

LegCo Panel on Administration of Justice and Legal Services

Binding Effect of the Securities-related Ordinances

Introduction

This paper summarises the purposes of the 12 securities-related ordinances and sets out their binding effect.

The Ordinances

2. At present, regulation over the securities and futures markets in Hong Kong is provided for in 11 ordinances and part of the Companies Ordinance. A summary of the purposes of these ordinances and their binding effect is contained in Annex. While the legislation puts the market regulatory functions primarily on the exchanges, clearing houses and, above all, the Securities and Futures Commission (SFC), it retains certain functions and powers for the Government. Such powers and functions include, inter alia, house-keeping functions for the SFC, the power to instigate inquiries and appoint inspectors, certain residual legislative power (such as the power of the Financial Secretary to specify investment arrangements under the Protection of Investors Ordinance) and the power to adjudicate on certain appeal cases. Some of the provisions also require in certain circumstances that the Financial Secretary be consulted on the exercise of certain functions by the SFC (such as recognition of clearing houses). In each of the ordinances the Government plays a role as regulator to safeguard the interests of investors or creditors.

The Binding Effect

S.66 of Cap. 1

3. S.66 of Cap. 1 (as amended) provides that -

“No Ordinance (whether enacted before, on or after 1 July 1997) shall in any manner whatsoever affect the right of or be binding on the State unless it is therein expressly provided or unless it appears by necessary implication that the State is bound thereby.”

4. Having gone through the 12 securities-related ordinances, we conclude that the State is not bound by any of them either by an express provision or by necessary implication.

Financial Services Bureau

Department of Justice

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**Summary of the Purposes and Binding Effect of
the Securities-related Ordinances**

Ordinance	Purpose	Binding by Express Provisions	Binding by Necessary Implications
Securities and Futures Commission Ordinance Cap.24	To establish the Securities and Futures Commission and to amend the law relating to dealing in securities and trading in futures contracts; and to provide for connected or incidental matters.	No.	No.
Commodity Exchanges (Prohibition) Ordinance Cap.82	To prohibit the establishment of further commodity exchanges in Hong Kong.	No.	No.
Commodities Trading Ordinance Cap.250	To provide for the establishment of a commodity exchange, to control the trading in commodity futures contracts and to provide for matters connected therewith and	No.	No.

incidental thereto.

Stock Exchanges Unification Ordinance Cap.361	To provide for the establishment of a single, unified stock exchange in Hong Kong; to provide for an Exchange Company to operate the Unified Exchange; to provide for the winding up of existing exchanges; and to provide for related matters.	No.	No.
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Securities and Future (Clearing Houses) Ordinance Cap.420	An Ordinance to empower the Commission to declare clearing houses to be recognized clearing houses for the purposes of this Ordinance, to provide for the approval by the Commission of the rules of recognized clearing houses, to make provision for safeguarding the operations and procedures of recognized clearing houses, and to provide for matters incidental thereto or connected therewith.	No.	No.
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Leveraged Foreign Exchange Trading Ordinance Cap.451	An Ordinance to regulate leveraged foreign exchange trading.	No.	No.
Exchanges (Special Levy) Ordinance Cap.351	An Ordinance to impose special levies on transactions on the Commodity Exchange and Unified Exchange.	No.	No.
Protection of Investors Ordinance Cap.335	An Ordinance to provide for the protection of investors in securities and other property.	No.	No.
Securities Ordinance Cap.333	To make provision in relation to stock markets and dealers in securities, to control trading in securities and the business of advising on making investments, and to provide for the protection of investors and associated matters.	No.	No.

<p>Securities (Disclosure of Interests) Ordinance Cap.396</p>	<p>To require certain persons holding shares in or debentures of listed companies to disclose their interest in those shares or debentures.</p>	<p>No.</p>	<p>No.</p>
<p>Securities (Insider Dealing) Ordinance Cap.395</p>	<p>An Ordinance to amend the law relating to insider dealing in relation to listed corporations; and for connected purposes.</p>	<p>No.</p>	<p>No.</p>
<p>Companies Ordinance Cap.32 (those relating principally to prospectuses and share repurchases)</p>	<p>To consolidate and amend the law relating to companies.</p>	<p>No.</p>	<p>No.</p>