

**Ruling by the President on  
the charging effect of Hon Albert HO's amendments to  
the Securities (Amendment) Bill 1998**

The Hon Albert HO has given notice to move amendments (CSA) to the Securities (Amendment) Bill 1998 at the Committee stage of the Bill. The objectives of the amendments are to introduce:

(a) a specific per claimant allowable compensation limit at \$200,000 and the possibility of its being further revised upwards by the Securities and Futures Commission (SFC) after consideration, subject to certain circumstances (clause 5); and

(b) the proposed new clause 5A which limits the subrogation right of the Securities and Futures Commission (SFC) on payment made to claimants under the Unified Exchange Compensation Fund (the Compensation Fund), out of money recoverable from the defaulting broker. It seeks to give the SFC and claimant equal priority in insolvency distribution.

2. In considering whether or not Mr HO's amendments have the effect of disposing of or charging any part of the revenue or other public moneys, I have invited and considered the views of the Secretary for the Financial Services and Mr HO and taken into account the view of the Counsel of the Legislature.

**The Administration's views**

3. The Secretary for Financial Services takes the view that Hon Albert HO's proposed CSAs have a charging effect within the terms of Rule 57(6) of the Council's Rules of Procedure because they entail a charge upon the General Revenue. Clause 2 of the Bill which adds new section 99(2) empowers the SFC to pay, with the approval of the Financial Secretary, into the Compensation Fund from its reserves such sum of money as it thinks fit. Since the SFC is partly funded by general revenue, some of its reserves come from General Revenue. Thus, any amount injected by the SFC from its reserves under the

new section 99(2) may include money appropriated from the General Revenue. Hence, the increase in the amount payable under clause 5 would require a disposal of public revenue. Hon Albert HO's proposed CSA to clause 5 imposes an obligation to pay individual claimants up to a fixed ceiling amount subject to the provisions in section 113(5A) proposed in the Bill. This may lead to a greater depletion of the Compensation Fund than would otherwise have been the case and may require the SFC to inject sums into the Compensation Fund under section 99(2) of the Ordinance, which in turn would reduce the reserves of the SFC to below a financially healthy position. The Government would consequently be required to seek appropriation out of the General Revenue for the purposes of SFC under section 53 of the Securities and Futures Commission Ordinance. The Secretary is of the opinion that the same effect applies also to Hon Albert HO's proposed new clause 5A concerning the subrogation right of the SFC. Taking the C. A. Pacific as an example, the Secretary claims that if Hon Albert HO's CSAs are passed, the potential additional erosion of the reserve of the Compensation Fund would amount to about \$120 million, and the recovery reduced by more than \$50 million. For the reserve of the Compensation Fund to be maintained at a prudent level, it would require additional funding, and government appropriation through the SFC would be a real possibility.

#### **Hon Albert HO's response**

4. Hon Albert HO does not agree with the assessment of the Secretary for Financial Services. He submits that the Government is under no statutory duty to expend funds from the General Revenue to support the financial viability of SFC and the Compensation Fund. Section 53 of the Securities and Futures Commission Ordinance does not impose a requirement that the Government must pay or that the Legislative Council must appropriate any money to the SFC. He quoted my previous ruling to allow Hon LEE Cheuk-yan's proposed amendment to the Secretary for Education and Manpower's resolution under the Pneumoconiosis (Compensation) Ordinance as an example. In that case I had allowed the proposed amendment because I took the view that the Government was not bound by law to bring the level of compensation under the Pneumoconiosis Ex-Gratia Scheme in line with that under the Ordinance and the Pneumoconiosis Compensation Fund was a statutory fund and not the revenue of the Government.

### **Counsel to the Legislature's Opinion**

5. The Counsel to the Legislature has given me an analysis of the case. Section 101 of the Securities Ordinance makes it clear that the Compensation Fund is not funded by the General Revenue, but is essentially a self-financing fund. The new section 99(2) proposed in the Bill will give the SFC the power to pay money out of its reserves into the Compensation Fund. Assuming that the new section 99(2) would be passed by this Council, it will not impose an unqualified obligation on SFC to inject money into the Compensation Fund from its reserves. The SFC has to consider whether and how to exercise this power in the light of its financial position. The effect of section 53 of the Securities and Futures Commission Ordinance is to provide a statutory basis for the Government to seek funding for the SFC from the General Revenue. Although not provided in expressed terms, the Government should only seek funding in respect of SFC's statutory functions. The Government has no duty to inject money for the sole purpose of maintaining the reserves of SFC at any level. The new section 113(5A) proposed in the Bill does not oblige the committee of the Stock Exchange of Hong Kong to make any payment. It is only given a discretion, which may be exercised if it considers the assets of the Compensation Fund so permit, after taking into consideration all ascertained and contingent liabilities of the Compensation Fund. The CSAs proposed by Hon Albert HO regarding section 113(5A) and the addition of section 113(5B) do not alter this fact. His CSAs only limit the committee's choice to whether or not the payment specified in subsection (5B) should be made.

### **My Opinion**

6. In the light of section 101 of the Securities Ordinance which provides for the sources of monies in respect of the Compensation Fund, I am satisfied that the Compensation Fund is not funded by General Revenue and the Government has no statutory obligation to pay money into it. I am also satisfied that the new section 99(2) proposed in the Bill seeks to give the SFC, with the approval of the Financial Secretary, the power, but not the legal duty, to pay money out of its reserves into the Compensation Fund. Such power could only be reasonably exercised if there is money in the reserves that could be expended for that

purpose. Section 53 of the Securities and Futures Commission Ordinance, which reads “In each financial year there shall be paid to the Commission out of general revenue such moneys as shall be appropriated for that purpose by the Legislative Council”, does not impose a duty on the Government to inject money to maintain the reserves of SFC at any level. The CSAs proposed by Hon Albert HO may limit the committee’s choice in the operations of the Compensation Fund but will not cause payment from the General Revenue, nor will they increase the legal liability of the Government for payment of money into the Compensation Fund.

### **My Ruling**

7. For the reasons given in paragraph 6, I rule that Mr HO’s amendments do not have a charging effect within the meaning of Rule 57(6) of the Rules of Procedure.

(Mrs Rita FAN)  
President  
Legislative Council

17 November 1998