

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

Extracts of LC Paper No. CB(1)925/00-01(02)

Administration's Response to "Supplement to the Comparison Table for Part VIII" prepared by the Legal Service Division (LSD) of the Legislative Council (Annex to LC Paper No. CB(1)770/00-01(01))

Clause No.	LSD's Remarks	Administration's Response
180(2)	<p>The application of the rule against self-incrimination appears to have been restricted. Clause 180(2) now requires a person to provide self incriminating information notwithstanding such information may be used in criminal proceeding in respect of an offence under clause 172 or 177 and also in civil and criminal proceedings under Part XIII (market misconduct).</p>	<p>The Department of Justice advised that the criminal proceedings which may be instituted under clauses 172(13), (14), (15), 177, or clauses 245(2), 246(6), 249(9) or 250(9) of Part XIII of the Bill are mainly concerned with the prosecution for acts of non-compliance with a requirement to provide information, the giving of false or misleading information to an authorised person, non-compliance with orders of the Market Misconduct Tribunal (MMT) or for failure to comply with the procedural requirements imposed by the MMT.</p> <p>The compelled evidence obtained pursuant to the exercise of the power under clauses 172 and 176 might be relevant where it is used as evidence to prove that certain statements have indeed been made by the person concerned, for instance, in the prosecution of the offences of giving false or misleading information to an authorized person or of failing to answer truthfully the questions asked by the MMT in contravention of the relevant provisions mentioned in the above paragraph and as specified under clause 180(2)(i) and (ii) of the Bill. As the purpose of the admission of such statement in those proceedings is not to establish the truth of its contents but merely as evidence of the fact that such a statement had been made, the statement in itself does not incriminate the person concerned. Other evidence would have to be adduced, as in the case of perjury or other offences under Part V of the Crimes Ordinance, to establish that the statement is false or misleading.</p> <p>In this regard it has already been provided under the existing provision of section 19 of the Securities (Insider Dealing) Ordinance (Cap 395) that the evidence obtained under compulsion pursuant to the exercise of the powers under sections 16, 17 and 18 of the Ordinance shall be admissible as evidence in criminal proceedings where a person is charged with an offence under section 18 or 20 of the Ordinance which contains provisions similar in nature to those stipulated under clauses 172, 177, 245 (2) and 246(6) of the Bill.</p> <p>Furthermore, a provision has been enacted under section 174 of the UK Financial Services and Market Act 2000 that compelled answers made by a person to an investigator of the Financial Services Authority in compliance with an information requirement will not be admissible as evidence against the person generally in criminal proceedings brought against the person except where the offence being prosecuted relates to the provision of information which he knows to be or is reckless as to whether it is false or misleading.</p>

Clause No.	LSD's Remarks	Administration's Response
		<p>As regards prosecution instituted under clauses 249(9) and 250(9) of Part XIII of the Bill for failure by a person, having been identified by the MMT to have engaged in market misconduct or whose breach of duties has been found by the MMT to have contributed to the market misconduct, to comply with an order of the MMT, it appears that the compelled evidence obtained under clause 172 or 176 is not likely to be relevant to those proceedings.</p> <p>In the circumstances, clause 180(2)(i) and (ii) do not appear to infringe the right to remain silent and the right against self-incrimination guaranteed under Articles 10, 11(1) and 11(2)(g) of the Hong Kong Bill of Rights or Article 14(1), (2) and (3)(g) of the International Covenant on Civil and Political Rights.</p>

Financial Services Bureau
Securities and Futures Commission
28 March 2001