

PART XI

SECURITIES AND FUTURES APPEALS TRIBUNAL

210. Securities and Futures Appeals Tribunal

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(5) ~~The Tribunal may, w~~Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any review~~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~~ such additional ~~the Tribunals~~ (including appointment of the chairman and other members of, ~~such division~~ and all matters concerning, each of such ~~division~~additional Tribunals) as they apply to the Tribunal.

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¹ At the Bills Committee meeting on 10 December 2001, some Members expressed the view that the concept of “division” might cause confusion when in effect each “division” of the Tribunal operates independently as a Tribunal with the same powers and functions. We accordingly propose further amendment to Paper CSA10/01 to remove the reference to “division” and provide instead for the establishment of more than one Tribunal.

211. Applications for review of specified decisions

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

- (a) the person who has ~~made the application~~applied² for the grant of the extension pursuant to that subsection and the relevant authority have been given a reasonable opportunity of being heard; and
- (b) it is satisfied that there is a good cause for granting the extension.

(4) Where the Tribunal receives a notice ~~given to it~~² under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the relevant authority.

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² We propose further technical drafting amendments to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 10 December 2001.

212. Proceedings before Tribunal

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(4) Subject to section 214(3), the standard of proof required to determine any question or issue before the Tribunal shall be ~~that the standard of proof~~³ applicable to civil proceedings in a court of law.

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³ We propose further technical drafting amendment to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 14 December 2001 on clause 244(7), which is similar to this subclause.

213. Powers of Tribunal

(1) ⁴Subject 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, ~~or~~ 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;

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- (j) determine the procedure to be followed in ~~connection with the review~~;

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⁴ We propose further technical drafting amendments to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 14 December 2001 on clause 245(1), which is similar to this subclause.

214. Contempt dealt with by Tribunal

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(4) ⁵Notwithstanding anything in this section and any other provisions of this Ordinance -

(a) no power ~~to punish for contempt~~ may be exercised ~~against any person under or pursuant to this section to determine whether to punish any person for contempt~~ in respect of any conduct if -

(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

⁵ We propose further drafting amendments to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 14 December 2001 on clause 253, which is similar to this subclause. The amendment seeks to clarify the operation of the “no double jeopardy” rule that the provision should apply whether the person concerned has been convicted or acquitted. The original reference to the Court’s power to punish for contempt should accordingly be to the Court’s power to initiate action to determine whether to punish for contempt.

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) any power ~~to punish for contempt~~ has
previously been exercised ~~against~~
~~the person under or pursuant to~~ this
section to determine whether to
punish the person for contempt in
respect of the same conduct; and

(ii) (A) proceedings arising from the
exercise of such power remain
pending; or

(B) by reason of the previous
exercise of such power, no power
~~to punish for contempt~~ may again
be lawfully exercised ~~against~~
~~that person under or pursuant to~~
this section to determine
whether to punish the person for
contempt in respect of the same
conduct.

220A.Applications for stay of decisions of Tribunal⁶

A party to a review may, at any time after the determination of the review, apply to the Tribunal for a stay of a decision of the Tribunal relating to the review, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

221. Appeal to Court of Appeal

(1) A party to a review who is dissatisfied with a decision of the Tribunal relating to the review ~~(whether or not it is a finding or determination in respect of the review, or an order made under section 211(3A), 216 or 220)~~⁷ may appeal to the Court of Appeal against the decision on a point of law.

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⁶ When Paper CSA10/01 was considered at the Bills Committee meeting on 10 December 2001, a Member commented that the SFAT should have the discretion to order stay of its own decision if it is likely that an appeal against its decision will be lodged and if the SFAT considers a stay appropriate. We accordingly propose a new clause 220A to this effect.

⁷ On reflection, we take the view that the bracketed non-exhaustive elaboration adds nothing to the meaning of “a decision”, as the term would no doubt cover a finding or determination in respect of the review, an order made under clauses 211(3A), 216 and 220, and other decisions. We therefore propose this further amendment to Paper CSA10/01 for brevity. Similar amendment is also proposed to clause 222.

⁵(2A) Where the Court of Appeal varies, or substitutes any other decision for, ~~the a decision in question~~ under subsection (2)(ba), the decision ~~in question~~ as varied or the other 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 review in question, whether or not under the same provision as that under which the decision ~~in question~~ has been made.

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222. No stay of execution on appeal

⁶Without prejudice to section 220A, ~~t~~The lodging of an appeal under section 221 does not by itself operate as a stay of execution of a decision of the Tribunal ~~(whether or not it is a finding or determination in respect of a review, or an order made under section 211(3A), 216 or 220)~~⁷ 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

⁸ We propose further drafting amendments to Paper CSA10/01 in the light of the comment of a Member expressed at the Bills Committee meeting on 14 December 2001 on clause 258, which is similar to this subclause. The deletion of "in question" proposed here would not distort the meaning of this provision.

the Tribunal or otherwise as the Court of Appeal considers appropriate.

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Financial Services Bureau
Securities and Futures Commission
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