

SCHEDULE 2

[ss. 3, 7 & 10 &
Schs. 1 & 9]

SECURITIES AND FUTURES COMMISSION

PART 1

CONSTITUTION AND PROCEEDINGS
OF COMMISSION, ETC.

¹**Chairman and members of Commission**

1. The Commission shall ~~consist~~ of a chairman and ~~an uneven~~ such number (~~to be determined by the Chief Executive but~~ not being less than 7) of other members as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows--

- (a) the majority of the members of the Commission shall be appointed to be non-executive directors of the Commission, and the remainder shall be appointed to be executive directors of the Commission; and
- (b) the chairman of the Commission shall, by virtue of holding that office, be regarded as an executive director of the Commission appointed under paragraph (a).

¹ We have taken on board the comment of some Members expressed at the Bills Committee meeting on 12 June 2001 that the Commission should consist of a majority of non-executive directors for enhanced governance.

~~2. Half of the members, including the chairman, of the Commission shall be appointed to be executive directors of the Commission and the remainder shall be appointed to be non-executive directors of the Commission.~~

3. When the membership of the Commission ceases to comply with the requirements of sections 1 and 2, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

**Deputy chairman and vacancies in office of
chairman or deputy chairman**

4. The Chief Executive may appoint an executive director of the Commission to be the deputy chairman of the Commission.

5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.

6. Notwithstanding that a deputy chairman has been appointed under section 4, the chairman of the Commission may, where there is no designation under section 7, designate an executive director

of the Commission to act as chairman of the Commission for any period during which both he and the deputy chairman are unable to act as chairman due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation.

7. If -

- (a) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or
- (b) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,

the Financial Secretary may designate an executive director of the Commission to act as chairman of the Commission for any period during which the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause.

8. A designation under section 7 ceases to have effect when -

- (a) it is revoked by the Financial Secretary;
- (b) where the designation is under section 7(a), an appointment is made under section 4; or
- (c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is no longer unable to act as chairman due to illness, absence from Hong Kong or any other cause,

whichever is the earlier.

9. A deputy chairman or an executive director of the Commission who acts as chairman of the Commission under section 5 or in accordance with a designation under section 6 or 7 shall be deemed for all purposes to be the chairman of the Commission.

Office of members, etc.

10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman or otherwise) shall be determined by the Chief Executive.

11. A member of the Commission (whether as the chairman, deputy chairman or otherwise) may at any time resign his office by notice in writing to the Chief Executive.

12. A member of the Commission (whether as the chairman, deputy chairman or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine.

13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman or otherwise) whose removal appears to him to be desirable

for the effective performance by the Commission of its functions.

Meetings

14. Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman or the deputy chairman, or any 2 other members, of the Commission.

15. At a meeting of the Commission -

- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting;
- (b) if the chairman of the Commission is not present but the deputy chairman of the Commission is present, the deputy chairman shall be the chairman of the meeting; or
- (c) if neither the chairman nor the deputy chairman of the Commission is present, the members of the Commission present shall choose one of their number to be the chairman of the meeting.

16. The quorum for a meeting of the Commission is not less than one third of the executive directors ~~4 members~~ of the Commission, ~~7~~ of whom 2 shall be executive directors and not less than one third

~~of the 2 shall be non-executive directors of the Commission~~².

17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.

18. Each member of the Commission present at a meeting of the Commission has one vote.

19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.

20. The chairman of a meeting of the Commission shall not exercise a casting vote in respect of any question for decision at the meeting until after he has consulted the Financial Secretary on the question.

² **We accept the comment of some Members expressed at the Bills Committee meeting on 12 June 2001 that with a variable number of SFC members (being not less eight including the chairman: see clause 1 above), the quorum of a meeting should not be set at a fixed number of them. The proposed revised quorum of one third of executive directors and one third of non-executive directors is the same as that required under the Rules of Procedure of LegCo (Cap. 2501). The revised “one third” requirement is also introduced in clauses 21(b)(ii) and 23 below on written resolution for the same rationale.**

Written resolution

21. Where a resolution -

(a) is in writing; and

(b) ³is signed by such number of members of the Commission as -

(i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and

(ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,

~~is signed by not less than 2 executive directors and not less than 2 non-executive directors of the Commission, including all of the executive directors and non-executive directors of the Commission who are, at~~

³ **The amendment seeks to clarify the requirement that a written resolution needs the consent of all executive directors and non-executive directors who are present in Hong Kong at the time when it is made; and the respective numbers of executive directors and non-executive directors should in any case be not less than one third of each group. See also note 2 above.**

~~any time when the resolution is made
available for signature, present in Hong
Kong and capable of signing the
resolution,~~

the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.

22. For the purposes of section 21, a resolution to which that section applies may be -

- (a) in the form of one document; or
- (b) in the form of more than one document, each in the like form and signed by one or more ~~executive directors or non-executive directors~~members⁴ of the Commission.

23. Where a resolution is in the form of more than one document as described in section 22(b), the requirement under section 21(b) shall be regarded as having been satisfied if the documents together bear the signatures of such number of members of the Commission as is specified in section 21(b)(i) and (ii).~~not less than 2 executive directors and not less than 2 non-executive directors of the Commission, including all of the executive directors and~~

⁴ **Drafting amendment. The term “member” is already defined in Schedule 1 to mean any executive director or non-executive director of the Commission. See also same amendment to clause 24.**

~~non-executive directors of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution.~~³

24. For the purposes of sections 21 to 23 -

- (a) a document shall be regarded as having been signed by ~~an executive director or non-executive director~~ a member⁴ of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the ~~executive director or non-executive director~~ member⁴; and
- (b) a resolution to which section 21 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as an ~~executive director or non-executive director~~ a member⁴ of the Commission for the purposes of that section.

Seal, and regulation of administration, etc.

25. The Commission shall have a seal, the affixing of which shall be authenticated by the signature of the chairman or the deputy chairman of the Commission, or by the signature of such other member of the Commission as is authorized by it to act in that behalf.

26. The Commission shall organize and regulate its administration,

procedure and business in such manner as it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

Advisory Committee

27. The Advisory Committee shall consist of -

- (a) the chairman of the Commission;
- (b) not more than 2 other⁵ executive directors of the Commission who shall be appointed by the Commission;
- (c) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.

28. A meeting of the Advisory Committee may be convened by -

- (a) the chairman of the Commission; or
- (b) any 3 other members of the Advisory Committee.

29. At a meeting of the Advisory Committee -

- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting; or
- (b) if the chairman of the Commission is not present, the members of the Advisory Committee present shall

⁵ **Technical amendment for greater clarity.**

choose one of their number to be the chairman of the meeting.

30. Where a member of the Advisory Committee appointed under section 27(b) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.

31. A member of the Advisory Committee appointed under section 27(b) or (c) may at any time resign his office by notice in writing to -

(a) where he has been appointed under section 27(b), the Commission; or

(b) where he has been appointed under section 27(c), the Chief Executive.

32. The Chief Executive may by notice in writing remove from office any member of the Advisory Committee appointed under section 27(c).

PART 2

NON-DELEGABLE FUNCTIONS OF COMMISSION

1. Any function of the Commission to make subsidiary legislation under or pursuant to any Ordinance.

2. The following functions of the Commission -

- (1) to borrow money, under section 5(4)(d) of this Ordinance;
- (2) to publish or otherwise make available materials, under section 5(4)(e) of this Ordinance;
- (3) to establish any committee, under section 8(1) of this Ordinance;
- (4) to refer any matter to a committee, under section 8(2) of this Ordinance;
- (5) to appoint a person to be a member or chairman of a committee, under section 8(3) of this Ordinance;
- (6) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee, under section 8(5) of this Ordinance;
- (7) to submit to the Chief Executive estimates, under section 13(2) of this Ordinance;
- (8) to prepare any financial statements, under section 15(2) of this Ordinance;
- (9) to prepare any report, under section 15(3) of this Ordinance;
- (10) to appoint auditors, under section 16(1) of this Ordinance;
- (11) to invest funds, under section 17 of this Ordinance;
- (12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;

- (13) to amend or revoke conditions, or impose new conditions, under section 19(3) of this Ordinance;
- (14) to give a company a reasonable opportunity of being heard, under section 19(7) of this Ordinance;
- (15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;
- (16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;
- (17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;
- (18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;
- (19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;
- (20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;
- (21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;
- (22) to withdraw recognition of a recognized exchange company, under section 28(1)(a) of this Ordinance;

- (23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(b) of this Ordinance;
- (24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;
- (25) to extend a direction, under section 29(3) of this Ordinance;
- (26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;
- (27) to amend or revoke conditions, or impose new conditions, under section 37(2) of this Ordinance;
- (28) to give a company a reasonable opportunity of being heard, under section 37(5) of this Ordinance;
- (29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;
- (30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;
- (31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;

- (32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;
- (33) to withdraw recognition of a recognized clearing house, under section 43(1)(a) of this Ordinance;
- (34) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(b) of this Ordinance;
- (35) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;
- (36) to amend or revoke conditions, or impose new conditions, under section 59(3) of this Ordinance;
- (37) to direct a person to take specified steps, under section 59(9)(c) of this Ordinance;
- (38) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;
- (39) to approve the increase or decrease of any interest a recognized exchange controller has in a recognized exchange company or recognized clearing house, pursuant to section 60(a) of this Ordinance;
- (40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;

- (41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;
- (42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;
- (43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;
- (44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;
- (45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;
- (46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;
- (47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;
- (48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;
- (49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;

- (50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;
- (51) to make statement in writing, pursuant to section 74(1) of this Ordinance;
- (52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;
- (53) to approve a fee, pursuant to section 76(1) of this Ordinance;
- (54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;
- (55) to amend or revoke conditions, or impose new conditions, under section 79(2) of this Ordinance;
- (56) to give a company a reasonable opportunity of being heard, under section 79(5) of this Ordinance;
- (57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;
- (58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;
- (59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;

- (60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;
- (61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;
- (62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;
- (63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;
- (64) to serve a notice, under section 92(1) of this Ordinance;
- (65) to extend the period during which a restriction notice is to remain in force, under section 92(6) of this Ordinance;
- (66) to apply to the Court of First Instance, pursuant to section 92(8) of this Ordinance;
- (67) to issue a suspension order, under section 93(1) of this Ordinance;
- (68) to extend the period during which a suspension order is to remain in force, under section 93(7) of this Ordinance;
- (69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 175(1)(a) to (g) of this Ordinance, under section 175(1) of this Ordinance;

- (70) to cause a report to be published, under section 176(6) of this Ordinance;
- (71) to impose a prohibition or requirement, under section 196, 197, or 198 ~~or 199~~⁶ of this Ordinance;
- (72) to withdraw, substitute or vary a prohibition or requirement, under section 201(1) of this Ordinance;
- (73) to present a petition, under section 205(1) of this Ordinance;
- (74) to apply to the Court of First Instance, pursuant to section 206(1) of this Ordinance;
- (75) to apply to the Court of First Instance, under section 207(1) of this Ordinance;

⁶ In considering Paper CE09/01 at the Bills Committee meeting on 14 September 2001, Members agreed that clause 199 should be removed. Reference to this clause is consequentially removed from the list of non-delegable functions.

(75A) to specify the time at which a specified decision is to take effect, under section 224(3) of this Ordinance;⁷

(76) to establish a compensation fund, under section 229 of this Ordinance;

(77) to borrow, or to charge any investments by way of security, under section 230(2) of this Ordinance;

(78) to appoint an auditor, under section 232(5) of this Ordinance;

(79) to invest money, under section 233(1) of this Ordinance;

(80) to make report to the Financial Secretary, under section 244(8) of this Ordinance;

(81) to publish guidelines, under section 300(1) of this Ordinance;

(82) to make an application, pursuant to section 373(1) of this Ordinance;

(83) to consult the Financial Secretary, under section 383(1) of this Ordinance;

(84) to make recommendation to the Chief Executive in Council, under section 383(2) of this Ordinance;

⁷ As mentioned in the footnote in the Annex to Paper CE01/01, the new item 75A serves as an additional safeguard in situations where appealable decisions would have to, in the public interest or in the interest of the investing public, take effect prior to the resolving of possible disputes. Item 75B proposed in that paper concerns decisions appealable to the Chief Executive in Council. Since we have accepted the comment of some Members that all appeals should be lodged with the Securities and Futures Appeals Tribunal (see Paper CE10/01), item 75B is spent of effect and thus not included in this final list.

(85) to appoint members of the Advisory Committee, under section 27(b) of Part 1;

(86) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;

(87) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;

(88) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance.