

立法會

Legislative Council

LC Paper No. LS33/11-12

Paper for the Bills Committee on Securities and Futures (Amendment) Bill 2011

Information Note on certain expressions in Hong Kong Institute of Certified Public Accountants' proposed safe harbour

Background

At the meeting of the Bills Committee held on 31 January 2012, information was sought on whether expressions used in the safe harbour proposed by Hong Kong Institute of Certified Public Accountants (HKICPA), namely "acting in good faith", "taken reasonable steps", "have exercised judgment", "reasonable prudence" and "properly considered" are present in other ordinances. As requested by Members, the information provided at the meeting is elaborated below¹ for Members' reference.

"acting in good faith"

2. The expression "in good faith" is found in a large number of provisions in the legislation in Hong Kong currently in force, including 20 provisions² of the Securities and Futures Ordinance (Cap. 571).

3. The exact expression "acting in good faith" is found in 46 provisions contained in 42 pieces of legislation, a list of which is attached at Annex A. Amongst the 46 provisions, 35 of which relate to immunity from liability³.

"taken reasonable steps"

4. This expression is found in 9 provisions contained in 8 pieces of legislation, a list of which is attached at Annex B. Amongst the 9 provisions, 3 of which relate to providing a defence to statutory offences⁴.

¹ This advice contains results of an online search of the legislation in Hong Kong currently in force through the Bilingual Laws Information System established by the Department of Justice.

² The 20 provisions of Cap. 571 are sections 22, 39, 64, 81, 92, 103, 158, 160, 170, 174, 175, 209, 271, 272, 276, 292, 293, 297, 380 and 381.

³ These are marked with "*" in Annex A.

⁴ These are marked with "*" in Annex B.

"have exercised judgment"

"reasonable prudence"

"properly considered"

5. These expressions are not found in provisions of the legislation currently in force in Hong Kong.

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7 February 2012

**Provisions of legislation in which the expression
"acting in good faith" is found**

Item No.	Legislation	Section No. & Heading
1.	Powers of Attorney Ordinance (Cap. 31)	<u>Section 3</u> Proof of instruments creating powers of attorney
2.	Companies Ordinance (Cap. 32)	<u>Section 168BI</u> Power of court to make orders about costs
3.	Recognition of Trusts Ordinance (Cap. 76)	<u>SCHEDULE (CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND ON THEIR RECOGNITION)</u> Article 15
*4.	Telecommunications Ordinance (Cap. 106)	<u>Section 39B</u> Immunity
*5.	Hospital Authority Ordinance (Cap. 113)	<u>Section 23</u> Protection of members of Authority, etc.
*6.	Public Health and Municipal Services Ordinance (Cap. 132)	<u>Section 138</u> Protection for public servants acting in good faith
7.	Banking Ordinance (Cap. 155)	<u>Section 122</u> Winding-up of authorized institutions
8.	Theft Ordinance (Cap. 210)	<u>Section 4</u> "Appropriates" (挪佔)
9.	Theft Ordinance (Cap. 210)	<u>Section 30</u> Orders for restitution

Item No.	Legislation	Section No. & Heading
*10.	Consumer Council Ordinance (Cap. 216)	<u>Section 19</u> Protection of members of Council and committees
*11.	Conveyancing and Property Ordinance (Cap. 219)	<u>Section 38</u> Protection of solicitors etc.
*12.	Public Order Ordinance (Cap. 245)	<u>Section 53</u> Indemnity to persons acting under Ordinance
*13.	Customs and Excise Service Ordinance (Cap. 342)	<u>Section 21</u> Protection of members and persons aiding them
*14.	Building Management Ordinance (Cap. 344)	<u>Section 29A</u> Protection of members of management committee
*15.	Employees Compensation Assistance Ordinance (Cap. 365)	<u>Section 42</u> Protection of members, etc. of Board
*16.	Hong Kong Council on Smoking and Health Ordinance (Cap. 389)	<u>Section 20</u> Protection of members of Council and committees
*17.	The Ombudsman Ordinance (Cap. 397)	<u>Section 18A</u> Immunity
*18.	Occupational Safety and Health Council Ordinance (Cap. 398)	<u>Section 30</u> Protection of members of Council
*19.	Employees' Compensation Insurance Levies Ordinance (Cap. 411)	<u>Section 28</u> Protection of members, etc. of Board
*20.	Employees Retraining Ordinance (Cap. 423)	<u>Section 32</u> Protection of members and employees of Board

Item No.	Legislation	Section No. & Heading
*21.	Chiropractors Registration Ordinance (Cap. 428)	<u>Section 26</u> Protection of members of Council and committees
*22.	The Legislative Council Commission Ordinance (Cap. 443)	<u>Section 20</u> Protection of members
23.	Carriage of Goods by Sea Ordinance (Cap. 462)	<u>Section 3</u> Application of Hague Rules as amended
24.	Carriage of Goods by Sea Ordinance (Cap. 462)	<u>SCHEDULE (THE RULES (THE HAGUE RULES AS AMENDED BY THE BRUSSELS PROTOCOLS 1968 AND 1979))</u> Article III paragraph 4
*25.	Human Organ Transplant Ordinance (Cap. 465)	<u>Section 9</u> Protection of members and officers of the board against personal liability
*26.	Occupational Deafness (Compensation) Ordinance (Cap. 469)	<u>Section 34</u> Protection of members, etc. of Board and Medical Committee
*27.	Hong Kong Arts Development Council Ordinance (Cap. 472)	<u>Section 17</u> Protection of members, employees, etc.
*28.	Land Survey Ordinance (Cap. 473)	<u>Section 34</u> Protection of members, etc. of the Committee and the Disciplinary Board
*29.	Sex Discrimination Ordinance (Cap. 480)	<u>Section 68</u> Protection of members of Commission, etc.

Item No.	Legislation	Section No. & Heading
30.	Fugitive Offenders (Suppression of the Financing of Terrorism) Order (Cap. 503 sub. leg. AA)	<u>SCHEDULE</u> (INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM) Article 8 paragraph 5
*31.	Social Workers Registration Ordinance (Cap. 505)	<u>Section 13</u> Protection of members of Board, etc.
32.	Patents Ordinance (Cap. 514)	<u>Section 14</u> Effect of transfer of application under section 13
33.	Patents Ordinance (Cap. 514)	<u>Section 56</u> Effect of transfer of patent under section 55
*34.	Veterinary Surgeons Registration Ordinance (Cap. 529)	<u>Section 27</u> Protection of members of Board and committees
*35.	Prevention of Copyright Piracy Ordinance (Cap. 544)	<u>Section 33</u> Protection of the Commissioner, authorized officers and persons assisting them
*36.	Human Reproductive Technology Ordinance (Cap. 561)	<u>Section 12</u> Protection of members of Council, etc.
*37.	Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570)	<u>Section 15</u> Protection for public officers acting in good faith
*38.	Land Titles Ordinance (Cap. 585)	<u>Section 11</u> Immunity
*39.	Construction Industry Council Ordinance (Cap. 587)	<u>Section 19</u> Protection of members of Council, etc.

Item No.	Legislation	Section No. & Heading
*40.	Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592)	<u>Section 16</u> Protection of Chairman, Deputy Chairman or panel member
*41.	Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592)	<u>Section 23</u> Protection of members, employees, etc. of Accreditation Authority or QR Authority, etc.
*42.	Unsolicited Electronic Messages Ordinance (Cap. 593)	<u>Section 45</u> Immunity of Authority, authorized officers, etc.
*43.	Fixed Penalty (Smoking Offences) Ordinance (Cap. 600)	<u>Section 14</u> Protection for public officers acting in good faith
*44.	Race Discrimination Ordinance (Cap. 602)	<u>Section 62</u> Protection of members of Commission, etc.
*45.	The Council of Heep Yunn School Incorporation Ordinance (Cap. 1099)	<u>Section 8A</u> Protection of members, officers, etc.
*46.	Hong Kong Council for Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 1150)	<u>Section 21</u> Protection of members, employees, etc.

**Provisions of legislation in which the expression
"taken reasonable steps" is found**

Item No.	Legislation	Section No. & Heading
1.	The Rules of the High Court (Cap. 4 sub. leg. A)	<u>Order 117A</u> (HK) UNITED NATIONS (ANTI-TERRORISM MEASURES) ORDINANCE (CAP 575) Rule 3(1)(b)(i)
2.	Money Changers Ordinance (Cap. 34)	<u>Section 11</u> Criminal liability
*3.	Weights and Measures Ordinance (Cap. 68)	<u>Section 20</u> Reliance on warranty as defence to charge under section 19
*4.	Waterworks Regulations (Cap. 102 sub. leg. A)	<u>Regulation 12</u> Use of fresh water for flushing
*5.	Public Health and Municipal Services Ordinance (Cap. 132)	<u>Section 71</u> Conditions under which warranty may be pleaded as defence
6.	Dangerous Drugs Ordinance (Cap. 134)	<u>Section 31</u> Supply of dangerous drug on prescription
7.	Banking (Capital) Rules (Cap. 155 sub. leg. L)	<u>Section 77</u> Recognized collateral
8.	Banking (Capital) Rules (Cap. 155 sub. leg. L)	<u>Section 124</u> Recognized collateral
9.	Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)	<u>Section 4</u> Determination of application