

**Subcommittee on Draft Subsidiary Legislation to be made under the
Securities and Futures Ordinance**

Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002

This paper sets out the recommendation of the Securities and Futures Commission (“SFC”) to the Chief Executive in Council to amend Schedules 1 and 2 to the Prevention of Bribery Ordinance (Cap.201) (the POBO) to bring an investor compensation company recognized by the SFC and its relevant personnel within the meaning of “public body” and “public servant” under the POBO.

Proposal

2. The SFC proposes to recommend the Chief Executive in Council to make the Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002 (the Order), now in draft at the **Annex**, for effecting consequential amendments to the POBO for the purposes set out in paragraph 1 above.

Power to make the Order

3. Section 409 of the Securities and Futures Ordinance (the SFO) empowers the Chief Executive in Council, by order published in the Gazette, to amend Schedule 10 to the SFO, which includes, among others, consequential amendments to other legislation. The amendments proposed to the POBO fall within the scope of consequential amendments.

Background

4. Part III of the SFO provides for the recognition of an investor compensation company by the SFC, and the transfer to it of some of the statutory functions of the SFC in relation to the day-to-day management and administration of the investor compensation fund. The investor compensation fund is to be established under Part XII of the SFO to provide a measure of compensation to investors who suffer losses as a result of default by market intermediaries such as corporations licensed for dealing in securities. Any

transfer of functions is to be effected through a transfer order made by the Chief Executive in Council under section 80 of the SFO.

Justifications

5. In order to ensure proper discharge of statutory functions by the SFC, the definitions of “public body” and “public servant” under the POBO extend respectively to the SFC and its relevant personnel, which/who are accordingly subject to the offences of bribery involving any public body and public servant specified under the POBO. As subject to the decision of the Chief Executive in Council, a recognized investor compensation company is to perform certain statutory functions of the SFC, the SFC therefore recommends the Council to make the Order so that any such company will be subject to similar safeguards as the SFC.

The draft Order

6. Clause 2 of the draft Order proposes to add in Part 2 of Schedule 10 to the SFO a new item for inclusion in Schedules 1 and 2 to the POBO the reference to “A company recognized as an investor compensation company under section 79(1) of the Securities and Futures Ordinance (Cap.571)”. In effect –

- (a) an investor compensation company recognized by the SFC falls within the meaning of “public body” under the POBO; and
- (b) any office holder of such a company (other than an honorary office holder) and any member of its council, board, committee or other body which is vested with any responsibility for the conduct or management of the affairs of the company, falls within the meaning of “public servant” under the POBO.

The recognized investor compensation company

7. The SFC intends to recognize the Investor Compensation Company Limited and transfer to it certain statutory functions to manage and administer the new investor compensation fund, including dealing with compensation claims, making payment to successful claimants and keeping accounts and records. In this connection, we have submitted a draft of the Securities and

Futures (Transfer of Functions – Investor Compensation Company) Order for Members' consideration at the meeting on 6 June 2002.

Public consultation

8. The SFC released a consultation paper on the concept and general framework of the new investor compensation arrangements in September 1998, including the establishment of an investor compensation company and to subject the company to the POBO. No contrary view has been received with respect to this particular proposal. The SFC further consulted the public on the draft of various sets of subsidiary legislation necessary for implementation of the new investor compensation arrangements in March and April this year. These draft rules were considered by Members of the Subcommittee on Draft Subsidiary Legislation to be made under the SFO at the meetings on 6 June 2002 and 24 October 2002.

Way forward

9. Subject to the decision of the Chief Executive in Council, the Order will be published in the Gazette for tabling before the Legislative Council in the normal manner. The intention is that the Order shall come into operation on the commencement of the SFO.

Securities and Futures Commission
Financial Services and the Treasury Bureau
27 November 2002

SECURITIES AND FUTURES ORDINANCE (AMENDMENT OF
SCHEDULE 10) ORDER 2002

(Made by the Chief Executive in Council under section 409
of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

This Order shall come into operation on the day appointed for
the commencement of the Securities and Futures Ordinance (Cap.
571).

**2. Savings, transitional, consequential and
related provisions, etc.**

Schedule 10 to the Securities and Futures Ordinance (Cap.
571) is amended in Part 2 by adding -

"18A. Prevention of Bribery (a) In Schedule 1, add -
Ordinance (Cap. 201)

"99. A company
recognized as an
investor
compensation
company under
section 79(1) of
the Securities
and Futures
Ordinance (Cap.
571).".

(b) In Schedule 2, add -

"7. A company
recognized as an
investor
compensation
company under
section 79(1) of
the Securities
and Futures
Ordinance (Cap.
571).".

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

This Order is made by the Chief Executive in Council under section 409 of the Securities and Futures Ordinance (Cap. 571). It amends Part 2 of Schedule 10 to the Ordinance by adding an amendment to the Prevention of Bribery Ordinance (Cap. 201) under which a recognized investor compensation company under the Securities and Futures Ordinance (Cap. 571) is specified as a public body for the purposes of the Prevention of Bribery Ordinance (Cap. 201).