

Ref.:C2/2/2C (97) XVI

LEGISLATIVE COUNCIL BRIEF

Securities (Insider Dealing) Ordinance
(Chapter 395)

SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 1 September 1998, the Council ADVISED and the Chief Executive ORDERED that the Securities (Insider Dealing)(Amendment) Bill 1998, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

The Insider Dealing Tribunal

2. The Insider Dealing Tribunal (“the Tribunal”) was first provided on an ad hoc basis under Part XIIA of the Securities Ordinance (Cap.333). In July 1990, the Securities (Insider Dealing) Ordinance (Cap.395) (“the Ordinance”) was enacted to, inter alia, turn the Tribunal into a permanent feature and to empower the Tribunal to impose sanctions on persons identified as insider dealers pursuant to its inquiry. To cope with the anticipated increase in workload that became apparent in 1994 and 1995, the Ordinance was amended in July 1995 to enable the Tribunal to operate in divisions so that it could deal with more than one case concurrently. Since March 1996, the Tribunal has been operating in two divisions.

3. Since the Tribunal received its first insider dealing inquiry under the Ordinance in 1994, it has completed a total of eight inquiries and is currently dealing with two other cases under its two divisions. Another two cases have been received from the Securities and Futures Commission (“SFC”) and are currently awaiting legal advice from the Department of Justice as regards possible inquiry by the Tribunal. According to the SFC, at least six more potential cases are in the pipeline for referral in the next twelve months.

4. As Hong Kong’s securities market continues to grow in terms of breadth and depth, the number as well as the complexity of insider dealing cases are also expected to increase further. It has become apparent that more divisions will be needed at times if not on a permanent basis to deal with the increasing workload of the Tribunal. While this can be done, there must be available a sufficiently large pool of candidates who are eligible for appointment as chairmen to the Tribunal.

The Current Legislation

5. The current legislation requires that a chairman must be a judge, which under the Ordinance is defined as either a judge or a former judge of the Court of First Instance (previously known as a judge of the High Court). Currently, both divisions of the Tribunal are chaired by judges of the Court of First Instance. But given the workload of the Court of First Instance itself, the Judiciary has indicated that it will have enormous difficulties to assign concurrently a number of substantive judges of the Court of First Instance to the Tribunal’s work. We have also been exploring the possibility of appointing former judges of the Court of First Instance as chairmen of the Tribunal but there has not been much success, primarily due to the problem of limited

availability of suitable former judges of the Court of First Instance who are willing to take up the appointment.

Our Proposal

6. To cope with the increasing workload of the Tribunal, the pool of eligible candidates for appointment as Tribunal chairman therefore needs to be enlarged. To this end, we propose that the definition of “judge” be amended to include also a deputy judge of the Court of First Instance. Although there may be concerns that the proposal may adversely affect the quality of the inquiry conducted by the Tribunal, we do not believe such concerns are justified. Deputy judges of the Court of First Instance are appointed by the Chief Justice, usually from among District Court judges or Senior Counsel in private practice. Section 10(2) of the High Court Ordinance (Cap.4) expressly provides that “[s]ubject to the terms of his appointment, a deputy judge shall have and may exercise all the jurisdiction, powers and privileges and shall have and perform all the duties of a judge of the Court of First Instance”. The Judiciary also considers that since deputy judges are deemed capable of doing the work of the Court of First Instance, they must also be capable of doing the Tribunal’s work.

THE BILL

7. Clause 2 of the Bill amends the definition of “judge” in section 2(1) of the Ordinance to specify that “judge” also means a deputy judge of the Court of First Instance.

PUBLIC CONSULTATION

8. The SFC has been consulted and has given their support to the proposal. Given the limited public interest, if any, in the matter and the technical nature of the proposed amendment, we did not conduct a formal public consultation exercise on the proposal. The Administration will brief the Financial Affairs Panel of the Legislative Council at its meeting on 7 September 1998.

BASIC LAW IMPLICATIONS

9. The Department of Justice advises that the proposed legislation does not conflict with those provisions of the Basic Law carrying no human rights dimensions.

BILL OF RIGHTS IMPLICATIONS

10. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE BILL

11. The Department of Justice has advised that there is no express provision to bind the State in the proposed Bill and in the provisions of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

12. The proposed Bill has no financial and staffing implications.

LEGISLATIVE TIMETABLE

13. The legislative timetable as approved by the Executive Council is as follows -

Publication in the Gazette	4 September 1998
First Reading and commencement of Second Reading debate	23 September 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

14. As approved by the Executive Council, the Bill will be published in the Gazette on 4 September 1998 and a press release will also be issued on the same day.

Financial Services Bureau
File Reference: C2/2/2C (97) XVI

A BILL

To

Amend the Securities (Insider Dealing) Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Securities (Insider Dealing) (Amendment) Ordinance 1998.

2. Interpretation

Section 2(1) of the Securities (Insider Dealing) Ordinance (Cap. 395) is amended, in the definition of “judge”, in paragraph (a), by adding “or a deputy judge” after “judge”.

Explanatory Note

The object of this Bill is to amend the definition of “judge” in section 2(1) of the Securities (Insider Dealing) Ordinance (Cap. 395) to include a deputy judge of the Court of First Instance in the definition (clause 2). The effect of the amendment is that a deputy judge of the Court of First Instance will, in addition to a judge or former judge of the Court of First Instance, be able to be appointed a chairman of the Insider Dealing Tribunal.