relation to the Commission, are not affected by the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 392, and any reference to the Commission (whether by reference to that Ordinance or otherwise) in any Ordinance or any instrument, record or document, or in or for the purposes of any proceedings, agreement or arrangement (whether in writing or not) shall be construed accordingly.

(3) The receipts of the Commission are not subject to taxation under the Inland Revenue Ordinance (Cap. 112).

(4) Part 1 of Schedule 2 contains provisions relating to the constitution and proceedings of and other matters relating to the Commission.

4. Regulatory objectives of Commission

The regulatory objectives of the Commission are -

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to promote understanding by the public of the operation and functioning of the securities and futures industry;
- (c) ²to ~~secure an appropriate degree of~~provide protection for members of the public investing in or holding financial products;
- (d) to minimize crime and misconduct in the securities and futures industry;
- (e) to reduce systemic risks in the securities and futures industry; and
- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

² **While there is no dispute that investors should also take responsibility in protecting their interests and the regulator should not be expected to provide a risk-proof investment environment, we accept the comment of some Members expressed at the meeting on 8 June 2001 that reference to “an appropriate degree” of protection in an “objective” clause might not be positively perceived. The revised clause 4(c) together with clause 5(1)(i) to (l) should put in proper perspective the role of the regulator in investor protection.**

5. Functions and powers of Commission

(1) The functions of the Commission are to, so far as reasonably practicable -

- (a) take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) supervise, monitor and regulate -
 - (i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than ~~exempt persons~~ registered institutions³; and
 - (ii) such of the activities carried on by ~~exempt persons~~ registered institutions as are required to be regulated by the Commission under any of the relevant provisions;
- (c) promote and develop an appropriate degree of self-regulation in the securities and futures industry;

³ **We accept the comment of some Members that the term “exempt person” is a misnomer and does not reflect the proposed regulatory framework whereby authorized institutions engaging in regulated activities are subject to a whole range of regulatory requirements and disciplinary sanctions. We informed Members at the meeting on 14 September 2001 that we would replace “exempt person” with “registered institution” throughout the Bill to duly reflect our policy intention.**

- (d) promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;
- (e) encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
- (f) take such steps as it considers appropriate to ensure that the relevant provisions are complied with;
- (g) maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;
- (h) co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;
- (i) promote understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;
- (j) encourage the public to appreciate the relative benefits of investing in financial products through persons carrying on activities regulated by the Commission under any of the relevant provisions;

- (k) promote understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor;
- (l) secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products;
- (m) promote, encourage and enforce -
 - (i) the adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than ~~exempt persons~~ registered institutions²; and
 - (ii) the adoption of appropriate internal controls and risk management systems by ~~exempt persons~~ registered institutions² in the conduct of activities regulated by the Commission under any of the relevant provisions;
- (n) suppress illegal, dishonourable and improper practices in the securities and futures industry;
- (o) take appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing

assistance in maintaining the financial stability of Hong Kong;

- (p) recommend reforms of the law relating to the securities and futures industry;
- (q) advise the Financial Secretary on matters relating to the securities and futures industry and provide him with such information in relation thereto as it considers appropriate; and
- (r) perform functions conferred or imposed on it by or under this or any other Ordinance.

(2) Subsection (1)(c) does not limit or otherwise affect any other function of the Commission.

(3) The Commission, in performing any of its functions in relation to -

- (a) any authorized financial institution as an ~~exempt person~~ registered institution² or as an associated entity of an intermediary; or
- (b) any person as an associated entity of an authorized financial institution that is an ~~exempt person~~ registered institution²,

may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.

(4) ~~The Commission has the power to do such things as it considers necessary in connection with, or reasonably incidental to, the~~

~~performance of its functions and, without limiting the generality of the foregoing, For the purposes of this Ordinance, the Commission⁴ may -~~

- (a) acquire, hold and dispose of property of any description;
- (b) make contracts or other agreements;
- (c) receive and expend moneys;
- (d) with the approval of the Financial Secretary, borrow money on security or other conditions;
- (e) publish or otherwise make available materials, however described, indicating to persons who are, or who carry on activities, regulated by the Commission under any of the relevant provisions and, where the Commission considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions; and
- (f) publish or otherwise make available materials, however described, indicating to the public any matter relating or incidental to the performance of any of the functions of the Commission.

(5) Materials published or otherwise made available under subsection (4)(e) or (f) are not subsidiary legislation.

⁴ **We accept the comment of some Members expressed at the Bills Committee meeting on 8 June 2001 that the power conferred to the SFC under the original formulation may be too wide. The amendment seeks to rectify this and the revised formulation is same as the one adopted in the origin of this clause, i.e. section 8 of the Securities and Futures Commission Ordinance.**

6. General duties of Commission

(1) In performing its functions, the Commission shall, so far as reasonably practicable, act in a way which -

- (a) is compatible with its regulatory objectives; and
- (b) it considers most appropriate for the purpose of meeting those objectives.

(2) In pursuing its regulatory objectives and performing its functions, the Commission shall have regard to -

- (a) the international character of the securities and futures industry and the desirability of maintaining the status of Hong Kong as a competitive international financial centre;
- (b) the desirability of facilitating innovation in connection with financial products and with activities regulated by the Commission under any of the relevant provisions;
- (c) the principle that competition among persons carrying on activities regulated by the Commission under any of the relevant provisions should not be impeded unnecessarily;
- (d) the importance of acting in a transparent manner, having regard to its obligations of preserving secrecy and confidentiality; and
- (e) the need to make efficient use of its resources.

7. Advisory Committee

(1) There shall be an Advisory Committee to advise the Commission on matters of policy regarding any of its regulatory objectives and functions.

(2) The Advisory Committee is constituted in accordance with Part 1 of Schedule 2 and shall conduct its business in accordance with that Part.

(3) The Advisory Committee shall meet at least once every 3 months to advise the Commission.

(4) The Commission may request the Advisory Committee to advise it on matters of policy regarding any of its regulatory objectives and functions.

8. Commission may establish committees

(1) The Commission may establish -

- (a) standing committees; and
- (b) special committees.

(2) The Commission may refer a matter to a committee established under this section for consideration, inquiry or management.

(3) The Commission may appoint a person to be a member of a committee established under this section, whether or not the person is a member of the Commission, and may appoint a member of the committee to be the chairman of the committee.

(4) A reference of a matter to a committee under subsection (2) does not prevent the Commission from performing any of its functions.

(5) The Commission may -

- (a) withdraw a reference under subsection (2) from a committee;
- (b) revoke an appointment of a member or chairman of a committee under subsection (3).

(6) A committee established under this section may elect one of its members -

- (a) to be its chairman if a chairman has not been appointed by the Commission under subsection (3); or
- (b) to act as its chairman for any period during which a chairman appointed by the Commission under subsection (3) is unable to act as chairman due to illness, absence from Hong Kong or any other cause,

and may at any time remove the member so elected from the office of the chairman.

(7) A committee established under this section may, subject to the provisions of this Ordinance, regulate its own procedure and business.

(8) A committee established under this section shall meet when and where the chairman of the committee determines, subject to any procedure fixed by the committee and any direction given by the Commission under subsection (9).

(9) The Commission may give directions to a committee established under this section, whether generally or in any particular case, and whether regarding the manner in which it shall act or otherwise, and the committee shall act in accordance with any such directions.

9. Staff of Commission

(1) The Commission may employ persons for such remuneration and allowances, and on such other terms and conditions, as the Commission determines.

(2) The Commission may provide and maintain schemes (whether contributory or not) for the payment of retirement benefits, gratuities or other allowances to its employees and their dependants.

(3) The Commission may engage consultants, agents and advisers to assist it in the performance of its functions.

10. Delegation and sub-delegation of Commission's functions

(1) Subject to subsection (2), the Commission may delegate any of its functions to -

- (a) a member of the Commission;
- (b) a committee established under section 8; or
- (c) an employee of the Commission, whether by reference to his name or to the office held by him.

(2) No delegation shall be made under subsection (1) in respect of -

- (a) the power of the Commission to delegate under this section; or
- (b) a function specified in Part 2 of Schedule 2.

(3) Where the Commission delegates a function under this section, it may at the same time authorize the delegate to sub-delegate the function and the authorization may contain restrictions or conditions on the exercise of the power to sub-delegate.

(4) A delegation or sub-delegation under this section does not prevent the Commission or its delegate from concurrently performing the function delegated or sub-delegated.

(5) The Commission may -

(a) revoke a delegation under this section;

(b) revoke an authorization in respect of a sub-delegation under this section,

whereupon the delegation or sub-delegation (as the case may be) shall cease to have effect.

(6) Where a person or committee purports to act pursuant to a delegation or sub-delegation under this section, he or it ~~is~~ shall be⁵ presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.

(7) Without prejudice to subsection (4), where there is a delegation or sub-delegation under this section in respect of a function of the Commission, any reference in this or any other Ordinance to the Commission in connection with the performance of the function shall, unless the context otherwise requires, be construed accordingly.

(8) The Legislative Council may by resolution amend Part 2 of Schedule 2.

11. Directions to Commission

(1) After consultation with the chairman of the Commission, the Chief Executive may, upon being satisfied that it is in the public

⁵ Minor drafting amendment.

interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objectives or the performance of any of its functions.

(2) The Commission shall comply with any written direction given under subsection (1).

(3) Where any written direction is given under subsection (1), any requirement under any other provision of this or any other Ordinance that the Commission shall, for the purpose of performing any of the functions to which the written direction relates -

(a) form any opinion;

(b) be satisfied as to any matter (including existence of particular circumstances); or

(c) consult any person,

shall not apply for all purposes connected with the performance of functions pursuant to, or consequent upon, the written direction.

(4) Written directions given under subsection (1) are not subsidiary legislation.

12. Commission to furnish information

The Commission shall, when required by the Financial Secretary, furnish to the Financial Secretary such information as he specifies on the principles, practices and policy it is pursuing or adopting, or proposes to pursue or adopt, in furthering any of its regulatory objectives or performing any of its functions, and the reasons therefor.

Division 2 - Accounting and financial arrangements

13. Financial year and estimates

(1) The financial year of the Commission commences on 1 April in each year.

(2) The Commission shall, not later than 31 December in each financial year of the Commission, submit to the Chief Executive for his approval estimates of its income and expenditure for the next financial year.

(3) The Financial Secretary shall cause the estimates as approved pursuant to subsection (2) to be laid on the table of the Legislative Council.

14. Appropriation

For each financial year of the Commission, the Government shall pay to the Commission out of the general revenue the moneys appropriated by the Legislative Council for that purpose.

15. Accounts and annual report

(1) The Commission shall keep proper accounts and records of its transactions.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare financial statements which shall -

- (a) give a true and fair view of the state of affairs of the Commission as at the end of the financial year and of the results of its operations and cash flows in the financial year; and

(b) be signed by the chairman, and one non-executive director, of the Commission.

(3) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare a report on its activities during the financial year and send a copy of the report to the Financial Secretary who shall cause a copy thereof to be laid on the table of the Legislative Council.

16. Auditors and audit

(1) The Commission shall, with the approval of the Financial Secretary, appoint auditors.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, submit to the auditors appointed under subsection (1) for audit the financial statements prepared for the financial year under section 15(2).

(3) The auditors appointed under subsection (1) shall prepare a report on the financial statements submitted to them under subsection (2) and send the report to the Commission which shall, as soon as reasonably practicable after its receipt, send to the Financial Secretary a copy of the report and a copy of the financial statements to the Financial Secretary which the report relates⁶.

(4) The auditors appointed under subsection (1) shall include in their report a statement as to whether, in their opinion, the financial statements to which the report relates give a true and fair

⁶ The amendment seeks to remove any doubt which Members have expressed at the meeting on 12 June 2001 that the Commission should submit to the Financial Secretary the “audited” financial statements. The revised formulation is the same as the one adopted in clause 16(6) whereby the Financial Secretary should table before the LegCo the auditors’ report and the audited financial statements.

view of the state of affairs of the Commission as at the end of the financial year for which the financial statements are prepared and of the results of its operations and cash flows in the financial year.

(5) An auditor appointed under subsection (1) has a right of access at all reasonable times to the books, accounts, vouchers, records and documents kept by the Commission and is entitled to require from the officers of the Commission such information and explanations as he considers necessary for the performance of his duties as auditor.

(6) The Financial Secretary shall cause a copy of the report referred to in subsection (3), and a copy of the financial statements to which the report relates, to be laid on the table of the Legislative Council.

(7) The Director of Audit or another public officer authorized by the Director under subsection (8) may at any reasonable time -

- (a) examine any books, accounts, vouchers, records or documents kept by the Commission; and
- (b) if the Director or the public officer (as the case may be) considers appropriate, make a copy of the whole of, or any entry in, such books, accounts, vouchers, records or documents.

(8) The Director of Audit may authorize any public officer to perform any function for the purposes of subsection (7).

17. Investment of funds

The Commission may invest its funds which are not immediately required in the manner that the Financial Secretary approves.

