

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

**Schedule 7 to the Securities and Futures Bill  
Committee Stage Amendments**

Members examined on a clause-by-clause basis Schedule 7 to the Securities and Futures Bill on 17 September 2001.

**Committee Stage Amendments**

2. We have since the above meetings made some amendments to Schedule 7 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 Schedule to 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.

SCHEDULE 7[ss. 209, 210, 211, 212, 213,  
215, 224, 226 & 227]

SECURITIES AND FUTURES APPEALS TRIBUNAL

PART 1

APPOINTMENT OF MEMBERS AND PROCEEDINGS OF TRIBUNAL, ETC.

1. In this Schedule, unless the context otherwise requires -
- "appeal panel" (上訴委員會) means the panel of persons appointed under section 71A<sup>1</sup>;
- "application for review" (覆核申請) has the meaning assigned to it by section 209 of this Ordinance;
- "chairman" (主席) means the chairman of the Tribunal;
- "judge" (法官) has the meaning assigned to it by section 209 of this Ordinance;
- "member" (成員) means a member of the Tribunal;
- "ordinary member" (普通成員) means a member other than the chairman;
- "panel member" (上訴委員) means a member of the appeal panel;
- "parties" (各方) has the meaning assigned to it by section 209 of this Ordinance;

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<sup>1</sup> Technical amendment to relocate the original clauses 7 - 10 of the Blue Bill as the new clauses 1A - 1D. Members considered the amendments and did not propose further changes at the Bills Committee meeting on 17 September 2001.

"relevant authority" (有關當局) has the meaning assigned to it by section 209 of this Ordinance;<sup>2</sup>

"review" (覆核) has the meaning assigned to it by section 209 of this Ordinance;

"Secretary" (局長) means the Secretary for Financial Services;

~~"temporary member" (暫委成員) means a temporary member of the Tribunal appointed under section 16~~<sup>3</sup>

specified decision" (指明決定) has the meaning assigned to it by section 209 of this Ordinance;<sup>4</sup>

"Tribunal" (審裁處) has the meaning assigned to it by section 209 of this Ordinance.

#### Appointment of appeal panel

<sup>5</sup>1A. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.

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<sup>2</sup> Technical amendment consequential to the introduction of the new reference to "relevant authority". Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

<sup>3</sup> 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" 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" in Clauses 1, and 16 to 20 of this Schedule. 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.

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

<sup>5</sup>1B. Subject to sections 1C and 1D, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

<sup>5</sup>1C. A panel member may at any time resign his office by notice in writing to the Chief Executive.

<sup>5</sup>1D. The Chief Executive may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

<sup>6</sup>1E. For the avoidance of doubt, section 210(5) of this Ordinance does not require the appointment of persons to more than one panel under section 1A.

#### **Appointment of chairman**

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

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<sup>5</sup> Technical amendment to relocate the original clauses 7 - 10 of the Blue Bill as the new clauses 1A - 1D. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

<sup>6</sup> Technical amendment for greater clarity. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

3. Subject to sections 4 to 6, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

4. The chairman may at any time resign his office by notice in writing to the Chief Executive.

~~<sup>7</sup>5. The chairman may be removed from office by the Chief Executive for Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.~~

6. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office ~~or before the resignation from or vacation of office by the chairman takes effect<sup>8</sup>~~, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

#### ~~Appointment of appeal panel~~

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<sup>7</sup> In the light of the comment made by some Members at the Bills Committee meeting on 17 September 2001, we propose the amendment, as a procedural safeguard, to require the Chief Executive to consult the Chief Justice before he may remove the chairman from office.

<sup>8</sup> In the light of the comments made by some Members at the Bills Committee meeting on 17 September 2001, we accept that where the SFAT chairman resigns or vacates from office for one reason or another it would not be practical to authorise him to continue to serve as chairman of the SFAT. The amendment seeks to delete references to the above circumstances.

~~7. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.~~

~~8. Subject to sections 9 and 10, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.~~

~~9. A panel member may at any time resign his office by notice in writing to the Chief Executive.~~

~~10. A panel member may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.~~

**Appointment of ordinary members**

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<sup>9</sup> Technical amendment to relocate the original clauses 7 - 10 of the Blue Bill as the new clauses 1A - 1D. **Members considered the amendments and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

11. For the purpose of determining a review, the Secretary on the recommendation of the chairman<sup>10</sup> shall appoint 2 panel members as ordinary members in relation to the review.

12. Subject to sections 13 ~~to 15~~ and 14<sup>11</sup>, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

13. An ordinary member may at any time resign his office by notice in writing to the Secretary.

14. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

~~<sup>11</sup>15. If a review has been commenced by the Tribunal but not completed before the resignation from or vacation of office by an ordinary member takes effect, the Secretary may authorize the ordinary member to continue to act as an ordinary member for the purpose of completing the review.~~

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<sup>10</sup> **In the light of the comment made by some Members, we propose the amendment, as a procedural safeguard, to require the Secretary for Financial Services to seek the recommendation of the chairman before appointing a member from the panel established under Clauses 1A to 1E to hear a review. It is intended that the specialities of such members should match the requisite expertise for the review in question.**

<sup>11</sup> **In the light of the comments made by some Members at the Bills Committee meeting on 17 September 2001, we accept that where an ordinary member of the SFAT resigns or vacates from office for one reason or another it would not be practical to authorise him to continue to serve as a member of the SFAT. We propose therefore to delete Clause 15. Consequential amendment is made to clause 12 to delete the cross reference to Clause 15.**

~~Appointment of temporary members<sup>3</sup>~~

~~16. Where any member is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to any specified matter —~~

~~(a) where such member is the chairman, the Chief Executive may, subject to sections 17 and 18, appoint a judge to act as a temporary member of the Tribunal in the place of the chairman for such period as he considers appropriate, and he may, subject to the other provisions of this Ordinance, from time to time be reappointed; or~~

~~(b) where such member is an ordinary member, the Secretary may, subject to sections 17 and 19, appoint a panel member to act as a temporary member of the Tribunal in the place of the ordinary member for such period as he considers appropriate, and he may, subject to the other provisions of this Ordinance, from time to time be reappointed.~~

~~17. A temporary member appointed by the Chief Executive or the Secretary may at any time resign his office by notice in writing to the Chief Executive or the Secretary (as the case may be).~~



~~18. A temporary member appointed by the Chief Executive may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.~~

~~19. Where a temporary member appointed by the Secretary ceases to be a panel member, he ceases to be such temporary member.~~

~~20. A temporary member who acts in the place of the chairman or an ordinary member in accordance with an appointment under section 16 shall be deemed for all purposes to be the chairman or the ordinary member (as the case may be) of the Tribunal.~~

### **Sittings**

21. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.

22. Before convening a sitting under section 21 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.

23. Subject to section 24, at any sitting of the Tribunal -

- (a) the chairman and 2 ordinary members shall be present;
- (b) the chairman shall preside; and

(c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

24. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 34 or 35, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

25. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

26. Where an application is made pursuant to section 25 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

27. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard<sup>12</sup> -

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<sup>12</sup> In drafting the Blue Bill, we have inadvertently narrowed the rights of the parties to a review, i.e. from "to be heard in person" under the existing law to "to be present in person". The amendment is proposed to rectify this accordingly. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001. Since then, we have proposed to build in greater flexibility by allowing also an employee to represent the relevant authority or the corporation.**

- (a) ~~to be present~~<sup>12</sup> in person or, in the case of the ~~Commission~~relevant authority<sup>13</sup> or a corporation, through an officer or employee<sup>12</sup> of the ~~Commission~~relevant authority<sup>13</sup> or the corporation (as the case may be); and
- (b) ~~through~~ ~~to be represented by a~~<sup>12</sup> counsel or a solicitor or, with the leave of the Tribunal, ~~by~~through<sup>12</sup> any other person.

~~<sup>14</sup>28. In section 27, "sitting" (聆訊) does not include any sitting of the Tribunal which is held solely for the purpose of deliberating on any question before the Tribunal.~~

29. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

30. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

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<sup>13</sup> We propose this amendment as the SFC is no longer the only authority which decision can be reviewed by lodging an appeal with the SFAT, but also the Monetary Authority and the recognized investor compensations company. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

<sup>14</sup> Clause 28 was intended to provide that SFAT members might sit privately to discuss among themselves any issues raised before the Tribunal. On reflection, we consider the provision unnecessary as members are certainly entitled to hold private conferences among themselves.

**Preliminary conferences and consent orders<sup>15</sup>**

31. At any time after an application for review has been made, the chairman may -

(aa) on his own motion or on the application of any of the parties to the review;

(a) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application by the parties to the review; and

(b) if the parties agree or, in the case of an application made by any party pursuant to paragraph (aa), the other party agrees<sup>16</sup>,

direct that a conference, to be attended by the parties or their representatives and presided over by the chairman ~~or such ordinary member or other person as he may specify, shall be held.~~ shall be held for the purposes of -

(i) enabling the parties to prepare for the conduct of the review;

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<sup>15</sup> **To address the concerns expressed by some Members at the Bills Committee meeting on 17 September 2001, we propose the amendments-**

**(a) to provide that parties to the review may apply to the SFAT chairman for preliminary conferences to be held;**

**(b) to ensure that no person other than the chairman will preside over preliminary conferences; and**

**(c) to set out the purposes of preliminary conferences.**

<sup>16</sup> **Technical comment for greater clarity.**

- (ii) assisting the Tribunal to determine issues for the purposes of the review; and
- (iii) generally securing the just, expeditious and economical conduct of the review.

<sup>17</sup>31A. At a conference held in accordance with a direction of the chairman under section 31, the chairman may -

- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
- (b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.

<sup>18</sup>31B. After a conference has been held in accordance with a direction of the chairman under section 31, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

32. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the

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<sup>17</sup> A new clause to provide expressly that the SFAT chairman may give directions at a preliminary conference for efficient case management.

<sup>18</sup> In the light of Members' comment, we propose to put in place a procedural safeguard to require the SFAT chairman to report to the full Tribunal the operation and outcome of preliminary conferences as he considers appropriate.

requirements otherwise applicable to the making of the order have been complied with, if -

- (a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and
- (b) the parties consent to all of the terms of the order.

33. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 32 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

<sup>19</sup>33A. In sections 32 and 33, "order" ( 命令) includes any finding, determination and any other decision.

#### **Chairman as sole member of Tribunal**

34. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing ~~served~~engiven to<sup>20</sup> the Tribunal, informed the Tribunal that they have agreed that the

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<sup>19</sup> Technical amendment for greater clarity.

<sup>20</sup> Technical drafting amendment in the light of the comment made by a Member at the Bills Committee meeting on 17 September 2001.

review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.

35. Where =

<sup>21</sup>(a) an application is made to the Tribunal pursuant to section 211(3A) of this Ordinance for the grant of an extension of the time within which an application for review shall be made; or

(b) an application is made to the Tribunal under section 220(1) of this Ordinance for a stay of a specified decision,

the chairman may determine the application as the sole member of the Tribunal.

36. Where section 34 or 35 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

<sup>22</sup>36A. After the chairman has made any determination under section 34, or made any determination in respect of an application described in section 35(b), the chairman shall report to the Tribunal the making

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<sup>21</sup> We accept the comment made by some Members at the Bills Committee meeting on 17 September 2001 that there should be a mechanism to permit late appeal involving genuine hardship. The proposed new provision seeks to empower the chairman to determine such application of late appeal as the sole member of the tribunal.

<sup>22</sup> A new clause to put in place a procedural safeguard to require the SFAT chairman to report to the full Tribunal any determination which he has made as the sole member of the Tribunal.

of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.

37. Where -

- (a) there is an application described in section 35~~7~~(b);  
and<sup>23</sup>
- (b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application~~7~~  
and
- ~~(c) no temporary member is appointed under section 16 to act in the place of the chairman in relation to the application~~7~~,<sup>3</sup>~~

a judge within the meaning of paragraph (a) of the definition of "judge" in section 209 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application ~~described in section 35~~<sup>24</sup> as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

#### Miscellaneous

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<sup>23</sup> Technical amendment consequential to the amendments proposed to clause 35.

<sup>24</sup> Minor technical drafting amendment.



38. Without limiting the generality of sections 215 and 368 of this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

PART 2

SPECIFIED DECISIONS

Division 1

Specified decisions made by the Commission

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
1.	Section 93(10) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2)(a) <del>or (b)</del> <sup>25</sup> of this Ordinance	Refusal to grant an authorization, <u>or imposition of any condition</u> <sup>26</sup> .
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
5.	Section 103(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.
6.	Section 103(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
7.	Section 103(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.

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<sup>25</sup> The amendment is consequential to the Committee Stage Amendment proposed to Part III for merging clause 95(2)(a) and (b) into one single sub-clause for uniform application to all persons wishing to be authorized for providing automated trading services. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

<sup>26</sup> We propose the amendment such that SFC's decision to impose condition upon giving the authorization would also be appealable to the SFAT. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	Ordinance	
8.	Section 103(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
9.	Section 104(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.
10.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.
12.	Section 104(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
13.	Section 105(1) of this Ordinance	Withdrawal of an authorization.
14.	Section 105(3) of this Ordinance	Refusal to withdraw an authorization, <del>upon request.</del> <sup>27</sup>
15.	Section 105(4) of this Ordinance	Imposition of any condition.
16.	Section 115(1) of this Ordinance	Refusal to grant a licence.
17.	Section 115(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
18.	Section 116(1)	Refusal to grant a licence for a period not

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<sup>27</sup> Technical amendment for consistency with other items in this part of the Schedule. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	of this Ordinance	exceeding 3 months.
19.	Section 116(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
<u>19A<sup>28</sup>.</u>	<u>Section 118(1) of this Ordinance</u>	<u>Refusal to grant registration.</u>
<u>19B<sup>28</sup>.</u>	<u>Section 118(5) of this Ordinance</u>	<u>Imposition, amendment or revocation of any condition, or imposition of any new condition.</u>
20.	Section 119(1) of this Ordinance	Refusal to grant a licence.
21.	Section 119(5) of this Ordinance	Imposition of any condition.
22.	Section 119(7) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
23.	Section 120(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
24.	Section 120(3) of this Ordinance	Imposition of any condition.
25.	Section 120(5) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
26.	Section 121(1) of this	Refusal to approve an accreditation.

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<sup>28</sup> The amendments are to merge the formerly "excluded decisions" (itemized in Part 3 of Schedule 7 to the Blue Bill) which are all made by the SFC, under Division 1 of Part 2 of Schedule 7. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

Item	Provision	Decision subject to review
		<u>Description of decision</u>
	Ordinance	
27.	Section 121(2) of this Ordinance	Refusal to approve a transfer of an accreditation.
28.	Section 123(1) of this Ordinance	Refusal to issue a duplicate licence <u>or certificate of registration</u> <sup>28</sup> .
29.	Section 125(1) of this Ordinance	Refusal to approve a person as a responsible officer.
30.	Section 125(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
31.	Section 126(1) of this Ordinance	Refusal to vary any regulated activity.
32.	Section 129(1) of this Ordinance	Refusal to approve premises.
33.	Section 130A(12) of this Ordinance	Refusal to approve a person to become <u>or continue to be a substantial shareholder</u> <sup>29</sup> .
34.	Section 130A(53) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition <sup>21</sup> .
<sup>29</sup> 34A	<u>Section 130B(1) of this Ordinance</u>	<u>Direction to a licensed corporation.</u>

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<sup>29</sup> As set out in Paper CE04/01 dated 5 July 2001 and discussed by Members on 10 July, we have substantially revised clause 130 on the regulatory arrangements in respect of substantial shareholders of a licensed corporation. Moreover, we have proposed that the direction issued by the SFC under clause 130B(1) and (2) to a person who has become a substantial shareholder without prior approval of the SFC is to be appealable to the SFAT. The amendments reflect the changes and the intention. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
<sup>29</sup> 34B	<u>Section 130B(2)</u> <u>of this</u> <u>Ordinance</u>	<u>Direction to a person.</u>
<sup>30</sup> 35.	Section 131(1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of this Ordinance	Refusal to grant a modification or waiver.
36.	Section 131(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
37.	Section 142(2) or (5)(b) of this Ordinance	Imposition of any condition.
38.	Section 142(5)(a) of this Ordinance	Suspension of a licence.
39.	Section 142(6) or (7) of this Ordinance	Amendment of any condition.
40.	Section 143(3)(a) of this Ordinance	Suspension of a licence.
41.	Section 143(3)(b) of this Ordinance	Imposition of any condition.
42.	Section 143(4) or (5) of this Ordinance	Amendment of any condition.
43.	Section 155(1) of this	Appointment of an auditor.

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<sup>30</sup> This amendment is to merge the formerly "excluded decisions" (itemized in Part 3 of Schedule 7 to the Blue Bill) which are all made by the SFC, under Division 1 of Part 2 of Schedule 7. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	Ordinance	
44.	Section 155(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
45.	Section 156(1) of this Ordinance	Appointment of an auditor.
46.	Section 156(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
47.	Section 187(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to <u>impose a prohibition on a person</u> , <del>from applying to be licensed or to be approved as a responsible officer.</del> <sup>31</sup>
48.	Section 187(2) of this Ordinance	Order requiring payment of a pecuniary penalty.
49.	Section 188(1)(a), (b), <u>or (c) or (d)</u> <sup>32</sup> of this Ordinance	Revocation or suspension of a licence.
50.	Section 188(2) of this Ordinance	Revocation of a licence.
51.	Section 188(7) of this	Revocation or suspension of the approval of a person as a responsible officer.

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<sup>31</sup> This amendment is consequential to the proposed Committee Stage Amendment to Part IX (Paper CE08/01) for enabling the imposition of prohibition orders with industry-wide effect. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

<sup>32</sup> This amendment is consequential to the proposed Committee Stage Amendment to Part IX (Paper CE08/01) that deletes clause 188(1)(d) of the Blue Bill. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

Item	Provision	<del>Decision subject to review</del> <u>Description of decision</u>
	Ordinance	
<u><sup>33</sup>51A</u>	<u>Section 189A(1)(i), (ii) or (iii) of this Ordinance</u>	<u>Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person.</u>
<u><sup>33</sup>51B</u>	<u>Section 189A(2) of this Ordinance</u>	<u>Order requiring payment of a pecuniary penalty.</u>

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<sup>33</sup> The amendments are consequential to the revised package that provides the SFC with additional disciplinary tools in relation to the regulation of registered institutions. The intention is such that the aggrieved party can lodge an appeal with the SFAT to review also decisions involving those newly proposed disciplinary tools. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**



- <sup>33</sup>51C    Section                    Revocation or suspension of any registration.  
          190(1)(d) or  
          (e) of this  
          Ordinance
- <sup>33</sup>51D    Section                    Revocation of any registration.  
          190(2) of this  
          Ordinance
52.        Section 194(1)    Requirement to transfer records.  
          of this  
          Ordinance
53.        Section 195(1)    Imposition of any condition.  
          of this  
          Ordinance
54.        Section                    Prohibition or requirement imposed on a  
          196(1)(a) or        licensed corporation concerning transactions,  
          (b) of this            etc.  
          Ordinance

- <sup>34</sup>55. Section 197(a) Prohibition or requirement imposed on a  
or (b) of this licensed corporation concerning relevant  
Ordinance property.
56. Section 198(1) Requirement imposed on a licensed corporation  
of this to maintain property.  
Ordinance
57. Section Substitution or variation of a prohibition or  
201(1)(b) requirement under section 196, 197 or 198 of  
of this this Ordinance.  
Ordinance
58. Section 201(1) Refusal to withdraw, substitute or vary a  
of this prohibition or requirement under section 196,  
Ordinance 197 or 198 of this Ordinance.
59. Section 300(2) Refusal to grant an exemption, or imposition  
of this of any condition.  
Ordinance
60. Section 300(3) Refusal to grant an exemption, or imposition  
of this of any condition.  
Ordinance
61. Section Suspension or withdrawal of an exemption, or  
300(4)(a) or amendment of any condition.  
(b) of this  
Ordinance
62. Section 389 of Imposition of any condition.  
this Ordinance
63. Section 38A(1) Refusal to issue a certificate of exemption,  
of the or imposition of any condition.  
Companies  
Ordinance (Cap.  
32)
64. Section 342A(1) Refusal to issue a certificate of exemption,  
of the or imposition of any condition.  
Companies  
Ordinance (Cap.  
32)

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<sup>34</sup> Technical amendment for greater clarity. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

PART 3<sup>35</sup>

## EXCLUDED DECISIONS

Division 2Specified decisions made by the Monetary Authority

Item	Provision	Decision subject to appeal
<del>1.</del>	<del>Section 118(1) of this Ordinance</del>	<del>Refusal to grant a declaration of exemption.</del>
<del>2.</del>	<del>Section 118(5) of this Ordinance</del>	<del>Imposition, amendment or revocation of any condition, or imposition of any new condition.</del>
<del>3.</del>	<del>Section 123(1) of this Ordinance</del>	<del>Refusal to issue a duplicate exemption.</del>
<del>4.</del>	<del>Section 126(1) of this Ordinance</del>	<del>Refusal to vary any regulated activity.</del>
<del>5.</del>	<del>Section 131(1)(e), (d) or (j) of this Ordinance</del>	<del>Refusal to grant a modification or waiver.</del>
<del>6.</del>	<del>Section 131(4) of this Ordinance</del>	<del>Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.</del>
<del>7.</del>	<del>Section 155(1) of this Ordinance</del>	<del>Appointment of an auditor.</del>
<del>8.</del>	<del>Section 155(4) of this Ordinance</del>	<del>Direction to pay any of the costs and expenses of any examination and audit.</del>

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<sup>35</sup> All appealable decisions are now defined collectively as "specified decisions" and grouped under Divisions 1, 2 and 3 of Part 2 of Schedule 7 to cover decisions made by the SFC, the HKMA and the SFC/recognized investor compensation company, respectively. Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.

Item	Provision	Decision subject to appeal
<del>9.</del>	<del>Section 156(1) of this Ordinance</del>	<del>Appointment of an auditor.</del>
<del>10.</del>	<del>Section 156(8) of this Ordinance</del>	<del>Direction to pay any of the costs and expenses of any examination and audit.</del>
<del>11.</del>	<del>Section 190(1)(a), (b), (c), (d) or (e) of this Ordinance</del>	<del>Revocation of an exemption.</del>
<del>12.</del>	<del>Section 194(1) of this Ordinance</del>	<del>Requirement to transfer records.</del>
<del>13.</del>	<del>Section 195(1) of this Ordinance</del>	<del>Imposition of any condition.</del>

<sup>36</sup>Division 2

Specified decisions made by the Monetary Authority

<u>Item</u>	<u>Provision</u>	<u>Description of decision</u>
<u>1.</u>	<u>Section 58A(1)(c) or (d) of the Banking Ordinance (Cap. 155)</u>	<u>Removal or suspension of relevant particulars of a relevant individual from the register.</u>

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<sup>36</sup> The amendments are to include those decisions made by the HKMA under the Banking Ordinance and are appealable to the SFAT, in relation to the relevant individuals engaged by, and the executive officers of , a registered institution. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

2.        Section 71C(1)    Refusal to give consent.  
of the Banking  
Ordinance (Cap.  
155)
3.        Section            Attachment of any condition.  
71C(2)(b) of  
the Banking  
Ordinance (Cap.  
155)
4.        Section            Withdrawal or suspension of consent.  
71C(4)(c) or  
(d) of the  
Banking  
Ordinance (Cap.  
155)
5.        Section 71C(5)    Attachment or amendment of any condition.  
of the Banking  
Ordinance (Cap.  
155)
6.        Section 71E(3)    Attachment or amendment of any condition.  
of the Banking  
Ordinance (Cap.  
155)

Division 3

Specified decisions made by the Commission or a recognized investor  
compensation company<sup>37</sup>

<u>Item</u>	<u>Provision</u>	<u>Description of decision</u>
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PART 3<sup>38</sup>Division 1

Specified decisions referred to in section 211(3)(b)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provision</u>
<u>1.</u>	<u>A specified decision set out in item 37 or 39 of Division 1 of Part 2.</u>	<u>Section 142(8) of this Ordinance.</u>
<u>2.</u>	<u>A specified decision set out in item 41 or 42 of Division 1 of Part 2.</u>	<u>Section 143(6) of this Ordinance.</u>

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<sup>37</sup> "Compensation decisions" made by the SFC or the recognized investor compensation company are to be itemized in Division 3 of Part 2 of Schedule 7. As the "compensation decisions" refers to those made under the subsidiary legislation to be prescribed under clause 236 of the SF Bill, this Division of the Schedule is to be updated by way of subsidiary legislation together with the relevant subsidiary legislation to be prescribed under Part XII. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

<sup>38</sup> 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.**

Division 2<sup>39</sup>

Specified decisions referred to in section 212(2B)(a)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provisions</u>
<u>1.</u>	<u>A specified decision set out in item 51A or 51B of Division 1 of Part 2.</u>	<u>Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap. 155).</u>

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<sup>39</sup> This Division of Schedule 7 supplements clause 212(2A)(a), which together afford the SFAT the same range of disciplinary sanctions that can be ordered 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). **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

Division 3<sup>40</sup>

Specified decisions referred to in section 212(2B)(b)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provisions</u>
<u>1.</u>	<u>A specified decision set out in item 1 or 4 of Division 2 of Part 2.</u>	<u>Section 189A(1) and (2) of this Ordinance.</u>

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<sup>40</sup> This Division of Schedule 7 supplements clause 212(2A)(b), which together afford the SFAT the same range of disciplinary sanctions that can be ordered 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). **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**



Division 4<sup>41</sup>

Specified decisions referred to in section 224(1)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provision</u>
<u>1.</u>	<u>A specified decision set out in item 37 or 39 of Division 1 of Part 2.</u>	<u>Section 142(8) of this Ordinance.</u>
<u>2.</u>	<u>A specified decision set out in item 41 or 42 of Division 1 of Part 2.</u>	<u>Section 143(6) of this Ordinance.</u>

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<sup>41</sup> 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.**

Division 5<sup>42</sup>

Specified decisions referred to in section 224(2)  
of this Ordinance

<u>Item</u>	<u>Description of specified decision</u>	<u>Provision</u>
<u>1.</u>	<u>A specified decision set out in item 3 of Division 1 of Part 2.</u>	<u>Section 97(2) of this Ordinance.</u>
<u>2.</u>	<u>A specified decision set out in item 4 of Division 1 of Part 2.</u>	<u>Section 98(4) of this Ordinance.</u>
<u>3.</u>	<u>A specified decision set out in item 17 of Division 1 of Part 2.</u>	<u>Section 115(6) of this Ordinance.</u>
<u>4.</u>	<u>A specified decision set out in item 19 of Division 1 of Part 2.</u>	<u>Section 116(4) of this Ordinance.</u>
<u>5.</u>	<u>A specified decision set out in item 19B of Division 1 of Part 2.</u>	<u>Section 118(6) of this Ordinance.</u>
<u>6.</u>	<u>A specified decision set out in item 22 of Division 1 of Part 2.</u>	<u>Section 119(8) of this Ordinance.</u>
<u>7.</u>	<u>A specified decision set out in item 25 of Division 1 of Part 2.</u>	<u>Section 120(6) of this Ordinance.</u>
<u>8.</u>	<u>A specified decision set out in item 34 of Division 1 of Part 2.</u>	<u>Section 130A(4) of this Ordinance.</u>
<u>9.</u>	<u>A specified decision set out in item 38 of Division 1 of Part 2.</u>	<u>Section 142(7B) of this Ordinance.</u>
<u>10.</u>	<u>A specified decision set out in item 37 or 39 of Division 1 of Part 2.</u>	<u>Section 142(8) of this Ordinance.</u>
<u>11.</u>	<u>A specified decision set out in item 40 of Division 1 of Part 2.</u>	<u>Section 143(5B) of this Ordinance.</u>
<u>12.</u>	<u>A specified decision set out in item 41 or 42 of Division 1 of Part 2.</u>	<u>Section 143(6) of this Ordinance.</u>

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<sup>42</sup> As mentioned in Paper CE05/01 dated 5 July 2001, SFC's decisions to suspend the licence of a licensed corporation not in compliance with the Financial Resources Rules should take effect prior to the determination of the relevant appeals. **Members considered this amendment and did not propose further changes at the Bills Committee meeting on 17 September 2001.**

<u>Item</u>	<u>Description of specified decision</u>	<u>Provision</u>
<u>13.</u>	<u>A specified decision set out in item 53 of Division 1 of Part 2.</u>	<u>Section 195(3) of this Ordinance.</u>
<u>14.</u>	<u>A specified decision set out in item 54, 55, 56 or 57 of Division 1 of Part 2.</u>	<u>Section 202(1) of this Ordinance.</u>
<u>15.</u>	<u>A specified decision set out in item 6 of Division 2 of Part 2.</u>	<u>Section 71E(3A) of the Banking Ordinance (Cap. 155).</u>