

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

**Clauses 187, 188, 189A and 190
of the Securities and Futures Bill**

After the Bills Committee meeting on 14 September 2001, the Legal Service Division (LSD) of the Legislative Council has prepared a table summarising its observations on the disciplinary sanctions in Part IX of the Securities and Futures Bill as applicable to SFC licensees and registered institutions and their relevant staff. Bills Committee Paper No. CB(1) 2090/00-01 is relevant.

2. Our response to LSD's remarks and observations is now set out in the last column of the table in the **Annex** for Members' reference.

Hong Kong Monetary Authority
Financial Services Bureau
6 December 2001

**Comparison of clauses 187 & 188 with 189A & 190
respectively of the Securities and Futures Bill**

Applicable to SFC licensees	Applicable to registered institutions and their relevant staff	LegCo LSD' s Remarks ¹	Administration' s Response
Clause 187	Clause 189A		
(1)(a)	(1)(a)		
(1)(b)	(1)(b)		
(1)(i)	(1)(i)		
(1)(ii)	Nil	Revocation or suspension of approval of responsible officer, of which the equivalent regarding exempted persons (now "registered institutions") is executive officer.	Corresponding provision already included in BAB 2000 (s.71C(4)).
(1)(iii)	(1)(ii)		
(1)(iv)	(i)(iii)		
(2)	(2)		
(3)	(3)		
(4)	(4)		
(5)	(5)		
(6)	(6)		
Nil	(7)	The Commission may make recommendations to the Monetary Authority.	Clause 187 is applicable to licensed corporations and their staff. Since the HKMA has no regulatory authority over such persons, it would not make recommendations in respect of such persons to the Commission. Therefore, a provision similar to clause 189A(7) is not needed in clause 187.
(9)	(8)	"Regulated person" is differently defined.	The definitions only differ in wordings but not in substance.

¹ As first set out in LC Paper No. CB(1) 2090/00-01 issued to Members of the Bills Committee on 24 September 2001.

Applicable to SFC licensees	Applicable to registered institutions and their relevant staff	LegCo LSD' s Remarks ¹	Administration' s Response
Clause 188	Clause 190		
(1)(a)	Nil	Clause 188(1)(a) covers licensed persons who are individuals which category has no equivalent regarding registered institutions.	The grounds listed in clause 188(1)(a), when applied to the securities staff of registered institutions, will also cast doubt on the fitness and properness of such staff. The proposed section 58A of the Banking Ordinance will then become applicable which may result in revocation or suspension of such staff from the register to be maintained by the HKMA.
(1)(b)(i) to (v)	(1)(d)(i) to (v)		
(1)(b)(vi) & (vii)	Nil	The mental incapacity & criminal conviction of any director of a licensed person as grounds for revocation or suspension.	“Mental incapacity” and “criminal conviction” will call into question the fitness and properness of a director of AI under the Banking Ordinance. This may result in either the withdrawal of consent given by the MA to the director or cast doubt on whether the AI should remain authorized under the Banking Ordinance. There is therefore no need to provide for the treatment of directors or the AIs concerned in respect of the regulated activities of registered institutions.
(1)(c)	(1)(e)		
(1)(d)	(1)(f)		
(2)	Nil	Provision applies specifically to persons licensed in relation to Type 7 regulated activity.	A corresponding provision in respect of registered institutions is already included in clause 118(8) of the SF Bill. To standardise the approach however, we have proposed a CSA to delete clause 118(8)(b)(i) and insert a new sub-clause in clause 190 (which becomes the new clause 190(2)) for registered institutions to mirror what is provided for licensed persons under clause 188(2).
(3)(a)	Nil	The provision refers to revocation of licence of individuals which category has no equivalent regarding registered institutions.	A person cannot represent a registered institution once he/she dies and will thus no longer be a “relevant individual engaged in relation to a regulated function in a regulated activity”. The registered institution concerned has to notify the MA of this change, and the particulars of such a person will be taken off the register to be maintained by the HKMA accordingly. No deemed revocation of status is therefore necessary.

Applicable to SFC licensees	Applicable to registered institutions and their relevant staff	LegCo LSD' s Remarks ¹	Administration' s Response
Nil	(3)(a)	The provision states cessation of being an authorized financial institution as a ground of revocation.	This is specific to registered institutions. No need for a similar provision for licensed corporations under clause 188.
(3)(b)	(3)(b)		
(4)(a)	(5)		
(4)(b)	Nil	Failure to submit annual return as a ground of suspension does not apply to registered institutions as they are not required to submit such return.	While registered institutions are not required to submit the type of annual returns of licensed corporations, they are subject to regular returns to be submitted to the MA, including a half-yearly return on securities trading activities. Failure to submit such returns will attract the penalty provisions under section 63(6) of the Banking Ordinance. We would also discuss with the SFC for including a condition in the certificate of registration that registered institutions should submit returns as required by the MA. Failure to comply with such a condition will then be a ground for revocation or suspension of registration status by the SFC.
(5)(a)	(6)		
(5)(b)	Nil	The provision deals with suspension for failure to submit annual return.	Same comment as above.
(6)	(7)		
(7)	Nil	Revocation or suspension of approval of responsible officer on ground of criminal conviction.	Criminal conviction will call into question the fitness and properness of an executive officer of registered institutions. This will make the power under section 71C(4) of the Banking Ordinance for suspension and revocation of consent exercisable.