

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

**Part XI of the Securities and Futures Bill
Committee Stage Amendments**

Members examined on a clause-by-clause basis Part XI of the Securities and Futures Bill on 17 September 2001.

Committee Stage Amendments

2. We have since the above meetings made some amendments to Part XI in the light of Members' comments and to further refine the drafting. All the amendments are marked up in the **Annex** with explanations therefor in the footnotes.

About the marked-up version of the Bill in the Annex

3. All the proposed amendments shown in the annex 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 Part of the Bill, such **new amendments are explained in the footnotes in bold type**, to distinguish them from the footnotes for amendments which Members have considered and proposed no further changes at previous meetings.

Financial Services Bureau
Securities and Futures Commission
26 November 2001

PART XI

SECURITIES AND FUTURES APPEALS TRIBUNAL

Division 1 - Interpretation

209. Interpretation of Part XI

In this Part, unless the context otherwise requires -

"application for review" (覆核申請) means an application made under section 211(1);

¹"~~excluded decision~~" (豁除決定) means a decision made in respect of an authorized financial institution as an exempt person or as an associated entity of an intermediary which -

(a) ~~is made by the Commission under or pursuant to any of the provisions set out in column 2 of Part 3 of Schedule 7; and~~

¹ As mentioned in Paper 8D/01 issued on 28 May, we accept Members' comments made at the meetings on 27 April and 2 May that the decisions made by the SFC and the HKMA in relation to a registered institution should also be appealable to the Securities and Futures Appeals Tribunal (the "SFAT"). To reflect this revised proposal, we have removed the distinction in Part XI of the Blue Bill between decisions made by the SFC which are appealable to the SFAT and referred to as "specified decisions", and by the HKMA which are appealable to the Chief Executive in Council and referred to as "excluded decisions". In this revised draft, all appealable decisions are itemized in part 2 of Schedule 7 as "specified decisions" and the relevant appeals are to be determined by the SFAT. Accordingly, we propose the amendment to delete the definition of "excluded decision". Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

(b) is within the description set out, opposite such provisions, in column 3 of Part 3 of Schedule 7;

"judge" (法官) means -

- (a) a judge or a deputy judge of the Court of First Instance;
- (b) a former Justice of Appeal of the Court of Appeal;
- (c) a former judge or a former deputy judge of the Court of First Instance;

²"parties" (各方), in relation to a review, means -

- (a) the Commission relevant authority making the specified decision in question; and

² Under the Blue Bill, all decisions appealable to the SFAT are made by the SFC.

As mentioned in note 1 above, we accept Members' comment that decisions made in relation to a registered institution, whether made (a) by the SFC under the SF Bill or (b) by the HKMA under the Banking Ordinance, should be appealable to the SFAT.

Moreover, at the meeting of 12 January 2001, members expressed the view that "compensation decisions" made by (c) the SFC or the recognized investor compensation company should also be appealable to the SFAT. We also accept this comment.

As such, there are now three groups of authorities (i.e. the aforesaid (a) to (c)) whose decisions may be appealable to the SFAT. We have introduced a short hand reference of "relevant authority" to cover collectively the three authorities which replaces all references to the "Commission" in Part XI of the Blue Bill; and a short hand reference of "specified decisions" to cover collectively the decisions made by them which are being itemized separately under Divisions 1, 2 and 3 of Part 2 of Schedule 7. The exact authority referred to is to be interpreted by reference to the decision under appeal. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

(b) the person making the application for review in question;

²"relevant authority" (有關當局) -

- (a) in relation to a specified decision within the meaning of paragraph (a) of the definition of "specified decision" in this section, means the Commission;
- (b) in relation to a specified decision within the meaning of paragraph (b) of the definition of "specified decision" in this section, means the Monetary Authority; or
- (c) in relation to a specified decision within the meaning of paragraph(c) of the definition of "specified decision" in this section, means the Commission or the recognized investor compensation company by which the decision is made (as the case may be);

"review" (覆核) means a review of a specified decision by the Tribunal under section 212(1);

"specified decision" (指明決定) means =

- ²(a) a decision which -
 - (a) is made by of the Commission which -
 - (i) is made under or pursuant to any of the provisions set out in column 2 of

Division 1 of Part 2 of Schedule 7;

and

~~(b) _____ (ii)~~ is within the description set out,
opposite such provisions, in column 3
of Division 1 of Part 2 of Schedule
7;

(b) a decision of the Monetary Authority which -

~~(i)~~ is made under or pursuant to any of
the provisions set out in column 2 of
Division 2 of Part 2 of Schedule 7;
and

~~(ii)~~ is within the description set out,
opposite such provisions, in column 3
of Division 2 of Part 2 of Schedule
7; or

(c) a decision of the Commission or a recognized
investor compensation company which -

~~(i)~~ is made under or pursuant to any of
the provisions set out in column 2 of
Division 3 of Part 2 of Schedule 7;
and

~~(ii)~~ is within the description set out,
opposite such provisions, in column 3
of Division 3 of Part 2 of Schedule
7;

~~but does not include an excluded decision;~~

"Tribunal" (審裁處) means the Securities and Futures Appeals Tribunal established by section 210.

Division 2 - Securities and Futures Appeals Tribunal

210. Securities and Futures Appeals Tribunal

(1) There is established a Tribunal to be known as the Securities and Futures Appeals Tribunal which shall have jurisdiction to review specified decisions, ³and to hear and determine any question or issue arising out of or in connection with any review, in accordance with this Part and Schedule 7.

(2) Subject as otherwise provided in this Part or in Schedule 7, the Tribunal -

- (a) shall consist of a chairman and 2 other members; and
- (b) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the 2^{other}² members⁴ of the Tribunal shall not be public officers.

³ Technical amendment to clarify the jurisdiction of the SFAT.

⁴ Technical amendment for greater clarity. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

(4) Part 1 of Schedule 7 shall have effect in relation to the appointment of members and ~~temporary members~~^{*} of the Tribunal, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

(5) The Tribunal may, where the Chief Executive considers appropriate, be divided into 2 or more divisions, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each division of the Tribunal (including appointment of the chairman and other members of such division and all matters concerning such division)⁵ as they apply to the Tribunal.

(6) With the exception of the chairman of the Tribunal who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 209, a member of the Tribunal may be paid, as a fee for his services, such amount as the

* At the Bills Committee meeting on 17 September 2001, some Members questioned the need for appointing "temporary members" to the SFAT and asked for sufficient safeguards to ensure fair hearing. The proposal for "temporary members", adopted from the existing arrangements for the Insider Dealing Tribunal, is intended to allow for flexibility to cater for unforeseen situations and save cost and time for parties to an appeal. On reflection, we consider that the need to appoint "temporary members" would be rare, as the hearing for a typical appeal takes about a week. We therefore propose to delete the provision for "temporary members". If a member becomes incapacitated in the course of an SFAT proceeding, a new Tribunal would have to be appointed to hear the appeal ab initio.

⁵ In the light of the comment of some Members expressed at the Bills Committee meeting on 17 September 2001, we propose amending clause 210(5) to make it clear that an additional Chairman and members are appointed upon the establishment of a new SFAT division. Each division of the SFAT would operate independently as an appeals tribunal. It would have the same powers and would perform the same functions as any other division. The arrangement may be invoked if a backlog of appeals need to be cleared expeditiously. This proposed arrangement allows for greater flexibility. We did not receive any comment thereon during consultation on the White Bill or the Blue Bill.

Financial Secretary considers appropriate, and that amount shall be a charge on the general revenue.

(7) Where a person who is a judge within the meaning of paragraph (a) of the definition of "judge" in section 209 is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects -

- (a) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;
- (b) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;
- (c) the terms and conditions to which the person is subject as a holder of that office.

211. Applications for review of specified decisions

(1) Subject to subsections (2) and (3), a person aggrieved by a specified decision of the ~~Commission~~relevant authority⁶ made in respect of him may, by notice in writing served ~~on~~given to⁷ the Tribunal, apply to the Tribunal for a review of the decision.

⁶ Please see Note 2 above. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

⁷ Technical drafting amendment in the light of the comment of a Member expressed at the Bills Committee meeting on 17 September 2001.

(2) A notice ~~served or given to~~⁷ the Tribunal under subsection (1) shall set out the grounds for the application to which the notice relates.

(3) An application for review of a specified decision of the ~~Commission~~^{relevant authority}⁸ shall be made within 21 days after -

(a) subject to paragraph (b) -

(i) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(ii) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made;

(b) where the decision is a specified decision which is described in column 2 of Division 1 of Part 3 of Schedule 7 and to which the provision set out, opposite such description of the specified decision, in that to which section

⁸ Please see Note 2 above. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

~~142(8) or 143(6)column 3 of that Division⁹~~

applies, a notice in respect of the decision has been given to the person in respect of whom it is made.

¹⁰(3A) Notwithstanding subsection (3), the Tribunal, upon application in writing by any person, may, subject to subsection (3B), by order extend the time within which an application for review of a specified decision of the relevant authority shall be made under subsection (3), whereupon the time within which such an application shall be made under subsection (3) shall be extended accordingly.

¹⁰(3B) The Tribunal shall not grant an extension under subsection (3A) unless –

(a) the person who has made the application for the grant of the extension pursuant to that subsection and the relevant authority have been given a reasonable opportunity of being heard; and

⁹ We have relocated the exact references in relation to the relevant specified decisions to Part 3 of Schedule 7. This change is to supplement the whole scheme for flexible updating of the decisions under the SF Bill and the Banking Ordinance that can be appealed against, by putting details of all specified decisions in Schedule 7. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

¹⁰ We accept the comment of some Members expressed at the meeting on 17 September 2001 that there should be a mechanism to permit late appeal involving genuine hardship. The proposed new clauses 211(3A) and 211(3B) seek to empower the SFAT to extend the appeal period if it is satisfied that there is a good cause for granting the extension.

(b) it is satisfied that there is a good cause for granting the extension.

(4) Where the Tribunal receives a notice ~~served on~~ given to⁷ it under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the ~~Commission~~ relevant authority¹¹.

212. Proceedings before Tribunal

¹²(1) ~~Following the submission of~~ After an application for review ~~has been made~~, the Tribunal shall review the specified decision to which the application relates.

(2) Following the review of a specified decision under subsection (1), the Tribunal may -

(a)¹³(a) confirm, vary or set aside the decision,
and, where the decision is set aside,
substitute for the decision any other decision

¹¹ Please see Note 2 above. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

¹² Technical drafting amendment in the light of the comment of a Member expressed at the Bills Committee meeting on 17 September 2001.

¹³ Technical drafting amendment in the light of the comment of a Member expressed at the Bills Committee meeting on 17 September 2001.

which the Tribunal considers appropriate,

~~whether more or less onerous;~~¹⁴

- (b) remit the matter in question to the ~~Commission~~relevant authority¹⁵ with the directions it considers appropriate, which may include a direction to the ~~Commission~~relevant authority¹⁵ to make a decision afresh in respect of any matter specified by the Tribunal.

¹⁴(2A) Where the Tribunal varies, or substitutes any decision for, a specified decision under subsection (2)(a), the decision as varied or the decision substituting for the specified decision (as the case may be) may be any decision (whether more or less onerous) that the relevant authority had power to make in respect of the person making the application

¹⁴ In Annex A to Paper No. CE10/01, we proposed amending clause 212(2)(a), and adding clauses 212(2A) and 212(3A) to afford the SFAT the same range of disciplinary sanctions that can be imposed upon a relevant employee or an executive officer of a registered institution (despite that the imposition of some of those sanctions is by the SFC and others the HKMA) as that upon a licensed representative or a responsible officer of a licensed corporation (whereby the imposition of all disciplinary sanctions is by the SFC). To illustrate, while reviewing an appeal against the SFC decision under the SF Ordinance to fine an executive officer of a registered institution, the SFAT may substitute the appealed decision with a decision to suspend the consent given to the executive officer for a specified period, a decision exercisable by the HKMA under the Banking Ordinance. Members considered the amendments in respect of the SFAT's power to substitute the specified decision of a relevant authority, and did not propose further changes at the Bills Committee meeting on 17 September 2001.

We have since relocated the relevant substance to the new clause 212(2A) and extended such application to cases where the SFAT varies the decision of the relevant authority.

Previous clause 212(2A) (now renumbered as clause 212(2B)) and clause 212(3A) remain basically unchanged except for updating of cross references.

¹⁵ Please see Note 2 above. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

for review in question, whether or not under the same provision as that under which the specified decision has been made.

¹⁴(2B) Without limiting the generality of subsections (2)(a) and (2A) but subject to subsection (3A)¹⁶ –

(a) where the specified decision in question is a specified decision described in column 2 of Division 2 of Part 3 of Schedule 7, the decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Monetary Authority had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division; and

(b) where the specified decision in question is a specified decision described in column 2 of Division 3 of Part 3 of Schedule 7, the

¹⁶ **Technical amendment consequential to the changes proposed to clause 212(2) and the new clause 212(2A).**

decision that the Tribunal may substitute under subsection (2)(a) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(a) for the specified decision) any decision that the Commission had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division.

(3) ¹⁷~~T~~Notwithstanding anything in this section, the Tribunal shall not determine a review without first giving the parties to the review a reasonable opportunity of being heard.

¹⁴(3A) Without limiting the generality of subsection (3), the Tribunal shall not exercise any power pursuant to subsection (2B)(a) or (b) without first giving a reasonable opportunity of being heard to -

- (a) in the case of subsection (2B)(a), the Monetary Authority; or
- (b) in the case of subsection (2B)(b), the Commission.

¹⁷ Technical amendment for greater clarity. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

¹⁸(4) Subject to section 214(3), where the Tribunal is the standard of proof required to determine any matter of fact, it shall do so on the balance of probabilities from the evidence before it question or issue before the Tribunal shall be that applicable to civil proceedings in a court of law.

213. Powers of Tribunal

- (1) Subject to the provisions of Part 1 of Schedule 7 and any rules made by the Chief Justice under section 226, the Tribunal, for the purposes of a review, may, on its own motion or on the application of any of the parties to the review –
- (a) receive and consider any material by way of oral evidence, written statements, documents or otherwise, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;
 - (b) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting relating to the review and to give evidence and produce any article, record or document in his possession relating to the subject matter of the review;

¹⁸ In the light of the comment of a Member expressed at the Bills Committee meeting on 17 September 2001, we propose the amendment to replace the applicable standard of proof on “balance of probabilities” with “that applicable to civil proceedings in a court of law”, which is the same standard adopted in clause 244(7) in respect of the proceedings of the Market Misconduct Tribunal.

- (c) administer oaths and affirmations¹⁹;
- (d) examine or cause to be examined on oath, affirmation¹⁹ or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the review;
- (e) order a witness to provide evidence in a truthful manner for the purposes of the review by affidavit or affirmation;
- (f) order a person not to publish or otherwise disclose any material the Tribunal receives;
- (g) prohibit the publication or disclosure of any material the Tribunal receives at any²⁰ sitting, or any²⁰ part of a sitting, which is held in private;
- (h) determine the manner in which any material referred to in paragraph (a) is received;
- (i) stay any of the proceedings in the review on such grounds and on such terms and conditions

¹⁹ We propose to delete references to "affirmations" as the term is covered in the defined meaning of "oaths" under the Interpretation and General Clauses Ordinance (Cap.1). Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

²⁰ Technical amendment for greater clarity. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

as it considers appropriate having regard to the interests of justice;

- (j) determine the procedure to be followed in connection with the review;
- (k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the carrying out of its functions.

(2) A person commits an offence if he, without reasonable excuse -

- (a) ~~refuses or~~²¹fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);
- (b) disrupts or otherwise misbehaves during any sitting of the Tribunal;
- (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;
- (d) hinders or deters any person from attending before the Tribunal, giving evidence or

²¹ Technical amendment for consistency throughout the Bill. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

producing any article, record or document, for the purposes of a review;

- (e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or
- (f) threatens, insults or causes any loss to be suffered by any member of the Tribunal at any time on account of the performance of his functions in that capacity.

(3) A person who commits an offence under subsection (2) is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

²²(4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made

²² In order that the SFAT can effectively and efficiently deal with applications for review, it is essential that the tribunal is able to obtain information relevant to the review including such information obtained by the SFC from a preliminary inquiry or an investigation under clauses 172 and 176 respectively, based on which the SFC has made the decision under appeal. Accordingly, we propose to add clause 213(4) expressly requiring a person to comply with the requirement imposed by the SFAT notwithstanding such compliance may incriminate him. The arrangements under the existing Securities and Futures Appeals Panel as provided for by the Securities and Futures Commission Ordinance are not sufficiently clear in this regard. As a safeguard that the interest of the person would not be unfairly compromised, we propose adding a new clause 213A (a use immunity provision) to restrict the use of the information. Accordingly the information shall not be admissible in evidence against the person in criminal proceedings in a court of law except under very limited circumstances (for example, perjury) as permitted under human rights principles. The proposed amendments are modeled on clauses 172, 176 and 180 under Part VIII which Members considered and did not propose any further changes at the Bills Committee meeting on 17 July 2001.

or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

22213A. Use of incriminating evidence required by Tribunal

Notwithstanding any other provisions of this Ordinance, where the Tribunal -

- (a) requires a person to give evidence under section 213(1)(b);
- (b) requires a person to answer any question under section 213(1)(d);
- (c) orders a person to provide evidence under section 213(1)(e); or
- (d) otherwise orders or requires a person to provide any information under section 213(1)(k).

and the evidence, answer or information (as the case may be) might tend to incriminate the person, then the requirement or order as well as the evidence, the question and answer, or the information (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 213(2)(a), 245(2)(a) or 246(6)(a) or (b), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the evidence, answer or information (as the case may be).

214. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, commits any conduct falling within the description of section 213(2)(a), (b), (c), (d), (e) or (f).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

²³(4) Notwithstanding anything in this section and any other provisions of this Ordinance –

(a) ~~no proceedings may be instituted power to punish for contempt may be exercised~~ against any person under this section in respect of any conduct if –

²³ We propose to replace “no proceedings may be instituted” with “no power to punish for contempt may be exercised” to address the technical comment made by the Legal Service Division of the Legislative Council that in the case of contempt, there may not be any proceeding instituted for the purpose.

- (i) criminal proceedings have previously been instituted against the person under section 213(2) in respect of the same conduct; and
 - (ii) (A) those criminal proceedings remain pending; or
 - (B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;
- (b) no criminal proceedings may be instituted against any person under section 213(2) in respect of any conduct if -
- (i) ~~proceedings have any power to punish for contempt has~~ previously been ~~instituted exercised~~ against the person under this section in respect of the same conduct; and
 - (ii) (A) ~~those proceedings~~ arising from the exercise of such power remain pending; or
 - (B) by reason of the previous ~~institution of those~~

~~proceedings, no~~
~~proceedingsexercise of such~~
~~power, no power to punish for~~
~~contempt~~ may again be lawfully
~~institutedexercised~~ against that
person under this section in
respect of the same conduct.

215. Privileged information

Nothing in this Part and Schedule 7 requires an authorized financial institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information as to the affairs of any of its customers other than that person.

216. Costs

(1) The Tribunal may, in relation to a review, by order award to -

- (a) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the review;
- (b) any party to the review,

such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the party (as the case may be) in relation to the review and the application for review in question.

(2) Any costs awarded under subsection (1) shall be paid by and recoverable as a civil debt from -

- (a) where the costs are awarded to any person under subsection (1)(a), such of the parties to the review in question as the Tribunal considers appropriate; or
- (b) where the costs are awarded to any party to the review under subsection (1)(b), the other party to the review.

(3) Subject to any rules made by the Chief Justice under section 226, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

(4) The Tribunal may order that any costs awarded under subsection (1) shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.).

217. Notification of Tribunal determinations

(1) The Tribunal shall, as soon as reasonably practicable after the conclusion of a review, deliver -

- (a) its determination in respect of the review, and the reasons for making the determination; and
- (b) any order made under section 216 in relation to the review, and the reasons for making the order.

(2) Where any sitting of the Tribunal relating to a review, or any part thereof, is held in private, the Tribunal may by order prohibit the publication or disclosure of any determination or order, or any reasons for any determination or order, referred to in subsection (1)(a) or (b), or any part thereof.

(3) A person commits an offence if he, without reasonable excuse, ~~refuses or~~²⁴ fails to comply with an order of the Tribunal made pursuant to subsection (2) and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

218. Form and proof of orders of Tribunal

(1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal ~~when the order is made~~²⁵.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as an order of

²⁴ Technical amendment for consistency throughout the Bill. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

²⁵ **We accept the comment of the Legal Service Division of the Legislative Council and propose to delete “when the order is made” as its inclusion may cause unjustified disputes over the validity of an order of the SFAT.**

the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

219. Orders of Tribunal may be registered in Court of First Instance

The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 226, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

220. Applications for stay of specified decisions

(1A) Subject to subsections (1) and (2), the making of an application for review does not by itself operate as a stay of the specified decision to which the application relates.²⁶

²⁷(1) A person who has made an application for review or an application pursuant to section 211(3A) may, at any time before the review or the application (as the case may be) is

²⁶ Technical amendment for greater clarity. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

²⁷ The amendment seeks to provide a person who is not able to lodge an appeal within the 21-day appeal period and is applying for an extension of the appeal period under clause 211(3A), the right to apply for stay of specified decisions.

determined by the Tribunal, apply to the Tribunal for a stay of the specified decision to which the application relates.

(2) On an application made under subsection (1), the Tribunal shall as soon as reasonably practicable conduct a hearing to determine the application, and may, where it considers appropriate, by order* grant a stay of the specified decision to which the application relates, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

Division 3 - Appeals

221. Appeal to Court of Appeal

(1) A party to a review who is dissatisfied with a ~~finding or determinat~~^{decision²⁸} of the Tribunal relating to the review (whether or not it is a finding or²⁸ determination in respect of the review, or an order made under section 211(3A)²⁹, 216 or 220) may appeal to the Court of Appeal against the ~~finding or determinati~~^{on}~~on~~^{decision²⁸} on a point of law.

* Technical amendment for greater clarity.

²⁸ Technical amendment to replace “finding or determination” with “decision” to make it clearer that a finding or determination of and an order made by the SFAT can be appealed against on a point of law.

²⁹ Technical amendment consequential to the addition of the new clause 211(3A) in respect of application for an extension of the appeal period.

- (2) In an appeal under subsection (1), the Court of Appeal may –
- (a) allow the appeal;
 - (b) dismiss the appeal;
 - (ba) ³⁰vary or set aside the decision in question,
and, where the decision is set aside,
³¹substitute for the decision any other decision
it considers appropriate;
 - (c) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the review in question afresh for the purpose of determining any question specified by the Court of Appeal.

³¹(2A) Where the Court of Appeal varies, or substitutes any decision for, the decision in question under subsection (2)(ba), the decision in question as varied or the decision substituting for the decision in question (as the case may be) may be any decision (whether more or less onerous) that the Tribunal had power to make in respect of the

³⁰ In the light of the comment of some Members expressed at the Bills Committee meeting on 17 September 2001, we propose a new subclause to enable the Court of Appeal to vary or substitute a decision of the SFAT.

³¹ In the light of the comment of some Members expressed at the Bills Committee meeting on 17 September 2001, we propose the amendment to empower the Court of Appeal to substitute a decision of the SFAT.

review in question, whether or not under the same provision as that under which the decision in question has been made.

(3) In an appeal under subsection (1), the Court of Appeal may make such order as to costs as it considers appropriate.

222. No stay of execution on appeal

The lodging of an appeal under section 221 does not operate as a stay of execution of a ³²decision finding or determination of the Tribunal (whether or not it is a determination finding or determination³² in respect of a review, or an order made under section 211(3A)³³, 216 or 220) unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

223. No other right of appeal

Subject to section 221 and section 50 of the High Court Ordinance (Cap. 4), any decision of the Tribunal shall be final and shall not be subject to appeal.

³² Technical amendment to replace “finding or determination” with “decision” to make it clearer that a finding or determination of and an order made by the SFAT can be appealed against on a point of law.

³³ Technical amendment consequential to the addition of the new clause 211(3A) in respect of an application for an extension of the appeal period.

Division 4 - Miscellaneous

224. Time when specified decisions to take effect

³⁴(1) Notwithstanding subsections (2) and (3) and any other provisions of this or any other Ordinance, no specified decision, other than a specified decision which is described in column 2 of Division 4 of Part 3 of that to which section 142(8) or 143(6) Schedule 7 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, takes effect at any time before -

- (a) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or
- (b) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made.

³⁴(2) A specified decision, other than a specified decision which is described in column 2 of Division 5 of Part

³⁴ We have relocated the exact references in relation to the relevant specified decisions to Part 3 of Schedule 7. This change is to supplement the whole scheme for flexible update of the decisions under the SF Bill and the Banking Ordinance that can be appealed against, through putting details of all specified decisions in Schedule 7. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

3 of Schedule 7 and to which the provision set out, opposite such description of the specified that to which section 97(2), 98(4), 115(6), 116(4), 119(8), 120(6), 142(8), 143(6), 187(4), 195(3) or 202(1)decision, in column 3 of that Division
applies, takes effect -

- (a) where, prior to the expiration of the timeperiod of 21 days³⁵ specified in section 211(3)~~as that within which an application for review of the decision shall be made~~, the person in respect of whom the decision is made notifies the Commissionrelevant authority³⁶ that he will not make an application the application for review of the decision³⁵, at the time when he so notifies the Commissionrelevant authority³⁶;
- (b) subject to paragraph (a), where the person does not make an application for review of the decision within the timeperiod of 21 days³⁵ specified in section 211(3)~~as that within which the application shall be made~~, at the time when the timeperiod so specified expires; or

³⁵ **Technical amendment for greater clarity.**

³⁶ Please see Note 2 above. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

(c) where the person makes an application for review of the decision within the ~~timeperiod of 21 days~~³⁵ specified in section 211(3) as that within which the application shall be made -

- (i) where the decision is confirmed by the Tribunal, at the time when the decision is so confirmed;
- (ii) where the decision is varied, or substituted by another decision, by the Tribunal, at the time when the decision is so varied or substituted, subject however to the terms of the variation or substitution; or
- (iii) where the application is withdrawn, at the time when it is so withdrawn.

(3) Notwithstanding subsection (2) and any other provisions of this or any other Ordinance, but subject to subsection (1), the ~~Commission~~^{relevant authority}³⁷ may, where it considers appropriate in the interest of the investing public or in the public interest to do so, specify in the notice served in respect of a specified decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision

³⁷ Please see Note 2 above. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

is to take effect, in which case the decision takes effect at the time so specified.

(4) Nothing in this section affects the power of the Tribunal to grant a stay of a specified decision under section 220³⁸.

~~225. Appeals to Chief Executive in Council in respect of excluded decisions³⁹~~

~~(1) A person aggrieved by an excluded decision of the Commission made in respect of him may appeal to the Chief Executive in Council against the decision.~~

~~(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.~~

~~(3) Notwithstanding subsections (4) and (5) and any other provisions of this or any other Ordinance, no excluded decision takes effect at any time before~~

~~(a) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or~~

~~(b) where there is no such requirement, a notice in writing in respect of the decision has been~~

³⁸ Technical amendment for greater clarity. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

~~served on the person in respect of whom it is made.~~

- (4) ~~An excluded decision, other than that to which section 118(6) or 195(3) applies, takes effect~~
- (a) ~~where, prior to the expiration of the time specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which a written memorandum in respect of the decision shall be submitted, the person in respect of whom the decision is made notifies the Commission that he will not submit the written memorandum, at the time when he so notifies the Commission;~~
- (b) ~~subject to paragraph (a), where the person does not submit a written memorandum in respect of the decision within the time specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which the written memorandum shall be submitted, at the time when the time so specified expires; or~~
- (c) ~~where the person submits a written memorandum in respect of the decision within the time~~

³⁹ As set out in Note 2 above, all decisions are now appealable to the SFAT. Accordingly, clause 225 should be deleted. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

~~specified in rule 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which the written memorandum shall be submitted—~~

- ~~(i) where the decision is confirmed by the Chief Executive in Council, at the time when the decision is so confirmed;~~
- ~~(ii) where the decision is varied or reversed, or substituted by another decision, by the Chief Executive in Council, at the time when the decision is so varied, reversed or substituted, subject however to the terms of the variation, reversal or substitution; or~~
- ~~(iii) where the written memorandum is withdrawn, at the time when it is so withdrawn.~~

~~(5) Notwithstanding subsection (4) and any other provisions of this or any other Ordinance, but subject to subsection (3), where the Commission considers appropriate in the interest of the investing public or in the public interest to do so, it may, after consultation with the Monetary Authority, specify in the notice served in respect of an excluded decision any time, other than that at which the~~

~~decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified~~

226. Rules by Chief Justice

The Chief Justice may make rules -

- (a) providing for the award of costs under section 216 and the taxation of those costs;
- (b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 219;
- (c) regulating the procedure for the hearing of appeals under section 221;
- (d) requiring the payment of the fees specified in the rules for any matter relating to applications for review;
- (e) providing for matters of procedure or other matters relating to applications for review or reviews, which are not provided for in this Part or in Part 1 of Schedule 7;
- (ea) ⁴⁰providing for the issue or service of any document (however described) for the purposes of this Part or Part 1 of Sch. 7;

⁴⁰ **Technical amendment for greater clarity.**

(f) prescribing any matter which this Part provides
is, or may be, prescribed by rules made by the
Chief Justice.

227. Amendment of Parts 2 and 3 of Schedule 7

The Chief Executive in Council may, by order published in
the Gazette, amend Parts 2 and 3 of Schedule 7.