

香港特別行政區政府財經事務局的信頭  
**Letterhead of FINANCIAL SERVICES BUREAU, GOVERNMENT OF THE HONG  
KONG SPECIAL ADMINISTRATIVE REGION**

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**URGENT**

27 July 1999

Ms. Estella Chan  
Clerk to Bills Committee  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Estella,

**Bills Committee on  
Securities (Margin Financing)(Amendment) Bill 1999**

Thank you for your letter of 20 July 1999.

Our responses to the outstanding issues stated in your letter are as follows (in the same order as they are raised) -

- (1) Pursuant to our deliberation on section 121AB, Members asked us to provide further information on the powers of the Securities and Futures Commission ("SFC") under the existing legislation in respect of investigations and inquiries. The power for SFC to inspect all accounting and other records (including the working papers of the auditors of the dealers) already exists in s.65D(1) of the Securities Ordinance ("SO"). Under that section, a person appointed by SFC to ascertain whether the dealer complies with the FRR shall have the

powers of an auditor under s.95(1), which in turn provides that “an auditor appointed by a dealer shall produce any books, accounts, and records held by him relating to the business of the dealer” upon request by the aforementioned SFC appointee. The power envisaged in s. 121AB(4) is analogous to that provided in s.95(1) and the Bill does not seek to extend the scope of SFC’s investigatory power over registered persons.

- (2) Members were also concerned about the appropriateness of the penalty levels envisaged under sections 121AB(6) and (7). We will give further consideration to this point and revert to the Bills Committee as soon as we are ready.
- (3) The meeting proposed that the obligation imposed under section 121AB(4)(b) should only be triggered whenever the Commission has a reasonable belief that there is a breach of the financial resources rules, as envisaged under section 121AB(3). We have no objection to the suggestion and would ask the Law Draftsman to consider how this could be best achieved.
- (4) The Bills Committee expressed serious concerns about the legal consequences of rescinding a contract under section 121AD(1)(a) and the rights of bona fide third party and asked the Administration to revisit the provisions under Division 4 and propose amendments to the Division if necessary. The policy intent of the Division is to render better protection to the investors by providing a client of an unregistered securities margin financier with the right to rescind the contract entered into between them. The concept of rescission is already in place in the existing Securities Ordinance including sections 72(4), 73(4), 143(5) and 144(c) although constructed differently. We are now in discussion with SFC as to whether the Division 4, as currently structured, effectively reflects the policy intent and whether amendments are necessary. We will revert to the Bills Committee with fuller details and proposed amendments, if any, as soon as we are ready.

- (5) At the meeting of the Bills Committee, Members asked the Administration to review the Bill with regard to the appropriateness of the penalty levels for different offences. In this regard, Members may find at Enclosure A a comparison table on the penalties for various offences appeared in the Bill vis-a-vis those in the existing SO. As noted from the table, the penalty levels for most of the offences are considerably higher than their analogous provisions in the existing Ordinance with a view to increasing the deterrent effect. We are presently consulting the SFC and the Department of Justice as to whether the penalty levels should be increased further to reflect the seriousness of the offences and to render greater deterrence.
- (6) Members also requested us to consider making the provisions under sections 121BD(3), (4) and (6) more specific with reference to the comparable provisions under the SFC Ordinance. These provisions are analogous to sections 95(2) and (3) of the SO and we will request the Law Draftsman to amend them along those lines.

The meeting has also agreed to introduce an amendment to section 121AY(2) by replacing the word “section” by “division” in the phrase “the expenses of an auditor appointed under this *section* should be borne by the registered financier concerned”. I would like to confirm that we agree to the suggestion and will instruct the Law Draftsman to include the amendment accordingly.

The attendance list for the next meeting is at Enclosure B.

Yours sincerely,

(Bryan P. K. Chan)  
for Secretary for Financial Services

c.c. Mr. Andrew Procter, SFC  
Mr. William Maddaford, LD  
Ms. Vicki Lee, LD

**Bills Committee on Securities (Margin Financing)(Amendment) Bill 1999**

**Comparison on the Penalty Levels for Various Offences in the Securities (Margin Financing)  
(Amendment) Bill 1999 vis-a-vis the Existing Securities Ordinance**

	Offence	Penalty on Conviction (in the Amendment Bill)		Penalty on Conviction (existing Securities Ordinance)	
		Section	Penalty Levels	Section	Penalty Levels
1.	Acting or holding out as a dealer or as a securities margin financier without licence	121C(2)	Summary conviction: level 5 and imprisonment for 6 months (\$500/day for continued offence)  Conviction on indictment: \$200,000 and imprisonment for 2 years (\$2,000/day for continued offence)	48(2)	\$50,000 (\$500/day for continued offence)
2.	Act as a representative without licence	121D(2)	Level 4 (\$500/day for continued offence)	50(2)	\$10,000 (\$100/day for continued offence)
3.	False representation for the purpose of obtaining the certificate of registration	121F(4)	Conviction on indictment: 5 years imprisonment	62(1)	Conviction on indictment: 5 years imprisonment
4.	Contravention of the requirements relating to information to be provided by dealers/financiers (concerning particulars appeared on the certificate of registration)	121Q	Level 2	63	\$2,000

	Offence	Penalty on Conviction (in the Amendment Bill)		Penalty on Conviction (existing Securities Ordinance)	
		Section	Penalty Levels	Section	Penalty Levels
5.	A financier carrying on a business of securities margin financing without an approved director or a dealer (which is a corporation) carrying on a business of securities dealing without a dealing director	121I	Summary conviction: level 5 (\$500/day for continued offence) Conviction on indictment: \$200,000 (\$2,000/day for continued offence)	48(2)	\$50,000 (\$500/day for continued offence)
6.	Failure to comply with the FRR	121AB(6)	Failure to notify SFC - level 4 (\$250/day for continued offence)	65C(4)	\$25,000 (\$250/day for continued offence)
		121AB(7)	Failure to produce information requested by SFC - level 5 and 2 years imprisonment	95(1)	\$10,000 and 2 years imprisonment
7.	Failure to issue contract notes/statement of accounts to clients after each transaction/at the end of the month	121Y(6)[75A(6)]	Level 4	75(3)	\$5,000
8.	Failure to provide clients with a copy of the statement of account or keep available for inspection by the client	121Z(5)(revised 77(6))	Level 4	77(4)	\$2,000
9.	Failure to comply with the requirement on handling of clients' securities held for safe custody	121AA(6)[81(6) and 81A(7)]	Mishandling of clients' securities held for safe custody : level 3	81(7)	\$2,000

	Offence	Penalty on Conviction (in the Amendment Bill)		Penalty on Conviction (existing Securities Ordinance)	
		Section	Penalty Levels	Section	Penalty Levels
	Disposition of client's securities without client's authorisation	121AA(7)[81(7) and 81A(8)]	Disposition of clients' securities w/out authorisation: Summary conviction - level 5 Conviction on indictment - \$200,000		\$20,000 and 2 years imprisonment
10.	Falsification of records	121AI(11)	Level 5 and 2 years imprisonment	83(7)	\$10,000 6 months imprisonment
11.	Unlawful disposition of money deposited in trust account	121AS	Level 3  With intent to defraud, \$200,000 and 5 years imprisonment	84(7)	\$10,000  With intent to defraud, \$50,000 and 5 years imprisonment
12.	Failure to notify SFC of change of auditors	121AU(2)	Level 4	87B(2)	\$5,000
13.	Failure to lodge auditor's report/annual financial statement before a specified time	121AK	Level 2	88(4)	\$5,000
14.	Failure to observe the confidentiality requirement by auditor and auditor's employee	121BC[revised 94(2)]	Level 6 and 6 months imprisonment	94	Nil
15.	Failure to produce records on demand by SFC	121BD[revised 95(3)]	Level 5 and 2 years imprisonment	95(3)	\$10,000 2 years imprisonment
16.	a) Destroying, concealing or altering records or send records or other property outside HK; or	121BE	a) Level 5 and 2 years imprisonment	96(1)	\$50,000 2 years imprisonment
	b) the person attempting to leave HK	121BF	b) Level 5 and 2 years imprisonment		

	Offence	Penalty on Conviction (in the Amendment Bill)		Penalty on Conviction (existing Securities Ordinance)	
		Section	Penalty Levels	Section	Penalty Levels
17.	CE-in-Council may make regulations to provide for a penalty of contravention of the rules made by Commission under section 146	Revised 146A	Level 1 and 3 months imprisonment	146(2)	\$2,000 and 3 months imprisonment
18.	Failure to comply with the order made by SFC in relation to the application of registration by existing financiers during the transition period	121BH(4)	Level 6	Not applicable	Not applicable

Financial Services Bureau

26 July 1999