

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

**Parts I and II of and Schedule 2 to the Securities and Futures Bill
Committee Stage Amendments**

Introduction

Members examined Parts I and II of and Schedule 2 to the Securities and Futures Bill on 8 and 12 June 2001.

Committee Stage Amendments

2. In respect of Part I, we propose a minor consequential amendment as marked up in **Annex 1** for the reason set out in the footnote thereto.

3. In respect of Part II and Schedule 2, we have made some amendments in the light of Members' comments and to further refine the drafting. All the amendments are marked up in **Annex 2** and **Annex 3** respectively with explanations therefor in the footnotes.

About the marked-up versions of the Bill in the Annexes

4. All the proposed amendments shown in the annexes to this paper are marked up against the Blue Bill, notwithstanding that they might have appeared in earlier marked-up versions issued to Members. Where the amendments are made since Members last considered the relevant Parts or Schedules of the Bill, such **new amendments would be explained in the footnotes in bold type.**

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.

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.