

立法會
Legislative Council

LC Paper No. LS31/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 1 December 2000**

**Legal Service Division Report on
Securities and Futures Bill**

Object of the Bill

To consolidate :-

- (a) the Securities and Futures Commission Ordinance (Cap. 24);
- (b) the Commodities Trading Ordinance (Cap. 250);
- (c) the Securities Ordinance (Cap. 333);
- (d) the Protection of Investors Ordinance (Cap.335);
- (e) the Stock Exchanges Unification Ordinance (Cap. 361);
- (f) the Securities (Insider Dealing) Ordinance (Cap. 395);
- (g) the Securities (Disclosure of Interests) Ordinance (Cap. 396);
- (h) the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);
- (i) the Leveraged Foreign Exchange Trading Ordinance (Cap. 451);
and
- (j) the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555);

into one single ordinance and to amend the law relating to the securities and financial industry (including the securities and futures market and financial products) and the regulation of activities and persons connected with the securities and financial industry, the protection and compensation of investors

and to provide for the inauguration of a new regulatory regime and other matters incidental thereto or connected therewith.

LegCo Brief Reference

2. SU B38/31 (2000) issued by the Financial Services Bureau on 10 November 2000.

Date of First Reading

3. 29 November 2000.

Comments

4. The colossal legislative proposal was published in the form of a White Bill (Special Supplement No. 5 to Government Gazette dated 7 April 2000) for consultation. A subcommittee was set up to study the White Bill. Six meetings were held and oral representations from deputations from market bodies and professional organizations were received. The report of the subcommittee (LC Paper No. CB(1)1902/99-00) ("the Report") was submitted to the House on 23 June 2000.

5. The Bill, a revamp of the White Bill, now comprises of 17 parts and nine Schedules. Excluding alterations necessitated by changes in section cross references, over 300 clauses of the White Bill have been revised and many quite significantly.

6. It is proposed in clause 4 of the Bill that the Securities and Futures Commission ("the Commission") is to have a new regulatory objective, namely, to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry. The precise scope and contents envisaged by this new objective have not been elaborated in the consultation document issued by the Administration in April 2000 or in the LegCo Brief.

7. Penalties for offences contained in the White Bill have been reduced in some provisions but increased in other provisions. It is yet undiscernible whether they follow any consistent principles. A table comparing the amended provisions relating to penalties for offences in the Bill and those in the White Bill is attached as the Schedule.

8. The new regulatory regime to be inaugurated after the enactment of the Bill will apply to exempt authorised institutions under the supervision of the Monetary Authority. Amendments to the Banking Ordinance (Cap. 155) are required to facilitate such application. The Administration has therefore introduced the Banking (Amendment) Bill 2000, which is the subject of a separate report of the Legal Service Division.

Public Consultation

9. There has been public consultation on the White Bill. According to the Financial Services Bureau, 53 submissions from 44 market organizations, chambers of commerce, professional bodies and individuals have been received. A summary of the submissions and the response of the Administration is available as Annex A to the LegCo Brief.

10. No public consultation has been conducted on the Bill in its present form.

Consultation with LegCo Panel

11. The Panel for Financial Affairs has been briefed on the Bill at its meeting on 10 November 2000.

Recommendation

12. The subcommittee, in its Report, expressed the view that given the complexity of the Bill and its far-reaching impact on the securities and futures market, Members should have sufficient time to scrutinize the Bill before its enactment. The subcommittee recommended that a Bills Committee be formed to study the Bill after it has been introduced to the Council. Members may wish to consider the recommendation of the subcommittee. The Bill involves multiple policy issues and affects the interests of the general public as well as the participants of the securities and financial market. The Legal Service Division is still scrutinizing the Bill and will seek clarification from the Administration on its drafting and legal aspects. Meanwhile, Members may wish to set up a Bills Committee to consider the Bill.

Prepared by

Legal Service Division
Legislative Council Secretariat
29 November 2000

SCHEDULE

Comparison of Amended Penalties Provisions of the Bill and the White Bill

Blue Bill section No.	White Bill section No.	Comments
100	99	The amounts of fin es are increased fivefold and a daily fine for continuing offences is introduced. The terms of imprisonment are increased to 7 years and 2 years for indictable and summary offences respectively.
114	113 & 114	The section has been redrafted to combine the provisions contained in the original s. 113 & 114.. The fin es for carrying on business illegally are reduced .
119	119 & 120	The new section combines the provisions governing the applications for licence and provisional licence by an individual. The fin es for failure to return revoked provisional licence are reduced .
122	122	The fin e for contravening this section has been halved and the provisions for daily fine are deleted.
130	128	The fin e for summary conviction has been increased to level 6.
132	130	The fin e is raised to level 5 but the imprisonment term is dropped.
136	134	The level of fin e is raised to level 6 and a daily fine of \$2,000 is imposed for continuing offence but the imprisonment term is dropped.
142	139	The strict criminal liabilities of executive officers for breaches of the Financial Resources Rules ("FRR") have been removed. The amounts of fin es upon conviction on indictment for failure to notify the Commission of inability to comply with the specified amount required under the FRR or to comply with a condition imposed are doubled and a daily fine is imposed for continuing offences. A defence of reasonable excuse is available for other breaches of FRR and any failure to notify the Commission of such breaches in time. The amounts of fin es and imprisonment terms for such breaches are also reduced .

143	140	The fin , daily fines and imprisonment terms are imposed in line with s.142 of the Blue Bill.
144	141	The strict criminal liabilities of executive officers for non-compliance are removed. A defence of reasonable excuse is available for non-fraudulent non-compliance with rules. The fin for conviction on indictment under ss. (5) and summary conviction under ss. (4) & (5) are increased .
145	142	The strict criminal liabilities of executive officers for non-compliance have been removed. The amounts of fin for summary conviction under ss. (4) & (5) have been increased .
147	144	The strict criminal liabilities of executive officers for non-compliance have been removed. A defence of reasonable excuse is available for non-fraudulent non-compliance with rules. The amounts for fin upon summary conviction under ss. (4) & (6) are increased . The imprisonment term upon summary conviction for fraudulent non-compliance is doubled.
148	145	The strict criminal liabilities of executive officers for non-compliance have been removed. A defence of reasonable excuse is available for non-fraudulent non-compliance with rules. The amounts for fin upon summary conviction under ss. (3) & (4) are increased .
151	148	Non-compliance with this section is no longer an offence punishable by imprisonment but the fine has been increased to \$50,000.
152	149	Non-fraudulent contravention of ss. (1) or (2) has now a defence of reasonable excuse under ss. (5). The amount of fine upon summary conviction of fraudulent contravention has been increased to \$500,000 (ss. (6)). Ss. (7) is added to exclude the application of this section to an associated entity that is an authorized institution.
158	155	The amount of fine upon summary conviction in ss. (3)(b) has been reduced to \$50,000 but that in ss. (5)(b)(ii) has been increased to \$500,000.
159	156	The fine and the imprisonment term upon summary conviction stipulated in ss. (2)(b) have respectively been increased fivefold and doubled.

161	157	The time for notification to the Commission of any change in particulars is extended to 7 days (<i>ss.</i> (2)). The criminal liabilities of directors or employees or executive officers of an intermediary under <i>ss.</i> (4), (5) & (7) are removed. The amount of fine upon summary conviction in <i>ss.</i> (5)(b) has been increased to \$500,000. The offence for contravening <i>ss.</i> (6) has been made indictable and the penalties have been increased (<i>ss.</i> (7)).
163	159	The upper limit of fine upon conviction on indictment is lowered to \$200,000.
168	161	The strict criminal liabilities of executive officers have been removed. The upper limit of a fine on summary conviction under <i>ss.</i> (2)(b) has been raised to level 6.
169	162	The indictable offence and imprisonment as penalty have been removed from <i>ss.</i> (5) and the fine on conviction is lowered to level 5.