

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

**Part XVI
Summary prosecution
by the Securities and Futures Commission**

Introduction

In response to a Member's request at the Bills Committee meeting on 8 October 2001, we set out below Securities and Futures Commission (SFC)'s policy in regard to the appointment of its employees to conduct summary prosecutions under clause 376.

Clause 376 – Summary prosecution by SFC

2. Clause 376 is a reproduction of section 62 of the SFC Ordinance (Cap. 24), which has been in operation since 1 May 1989. Clauses 376(1) and (2) empower the SFC to prosecute in its own name summary offences before a Magistrate and may appoint non-legally qualified employees to conduct such prosecutions. This arrangement has been running smoothly for the past 12 years. No complaints or adverse comments have been received.

3. Employees of SFC are experienced prosecutors in their own field. They have a good knowledge of the operations of the market, the activities connected with the marketing and trading of financial products and licensing matters, which would assist in the prosecution of offences involving evidence of a technical nature.

SFC's policy

4. In the vast majority of prosecutions brought by the SFC in the Magistrates' courts, the SFC is represented either by a legally qualified member of its Legal Services Division or by counsel instructed by or on behalf of the Commission.

5. However, there are exceptions. For example, where the defendant or his solicitors have communicated to the SFC that the defendant will plead guilty at the hearing, the SFC may be represented in court by a member of staff from the Division involved in the investigation of the matter which gave rise to the charge(s). This is almost invariably the Commission's Enforcement Division. In such cases, these SFC staff members are familiar with the case in question, the relevant legislation and court procedure, so that they will be able to assist the court if so requested.

6. Hence, only legally qualified persons, whether SFC staff or counsel at the Bar, will undertake the prosecution of contested cases brought by the SFC in the Magistrates' courts. In the few cases where a non-legally qualified member of SFC staff represents the SFC in a plea of guilty, the staff member has the knowledge and experience to perform that function. The law therefore allows the SFC to conduct summary prosecutions in an efficient and effective manner.

Local comparison

7. Section 52 of the SFC Ordinance is not the only incidence when an expert in the relevant field is authorised to represent the prosecution before a Magistrate. There are similar provisions in a number of existing Ordinances. Indeed, the practice of allowing SFC employees to represent the prosecution in certain circumstances is akin to that of departmental prosecutors with expertise in their own area of operation. For instance, similar powers have been conferred on –

- (a) officers of the Labour Department under section 17(1) of the Factories and Industrial Undertakings Ordinance (Cap. 59);
- (b) occupational safety officers under section 34(1) of the Occupational Safety and Health Ordinance (Cap. 509);

- (c) any public officer authorised by the relevant Authority under section 132 of the Public Health and Municipal Services Ordinance (Cap. 132); and
- (d) any public officer appointed under section 13 of the Magistrates Ordinance (Cap. 227) including, customs officers, immigration officers, officers from the Inland Revenue Department, etc.

Clause 376(3) and Article 63 of the Basic Law (BL 63)

8. A Member also enquired about the relationship between clause 376(3) and BL 63. Clause 376(3) provides that nothing in clause 376 derogates from the Secretary for Justice (SJ)'s powers in respect of prosecution of criminal offences. It is essentially a statutory reflection and affirmation of SJ's constitutional power under BL 63 of the Basic Law to control criminal prosecutions, free from any interference. Similar provisions are found in existing legislation enacted before the Reunification. For example, section 17(1) of the Factories and Industrial Undertakings Ordinance (see paragraph 7(a) above) empowers officers of the Labour Department to prosecute offences under that Ordinance in the name of the Commissioner of Labour. Section 17(3) of that ordinance contains a provision similar to clause 376(3).

Securities and Futures Commission
Financial Services Bureau
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