

PART XII

INVESTOR COMPENSATION

229. Establishment of compensation fund

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(2) In this section -

"associated person" (相聯者), in relation to a specified
person, means -

- (a) ~~an employee of a person employed or otherwise~~
engaged by¹ the specified person;

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¹ Members considered the amendment set out in Paper No. CSA11/01 dated 23 November 2001 at the Bills Committee meeting on 10 December 2001, and proposed a further change to sub-clause (2). We agree with Members that having regard to the range of persons permitted to act for or on behalf of a specified person, the provision should be extended to cover also persons engaged, but not necessarily employed, by the specified person.

**235. Subrogation of the Commission to rights,
etc. of claimant on payment from
compensation fund**

(1) Where the Commission makes any payment out of the compensation fund in respect of any claim for compensation made under rules made under this Part -

(a) the Commission shall be subrogated, to the extent which that payment bears to the loss sustained (without taking into account any compensation paid or payable out of the compensation fund for the loss²) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss; and

(b) the respective rights of the claimant and the Commission in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss -

(i) any sum out of the assets of the person concerned who is in default;

or

² **Members considered Paper No. CSA11/01 dated 23 November 2001, and did not propose further amendment to this clause at the Bills Committee meeting on 10 December 2001. The Legal Service Division of the Legislative Council made a technical comment outside the meeting that the meaning of “compensation” referred to in clause 235(1)(a) should be made clearer. We accept the comment and further propose the amendment to qualify “compensation” as that “paid or payable out of the compensation fund for the loss”. (Same amendment will be made to clause 87).**

(ii) any property held on trust by that person for the claimant, shall rank equally.

(2) All assets (whether in cash or otherwise) amounts³ recovered by the Commission under subsection (1) shall become part of the compensation fund.

³ This further amendment to Paper No. CSA11/01 to replace “amounts” with “assets (whether in cash or otherwise)” is to cater for the circumstances where assets other than cash are recovered in the exercise of the subrogation rights. The same amendment has been made to clause 230(1)(c), which was considered and accepted by Members at the Bills Committee meeting on 10 December 2001.

236. Rules by Chief Executive in Council and Commission

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(4) In making any rules under subsection (1)(a), the Chief Executive in Council shall ensure that the funds of the compensation fund shall, so far as practicable, be ~~derived from the securities and futures industry borne by participants or any particular class of participants in the securities and futures market~~⁴.

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Financial Services Bureau
Securities and Futures Commission
4 January 2002

⁴ Members considered the proposed amendment last set out in Paper No. CSA11/01 dated 23 November 2001, and did not propose further changes at the Bills Committee meeting on 10 December 2001. The Legal Service Division of the Legislative Council made a technical comment outside the meeting that the reference to “derived from the securities and futures industry” may be construed as excluding transaction levy as a source of contribution. We accept the comment. For avoidance of doubt, we propose to replace the phrase with “borne by participants or any particular class of participants in the securities and futures market”.