

## **LEGISLATIVE COUNCIL BRIEF**

### **EXCHANGES AND CLEARING HOUSES (MERGER) BILL**

#### **INTRODUCTION**

At the meeting of the Executive Council on 2 November 1999, the Council ADVISED and the Chief Executive ORDERED that the Exchanges and Clearing Houses (Merger) Bill, at Annex A, should be introduced into the Legislative Council.

#### **BACKGROUND AND ARGUMENT**

##### **General Background**

##### *Need for Reform in the Securities and Futures Market*

2. Currently, the securities and futures market in Hong Kong comprises two exchanges and three clearing houses, namely the Stock Exchange of Hong Kong ("SEHK"), the Hong Kong Futures Exchange ("HKFE"), Hong Kong Securities Clearing Company Limited ("HKSCC"), the SEHK Options Clearing House Limited ("SEOCH") and HKFE Clearing Corporation Limited ("HKFECC"). The current market structure follows largely the 1988 report of the Securities Review Committee<sup>1</sup>. Compared with the situation prior to the 1987 market crash, the exchanges have been modernised in terms of constitution and management, and become more accountable to public interests and responsive to market needs. However, they remain essentially mutual, membership-driven organisations.

3. While this market structure has served Hong Kong well for the last decade, it has increasingly become a constraint over our

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<sup>1</sup> The report was prepared by the Securities Review Committee appointed by the then Governor in November 1987 to review the constitution, power, management and operation of the Hong Kong Stock and Futures Exchanges and their regulatory bodies. The report of the committee is also commonly referred to as the Ian Hay Davison Report following the name of the Chairman of the Committee.

competitiveness and efficiency in responding to challenges from technological advances, globalisation of the international financial markets and the needs of the increasingly sophisticated investors both locally and overseas.

4. The current market structure is fragmented in terms of market segments and functions, limiting economies of scale and development of a coherent and consistent market strategy essential in pulling all strengths and resources together to meet the global and external challenges. Outside Hong Kong, many major exchanges including the Deutsche Bourse, the Stockholm Exchange and the Amsterdam Exchange have already undergone reform to demutualise to enhance their competitiveness. Others such as the Toronto Stock Exchange, the London Stock Exchange and the New York Stock Exchange have also announced plans to follow suit. In Asia, some markets have also adopted new structures and strategies to meet the challenge. The Australian Stock Exchange was demutualised and listed in 1998. Singapore has announced its plan to demutualise and merge its stock market and derivatives market by end 1999. Tokyo is also adopting measures to increase its attractiveness to international investors. Exchanges world-wide are forced to adapt or disappear. Hong Kong will not be an exception.

### ***The Merger***

5. The Financial Secretary announced in his Budget Speech on 3 March 1999 a comprehensive market reform for the securities and futures market to enhance its competitiveness. Details of the reform are set out in a policy paper published by the Administration on the same date. The reform calls for, inter alia, the merger of the two exchanges and three clearing houses under a single holding company. The new holding company will be a performance-driven commercial entity allowed to make profit and distribute dividends to its shareholders. It will also be required to perform important public functions to maintain a fair and orderly market and ensure prudent risk management, bearing in mind the public interest in general and the interest of the investing public in particular. Ownership of exchanges and the right of access to the market will be separated to avoid conflicts of interests between the exchanges themselves and their shareholders and to allow more effective competition in the market. Through listing, ownership of the new holding company is expected to diversify over time to become a public-owned company. The Financial Secretary also announced a timetable

for the reform, which envisaged the agreement of the merger proposal by members of the exchanges by the end of September 1999.

6. In response to the call for reform, commercial negotiations between the SEHK and the HKFE on the terms of their merger commenced soon after the Budget Speech. On conclusion of the negotiations, schemes of arrangement documents reflecting the terms of the merger were put to their members for approval. These respective scheme documents were approved by the exchanges' members at their court meetings and extraordinary general meetings held on 27 September with overwhelming majority and subsequently sanctioned by the court on 11 October. The schemes will become effective upon enactment of the Bill and completion of certain procedural steps as set out in the scheme documents.

7. Upon implementation of the merger, the two exchanges will become wholly-owned subsidiaries of the holding company, known as Hong Kong Exchanges and Clearing Limited<sup>2</sup> (HKEC). Under the schemes of arrangements, the existing issued shares of the two exchanges will be cancelled, and their existing shareholders will in return be issued shares of the HKEC and/or cash under the cash alternative scheme. The SEOCH and HKFECC will remain wholly-owned subsidiaries of SEHK and HKFE respectively immediately after the merger. At the same time, HKSCC will also become a wholly-owned subsidiary of HKEC.

8. HKSCC is currently a company limited by guarantee which has no issued shares, and accordingly no shareholders or owners. Its members (i.e. guarantors) are the SEHK and five banks<sup>3</sup>, which collectively provide a guarantee of \$50 million to meet HKSCC's debts and liabilities in the event of its being wound up. The constitution of HKSCC provides that none of its members has any right to receive any dividends or other distributions of profit nor has a right to receive anything on a solvent liquidation of HKSCC. Hence, it is considered that HKSCC members should not receive any allocation of shares in HKEC in respect of HKSCC. This has been the guiding principle in handling HKSCC in the merger transaction.

9. As part of the merger transaction and subject to the enactment of

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<sup>2</sup> In order to facilitate the merger transaction, the HKEC was established in July 1999 as a private company wholly-owned by the Financial Secretary Incorporated. Currently, it has seven directors, including the Chairman, who are appointed by the Financial Secretary.

<sup>3</sup> They are Bank of China, Bank of East Asia, Hang Seng Bank, HSBC and Standard Chartered Bank.

the provisions in the Bill, members of the HKSCC are expected to amend HKSCC's constitution to convert it from a company limited by guarantee into a company limited by shares. HKSCC will also issue its paid-up shares exclusively to HKEC, which will as a result become HKSCC's holding company.

### ***Trading Right***

10. Under the current constitution of SEHK and HKFE, right of access to the trading facilities maintained by the exchanges are restricted to members who must also be shareholders. As a key objective of the merger reform, ownership of the exchanges and access to the trading facilities will be separated after the merger. Upon coming into effect of the merger, each shareholder of the SEHK and HKFE will be issued a "trading right" in their respective exchanges for each share held in the respective exchanges. Such trading right may be transferred once within a period of 10 years from the coming into effect of the merger. A holder of the trading right may trade on or through the exchanges as "exchange participant" if the holder possesses the relevant intermediary licence from the Securities and Futures Commission ("SFC")<sup>4</sup>, and satisfies other requirements imposed by HKEC such as fees and proper risk management. Existing members of the two exchanges who are currently trading on the respective cash and futures markets will continue to be allowed to trade on those respective markets after the merger as "exchange participants".

11. As part of the package of the merger deal, the HKEC Board has determined that HKEC will establish a moratorium on the issue of new "trading rights" (save for such rights as may be issued in respect of alliance with other exchanges) for a period of two years from the coming into effect of the merger. For a further period of two years, no new "trading right" will be issued for less than HK\$3.0 million per SEHK trading right or for less than HK\$1.5 million per HKFE trading right.

### ***Corporate Structure of HKEC***

12. A proposed model of corporate structure for HKEC is set out in a policy paper entitled "Hong Kong Exchanges and Clearing Limited: Reinforcing Hong Kong's Position as a Global Financial Centre"

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<sup>4</sup> By law, any person carrying on a business of dealing in securities or trading commodity futures contracts in Hong Kong has to be licensed by the SFC or fall within one of the licensing exemptions.

published by the Administration on 8 July 1999 ("the 8 July Paper"). The 8 July Paper has taken into account views expressed by the public and members of the Legislative Council, members of the industry, leaders of the market as well as advisers of the Government and the SFC. A summary of the 8 July Paper is at Annex B for reference.

13. The 8 July Paper also outlines a proposed business model for HKEC. The board of directors is the highest decision-making body of HKEC. It will be chaired by a non-executive chairman to be elected by the directors (and subject to the approval of the Chief Executive (please also refer to paragraph 19 below)). The company's management will be led by a chief executive officer, assisted by a chief operating officer and supported by professional staff. The HKEC will establish different business units to carry out different business activities, such as the cash market, derivatives market, clearing operations, information-technology and systems, and information services. In order to derive maximum benefit from economies of scale, all administrative functions of the group will be centralised at the holding company level as far as possible.

#### ***Public Functions of HKEC***

14. The 8 July Paper also sets out the public functions to be performed by the HKEC. While HKEC will be a profit-driven commercial entity, it will also be a key strategic economic asset of Hong Kong. It will be responsible to ensure a fair and orderly market for securities and futures trading and prudent risk management as the trading and clearing functions of the securities and futures markets will be centralised in HKEC through its ownership of both exchanges and the three clearing houses recognised by the SFC in Hong Kong. The exclusive right granted to the SEHK to operate a stock market in Hong Kong will be extended to the HKEC and its subsidiary exchanges.

15. HKEC will play a crucial role in safeguarding the integrity and stability of the financial system of Hong Kong. The integrated clearing and settlement unit under HKEC will be one of the most important components of the financial infrastructure of Hong Kong. HKEC will have the responsibility to ensure that the risks of the market are properly managed and reduced as far as possible. Any material failure of the clearing unit would be detrimental to the market, its reputation as well as the confidence of the investors and market users.

### ***Framework of Checks and Balances***

16. It is important that the commercial and public objectives of HKEC are properly balanced. To this end, a comprehensive framework of checks and balances needs to be put in place. The framework will be built on the basis of the current regulation over the exchanges and clearing houses provided for under the various securities-related ordinances<sup>5</sup>, and supplemented by a number of measures which address specific issues that arise from the merger.

### **Governance structure**

17. As HKEC is a commercial entity, its board has a fiduciary duty to its shareholders to promote the interests of the company. It is important that there is an appropriate corporate governance structure for the HKEC to ensure that it will be run properly in pursuit of both the public and commercial objectives and be able to strike a right balance where these objectives conflict with each other.

18. *The Board.* After the merger, the board will comprise up to 15 members, including eight directors to be appointed by the Financial Secretary to represent public and market interests, six directors to be elected by the shareholders, and the chief executive officer who will be a director ex-officio.

19. *The Chairman.* The Chairman of HKEC assumes key responsibility not only for HKEC but also for the wider public interests vested in HKEC. The Chairman should be non-executive to ensure that he is best placed to balance the interests of HKEC, its shareholders and the public. The current chairman was appointed by the Financial Secretary as the sole owner of the HKEC. For the inaugural board of HKEC after the coming into effect of the merger and thereafter, the chairman will be elected by the directors and the appointment will be subject to the approval of the Chief Executive. The board of HKEC with a two-third majority may remove the chairman from office. Similarly the Chief Executive will be empowered by both the constitution of HKEC and the Bill to remove the chairman on grounds of public

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<sup>5</sup> These include the Securities and Futures Commission Ordinance (Cap.24), the Securities Ordinance (Cap.333), the Stock Exchanges Unification Ordinance (Cap.361), the Commodities Trading Ordinance (Cap.250) and the Securities and Futures (Clearing Houses) Ordinance (Cap.420). These and other securities-related ordinances are in the meantime being consolidated into a single composite Securities and Futures Bill, which after enactment will form the legislative framework for the regulation of the securities and futures markets.

interests or interests of the investing public, or for the proper regulation of the market.

20. *CEO and COO.* Under the existing legislation and the constitution of the exchanges, the appointment of their chief executive officers is subject to the approval of the SFC. Under the Bill, approval by the SFC will be required for the appointment of the chief executive officer and chief operating officer of HKEC. Likewise, the SFC may also remove the chief executive officer and the chief operating officer on grounds of public interests, interests of the investing public or for proper regulation of the market.

### Regulation

21. *Constitution and rules.* As in the case of the exchanges and clearing houses at present, any amendment to the constitution of HKEC, and any of its rules or any amendment thereto will have no effect unless approved by the SFC. In order to prevent the abuse of its monopoly position in the market, any fees and charges imposed by the HKEC or any of its subsidiary exchange companies or clearing houses will be subject to the approval of the SFC. In considering any proposed fees and charges, the SFC will have to have regard to the level of competition in Hong Kong of the services to which the fees and charges relate as well as the level of fees for comparable services in overseas markets.

22. *Risk management.* To ensure that HKEC will perform the risk management function in a prudent manner and to prevent any compromise of such function by profit-related considerations, it is proposed that the policy-making function for the clearing unit should be entrusted to an independent risk management committee within HKEC. The committee will be chaired by the chairman of HKEC and comprise no less than three and no more than five members appointed by the Financial Secretary from the market regulators as well as market experts and no more than two members appointed by the HKEC board of directors. The decision made by the risk management committee will prevail unless overruled by two-third majority of all directors of the board of the HKEC.

23. *Shareholding limit.* A 5% shareholding limit will be specified in the constitution of the HKEC to prevent control of HKEC by any person either alone or with any associate(s). The limit can be waived by

the SFC in consultation with the Financial Secretary where it can be demonstrated that such exemption is in the interest of the public and the market, such as under an equity alliance with an overseas exchange. Conditions may be attached to such exemptions where appropriate. It is proposed that no person may exercise or control the exercise of more than 5% of the voting power of HKEC, an exchange company or clearing house unless approved by the SFC. In addition, any changes in the shareholding of HKEC on its subsidiary exchange companies and clearing houses will also require the approval of the SFC.

24. *Listing of HKEC.* As noted above, HKEC and possibly its subsidiaries will be listed on the stock exchange run by the SEHK. In order to remove the conflict of interest which would arise if SEHK were to supervise its own holding company (namely HKEC) and other companies of the HKEC listed on the SEHK, it is proposed that before any such listing is permitted, the SFC will have to be satisfied that there are adequate rules dealing with possible conflicts of interest and that arrangements are in place to ensure market integrity and compliance with listing obligations. To further ensure a level playing field on the stock market between the HKEC group of companies and other listed companies, the SFC may also give direction to HKEC or a company of which HKEC is the controller to take steps to remedy any conflict of business interest.

### ***Rationalised Market Regulation***

25. The division of market regulation between the SFC and HKEC will essentially follow the current model applicable to the exchanges and clearing houses. To ensure that the regulation of intermediaries will be conducted effectively and efficiently, the existing duplication of intermediaries supervision between the exchanges and the SFC will be minimised. After the merger, all prudential regulation of exchange participants will be handled by the SFC while the HKEC and its exchange and clearing subsidiaries will monitor particular aspects of the business of the participants so as to assess and manage the risk inherent in the operations of its subsidiary business units. This would involve in particular adequate risk management measures and compliance with exchange trading rules. Separately, SEHK and the HKEC after merger will administer and enforce the listing rules as at present except where conflict of interest arises as noted in paragraph 24 above.



### ***Conversion of HKSCC***

26. To complete the merger, it is necessary to convert the HKSCC from a company limited by guarantee to a company limited by shares. Currently, the Companies Ordinance (Cap.32) has no provisions specifically dealing with such conversion. There is also no precedent in the corporate law of Hong Kong. Having consulted extensively among the Department of Justice, the SFC as well as external counsel, it is considered that the best and most prudent way to accomplish this is by means of legislation. It is proposed that members of the HKSCC (i.e. the guarantors) be empowered under the Bill to amend the constitution of HKSCC to convert it into a company limited by shares. The Bill will also provide clear procedural steps to complete such conversion after the amended constitution is approved by the SFC.

### ***Regulatory Regime for Recognised Exchange Controller***

27. Part of the checks and balances described above will be incorporated into a regulatory regime devised for a new class of regulated body to be known as recognised exchange controller (“REC”), which will also apply to the HKEC. In order to ensure that after the demutualisation, the exchange companies and clearing houses will not come under the control of persons or companies who are not fit to run an exchange company or clearing house, the proposed regulatory regime will provide that no person shall control directly or indirectly an exchange company or clearing house unless it is recognised as an exchange controller. Any person who exercises or controls the exercise of more than 35% of the voting power of an exchange company or clearing house or in accordance with whose directions or instructions the directors of an exchange company or clearing house are accustomed to act will be deemed to be in control of that exchange company or clearing house. Other aspects of the regulatory regime are set out under the section on “The Bill” below.

### ***Re-Delineation of the Financial Services Functional Constituency***

28. The Legislative Council (Amendment) Ordinance 1999 (No. 48 of 1999) provides that members of the two exchanges who are eligible to vote at their general meetings will be eligible to be registered as electors for the Financial Services Functional Constituency (“FSFC”). There are currently about 640 members of the two exchanges eligible to be

registered as electors. Given the removal of the existing membership structure, it is proposed that the Ordinance be amended to replace "members" with "exchange participants" as the basis of delineation of the FS FC with respect to the two exchanges after the merger. The change will be effected by the consequential amendment by the Bill.

29. Under the current delineation and in accordance with the constitution of the SEHK, members of the SEHK who are not trading on the market but whose membership remains "active" (i.e. not suspended) are also eligible to become electors of the FS FC. After the merger, these non-trading but "active" members may not automatically be admitted as "exchange participant" by the SEHK and under the proposed redelineation of the FS FC, they will not be eligible to become electors. As of late October 1999, there are 21 such non-trading active members of the SEHK. The proposed amendment should be neutral to the members of the HKFE since those who are not trading are not admitted as members and are therefore not qualified to become electors under the current delineation.

## **THE BILL**

30. Clauses 3 and 4 provide for the recognition and withdrawal of recognition of companies as exchange controllers. Both clauses and Schedule 1 set out the procedures to be adopted to cause a person to cease to be an exchange controller where the person is not a REC or where its recognition is withdrawn. Persons who are already controllers of exchanges companies and clearing houses before the commencement of the Bill will also be required to be recognised by the SFC as a REC if they wish to continue to be such controllers after the commencement of the Bill.

31. The main regulatory provisions pertaining to a REC are set out in clauses 5 to 15 -

- (a) a REC shall not increase or decrease its interests in an exchange company or clearing house unless approved by the SFC (clause 5);
- (b) no person may, either alone or with associates, exercise or control the exercise of 5% or more of the voting power of a REC, an exchange company or a clearing house without the approval of the SFC after consultation with the Financial

Secretary (clause 6);

- (c) the Financial Secretary may exempt a person from the requirement of recognition to become an exchange controller under clause 3(1) (clause 7);
- (d) a REC has a duty to ensure a fair and orderly securities and futures market and that risks are managed prudently (clause 8);
- (e) a REC shall establish a Risk Management Committee (clause 9);
- (f) amendment to the constitution or rules of a REC shall not have effect unless approved by the SFC or exempted under clause 10(6) (clause 10);
- (g) appointment of the chairman of a REC is subject to the approval of the Chief Executive (clause 11);
- (h) appointment of the chief executive officer and chief operating officer of a REC is subject to the approval of the SFC (clause 12);
- (i) HKEC and its subsidiaries as listed companies shall be regulated by the SFC, and the SFC may give direction to the relevant exchange company in case of conflict of interests (clauses 13 and 14); and
- (j) no fees imposed by a REC or its exchange company or clearing house subsidiaries shall have effect unless approved by the SFC (clause 15).

32. Clauses 18 to 24 contain transitional provisions and saving provisions.

33. Clause 19 deems the HKEC a REC. Clause 20 empowers the Financial Secretary to appoint no more than eight directors to the board of the HKEC. Clause 21 deems SEHK and HKFE to be exempted from the requirement for recognition as exchange controller under clause 3(1) in relation to SEOCH and HKFECC, which will continue initially to be the

wholly-owned subsidiary of the SEHK and HKFE respectively<sup>6</sup>. Clause 22 empowers the members of the HKSCC to amend the constitution of the HKSCC for the purposes of converting the HKSCC from a company limited by guarantee to a company limited by shares.

34. Schedule 2 contains the consequential amendments necessitated by the Bill. The majority of them are related to the conversion from "members", "stockbrokers" and "shareholders" to "exchange participants". Those apart, the following are also worth noting -

- (a) sections 50 and 51 of the SFC Ordinance (Cap.24) empowering the SFC to give restriction notice and suspension order respectively to exchange companies and clearing houses will be expanded to cover RECs;
- (b) section 27 of the Stock Exchanges Unification Ordinance (Cap.361) will be amended to enable the HKEC and the HKFE to also share the exclusive right of the SEHK to operate a stock market in Hong Kong. This would enable the future transfer of the stock options products currently traded on the SEHK to HKFE to centralise the trading of futures and derivatives products;
- (c) the Prevention of Bribery Ordinance (Cap. 201) will be amended to include the HKEC as a public body under its Schedules 1 and 2; and
- (d) the Legislative Council (Amendment) Ordinance 1999 (No.48 of 1999) will be amended to re-delineate the Financial Services Functional Constituency with respect to the two exchanges on the basis of "exchange participants".

Extracts of the relevant sections of the above ordinances are at Annex C.

## **LEGISLATIVE TIMETABLE**

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<sup>6</sup> After the merger coming into effect, both the SEHK and HKFE will become wholly-owned subsidiaries of the HKEC. Both exchanges will in turn continue to own their respective clearing houses. It is expected however that in due course the clearing functions will be integrated and centralised under a single clearing unit of HKEC and the separate ownership of the respective clearing houses by the exchanges will no longer be necessary.

35. The legislative timetable as approved by the Executive Council is as follows –

|  |                  |
|--|------------------|
| Publication in the Gazette   | 5 November 1999  |
| First Reading and commencement of Second Reading debate                | 10 November 1999 |
| Resumption of Second Reading debate, committee stage and Third Reading | to be notified   |

### **BASIC LAW IMPLICATIONS**

36. The Department of Justice advises that the proposed legislation does not conflict with those provisions of the Basic Law which carry no human rights implications.

### **HUMAN RIGHTS IMPLICATIONS**

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

### **BINDING EFFECT OF THE BILL**

38. The Bill does not have any binding effect on the state and will not affect the current binding effect of the existing provisions of the various Ordinances covered by the Bill.

### **FINANCIAL AND STAFFING IMPLICATIONS**

39. The Bill has no financial or staffing implications for the Government. Under the expanded regulatory regime, there will be additional workload for the SFC and additional resources will be required. The budgetary implications for the SFC are being examined and at this stage, there is no plan to request government appropriation for the SFC.

### **ECONOMIC IMPLICATIONS**

40. The proposed reform will enhance the competitiveness and

efficiency of the domestic securities and futures markets and should therefore have positive implications for the development of Hong Kong's financial market and hence the economy as a whole in the longer term.

## **PUBLIC CONSULTATION**

41. Since the announcement of the reform by the Financial Secretary in his Budget Speech on 3 March 1999, the proposed merger has been at the centre of the focus of the domestic securities and futures market and the brokerage industry. The proposals have been set out in extensive details in the two papers published by the Administration on 3 March and 8 July 1999 respectively. Public and market feedback to the proposal has also been widely reported in the mass media. There has also been continuous dialogue with the industry in the various fora on the merger proposal including the Co-ordinating Committee on Market Structure Reform chaired by the Secretary for Financial Services. The issue was also the subject of a motion debate of the Legislative Council on 5 May 1999. We have also briefed the LegCo Financial Affairs Panel twice on progress of the merger as well as the scope of the Bill on 7 June and 11 October 1999 respectively. We do not consider it necessary to conduct any further public consultation on the reform.

## **PUBLICITY**

42. A press release has been issued on 4 November 1999 and the Bill will be gazetted on 5 November 1999.

Financial Services Bureau  
File Reference : SUB 56/7 (99)  
4 November 1999

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A BILL

To

Prohibit persons from being controllers of Exchange Companies or clearing houses unless the persons are recognized exchange controllers; to regulate recognized exchange controllers; to regulate Exchange Companies and clearing houses which have recognized exchange controllers as their controllers; to regulate the ownership of recognized exchange controllers, Exchange Companies and clearing houses; and to provide for matters incidental thereto or connected therewith.

Enacted by the Legislative Council.

PART I

PRELIMINARY

**1. Short title and commencement**

(1) This Ordinance may be cited as the Exchanges and Clearing Houses (Merger) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice in the Gazette.

**2. Interpretation**

(1) In this Ordinance, unless the context otherwise requires -

“associate”(有聯繫者), in relation to a person entitled to exercise, or control the exercise of, voting power in relation to, or holding shares in, a company -

- (a) means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they act together in exercising their voting power in relation to it; and
- (b) includes a person, or a person belonging to a class of persons, specified in a notice under subsection (2) to be an associate for the purposes of this Ordinance;

“clearing house”(結算所) means a recognized clearing house within the meaning of section 2(1) of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);

“clearing participant”(結算所參與者) means a clearing participant within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

“Commission”(證監會) means the Securities and Futures Commission established by section 3 of the Securities and Futures Commission Ordinance (Cap. 24);

“company”(公司) means -

(a) a company within the meaning of section 2(1) of the Companies Ordinance (Cap. 32); or

(b) any other body corporate;

“condition” (條件) includes any deemed condition under this Ordinance;

“constitution” (章程) , in relation to a company, means the memorandum and articles of association of the company or other instrument providing the constitution of the company;

“controller” (控制人) , in relation to a company, means any person who is -

(a) a shareholder controller of the company; or

(b) an indirect controller of the company;

“Exchange Company” (交易所) means an Exchange Company within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

“exchange participant” (交易所參與者) means an exchange participant within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

“fee” (費用) includes a charge;

“futures contract”(期貨合約) means a futures contract within the meaning of section 2(1) of the Commodities Trading Ordinance (Cap. 250);

“indirect controller” (間接控制人) , in relation to a company, means any person in accordance with whose directions or instructions the directors of the company or of another

company of which it is a subsidiary are accustomed to act, but does not include any person in accordance with whose directions or instructions those directors are accustomed to act by reason only that they act on advice given by him in his professional capacity;

“officer” (高級人員) means an officer within the meaning of section 2(1) of the Companies Ordinance (Cap. 32);

“recognized exchange controller” (認可控制人) means a company recognized as an exchange controller under section 3(2);

“Risk Management Committee” (風險管理委員會), in relation to a recognized exchange controller, means the committee of that name established under section 9(1) by the controller;

“rules of a recognized exchange controller” (認可控制人規章) and “rules of the recognized exchange controller” (該認可控制人規章) mean the rules, by whatever name they may be called and wherever contained, governing the conduct or procedure of -

- (a) the recognized exchange controller;
- (b) the Risk Management Committee;
- (c) any person or body of persons declared in a notice under subsection (3) to be a person or body of persons, as the case may be, to which this definition shall apply;

“securities” (證券) means securities within the meaning of section 2(1) of the Securities Ordinance (Cap. 333);

“served” (送達) includes given;

“shareholder controller”(股東控制人), in relation to a company, means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 35% of the voting power at any general meeting of the company or of another company of which it is a subsidiary;

“shares”(股份) includes securities;

“subsidiary”(附屬公司) has the same meaning as in the Companies Ordinance (Cap. 32);

“working day”(工作天) means any day other than -

(a) a public holiday; or

(b) a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

(2) The Chief Executive in Council may, by notice in the Gazette, declare a person, or a person belonging to a class of persons, specified in the notice to be an associate for the purposes of this Ordinance.

(3) The Commission may, after consultation with the Financial Secretary, by notice in the Gazette, declare a person or body of persons specified in the notice to be a person or body of persons, as the case may be, to which the definition of “rules of a recognized exchange controller” and “rules of the recognized exchange controller” shall apply.

(4) Where there is a reference in this Ordinance or any other enactment to the controller of an Exchange Company or clearing house (howsoever expressed), the term controller shall be construed in accordance with the provisions of this section.

(5) Where under this Ordinance -

- (a) an act cannot be done; or
- (b) an omission cannot be made,

except with, or unless with, the approval in writing of the Commission, then -

- (i) the approval may be subject to such conditions, if any, as the Commission thinks fit and specified in the approval (including conditions failure to comply with which causes the approval to lapse); and
- (ii) for the purposes of any pecuniary, custodial or other sanction which may be imposed under this Ordinance in relation to any such act done or omission made without such approval, the approval shall have no effect to the extent that the act is done or the omission made, as the case may be, otherwise than in accordance with any such conditions.

(6) For the avoidance of doubt, it is hereby declared that a notice under subsection (2) or (3) is subsidiary legislation.

## PART II

### RECOGNITION AND WITHDRAWAL OF RECOGNITION OF EXCHANGE CONTROLLER

#### **3. Recognition of exchange controller**

(1) Subject to section 7, no person shall become or continue to be the controller of an Exchange Company or clearing house unless the person is a recognized exchange controller.

(2) Where the Commission is satisfied that it is appropriate to do so -

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

it may, with the consent in writing of the Financial Secretary, by notice in writing served on a company which is a company referred to in paragraph (a) of the definition of “company”, recognize the company as an exchange controller -

(i) subject to such conditions as it thinks fit specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(3) Without prejudice to the generality of conditions which may be specified in a notice under subsection (2), there shall be deemed to be a condition specified in the notice empowering the Commission, by notice in writing served on a recognized exchange controller, to add conditions to, or to vary or repeal any



conditions specified in, the first-mentioned notice where the Commission -

- (a) is satisfied it is appropriate to do so on a ground specified in paragraph (a) or (b) of that subsection; and
  - (b) has the consent in writing of the Financial Secretary to do so.
- (4) Subject to subsection (5), a person who -
- (a) contravenes subsection (1); or
  - (b) fails to comply with a condition specified in a notice under subsection (2) served on the person,

commits an offence and is liable -

- (i) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;
  - (ii) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.
- (5) Where a person is charged with an offence under subsection (4), it shall be a

defence for the person to prove -

- (a) in the case of subsection (4) (a), that the person did not know the acts or circumstances by virtue of which the person became the controller of the Exchange Company or clearing house concerned were such as to have that effect;

(b) in the case of subsection (4) (b), that the person exercised all due diligence to comply with the condition concerned.

(6) Where a person is the controller of an Exchange Company or clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention), the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice -

- (a) for the purpose of causing the person to cease to be such controller; and
- (b) within such period as is specified in the notice for the purpose.

(7) The steps specified in a notice under subsection (6) may be framed so as to afford the person on whom the notice is served a choice between different ways of ceasing to be the controller of the Exchange Company or clearing house concerned.

(8) The period specified in a notice under subsection (6) for taking the steps specified in the notice shall not expire before the end of the period specified in subsection (9) within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

(9) A person served with a notice under subsection (6) may appeal against the notice to the Chief Executive in Council not

later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.

(10) Subject to subsection (11), a person served with a notice under subsection (6) who contravenes the notice commits an offence and is liable -

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(11) It shall be a defence for a person charged with an offence under subsection (10) to prove that the person exercised all due diligence to comply with the notice concerned under subsection (6) served on the person.

(12) Where a person served with a notice under subsection (6) contravenes the notice (and whether or not the person is charged with an offence under subsection (10)), the provisions of Schedule 1 shall immediately apply.

(13) The provisions of this section, except subsection (4) (a), shall apply to a person who became the controller of an Exchange Company or clearing house before the commencement of this section as they apply to a person who became the controller of an Exchange Company or clearing house on or after that commencement.

(14) Where a company becomes a recognized exchange controller, the Commission shall cause notice of that fact to be published in the Gazette.

(15) Where a company is seeking to be a recognized exchange controller and the Commission is minded not to recognize the company under subsection (2), the Commission shall give the company a reasonable opportunity of being heard before making a decision to so recognize or not recognize the company.

#### **4. Withdrawal of recognition of exchange controller**

(1) Subject to subsection (2), where the Commission is satisfied that it is appropriate to do so -

- (a) in the interest of the investing public or in the public interest; or
- (b) for the proper regulation of markets in securities or futures contracts,

it may, with the consent in writing of the Financial Secretary, by notice in writing served on a recognized exchange controller stating the reasons in support of the ground or grounds for the notice -

- (i) withdraw the company's recognition as an exchange controller with effect from a date specified in the notice for the purpose;
- (ii) if the company is the controller of an Exchange Company or clearing house, direct the company to take such steps as are specified in the notice -

(A) for the purpose of causing the company to cease to be such controller;

and

(B) within such period as is specified in the notice for the purpose.

(2) The Commission shall not exercise its power under subsection (1) in relation to a recognized exchange controller unless it has given the company a reasonable opportunity of being heard.

(3) The steps, if any, specified in a notice under subsection (1) may be framed so as to afford the company on which the notice is served a choice between different ways of ceasing to be the controller of the Exchange Company or clearing house concerned.

(4) The period specified in a notice under subsection (1) for taking the steps, if any, specified in the notice shall not expire before the end of the period specified in subsection (5) within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

(5) A company served with a notice under subsection (1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.

(6) Subject to subsection (7), a company served with a notice under subsection (1) which contravenes the notice commits an offence and is liable -

- (a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;
- (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(7) It shall be a defence for a company charged with an offence under subsection (6) to prove that the company exercised all due diligence to comply with the notice concerned under subsection (1) served on the company.

(8) Where a company served with a notice under subsection (1) contravenes the notice (and whether or not the company is charged with an offence under subsection (6)), the provisions of Schedule 1 shall immediately apply.

**5. Interest of recognized exchange controller in Exchange Company or clearing house cannot be increased or decreased except with approval of Commission**

Where a recognized exchange controller is the controller of an Exchange Company or clearing house, the, by virtue of this section and notwithstanding any other enactment or rule of law -

- (a) any interest the recognized exchange controller has in the Exchange Company or clearing house, as the case may be, as such controller cannot be increased or decreased except with the approval in writing of the Commission;

- (b) any attempt (whether in the form of an agreement or otherwise and by whomsoever) to increase or decrease any such interest in contravention of paragraph (a) is void for all purposes.

**6. Person not to become minority controller of recognized exchange controller, etc. without approval of Commission**

(1) In this section, “minority controller” (次要控制人) , in relation to a company -

- (a) means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the company or of another company of which it is a subsidiary;

- (b) does not include a recognized exchange controller.

(2) Subject to subsection (12), on and after the commencement of this section a person shall not become a minority controller of a recognized exchange controller, Exchange Company or clearing house except with the approval in writing of the Commission after consultation with the Financial Secretary (which approval shall be deemed to be subject to a condition that the person shall not increase the interest the person has as such minority controller except with the further approval in writing of the Commission after consultation with the Financial Secretary).

(3) Subject to subsection (4), a person who -

- (a) contravenes subsection (2); or

- (b) fails to comply with a condition specified in an approval under subsection (2),

commits an offence and is liable -

- (i) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;
- (ii) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(4) Where a person is charged with an offence under subsection (3), it shall be a defence for the person to prove -

- (a) in the case of subsection (3) (a), that the person did not know that the acts or circumstances by virtue of which the person became a minority controller of the recognized exchange controller, Exchange Company or clearing house concerned were such as to have that effect;
- (b) in the case of subsection (3) (b), that the person exercised all due diligence to comply with the condition concerned.

(5) Where a person has contravened subsection (2) or failed to comply with a condition specified in an approval under that subsection (and whether or not the person is charged with an offence under subsection (3) in relation to the contravention or failure), the Commission may, by notice in writing served on the



person, direct the person to take such steps as are specified in the notice -

- (a) for the purpose of causing the person to cease to be a minority controller of the recognized exchange controller, Exchange Company or clearing house the subject of that contravention or failure; and
- (b) within such period as is specified in the notice for the purpose.

(6) The steps specified in a notice under subsection (5) may be framed so as to afford the person on whom the notice is served a choice between different ways of ceasing to be a minority controller of the recognized exchange controller, Exchange Company or clearing house concerned.

(7) The period specified in a notice under subsection (5) for taking the steps specified in the notice shall not expire before the end of the period specified in subsection (8) within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

(8) A person served with a notice under subsection (5) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.

(9) Subject to subsection (10), a person served with a notice under subsection (5) who contravenes the notice commits an offence and is liable -

- (a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;
- (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(10) It shall be a defence for a person charged with an offence under subsection (9) to prove that the person exercised all due diligence to comply with the notice concerned under subsection (5) served on the person.

(11) Where a person served with a notice under subsection (5) contravenes the notice (and whether or not the person is charged with an offence under subsection (9)), the provisions of Schedule 1 shall immediately apply.

(12) The Commission may, after consultation with the Financial Secretary, make rules to exempt a person, or a person belonging to a class of persons, specified in the rules from one or more of the requirements of subsection (2) subject to such conditions, if any, as are specified in the rules.

(13) Where a person is seeking to be a minority controller of a recognized exchange controller, Exchange Company or clearing house and the Commission is minded not to give approval under subsection (2) in relation thereto, the Commission shall give the person a reasonable opportunity of being heard before making a decision to give or not give such approval.

(14) For the avoidance of doubt, it is hereby declared that -

(a) nothing in this section shall operate to prevent the Commission from approving under this Ordinance or any other enactment the provisions of the constitution, or the provisions of an amendment to the constitution, of a recognized exchange controller, Exchange Company or clearing house which impose requirements additional to this section in relation to -

(i) interests held in the recognized exchange controller, Exchange Company or clearing house, as the case may be, including, but not limited to, the exercise, or the control of the exercise, of voting power at any general meeting of the recognized exchange controller, Exchange Company or clearing house, as the case may be; or

(ii) steps to be taken for the purpose of causing a person to dispose of any such interest including, but not limited to, ceasing to be a minority controller (by whatever name called) of the recognized exchange controller, Exchange Company or clearing house, as the case may be;

(b) rules made under subsection (12) are subsidiary legislation.

**7. Exemption from section 3(1) and revocation of exemption**

(1) Where the Financial Secretary is satisfied that it is appropriate to do so -

- (a) in the interest of the investing public or in the public interest; or
- (b) for the proper regulation of markets in securities or futures contracts,

he may; by notice in writing served on a person, exempt the person from section 3(1) -

- (i) subject to such conditions as he thinks fit specified in the notice; and
- (ii) with effect from a date specified in the notice for the purpose.

(2) Where the Financial Secretary is satisfied that it is appropriate to do so -

- (a) in the interest of the investing public or in the public interest; or
- (b) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person the subject of an exemption under subsection (1) stating the reasons in support of the ground or grounds for the notice, revoke the exemption -

- (i) subject to such conditions as he thinks fit specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose, being a date reasonable in all the circumstances of the case.

(3) Subject to subsection (4), a person who fails to comply with a condition specified in a notice under subsection (1) or (2) commits an offence and is liable -

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove that that the person exercised all due diligence to comply with the notice concerned under subsection (1) or (2) served on the person.

(5) For the avoidance of doubt, it is hereby declared that the Financial Secretary's power under subsection (2) to revoke an exemption under subsection (1) includes the power to revoke and replace the exemption.

PART III

DUTIES OF RECOGNIZED EXCHANGE CONTROLLER TO  
ENSURE ORDERLY AND FAIR MARKET AND TO  
ESTABLISH RISK MANAGEMENT COMMITTEE

**8. Duty to ensure orderly and fair market, etc.**

(1) It shall be the duty of a recognized exchange controller which is the controller of an Exchange Company or clearing house to ensure -

- (a) so far as is reasonably practicable, and in its capacity as such controller, an orderly and fair market in securities or futures contracts traded on or through the Exchange Company;
- (b) that risks are managed prudently by the recognized exchange controller in its capacity as a recognized exchange controller;
- (c) so far as is reasonably practicable, that the Exchange Company or clearing house comply with any lawful requirement placed on it under any enactment or rule of law and with any other legal requirement placed on it.

(2) In performing its duty under subsection (1) (a) or (b), a recognized exchange controller shall -

- (a) act in the interests of the public, having particular regard to the interests of the investing public; and

- (b) ensure that where the interests referred to in paragraph (a) conflict with any other interests that it is required to serve under any other law, the former shall prevail.

(3) Without prejudice to the generality of section 56(1) of the Securities and Futures Commission Ordinance (Cap. 24), no liability shall be incurred by a recognized exchange controller or any person acting on behalf of a recognized exchange controller, in respect of anything done in good faith in the performance or purported performance of the duty referred to in subsection (1).

## **9. Establishment and functions of Risk Management Committee**

(1) A recognized exchange controller shall, not later than 3 months after the commencement of this section or the date on which it becomes a recognized exchange controller, whichever first occurs, establish and keep established a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the recognized exchange controller and of any Exchange Company or clearing house of which the recognized exchange controller is the controller.

(2) The Risk Management Committee shall consist of -

- (a) the chairman of the recognized exchange controller who shall also be the chairman of the Committee; and
- (b) not less than 3 or more than 7 other members.

(3) The Financial Secretary shall appoint not less than 3 or more than 5 of the members referred to in subsection (2) (b).

(4) The recognized exchange controller shall appoint not more than 2 of the members referred to in subsection (2) (b).

(5) Where a policy referred to in subsection (1) is submitted by the Risk Management Committee to the board of directors of the recognized exchange controller with the recommendation of the Committee that the board pass a resolution to adopt and implement the policy, then the board shall, as soon as is reasonably practicable, pass a resolution to adopt and implement the policy unless not less than two-thirds of the total membership of the board pass a resolution stating that the board declines to adopt and implement the policy.

#### PART IV

##### REGULATION OF RECOGNIZED EXCHANGE CONTROLLER

#### **10. Approval of amendments to the constitution or rules of recognized exchange controller**

(1) No -

(a) amendment of the constitution of a recognized exchange controller; or

(b) rule of a recognized exchange controller or any amendment thereto,

shall have effect unless it has the approval in writing of the Commission.



(2) A recognized exchange controller shall submit or cause to be submitted to the Commission for its approval -

- (a) every amendment of the constitution of the controller;
- (b) the rules of the controller and every amendment thereto.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2) from a recognized exchange controller, by notice in writing served on the controller, give its approval or refuse to give its approval to the amendment of the constitution, rules or amendment of the rules, as the case may be, or any part thereof, the subject of the submission.

(4) The Commission may in a particular case, with the agreement of the recognized exchange controller, extend the time prescribed in subsection (3).

(5) The Financial Secretary may, on the advice of the Commission and generally or in a particular case, extend the time prescribed in subsection (3).

(6) The Commission may, by notice in the Gazette, declare any class of rules of a recognized exchange controller to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the controller which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(7) For the avoidance of doubt, it is hereby declared that a notice under subsection (6) is not subsidiary legislation.

#### **11. Chairman of recognized exchange controller**

(1) No person shall be the chairman of a company which is a recognized exchange controller, whether he became such chairman before, on or after the commencement of this section, unless he has the approval in writing of the Chief Executive to hold that office.

(2) Where the Chief Executive is satisfied that it is appropriate to do so -

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person who is the chairman of a recognized exchange controller, remove the person from that office with effect from a date specified in the notice for the purpose.

#### **12. Appointment of chief executive or chief operating officer of recognized exchange controller requires approval of Commission**

(1) No appointment of a person as chief executive or chief operating officer of a company which is a recognized exchange controller, whether made before, on or after the commencement of

this section, shall have effect unless the appointment has the approval in writing of the Commission.

(2) Where the Commission, after consultation with the Financial Secretary and the chairman of a recognized exchange controller, is satisfied that it is appropriate to do so -

(a) in the interest of the investing public or in the public interest; or

(b) for the proper regulation of markets in securities or futures contracts,

it may, by notice in writing served on a person who is the chief executive or chief operating officer of the controller, remove the person from that office with effect from a date specified in the notice for the purpose.

(3) A person served with a notice under subsection (2) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice, but the notice shall take effect immediately notwithstanding that an appeal has been or may be made under this subsection.

**13. Provisions applicable where recognized exchange controller, etc. seeks to be listed company**

(1) In this section -

“listed company” (上市公司) means a listed company within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);

“relevant company” (相關公司) means a company of which the relevant recognized exchange controller is the controller;

“relevant recognized exchange controller” (相關認可控制人) means a recognized exchange controller which is the controller of the Stock Exchange Company;

“Stock Exchange Company” (證券交易所) means the Stock Exchange Company within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24).

(2) The relevant recognized exchange controller, or a relevant company, shall not become a listed company unless and until the Commission states in writing that it is satisfied that -

(a) subject to subsection (3), rules made under section 34 of the Stock Exchanges Unification Ordinance (Cap. 361) adequately deal with possible conflicts of interest that might arise if the relevant recognized exchange controller or relevant company, as the case may be, were to be a listed company; and

(b) the relevant recognized exchange controller or relevant company, as the case may be, has entered into arrangements with the Commission that adequately ensure -

(i) the integrity of the market in securities or futures contracts traded on or through the Exchange Company concerned; and

- (ii) the compliance with obligations as a listed company which would fall on the relevant recognized exchange controller or relevant company, as the case may be, if it were to become a listed company.

(3) Rules referred to in subsection (2) (a) shall make provision to the effect that the Commission shall, instead of the Stock Exchange Company, take all actions and make all decisions in relation to the relevant recognized exchange controller or relevant company that would be taken by the Stock Exchange Company in the case of a company that was neither a recognized exchange controller nor a relevant company except in the case of any action or decision in respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action or decision were to be taken or made, as the case may be, by the Stock Exchange Company.

(4) By virtue of this section, the Commission shall have such powers and functions as are provided for it under -

- (a) rules made for the purposes of subsections (2) (a) and (3);
- (b) arrangements referred to in subsection (2) (b).

(5) Where a fee is payable to the Stock Exchange Company by a person for the taking of an action or the making of a decision which may be taken or made, as the case may be, by the Commission by virtue of subsections (2) (a) and (3), then, notwithstanding any other enactment or rule of law, that person shall pay that fee to

the Commission in any case where the Commission takes that action or makes that decision, as the case may be, by virtue of those subsections.

**14. Commission may give directions to recognized exchange controller where it is satisfied that conflict of interest exists, etc.**

(1) Where the Commission is satisfied that -

(a) a conflict of interest exists or may come into existence between -

(i) the interest of a recognized exchange controller or a company of which the recognized exchange controller is the controller (“relevant company”); and

(ii) the interest of the proper performance of the functions conferred by this Ordinance or any other enactment (including any rules made under any enactment, whether or not they are subsidiary legislation) on the controller or the relevant company; or

(b) such a conflict of interest has existed in circumstances that make it likely that the conflict of interest will continue or be repeated,

then the Commission may by notice in writing served on the controller or relevant company, as the case may be, stating the

reason or reasons in support of the ground or grounds for the notice, direct the controller or relevant company, as the case may be, to forthwith take such steps as are specified in the notice (including steps in relation to any of its affairs, business and property whatsoever) for the purposes of remedying the conflict of interest or the matters occasioning the conflict of interest, as the case may be.

(2) A recognized exchange controller or relevant company served with a notice under subsection (1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice, but the notice shall take effect immediately notwithstanding that an appeal has been or may be made under this subsection.

(3) A recognized exchange controller or relevant company served with a notice under subsection (1) which contravenes the notice commits an offence and is liable -

- (a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;
- (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

PART V  
MISCELLANEOUS

**15. Fees to be approved by Commission**

(1) No fee imposed on or after the commencement of this section by -

- (a) a recognized exchange controller in its capacity as a recognized exchange controller; or
- (b) an Exchange Company or clearing house -
  - (i) of which the recognized exchange controller is the controller; and
  - (ii) in its capacity as an Exchange Company or clearing house, as the case may be,

shall have effect unless the fee is specified in the rules of the recognized exchange controller, Exchange Company or clearing house, as the case may be, and has the approval in writing of the Commission.

(2) The Commission shall, in deciding whether or not to approve a fee referred to in subsection (1), have regard to -

- (a) the level of competition in Hong Kong for the matter for which the fee is to be imposed; and
- (b) the level of fee, if any, imposed by another recognized exchange controller, Exchange Company or clearing house, or any similar body outside Hong Kong, for the same or a similar matter to which the fee relates.



## **16. Amendment of Schedule 1**

The Chief Executive in Council may, by notice in the Gazette, amend Schedule 1.

## **17. Application of Companies Ordinance to recognized exchange controller**

The provisions of the Companies Ordinance (Cap. 32) shall apply to a recognized exchange controller to the extent that they are not inconsistent with this Ordinance.

## **PART VI**

### **TRANSITIONAL PROVISIONS, SAVINGS PROVISIONS AND CONSEQUENTIAL AMENDMENTS**

## **18. Interpretation**

In this Part, unless the context otherwise requires -

“HKEC” (交易結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Exchanges and Clearing Limited;

“HKFE”(期交所) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Futures Exchange Limited;

“HKFECC” (期貨結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name HKFE Clearing Corporation Limited;

“HKSCC” (香港結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Securities Clearing Company Limited;

“SEHK”(聯交所) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name The Stock Exchange of Hong Kong Limited;

“SEOCH” (期權結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name The SEHK Options Clearing House Limited.

**19. HKEC deemed to be recognized exchange controller**

On the commencement of section 3(1), the HKEC shall be deemed to be a recognized exchange controller as if, on that commencement, it had been recognized as an exchange controller under section 3(2), and the other provisions of this Ordinance (including sections 3(3) and 4) shall apply to the HKEC accordingly.

**20. Financial Secretary may appoint not more than 8 persons to board of directors of HKEC**

(1) Notwithstanding any enactment or rule of law -

(a) the Financial Secretary may appoint not more than 8 persons to be members of the board of directors of

the HKEC where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest;

- (b) no person appointed under paragraph (a) as a member of the board of directors may be removed from that office except by the Financial Secretary revoking the person's appointment.

(2) Subject to subsection (1) (b), a member of the board of directors of the HKEC who is such a member by virtue of an appointment under subsection (1) (a) shall have the same rights, privileges, obligations and liabilities under any enactment or rule of law as a member of that board who is such a member otherwise than by virtue of such an appointment.

**21. SEHK and HKFE deemed to be exempted from section 3(1) in relation to SEOCH and HKFECC**

On the commencement of section 3(1) -

- (a) the SEHK shall be deemed to be exempted from that section in so far as the SEHK is the controller of the clearing house which is the SEOCH as if, on that commencement, the SEHK had been so exempted under section 7(1), and the other provisions of this Ordinance (including section 7(2) and (5)) shall apply accordingly;
- (b) the HKFE shall be deemed to be exempted from that section in so far as the HKFE is the controller of

the clearing house which is the HKFECC as if, on that commencement, the HKFE had been so exempted under section 7(1), and the other provisions of this Ordinance (including section 7(2) and (5)) shall apply accordingly.

**22. HKSCC to be converted from company limited by guarantee to company limited by shares**

(1) Notwithstanding any other enactment or rule of law, the constitution of the HKSCC may be amended by special resolution for the purposes of converting the HKSCC from a company limited by guarantee to a company limited by shares.

(2) An amendment for the purposes referred to in subsection (1) shall not have effect unless it is approved by the Commission.

(3) Notwithstanding any other enactment or rule of law, on the commencement of this subsection, if the constitution of the HKSCC has been amended for the purposes referred to in subsection (1), then -

- (a) the HKSCC shall cease to be a company limited by guarantee and shall be deemed to be a company limited by shares in accordance with its constitution as so amended;
- (b) the HKSCC shall, as required by the HKEC, issue its shares to the HKEC and any nominee of the HKEC;
- (c) the liability of each member and past member of the HKSCC immediately before that commencement as a

guarantor on the winding-up of the HKSCC is extinguished;

(d) the HKEC shall, not later than 30 days after that commencement, give a guarantee -

(i) in favour of the HKSCC to the effect that the HKEC undertakes to contribute to the assets of the HKSCC on the winding-up of the HKSCC of an amount not less than the amount of guarantee the HKSCC had immediately before that commencement; and

(ii) in a form approved in writing by the Commission;

(e) the HKSCC shall, not later than 5 working days after that commencement, file a copy of any resolution made for the purposes referred to in subsection (1), and a copy of its constitution as amended pursuant to that or any other resolution, with the Registrar within the meaning of the Companies Ordinance (Cap. 32);

(f) that Registrar shall, not later than 14 days after HKSCC has complied with paragraph (e), issue a certificate stating that the HKSCC has ceased to be a company limited by guarantee and is a company limited by shares with effect on and after that commencement.

(4) It is hereby declared that -

- (a) this section does not operate to -
- (i) create a new legal entity;
  - (ii) prejudice or affect the continuity of the HKSCC;
  - (iii) subject to subsection (3) (c), affect any right, privilege, obligation or liability acquired, accrued or incurred by the HKSCC before the commencement of subsection (3);
  - (iv) render defective any legal or other proceedings instituted or to be instituted by or against the HKSCC or any other person;
  - (v) make the HKSCC a company incorporated by an enactment;
  - (vi) cause any provisions of the Companies Ordinance (Cap. 32) to cease to apply to the HKSCC except to the extent necessary for the purposes of subsections (1), (2) and (3) and paragraphs (b), (c) and (d);
  - (vii) prevent the HKSCC from converting itself, in accordance with any enactment or rule of law, from a company limited by shares to another type of company;
  - (viii) prevent the HKSCC from amending its constitution or rules (within the meaning

of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)) in accordance with any enactment or rule of law;

- (b) the memorandum of association of the HKSCC shall not have names subscribed to it;
- (c) sections 5(4) (b) and (c), 6 and 12(c) of the Companies Ordinance (Cap. 32) shall not apply to the HKSCC;
- (d) section 9 of the Companies Ordinance (Cap. 32) shall apply to the HKSCC as if the words “signed by the subscribers to the memorandum and” were omitted.

**23. Certain registered dealers deemed to be exchange participants**

(1) A person who was, immediately before the commencement of this section -

- (a) a member within the meaning of section 2 of the Securities Ordinance (Cap. 333); and
- (b) a registered dealer within the meaning of that section,

shall be deemed to be an exchange participant within the meaning of that section until -

- (i) he ceases to be a person who, in accordance with the rules of the Exchange Company referred to in paragraph (a) of the definition of “exchange

participant” in that section, may trade on or through the Exchange Company;

or

- (ii) his name is entered in the list, roll or register referred to in paragraph (b) of that definition,

whichever first occurs.

(2) A person who was, immediately before the commencement of this section -

- (a) a shareholder within the meaning of section 2 of the Commodities Trading Ordinance (Cap. 250); and
- (b) a registered dealer within the meaning of that section,

shall be deemed to be an exchange participant within the meaning of that section until -

- (i) he ceases to be a person who, in accordance with the rules of the Exchange Company referred to in paragraph (a) of the definition of “exchange participant” in that section, may trade on or through the Exchange Company;
- or
- (ii) his name is entered in the list, roll or register referred to in paragraph (b) of that definition,

whichever first occurs.

## **24. Consequential amendments**

The enactments specified in Schedule 2 are amended as set out in that Schedule.



SCHEDULE 1

[ss. 3(12), 4(8)  
6(11) & 16]

PROVISIONS APPLICABLE WHERE THERE IS CONTRAVENTION  
OF NOTICE UNDER SECTION 3(6), 4(1) OR 6(5)

**1. Restrictions on and sale of shares**

(1) The powers conferred by this section shall be exercisable where a person has contravened a notice under section 3(6), 4(1) or 6(5) of this Ordinance.

(2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions -

- (a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them. and any issue of such shares, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or pursuant to any offer made to their holder;
- (d) except in a liquidation, no payment shall be made of any sums due from the company concerned on the shares, whether in respect of capital or otherwise.

(3) Where shares are subject to the restrictions under subsection (2) (a), any agreement to transfer the shares or, in the

case of unissued shares, the right to be issued with them, shall be void.

(4) Where shares are subject to the restrictions under subsection (2) (c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), shall be void.

(5) Where shares are subject to any restrictions under subsection (2), any person affected by any of those restrictions may request the Commission to make an application referred to in subsection (6) (a) in respect of those shares and, where such a request is made, the Commission shall, not later than 30 days after that request has been made -

(a) comply with that request; or

(b) serve a notice in writing on that person stating that it does not propose to comply with that request.

(6) The Court of First Instance may -

(a) on the application of the Commission, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions;

(b) on the application of a person who has made a request under subsection (5) where he has been served with a notice under paragraph (b) of that

subsection in respect of that request, order the sale of any shares to which that request relates and that they shall cease to be subject to any restrictions under subsection (2).

(7) Where an order has been made under subsection (6), the Court of First Instance may, on the application of the Commission, make such further order relating to the sale or transfer of the shares as it thinks fit.

(8) Where shares are sold pursuant to an order under this section, the proceeds of the sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds be paid to him.

(9) This section shall apply -

- (a) to all the shares in the company concerned by virtue of which the person concerned is a shareholder controller, or minority controller within the meaning of section 6 of this Ordinance, of the company which are held by him or any associate of his and were not so held immediately before he became such a controller; and
- (b) where the person concerned became a shareholder controller, or minority controller within the meaning of section 6 of this Ordinance, of the company concerned by virtue of the acquisition by

him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held immediately before he became such a controller.

(10) A copy of a notice served under subsection (2) on the person concerned shall be served on the company to whose shares it relates and, if it relates to shares held by any associate of that person, on that associate.

(11) The Chief Justice may make rules regulating the practice and procedure in connection with applications (including any class of applications) made under subsection (6).

## **2. Punishment for attempted evasion of restrictions**

(1) Any person who -

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to any restrictions under section 1(2) or of any right to be issued with any such shares;
- (b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them;
- (c) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of

that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy; or

- (d) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 1(3) or (4),

commits an offence and is liable -

- (i) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;
- (ii) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

(2) Where shares in a company are issued in contravention of restrictions under section 1(2) or payments are made by a company in contravention of such restrictions, every director and every manager of the company who knowingly and wilfully permits such an issue of shares or the making of such a payment, as the case may be, commits an offence and is liable -

- (a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

- (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months.

### **3. Prohibition on certain person acting as indirect controllers**

(1) In this section, “prohibited person” (受禁制的人), in relation to a company, means any person who has contravened a notice under section 3(6) or 4(1) of this Ordinance in relation to the company in so far as the notice relates to a controller who is an indirect controller.

(2) No person who is a prohibited person in respect of a company shall act or continue to act, as the case may be, as an indirect controller of the company and, accordingly, as such a controller shall not give or shall cease to give, as the case may be, any directions or instructions to the directors of the company or of another company of which it is a subsidiary.

(3) Where any director of a company or of another company of which it is a subsidiary is given (whether directly or indirectly) any directions or instructions -

- (a) by a person whom the director knows, or ought reasonably to know, is a prohibited person in respect of the first-mentioned company; and
- (b) which are, or might reasonably be construed as being, prohibited from being so given by virtue of subsection (2),

the director shall forthwith give notice in writing to the Commission of those directions or instructions and the circumstances in which they were so given.

(4) Any prohibited person who contravenes subsection (2) commits an offence and is liable -

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(5) Any director who without reasonable excuse contravenes subsection (3) commits an offence and is liable -

(a) on conviction upon indictment to a fine of \$1,000,000 and, in the case of an individual, to imprisonment for 2 years;

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(6) In this section, a reference to a continuing offence means an offence consisting of a person's continued default, refusal or other contravention of subsection (1) or (2), and

notwithstanding that any period (howsoever expressed) specified in that subsection for complying with it has expired.

SCHEDULE 2

[s. 24]

CONSEQUENTIAL AMENDMENTS

**Securities and Futures Commission Ordinance**

**1. Interpretation**

Section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24) is amended -

(a) in the definition of “the relevant Ordinances”, by adding”, the Exchanges and Clearing Houses (Merger) Ordinance ( of 1999)” after “(Cap. 396)”;

(b) by adding -

““clearing participant”( 結算所參與者 )means a participant within the meaning of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);

“exchange participant” ( 交易所參與者 ) means a person -

(a) who, in accordance with the rules of an Exchange Company, may trade on or through the Exchange Company; and



(b) whose name is entered in a list, register or roll kept by the Exchange Company as a person who may trade on or through the Exchange Company;

“recognized exchange controller” (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance ( of 1999);”.

## **2. Functions of Commission**

Section 4(1) is amended -

- (a) in paragraph (d), by repealing “and clearing houses” and substituting “, clearing houses and recognized exchange controllers”;
- (b) in paragraph (f), by repealing “members of the Exchange Companies and clearing houses” and substituting “exchange participants of the Exchanges Companies and clearing participants of the clearing houses”.

## **3. Powers of intervention**

Section 38(3) is amended by repealing “a member of an Exchange Company or a clearing house” and substituting “an

exchange participant of an Exchange Company or clearing participant of a clearing house”.

#### **4. Winding-up orders**

Section 45(2) is amended by repealing “a member of an Exchange Company or a clearing house” and substituting “an exchange participant of an Exchange Company or clearing participant of a clearing house”.

#### **5. Bankruptcy orders**

Section 46(2) is amended by repealing “a member of an Exchange Company or a clearing house” and substituting “an exchange participant of an Exchange Company or clearing participant of a clearing house”.

#### **6. Transfer and resumption of functions**

Section 47 is amended -

(a) by repealing subsection (1) and substituting -

“(1) If it appears to the Commission that an Exchange Company, or a recognized exchange controller which is the controller of the Exchange Company, is willing and able to perform all or any of the functions to which this section applies, it may request the Chief Executive in Council to make an order (“transfer order”) transferring all or any of

those functions to the Exchange Company or recognized exchange controller (“designated company”), as the case may be, or transfer the functions in so far as they or it apply or applies to the exchange participants or applicants to be exchange participants of the designated company which is that Exchange Company.”;

- (b) in subsections (3), (4), (5), (6) and (7), by repealing “Exchange Company” and substituting “company”.

**7. Information: Exchange Companies, clearing houses and recognized exchange controllers**

Section 48 is amended -

- (a) in subsection (1) -

- (i) by repealing “or any clearing house” and substituting “, any clearing house or any recognized exchange controller”;

- (ii) by repealing “members” and substituting “exchange participants”;

- (b) in subsection (2) -

- (i) by repealing “or clearing house” and substituting “, clearing house or recognized exchange controller”;

- (ii) by adding “, in the case of an Exchange Company or clearing house,” after “including”;
- (iii) by repealing “members” and substituting “exchange participants or clearing participants, as the case may be”.

**8. Additional powers - restriction notices relating to Exchange Companies, clearing houses and recognized exchange controllers**

Section 50 is amended -

- (a)
  - (i) in subsections (1), (2)(b) and (c)(i) and (ii), (3)(a) and (8), by repealing “or clearing house” wherever it appears and substituting “, clearing house or recognized exchange controller”;
  - (ii) in subsection (9), by repealing “或結算所” and substituting “、結算所或認可控制人” ；
- (b) in subsection (10), by repealing “or clearing house, or any member, officer or servant of an Exchange Company or clearing house” and substituting “, clearing house or recognized exchange controller, or any exchange participant, clearing participant, officer or servant of an Exchange Company, clearing house or recognized exchange controller”.

**9. Additional powers - suspension orders relating to Exchange Companies, clearing houses and recognized exchange controllers**

Section 51 is amended -

(a) in subsection (1) -

(i) by repealing “or clearing house,” and substituting “, clearing house or recognized exchange controller,”;

(ii) by repealing “or clearing house -” and substituting “, clearing house or recognized exchange controller -”;

(iii) in paragraph (a), by repealing “or clearing house” and substituting “, clearing house or recognized exchange controller”;

(iv) in paragraph (d), by repealing “or clearing house” and substituting “, clearing house or recognized exchange controller or the functions of the chief operating officer of the recognized exchange controller”;

(b) in subsections (2)(a), (4)(a) and (b)(i), (6)(a) and (7), by repealing “or clearing house” and substituting “, clearing house or recognized exchange controller”.

**10. In junctions to restrain contraventions**

Section 55(2) is amended by repealing “a member” and substituting “an exchange participant”.

**11. Preservation of secrecy, etc.**

Section 59(2)(f) is amended -

- (a) in subparagraph (iv), by repealing “or”;
- (b) by repealing subparagraph (v) and substituting -
  - “(v) a clearing house; or
  - (vi) a recognized exchange controller,”.

**12. Functions of Commission to which section 9 does not apply**

The Schedule is amended, in paragraph 5, by repealing “, 36(1) or 44(3)” and substituting “or 36(1)”.

**Telecommunication Ordinance**

**13. Temporary restriction on disposal or acquisition**

Section 13J(4)(b)(iii) of the Telecommunication Ordinance (Cap. 106) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

## **Prevention of Bribery Ordinance**

### **14. Public bodies**

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding -  
“96. Hong Kong Exchanges and Clearing Limited.”.

### **15. Public bodies specified for purposes of definition of “public servant”**

Schedule 2 is amended by adding -

“6. Hong Kong Exchanges and Clearing Limited.”.

## **Commodities Trading Ordinance**

### **16. Interpretation**

Section 2(1) of the Commodities Trading Ordinance (Cap. 250) is amended -

- (a) in the definition of “default”, by repealing “shareholder” wherever it appears and substituting “exchange participant”;
- (b) in the definition of “rules of the Exchange Company”, by repealing “shareholders” and substituting “exchange participants”;
- (c) by repealing the definition of “shareholder”;
- (d) by adding -

““exchange participant” (交易所參與者) means a person -

(a) who, in accordance with the rules of the Exchange Company, may trade on or through the Exchange Company; and

(b) whose name is entered in a list, register or roll kept by the Exchange Company as a person who may trade on or through the Exchange Company;

“recognized exchange controller” (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance ( of 1999);

“trading right” (交易權) means a right to be eligible to trade on or through the Exchange Company and entered as such a right in a list, register or roll kept by the Exchange Company.”.

## **17. Licensing of the Commodity Exchange**

Section 13(3) is amended -

(a) by repealing paragraphs (d) and (e);



- (b) in paragraphs (j) and (k), by repealing “shareholders” and substituting “exchange participants”.

**18. Disqualifications from becoming or remaining shareholders**

Section 17 is repealed.

**19. Deposits to be paid by dealers**

Section 31(1)(a)(i), (b)(i) and (c)(i) and (2)(c) and (d) is amended by repealing “shareholder” wherever it appears and substituting “holder of a trading right”.

**20. Contract levy**

Section 79A is amended -

- (a) in subsection (1), by repealing “shareholder” and substituting “exchange participant”;
- (b) in subsection (4)(a), by repealing “a shareholder” and substituting “an exchange participant”.

**21. Exchange Company to make deposits in respect of holders of trading rights**

Section 82(1) is amended by repealing “shareholder” and substituting “holder of a trading right”.

**22. Effect of persons ceasing to be holders of trading rights**

Section 84(1), (2) and (3) is amended by repealing “shareholder” wherever it appears and substituting “holder of a trading right”.

**23. Replenishment of compensation fund in certain cases**

Section 85(1) and (2) is amended by repealing “shareholder” wherever it appears and substituting “holder of a trading right”.

**24. Claims against the compensation fund**

Section 87 is amended -

(a) in subsection (1) -

(i) by repealing “a shareholder” and substituting “an exchange participant”;

(ii) by repealing “the shareholder” wherever it appears and substituting “the exchange participant”;

(b) in subsections (2), (3) and (4A), by repealing “shareholder” wherever it appears and substituting “exchange participant”.

**25. Rights of innocent directors, etc. in relation to the compensation fund**

Section 88 is amended -

(a) in subsection (1) -

- (i) by repealing “a shareholder” and substituting “an exchange participant”;
- (ii) by repealing “the shareholder” where it twice appears and substituting “the exchange participant”;
- (b) in subsection (2), by repealing “shareholder” where it twice appears and substituting “exchange participant”;
- (c) in subsection (3), by repealing “a shareholder” where it twice appears and substituting “an exchange participant”.

**26. Notice calling for claims against the compensation fund**

Section 89 is amended -

- (a) in subsection (1) -
  - (i) by repealing “a shareholder” and substituting “an exchange participant”;
  - (ii) by repealing “the shareholder” and substituting “the exchange participant”;
- (b) by adding -

“(5) Where a recognized exchange controller is the controller of the Exchange Company, then subsection (4) shall apply to the recognized exchange controller and any member of its board of directors as that

subsection applies to the Exchange Company and any member of the management committee.”.

**27. Exchange Company may require production of documents, etc.**

Section 91(1)(b) is amended by repealing “shareholder” and substituting “exchange participant”.

**28. Supplementary provisions relating to court proceedings**

Section 93(c) is amended by repealing “shareholder” where it twice appears and substituting “exchange participant”.

**29. Subrogation of the Commission to rights, etc. of claimant on payment from compensation fund**

Section 95(b) is amended -

- (a) by repealing “the shareholder” and substituting “the exchange participant”;
- (b) by repealing “a shareholder” and substituting “an exchange participant”.

**30. Provision where the compensation fund is insufficient to meet claims**

Section 97(2) is amended by repealing “shareholder” and substituting “exchange participant”.

**31. Report of certain matters regarding exchange participants**

Section 100 is amended -

- (a) in subsection (1), by repealing “a shareholder” and substituting “an exchange participant”;
- (b) in subsection (2), by repealing “the membership of a shareholder is suspended, or a shareholder is expelled from membership” and substituting “an exchange participant is suspended, or expelled”.

**32. Prohibition of use of title “commodity exchange”, etc.**

Section 106(1) is amended by adding “, or a recognized exchange controller which is the controller of the Exchange Company,” after “Exchange Company”.

**Securities Ordinance**

**33. Interpretation**

Section 2(1) of the Securities Ordinance (Cap. 333) is amended -

- (a) by repealing the definitions of “corporate member”, “individual member”, “member” and “stockbroker”;
- (b) in the definition of “rules”, by repealing “members” and substituting “exchange participants”;

(c) in the definition of “stock market”, in paragraphs (a) and (b), by repealing “a stockbroker” and substituting “an exchange participant”;

(d) by adding -

““exchange participant” (交易所參與者) means a person -

(a) who, in accordance with the rules of the Exchange Company, may trade on or through the Exchange Company; and

(b) whose name is entered in a list, register or roll kept by the Exchange Company as a person who may trade on or through the Exchange Company;

“recognized exchange controller” (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance ( of 1999) ;

“trading right” (交易權) means a right to be eligible to trade on or through the Exchange Company and entered as such a right in a list, register or roll kept by the Exchange Company;”.

### **34. Rules**

Section 14(1) is amended -

- (a) in paragraph (d), by repealing “to membership” and substituting “as exchange participants”;
- (b) in paragraph (fa), by repealing “member” and substituting “exchange participant”;
- (c) in paragraph (fb), by repealing “the membership of, any of its members, or requests any of its members to resign his membership” and substituting “an exchange participant, or requests any exchange participant to resign”.

### **35. Restriction on use of the title “stock exchange”, etc.**

Section 21(1) is amended by adding “or a recognized exchange controller which is the controller of the Exchange Company” after “Exchange Company”.

### **36. Appeal against direction, etc.**

Section 29(1) is amended by adding “(or, if a recognized exchange controller is the controller of the Exchange Company, that recognized exchange controller)” after “Exchange Company”.

**37. Deposit required before registration as dealer**

Section 52(6)(a), (b) and (c) is amended by repealing “member” wherever it appears and substituting “the holder of a trading right”.

**38. Offers by dealers**

Section 72(5)(d) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

**39. Disclosure of certain interests**

Section 79(2) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

**40. Short selling prohibited**

Section 80(4)(c) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

**41. Certain money received by dealer to be paid into a trust account**

Section 84(1)(a) and (b) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

**42. Right of committee to impose obligations, etc., on exchange participants not affected by this Part**

Section 97 is amended by repealing “members” and substituting “exchange participants”.



### **43. Interpretation**

Section 98(1) is amended -

- (a) in the definition of “default” -
  - (i) by repealing “a stockbroker” and substituting “an exchange participant”;
  - (ii) by repealing “the stockbroker” wherever it appears and substituting “the exchange participant”;
- (b) in the definition of “stockbroking business”, in paragraph (a), by repealing “a member” and substituting “an exchange participant”.

### **44. Exchange Company to make deposits in respect of exchange participants**

Section 104 is amended -

- (a) in subsection (1), by repealing “membership of the Exchange Company” and substituting “trading right”;
- (b) in subsection (2) -
  - (i) in paragraph (a) -
    - (A) by repealing “membership” and substituting “trading right”;
    - (B) by repealing “and”;
  - (ii) by repealing paragraph (b);
- (c) by repealing subsection (3).

### **45. Section substituted**

Section 106 is repealed and the following substituted -

**“106.Repayment of deposits in**

**certain cases**

(1) Where the Exchange Company has deposited a sum of money with the Commission under section 104 in respect of a trading right and thereafter a person ceases to be the holder of the trading right, then the Commission shall, unless the money is required to satisfy any claims or liabilities arising before such cessation, within 6 months after the cessation, deliver to the Exchange Company the sum deposited in respect thereof.

(2) If any money has been delivered to the Exchange Company pursuant to subsection (1) in respect of a trading right, the Exchange Company shall, if the person who ceased to be the holder of the trading right has satisfied all financial obligations due to the Exchange Company and is otherwise in good standing with the Exchange Company, deliver the money -

- (a) to the person;
- (b) where the person has died or is bankrupt, to his personal representative or trustee in bankruptcy, as the case may be; or
- (c) where the person is a corporation in liquidation, to the liquidator thereof.”.

**46. Replenishment of fund in certain cases**

Section 107 is amended -

- (a) in subsection (1), by repealing “a stockbroker” and substituting “an exchange participant”;
- (b) in subsection (2), by repealing “the stockbroker” and substituting “the exchange participant”.

#### **47. Claims against the fund**

Section 109 is amended -

- (a) in subsection (1) -
  - (i) by repealing “a stockbroker” and substituting “an exchange participant”;
  - (ii) by repealing “that stockbroker” and substituting “that exchange participant”;
  - (iii) by repealing “the stockbroker” wherever it appears and substituting “the exchange participant”;
- (b) in subsections (2) and (3), by repealing “stockbroker” and substituting “exchange participant”;
- (c) in subsection (7)(a) -
  - (i) by repealing ““stockbroker” (股票經紀)” and substituting ““exchange participant” (交易所參與者)”;
  - (ii) by repealing “a member” where it twice appears and substituting “an exchange participant”.

**48. Rights of innocent partner, etc. in relation to the fund**

Section 111 is amended -

(a) in subsection (1) -

(i) by repealing “a stockbroker” wherever it appears and substituting “an exchange participant”;

(ii) by repealing “that stockbroker” and substituting “that exchange participant”;

(b) in subsection (2), by repealing “stockbroker” and substituting “exchange participant”.

**49. Notice calling for claims against the fund**

Section 112 is amended by adding -

“(5) Where a recognized exchange controller is the controller of the Exchange Company, then subsection (4) shall apply to the recognized exchange controller, the board of directors or any member thereof of the recognized exchange controller, or any employee of the recognized exchange controller, as it applies to the Exchange Company, the committee or any member thereof, or any employee of the Exchange Company.”.

**50. Power of the committee of the Exchange Company in respect of claims**

Section 113(5A) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

**51. Committee of the Exchange Company may require production of securities, etc.**

Section 114(1)(b) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

**52. Supplementary provisions relating to proceedings brought under section 115**

Section 116(c) is amended by repealing “stockbroker” where it twice appears and substituting “exchange participant”.

**53. Subrogation of the Commission to rights, etc., of claimant on payment from fund**

Section 118(b) is amended by repealing “stockbroker” where it twice appears and substituting “exchange participant”.

**54. Provision where fund is insufficient to meet claims or where claims exceed total amount payable**

Section 120(2) is amended by repealing “stockbroker or stockbrokers” and substituting “exchange participant or exchange participants”.

**55. Regulations**

Section 146(1)(ra) is amended by repealing “stockbroker” and substituting “exchange participant”.

**56. Requirements to be satisfied in relation to offers to acquire securities**

Schedule 1 is amended, in paragraph 4, by repealing “a stockbroker” and substituting “an exchange participant”.

**57. Requirements to be satisfied in relation to offers to dispose of securities**

Schedule 2 is amended, in paragraph 6, by repealing “a stockbroker” and substituting “an exchange participant”.

**Stock Exchanges Unification Ordinance**

**58. Interpretation**

Section 2 of the Stock Exchanges Unification Ordinance (Cap. 361) is amended -

(a) in subsection (1) -

(i) by repealing the definition of “member”;

(ii) by adding -

““exchange participant” (交易所參與者) means a person -

(a) who, in accordance with the rules of the Exchange Company, may trade on or through the Exchange Company; and

(b) whose name is entered in a list, register or roll kept by the Exchange Company as a person who may trade on or through the Exchange Company;

“recognized exchange controller” (認可控制人) means a recognized exchange controller within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance ( of 1999);”;

(b) by repealing subsection (2).

**59. Committee to manage the Exchange Company**

Section 10 (3) to (7) is repealed.

**60. Sections repealed**

Sections 11, 12, 13 and 14 are repealed.

**61. Duty of Exchange Company to notify in relation to compliance by its exchange participants with section 65B of the Securities Ordinance**

Section 15 is amended -

- (a) by repealing subsection (1);
- (b) in subsection (2) (a) and (b), by repealing “member” and substituting “exchange participant”.

## 62. **Void agreements**

Section 26 is amended -

- (a) by adding “or an exchange participant” after “a member” where it first appears;
- (b) in the proviso -
  - (i) in paragraph (b), by adding “or exchange participant” after “member”;
  - (ii) in paragraph (c), by adding “or exchange participant” after “such member”.

## 63. **The Unified Exchange**

Section 27 (4) is repealed and the following substituted -

- “(4) The reference in subsection (1) to the Exchange Company includes -
- (a) a recognized exchange controller which is the controller of the Exchange Company; and
  - (b) an Exchange Company, within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24), of which that recognized exchange controller is the controller.”.



**64. Premises of the Unified Exchange, etc.**

Section 29 is amended by adding -

“(3) Where a recognized exchange controller is the controller of the Exchange Company, then the recognized exchange controller shall at all times maintain to the satisfaction of the Commission adequate and properly equipped premises for the conduct of the business of the recognized exchange controller.”.

**65. Rules of the Unified Exchange**

Section 34 is amended -

(a) by repealing subsection (1) (b) and substituting the following -

“(b) to deal with possible conflicts of interest that might arise where a relevant recognized exchange controller or a relevant company, within the meaning of section 13 of the Exchanges and Clearing Houses (Merger) Ordinance ( of 1999), seeks to be or is a listed company within the meaning of that section; and”;

(b) by adding -

“(2A) The Commission may exercise the power under subsection (1) (b) instead of the Exchange Company.”.

**66. Withdrawal of recognition of the Exchange Company**

Section 36 (1) (c) is amended by repealing “or 44 (3)”.

**67. Exchange Company to amend its articles of association**

Section 44 is repealed.

**68. Schedule 1 repealed**

Schedule 1 is repealed.

**Securities (Insider Dealing) Ordinance**

**69. Possession of relevant information obtained in privileged capacity**

Section 5 of the Securities (Insider Dealing) Ordinance (Cap. 395) is amended -

(a) in subsection (2) (c), by repealing “or any clearing house” and substituting”,  
any clearing house or any recognized exchange controller”;

(b) in subsection (3), by adding -

““member”(成員) includes an exchange participant within the meaning  
of section 2 of the Securities and Futures Commission Ordinance  
(Cap. 24);

“recognized exchange controller” (認可控制人) means a recognized  
exchange controller

within the meaning of section 2 of the Exchanges and Clearing Houses (Merger) Ordinance ( of 1999);”.

### **Securities (Disclosure of Interests) Ordinance**

#### **70. Interests to be disregarded**

Section 14 (4) (a) (iii) of the Securities (Disclosure of Interests) Ordinance (Cap. 396) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

### **Legislative Council Ordinance as amended by the Legislative Council (Amendment) Ordinance 1999**

#### **71. Composition of the financial services functional constituency**

Section 20U of the Legislative Council Ordinance (Cap. 542) as amended by the Legislative Council (Amendment) Ordinance 1999 (48 of 1999) is amended -

(a) by renumbering it as section 20U (1);

(b) in subsection (1), by repealing paragraphs (a) and (b) and substituting -

“(a) subject to subsection (2), exchange participants of the Exchange Company within the meaning of section 2 of the Stock Exchanges Unification Ordinance (Cap. 361);

(b) subject to subsection (2), exchange participants of the Exchange Company within the meaning of section 2 of the Commodities Trading Ordinance (Cap. 250); and”;

(c) by adding -

“(2) Notwithstanding any other enactment or rule of law -

(a) by virtue of this subsection, the rules of an Exchange Company may provide that a class of exchange participants specified in the rules are not exchange participants for the purposes of this Ordinance;

(b) no amendment or substitution of the rules of an Exchange Company made on or after the commencement of this subsection shall have effect -

(i) for the purposes of this Ordinance to the extent, if any, to which the amendment or substitution, as the case may be,

causes a person to become or to cease to be an  
exchange participant of the Exchange Company;

and

- (ii) unless the amendment or substitution, as the case may be, has been approved in writing by the Secretary for Constitutional Affairs.

(3) In subsection (2) -

“Exchange Company” (交易所) means an Exchange Company within the meaning of section 2 of the Securities and Futures Commission Ordinance (Cap. 24);

“exchange participant” (交易所參與者) means an exchange participant within the meaning of section 2 of the Securities and Futures Commission Ordinance (Cap. 24);

“rules” (規章), in relation to an Exchange Company, means the rules governing the conduct, or the operation and management, of the Exchange Company or the conduct of

its exchange participants, by whatever name such rules may be called and wherever contained.”.

**72. Who is eligible to be registered as an elector: functional constituencies**

Section 25 is amended -

- (a) in subsection (4), by adding “20U (1) (a) and (b),” after “20T,”;
- (b) in subsection (5), by adding “(1) (c)” after “20U”.

**73. Savings and transitional provisions**

Schedule 3 is amended by adding -

**“4. Basis for the next provisional register of the financial services functional constituency**

(1) The existing final register of functional constituencies published under section 32 (1) (b) of this Ordinance, in so far as it relates to the financial services functional constituency, forms the basis of the next provisional register for the financial services functional constituency.

(2) Sections 2 and 3 shall apply to and in relation to the next provisional register for the financial services functional constituency and to the financial services functional constituency as they apply to and in relation to the first provisional register for the catering functional constituency and to the catering functional constituency.

(3) In this section, “the next provisional register for the financial services functional constituency” (金融服務界功能界別下一份臨時選民登記冊) means the part in the provisional register of functional constituencies to be compiled not later than 15 April 2000 under section 32 (1) (a) of this Ordinance that relates to the financial services functional constituency.”.

### **Securities and Futures Commission (Fees) Rules**

#### **74. Application fees, annual fees, etc.**

Schedule 1 to the Securities and Futures Commission (Fees) Rules (Cap. 24 sub. leg.) is amended by repealing item 25.

### **Financial Resources Rules**

#### **75. Interpretation**

Section 2 of the Financial Resources Rules (Cap. 24 sub. leg.) is amended, in the definition of “adjusted net admissible assets”, by repealing “members” and substituting “participants”.

#### **76. Interpretation**

Section 5 is amended, in the definition of “securities introducing broker”, in paragraphs (a) and (b), by repealing “members of the Unified Exchange or” and substituting “exchange participants of the Unified Exchange or members”.

**77. Liquid assets**

Section 9 is amended -

- (a) in paragraph (ze) (i) and (ii), by adding “or participants” after “members”;
- (b) in paragraph (zf) (i), by repealing “a member of the Unified Exchange or” and substituting “an exchange participant of the Unified Exchange or a clearing participant of”;
- (c) in paragraphs (zg) (i) and (zi), by adding “or participants” after “members”.

**78. Calculation of liquid assets and ranking liabilities**

Section 11 (16) is amended by repealing “a member of the relevant exchanges or clearing houses” and substituting “an exchange participant or clearing participant in relation to the relevant exchanges or clearing houses, as the case may be”.

**79. Interpretation**

Section 12 is amended, in the definition of “futures introducing broker”, in paragraphs (a) and (b), by repealing “members of the Commodity Exchange or” and substituting “exchange participants of the Commodity Exchange or members”.

**80. Adjusted current assets**

Section 15 is amended -



- (a) in paragraphs (f), (g), (h) and (k) (i), by adding “clearing participants or” before “clearing members”;
- (b) in paragraph (l) (vi), by adding “participantship or” before “membership costs”.

**81. Registered dealers to lodge quarterly returns**

Section 22 is amended by repealing “a member” and substituting “an exchange participant”.

**Securities and Futures Commission  
(Annual Returns) Rules**

**82. Schedule amended**

The Schedule to the Securities and Futures Commission (Annual Returns) Rules (Cap. 24 sub. leg.) is amended, in the Annual Return, in Part C -

- (a) in paragraph 23 (a) and (b), by repealing “a member” and substituting “an exchange participant/member”;
- (b) in paragraphs 24 and 25, by repealing “membership” and substituting “exchange participantship/ membership”.

**Securities and Futures Commission  
(Transfer of Functions) Order**

**83. Section substituted**

Section 3 of the Securities and Futures Commission (Transfer of Functions) Order (Cap. 24 sub. leg.) is repealed and the following substituted -

**“3. Application**

Nothing in this Order shall apply in relation to -

- (a) prospectuses of mutual fund corporations, as defined by section 2 (1) of the Securities Ordinance (Cap. 333);
- (b) functions conferred upon the Commission by virtue of section 13 of the Exchanges and Clearing Houses (Merger) Ordinance ( of 1999) or section 34 of the Stock Exchanges Unification Ordinance (Cap. 361) or any rules made under either of those sections.”.

**Commodities Trading (Dealers, Commodity Trading  
Advisers and Representatives) Rules**

**84. Particulars to be entered in registers**

Rule 6 of the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap. 250 sub. leg.) is amended by adding -

“(3) In this rule, “member” (會員) includes an exchange participant.”.

**85. Schedule 1 amended**

Schedule 1 is amended -

(a) in Form 1 -

(i) in Part C -

(A) in item C13 -

(I) by repealing “a shareholder” wherever it appears  
and substituting “an exchange participant”;

(II) by repealing “became shareholder” and substituting  
“became exchange participant”;

(B) in item C14 -

(I) by repealing “a member” and substituting “an  
exchange participant/member”;

(II) by repealing “membership” where it twice appears  
and substituting “exchange  
participanship/membership”;

(III) by repealing “became member” and substituting  
“became exchange participant/member”;

(C) in items C15 (a), C16 (a) and C17 (a), by repealing  
“membership” and substituting “exchange  
participants/membership”;

(ii) in Part D -

(A) in item D21 -

(I) by repealing “a shareholder” wherever it appears  
and substituting “an exchange participant”;

(II) by repealing “became shareholder” and substituting  
“became exchange participant”;

(B) in item D22-

(I) by repealing “a member” and substituting “an  
exchange participant/member”;

(II) by repealing “membership” where it twice appears  
and substituting “exchange

participantship/membership”;

(III) by repealing “became member” and substituting

“became exchange participant/member”.

(C) in items D23 (a), D24 (a) and D25 (a), by repealing

“membership” and substituting “exchange

participantship/membership”;

(b) in Form 2 -

(i) in item 15, by repealing “a shareholder” wherever it appears and substituting “an exchange participant”;

(ii) in item 16 -

(A) by repealing “a member” where it twice appears and substituting “an exchange participant/member”;

(B) by repealing “membership” wherever it appears and substituting “exchange participant/membership”;

(iii) in items 17 (a), 18 (a) and 19 (a), by repealing “membership” and substituting “exchange participantship/membership”.

**Commodities Trading (Trading Limits and  
Position Limits) Rules**

**86. Compliance by exchange members**

Section 4 of the Commodities Trading (Trading Limits and Position Limits) Rules (Cap. 250 sub. leg.) is amended -

- (a) by repealing “a shareholder” and substituting “an exchange participant”;
- (b) in paragraphs (a) and (b), by repealing “shareholder” and substituting “exchange participant”.

**Securities (Miscellaneous) Rules**

**87. Change of information**

Rule 7(a) (ii) of the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) is amended by adding “exchange participants or” after “change in”.

**Securities (Dealers, Investment Advisers, Partnerships  
and Representatives) Rules**

**88. Particulars to be entered in the  
register of dealers**

Rule 6 (a) (vi), (b) (vii) and (c) (vii) of the Securities (Dealers, Investment Advisers, Partnerships and Representatives) Rules (Cap. 333 sub. leg.) is amended by repealing “a member” and substituting “an exchange participant or member”.

**89. Particulars to be entered in the register of investment advisers**

Rule 7 (c) (vii) is amended by repealing “a member” and substituting “an exchange participant or member”.

**90. Particulars to be entered in the register of dealers’ representatives**

Rule 8 (e) is amended by repealing “a member” and substituting “an exchange participant or member”.

**91. Schedule amended**

The Schedule is amended -

(a) in Form 1 -

(i) in Part C -

(A) in item C12 -

(I) by repealing “a member” and substituting “an exchange participant/member”;

(II) by repealing “membership” where it twice appears and substituting “exchange participants/membership”;

(III) by repealing “became member” and substituting

“became exchange participant/member”;

(B) in items C13 (a), C14 (a) and C15 (a), by repealing “membership” and substituting “exchange participants/membership”;

(ii) in Part D -

(A) in item D20 -

(I) by repealing “a member” and substituting “an exchange participant/member”;

(II) by repealing “membership” where it twice appears and substituting “exchange participantship”;

(III) by repealing “became member” and substituting “became exchange participant/member”;

(B) in items D21 (a), D22 (a) and D23 (a), by repealing “membership” and substituting “exchange participantship/membership”;

(b) in Form 2 -

(i) in item 15 -



- (A) by repealing “a member” where it twice appears and substituting “an exchange participant/member”;
- (B) by repealing “membership” wherever it appears and substituting “exchange participants/membership”;
- (ii) in items 16 (a), 17 (a) and 18 (a), by repealing “membership” and substituting “exchange participants/membership”.

### **Securities (Exchange - Traded Stock Options) Rules**

#### **92. Prescribed limits and reporting levels**

Section 2 (3) of the Securities (Exchange - Traded Stock Options) Rules (Cap. 333 sub. leg.) is amended -

- (a) by repealing “a member” and substituting “an exchange participant”;
- (b) in paragraphs (a) and (b), by repealing “that member” and substituting “that exchange participant”.

**Securities (Disclosure of Interests)  
(Exclusions) Regulations**

**93. Prescribed interests**

Regulation 3(2) (b) (i) of the Securities (Disclosure of Interests) (Exclusions) Regulations (Cap. 396 sub. leg.) is amended by repealing “a stockbroker” and substituting “an exchange participant”.

Explanatory Memorandum

The principal object of this Bill is to facilitate the regulation of the Exchange Companies and clearing houses (see the definitions of “Exchange Company” and “clearing house” in clause 2(1)) by -

- (a) prohibiting a person from becoming or continuing to be the controller of an Exchange Company or clearing house unless the person is a company recognized by the Securities and Futures Commission (“the Commission”) as an exchange controller (see the definitions of “controller”, “indirect controller” and “shareholder controller” in clause 2(1)); and
- (b) regulating a recognized exchange controller in relation to the Exchange Companies and clearing houses of which it is the controller.

2. Part I (clauses 1 and 2) is preliminary. Clause 2(1) defines the terms used in the Bill. The definition of “exchange

participant” should, in particular, be noted, as it will supersede the term “member” (of The Stock Exchange of Hong Kong Limited) and the term “shareholder” (of the Hong Kong Futures Exchange Limited). The reason for the change in terminology is because there will now be a separation between membership of an Exchange Company and the right to trade on or through an Exchange Company.

3. Part II (clauses 3 to 7) provides for the recognition and withdrawal of recognition of companies as exchange controllers. Clause 3(2) (a) and (b) sets out the alternative grounds on which the Commission must be satisfied before recognizing a company as an exchange controller. The same grounds under clause 4(1) (a) and (b) form the basis on which the Commission may withdraw recognition of a company as an exchange controller. Both clauses 3 and 4 (and Schedule 1) set out the procedures to be adopted to cause a person to cease to be the controller of an Exchange Company or clearing house where the person is not recognized as an exchange controller or recognition is withdrawn. Clause 5 provides that a recognized exchange controller shall not increase or decrease its interest in an Exchange Company or clearing house of which it is the controller except with the approval of the Commission.

4. Clause 6 prohibits a person from becoming a minority controller (see the definition of “minority controller” in clause 6(1)) of a recognized exchange controller, Exchange Company or clearing house without the approval of the Commission. Clause 7 empowers the Financial Secretary to grant an exemption from clause

3(1), and to revoke any such exemption, on the same grounds on which a company may be recognized as an exchange holding company or have such recognition withdrawn. (See, also, clause 21).

5. Part III (clauses 8 and 9) imposes duties on a recognized exchange controller. Clause 8 requires such a controller to, inter alia, ensure, so far as is reasonably practicable and in its capacity as a controller, an orderly and fair market in securities or futures contracts traded on or through an Exchange Company of which it is the controller. Clause 9 requires such a controller to establish a Risk Management Committee to formulate policies on risk management matters relating to the activities of the controller and of any Exchange Company or clearing house of which it is the controller. The recognized exchange controller is also required to adopt and implement the policies formulated by the Risk Management Committee unless not less than two-thirds of the total membership of the board of directors of the controller decline to do so.

6. Part IV (clauses 10 to 14) relates to the regulation of a recognized exchange controller. Clause 10 provides that no amendments to the constitution or rules of a recognized exchange controller shall have effect unless approved by the Commission or exempted under clause 10(6). Clause 11 provides that no person may be the chairman of a recognized exchange controller unless he has the approval in writing of the Chief Executive. Clause 12 provides that no appointment of, inter alia, the chief executive of a recognized exchange controller shall have effect unless it

has the approval in writing of the Commission. Clause 13 covers the situation where a recognized exchange controller (or another company of which it is the controller) seeks to become a listed company. Clause 14 empowers the Commission to give directions to a recognized exchange controller where the Commission is satisfied that a conflict of interest exists between the interest of the controller as a company and the interest of the functions it is required to perform as such a controller.

7. Part V (clauses 15, 16 and 17) contains miscellaneous provisions. Clause 15 provides that no fees imposed by a recognized exchange controller or an Exchange Company or clearing house of which it is the controller shall have effect unless approved by the Commission. Clause 16 empowers the Chief Executive in Council to amend Schedule 1. Clause 17 makes it clear that the provisions of the Companies Ordinance (Cap. 32) apply to a recognized exchange controller to the extent they are not inconsistent with the Bill.

8. Part VI (clauses 18 to 24) and Schedule 2 contain transitional provisions, saving provisions and consequential amendments necessitated by the Bill. It should be noted that the Hong Kong Exchanges and Clearing Limited will be deemed to be a recognized exchange controller (clause 19), and that the Hong Kong Securities Clearing Company Limited will be converted from a company limited by guarantee to a company limited by shares (clause 22).

## **HONG KONG EXCHANGES AND CLEARING LIMITED**

### **Reinforcing Hong Kong's Position as a Global Financial Centre**

#### ***Facing Up to Rapid Change***

The international financial market and the exchange industry are changing rapidly. Hong Kong must respond proactively to secure its leadership within the region and to reinforce its position as a global financial centre. Against this background, the Financial Secretary announced on 3 March, 1999 a comprehensive reform for the securities and futures market, which included the demutualisation and merger of Hong Kong's Exchanges and Clearing Houses under a new holding company, now named *as the Hong Kong Exchanges and Clearing Limited ("HKEC")*.

#### ***Mission for Competitiveness***

Hong Kong, by creating HKEC through demutualisation and merger, aims to be the global financial centre and the leading exchange in Asia. HKEC's competitiveness will be sought by:

- creating a performance-, client- and profit-driven commercial organization;
- putting in place an efficient and balanced framework for the operation of HKEC;
- separating trading right from ownership of the Exchanges and opening up market access;
- developing the investor base and issuer base as well as diversifying and customising access to its market;
- upgrading and diversifying its products and services;

- developing state-of-the-art technology and systems for markets under HKEC; and
- preserving a strong regulatory framework to promote market integrity and protect public interests.

### ***A Business Focussed Structure***

HKEC will adopt a business structure which focuses on shareholder value creation and the search for long term business growth. It will aim to enhance services to investors, issuers and intermediaries and to look for strategic alliances with global partners to ensure sustainable competitiveness.

In the proposed model, the board of directors will be the highest decision-making body of HKEC, chaired by a Non-Executive Chairman. HKEC's leadership will come from the Chairman, the Chief Executive Officer and the Chief Operating Officer. The expertise of market participants and professionals will be tapped through a number of governance committees and consultative panels. HKEC will formulate its business policy, set its fees and charges, make decision on traders' admission and global alliances.

### ***Representative Ownership and Board Structure***

HKEC will be a public listed company. Its board will be small to ensure efficiency in policy formulation and decision-making. It will comprise directors elected by shareholders and those representing public and market interests. The initial shareholders of HKEC will be the members of the Exchanges. As HKEC's ownership diversifies over time through the listing and trading of its shares on the stock market, representation of shareholders' interest in the board will also increase. The composition of the board will aim to maintain an appropriate balance between shareholders and public interest representatives as HKEC matures and its ownership diversifies.

### ***Gradual Opening Up of Trading Rights***

In order for HKEC to reinforce its position as a global financial centre, access to the exchanges will be broadened gradually to -

- attract more market participants; and
- enable it to capture a greater share of global liquidity as investors increasingly trade around the clock and the globe.

The opening up of market access will proceed gradually to provide today's members with adequate time to prepare for new competition.

HKEC may begin to offer new trading right to its cash and derivatives markets after two years of its inception. Meanwhile, access to the markets may be obtained through acquisition of trading rights from existing members of the Exchanges. Redundant and unused trading rights among current Exchange members will provide a considerable pool of accessible trading right in both markets to new traders.

HKEC will retain the flexibility to accommodate remote access needs arising from strategic alliances with overseas exchanges.

### ***Rationalized Market Regulation***

The division of market regulation between the Securities and Futures Commission ("SFC") and HKEC will essentially follow the current model applicable to the Exchanges and Clearing Houses.

To ensure that the regulation of intermediaries will be conducted effectively and efficiently, the existing duplication of intermediary supervision between the Exchanges and the SFC will be minimised.

- **SFC:** All prudential regulation of exchange users will be handled by the SFC. This would include monitoring compliance with liquid capital requirements and ensuring that exchange users have in place proper systems of management and control.
- **HKEC:** HKEC, as the current Exchanges, will monitor particular aspects of the business of exchange users so as to assess and manage



the risks inherent in the operations of its subsidiary business units. This would particularly involve adequacy of risk management measures and compliance with exchange trading rules.

### ***Benefits For Stock and Futures Exchange Members***

Changes undertaken by HKEC to bolster its competitiveness will inevitably create new challenges for today's members. With challenges, there will also be new opportunities -

- **Benefits from HKEC share ownership:** Members can for the first time enjoy the benefits of commercial ownership of the exchanges including potential dividends and capital appreciation following HKEC's listing.
- **Broadened product range:** New product development will likely result from HKEC's pursuit of commercial objectives and the possibility of global alliance.
- **More efficient trading and clearing systems:** Merger will facilitate and stimulate the development of coherent systems across cash and derivative markets and the clearing operation, reducing unnecessary interfaces and enhancing efficiency.
- **Higher cost efficiency in technology investment:** Investment costs in technology will be shared among different business units, resulting in higher cost efficiency and stronger technology comparative advantage.

### ***Checks and Balances***

HKEC's success will be a cornerstone of Hong Kong's economic vibrancy and financial stability. The regulatory framework for HKEC will therefore ensure that HKEC's commercial objectives are balanced through:

***Effective self-regulation:*** HKEC's decision-making and self-regulation will take place within the existing framework for the regulation of exchanges and clearing houses.

***Prevention of monopolistic abuses:*** Where HKEC's products and services are offered on a de facto monopoly basis, the SFC will have approval authority, as it does at present, over the fees that HKEC charges.

***Excellence in risk management:*** Risk management will be critical to preserving and bolstering market integrity. HKEC's risk management practices will be audited by the SFC to ensure adequate risk provisioning and the soundness of underlying process.

***Shareholding limit:*** There will be a shareholding limit of 5% to prevent control of HKEC by any individual parties or parties acting in concert.

### ***The Way Forward***

The reform launched by the formation of HKEC is both urgent and critical to Hong Kong's long-term success as a global financial centre. By acting decisively now, Hong Kong, its market participants and HKEC's shareholders stand to benefit from:

***HKEC merger synergies:*** The formation of HKEC will foster profit growth. For intermediaries, the merger will facilitate aligned product development across the exchanges and clearing houses and reduce cost by enhancing capital efficiency and unifying technology platforms.

***Regional economic recovery:*** HKEC's formation is best timed to benefit from the economic recovery of the region and the increasing business opportunities as issuers and investors return to the market.

***Mainland's long-term capital needs:*** HKEC's structural changes are intended to deepen liquidity and investor participation in the Hong Kong market, reinforcing the SAR's position as Mainland's primary window for international capital raising.

|             |  |                          |
|-------------|--|--------------------------|
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|             | COMMISSION ORDINANCE Number:   |                          |
| Section: 50 | Heading: <b>Additional powers-restriction notices relating to Exchange Companies and clearing houses</b> | Version Date: 01/07/1997 |

## Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Subject to subsections (2), (4) and (11), where the Commission is satisfied that it is in the interest of the investing public or in the public interest, or it is appropriate to do so for the protection of investors or for the proper regulation of an Exchange Company or clearing house, the Commission may by notice in writing (“restriction notice” (限制通知書)) do any of the following-

- (a) require the Exchange Company or clearing house, before the expiration of a period specified in the notice-
    - (i) to amend, withdraw or revoke, in such manner as shall be specified in the notice, any provision of its memorandum of association, articles of association, rules or regulations or other instrument so specified;
    - (ii) to take such action relating to the management, conduct or operation of its business as may be so specified;
  - (b) prohibit the Exchange Company or clearing house doing or causing to be done, during a period so specified, such act or other thing relating to the management, conduct or operation of its business as shall be so specified.
- (2) The Commission shall not serve a restriction notice unless-
- (a) it has previously consulted the Financial Secretary in relation thereto;
  - (b) it has previously requested in writing the Exchange Company or clearing house concerned to put, or cause to be put, into effect a provision (which includes a request to refrain from doing any act or other thing) specified in the request and similar in effect to the requirement or prohibition specified in the restriction notice or, in case there is more than one such requirement or prohibition so specified, provisions the combined effect of all of which is similar to the combined effect of the requirements or prohibitions so specified; and
  - (c) in the case of a request under paragraph (b) which-
    - (i) contains a provision requesting the Exchange Company or clearing house concerned to amend, withdraw or revoke any provision of its memorandum or articles of association under subsection (1)(a)(i), the provision has not been complied with before the expiration of the period specified in relation thereto in the request being not less than 45 days; or

- (ii) contains a provision requesting the Exchange Company or clearing house concerned to do or refrain from doing any act or other thing, the Commission is satisfied that the provision has not been complied with.
- (3) (a) Where a restriction notice requires an Exchange Company or clearing house to amend, withdraw or revoke any provision of its memorandum of association or articles of association, the Exchange Company or clearing house may appeal to the Governor in Council against the notice.
- (b) An appeal under paragraph (a) shall not affect the coming into force of the restriction notice to which the appeal relates.
- (4) A period specified in a restriction notice in relation to a prohibition under subsection (1)(b) shall be a period not exceeding 6 months beginning on the date of the notice.
- (5) The Commission may, after consultation with the Financial Secretary, by notice in writing extend, for a period or successive periods of not more than 3 months each, the period during which a restriction notice is to remain in force.
- (6) Where a restriction notice is issued or extended under this section, the Commission may cause to be published in the Gazette a copy of the notice or, as may be appropriate, particulars of the extension.
- (7) A restriction notice may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court of First Instance as if it were a judgment or order of that court. (Amended 25 of 1998 s. 2)
- (8) Where an Exchange Company or clearing house is in breach of a requirement in a restriction notice under subsection (1)(a)(i) relating to a provision of its memorandum of association, articles of association, rules or regulations or other instrument-
- (a) in the case of a requirement to amend such provision, the provision shall be deemed to have effect as if the requirement had been complied with;
- (b) in the case of a requirement to withdraw or revoke such provision, the provision shall cease to have effect.
- (9) Where-
- (a) a restriction notice includes a requirement described in subsection (1)(a)(i) and the requirement relates to the memorandum of association or the articles of association of a company; and
- (b) by virtue of subsection (8) the provision to which the requirement relates has effect as if the requirement had been complied with or, as the case may be, has ceased to have effect,
- the Commission shall, as soon as may be, deliver to the Registrar of Companies a copy of the notice, and if there is an appeal under subsection (3) against the notice and the appeal is not withdrawn, the Commission shall, as soon as may be, inform such registrar in writing of the outcome of the appeal.
- (10) No Exchange Company or clearing house, or any member, officer or servant of an Exchange Company or clearing house shall be liable in damages for any act or omission done or omitted in compliance or in purported compliance with a restriction notice unless the act or omission is shown by the person claiming the damages to have been done or omitted in bad faith.
- (11) Nothing in this section shall be construed as enabling the Commission to do under this section anything which may be done by the Commission by direction or order under section 26 or 27 of the Securities Ordinance (Cap 333) or section 21 of the Commodities Trading Ordinance (Cap 250).

(Enacted 1989)

(1) Where the Commission is satisfied that it is in the interest of the investing public or in the public interest, or it is appropriate to do so for the protection of investors or for the proper regulation of an Exchange Company or clearing house, the Commission may, after consultation with the Financial Secretary, make an order (“suspension order”(暫停職能令)) relating to all or any of the following functions of the Exchange Company or clearing house-

- (a) the functions of the board of directors or governing body of the Exchange Company or clearing house;
  - (b) the functions of a director of a board or a member of a body referred to in paragraph (a);
  - (c) the functions of a committee (including a sub-committee) established by a board or body referred to in paragraph (a);
  - (d) the functions of the chief executive officer (whether called that or not) of the Exchange Company or clearing house.
- (2) For so long as a suspension order is in force the following provisions shall apply-
- (a) none of the functions to which the order relates shall be performed by the Exchange Company or clearing house to which it relates or any board, governing body, committee or officer thereof;
  - (b) any function to which paragraph (a) applies may be performed by such person as shall be specified in the order in relation to that function;
  - (c) a person referred to in paragraph (a) shall not, by act or omission, either directly or indirectly, affect the manner in which functions therein referred to are performed.
- (3) Subject to subsection (5), a suspension order shall continue in force for such period, being a period not exceeding 6 months, as shall be specified in the order.
- (4) (a) A suspension order or an extension thereof under subsection (5) shall take effect when a copy of the order or notice of the extension is served under subsection (6)(a) on the Exchange Company or clearing house to which the order relates.
- (b) (i) Where a suspension order is made or such an order is extended under subsection (5), the Commission shall, if it is practical so to do, as soon as may be, give a copy of the order or, as may be appropriate, notice of its extension to the chief executive officer of the Exchange Company or clearing house to which the order relates and to such directors or members of the committee thereof (if any) as the Commission may consider appropriate in the circumstances.
  - (ii) Nothing in this paragraph shall affect paragraph (a).
- (5) The Commission may, after consultation with the Financial Secretary, extend for a period or successive periods of not more than 3 months each the period during which a suspension order is to remain in force.
- (6) Where a suspension order is made or extended under this section, the Commission shall-
- (a) forthwith serve a copy of the order or notice in writing of the extension on the Exchange Company or clearing house to which the order relates; and
  - (b) cause the suspension order or, as may be appropriate, notice of such extension to be published in the Gazette.
- (7) Where costs or expenses are reasonably incurred by the Commission or a director or employee thereof in connection with a suspension order, an amount equal to the amount of the costs or expenses shall be paid to be Commission on demand by the Exchange Company or clearing house concerned and shall be recoverable as a civil debt.
- (8) Any person who knowingly contravenes subsection (2)(c) commits an offence.

(Enacted 1989)

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|--------------|---|--------------------------|
| Chapter: 361 | Title: STOCK EXCHANGES<br>UNIFICATION ORDINANCE | Gazette Number:          |
| Section: 27  | Heading: <b>The Unified Exchange</b>            | Version Date: 30/06/1997 |

### PART III

#### THE UNIFIED EXCHANGE

(1) On and after a day\* to be appointed by the Financial Secretary by notice in the Gazette, the Exchange Company shall have the exclusive right to establish, operate and maintain a stock market in Hong Kong.

(2) The Financial Secretary shall appoint a day under subsection (1), which shall not be later than 3 years after the date of commencement of this Ordinance.

(3) The stock market established under subsection (1) shall, for the purposes of this Ordinance, be known as the Unified Exchange.

(4) The members of the Exchange Company shall be the members of the Unified Exchange. (Amended 59 of 1985 s. 10)

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\* Note: See, as to the appointed day, L.N. 61 of 1986. See also the Stock Exchanges Unification (Extension of Period) (Consolidation) Order (Cap 361 sub. leg. 1989 Revised Edition)

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|--------------|---|-------------------------------------|
| Chapter: 201 | Title: PREVENTION OF BRIBERY<br>ORDINANCE | Gazette Number: L.N. 198 of<br>1999 |
| Schedule: 1  | Heading: <b>PUBLIC BODIES</b>             | Version Date: 01/09/1999            |

[sections 2(1) & 35]  
(Amended 20 of 1999 s. 6)

1. Hong Kong Telecom International Limited. (Replaced 20 of 1999 s. 6)
2. China Light and Power Company Limited.
3. (Repealed 20 of 1999 s. 6)
4. The Chinese University of Hong Kong. (Replaced 20 of 1999 s. 6)
5. Hong Kong Arts Development Council. (Replaced 26 of 1995 s. 19)
6. (Repealed L.N. 198 of 1999)
7. Fish Marketing Organization.
8. Hong Kong and China Gas Company Limited.
9. Hong Kong and Yaumati Ferry Company Limited.
10. Hong Kong Air Cargo Terminals Limited.
11. Hong Kong Building and Loan Agency.
12. Hong Kong Commercial Broadcasting Company Limited.
13. Hong Kong Electric Company Limited.
14. Hong Kong Export Credit Insurance Corporation.
15. Hong Kong Housing Authority.
16. Hong Kong Housing Society.
17. (Repealed 50 of 1987 s. 13)
18. The Hong Kong Polytechnic University. (Replaced 94 of 1994 s. 23)
19. Hong Kong Productivity Council.
20. Hong Kong Settlers Housing Corporation Limited.
21. Hong Kong Telephone Company Limited.
22. Hong Kong Tourist Association.
23. Hong Kong Trade Development Council.
24. Hong Kong Tramways Limited.
25. Kowloon Motor Bus Company (1933) Limited.
26. (Repealed L.N. 249 of 1990)
27. Ocean Park Corporation. (Amended 35 of 1987 s. 40)
28. Peak Tramways Company Limited.
29. Asia Television Limited. (Replaced L.N. 31 of 1983)
30. Hong Kong Jockey Club. (Amended 20 of 1999 s. 6)
31. The Hong Kong Jockey Club (Charities) Limited. (Replaced L.N. 512 of 1994)
32. "Star" Ferry Company Limited.
33. Television Broadcasts Limited.
34. The Community Chest of Hong Kong.
35. University of Hong Kong.
36. Vegetable Marketing Organization.
37. Mass Transit Railway Corporation. (Added 36 of 1975 s. 31)
38. The Hong Kong Industrial Estates Corporation. (Added 17 of 1976 s. 13. Amended 16 of 1977 s. 43)
39. The Hong Kong Examinations Authority. (Added 23 of 1977 s. 17)
40. Consumer Council. (Added 56 of 1977 s. 22)
41. (Repealed 20 of 1999 s. 6)
42. The Vocational Training Council. (Added 6 of 1982 s. 25)
43. The Kowloon-Canton Railway Corporation. (Added 73 of 1982 s. 39)

44. New Lantao Bus Company (1973) Limited. (Added L.N. 160 of 1983)
45. Hong Kong Baptist University. (Added 50 of 1983 s. 34. Amended 93 of 1994 s. 39)
46. City University of Hong Kong. (Added 65 of 1983 s. 25. Amended 92 of 1994 s. 32)
47. The Hong Kong Academy for Performing Arts. (Added 38 of 1984 s. 28)
48. The Hong Kong University of Science and Technology. (Added 47 of 1987 s. 25)
49. Broadcasting Authority. (Added 49 of 1987 s. 17)
50. Hong Kong Council on Smoking and Health. (Added 56 of 1987 s. 21)
51. Land Development Corporation. (Added 71 of 1987 s. 20)
52. Securities and Futures Commission. (Added 10 of 1989 Schedule 2)
53. The Open University of Hong Kong. (Added 22 of 1987 Schedule 2. Amended L.N. 176 of 1989. Replaced 50 of 1997 s. 29)
54. Hong Kong Sports Development Board. (Added 8 of 1990 s. 18)
55. Travel Industry Council of Hong Kong. (Added L.N. 62 of 1990)
56. (Repealed 20 of 1999 s. 6)
57. Hong Kong Council for Academic Accreditation. (Added 15 of 1990 s. 26)
58. The Hospital Authority (including any committee established by the Hospital Authority). (Added 68 of 1990 s. 24)
59. The Airport Authority. (Added L.N. 249 of 1990. Replaced 71 of 1995 s. 49)
60. Metro Broadcast Corporation Limited. (Added L.N. 184 of 1991)
61. Hong Kong Academy of Medicine. (Added 55 of 1992 s. 16)
62. Lingnan University. (Added 72 of 1992 s. 29. Replaced 54 of 1999 s. 29)
63. Citybus Limited. (Added L.N. 330 of 1992)
64. New Hong Kong Tunnel Company Limited. (Added L.N. 382 of 1992)
65. Tate's Cairn Tunnel Company Limited. (Added L.N. 382 of 1992)
66. Hong Kong Industrial Technology Centre Corporation. (Added 21 of 1993 s. 25)
67. (Repealed 134 of 1997 s. 85)
68. Tradelink Electronic Commerce Limited. (Replaced L.N. 125 of 1998)
69. Travel Industry Compensation Fund Management Board. (Added 51 of 1993 s. 8)
70. Western Harbour Tunnel Company Limited. (Added 72 of 1993 s. 71)
71. Wharf Cable Limited. (Added L.N. 384 of 1993)
72. The Legislative Council Commission. (Added 14 of 1994 s. 24)
73. The Hong Kong Institute of Education. (Added 16 of 1994 s. 25)
74. Hong Kong Quality Assurance Agency. (Added L.N. 409 of 1994)
75. Equal Opportunities Commission. (Added 67 of 1995 s. 91)
76. The Security and Guarding Services Industry Authority. (Added 97 of 1994 s. 34)
77. Legal Aid Services Council. (Added 17 of 1996 s. 14)
78. Route 3 (CPS) Company Limited. (Added 33 of 1995 s. 65)
79. Privacy Commissioner for Personal Data. (Added 81 of 1995 s. 72)
80. Authorized Persons Registration Committee. (Added 54 of 1996 s. 27)
81. Structural Engineers Registration Committee. (Added 54 of 1996 s. 27)
82. Contractors Registration Committee. (Added 54 of 1996 s. 27)
83. The Estate Agents Authority. (Added 48 of 1997 s. 57)
84. Long Win Bus Company Limited. (Replaced 20 of 1999 s. 6)
- 84A. Long-term Prison Sentences Review Board. (Added 86 of 1997 s. 44. Amended 20 of 1999 s. 6)
85. Electoral Affairs Commission. (Added 129 of 1997 s. 24)
86. Mandatory Provident Fund Schemes Authority. (Added 4 of 1998 s. 8)
87. New World First Bus Services Limited. (Added L.N. 239 of 1998)
88. The Hong Kong Mortgage Corporation Limited. (Added L.N. 313 of 1998)
89. Hong Kong Note Printing Limited. (Added L.N. 313 of 1998)
90. Exchange Fund Investment Limited. (Added L.N. 16 of 1999)
91. The Stock Exchange of Hong Kong Limited. (Added 20 of 1999 s. 6)
92. Hong Kong Futures Exchange Limited. (Added 20 of 1999 s. 6)



93. Hong Kong Securities Clearing Company Limited. (Added 20 of 1999 s. 6)  
94. The SEHK Options Clearing House Limited. (Added 20 of 1999 s. 6)  
95. HKFE Clearing Corporation Limited. (Added 20 of 1999 s. 6)  
(Replaced L.N. 272 of 1974)
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Note 1-S. 18 of 48 of 1996 reads as follows-

“18. Savings

(1) Notwithstanding the repeal of section 14A of the principal Ordinance by section 17 of this Ordinance, a written notice issued under section 14A(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance, shall continue in force according to its tenor for such period as it would have continued in force had section 14A of the principal Ordinance not been repealed and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.

(2) Notwithstanding the amendment of section 14C of the principal Ordinance by section 7 of this Ordinance, an order issued under section 14C(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance shall continue in force according to its tenor for such period as it would have continued in force had section 14C of the principal Ordinance not been amended and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.”

Note 2-For text of s. 14A prior to its repeal by s. 17 of 48 of 1996, please see the Revised Edition of the Laws and ss. 2 & 3 of 8 of 1993.

Note 3-For text of s. 14C prior to its amendment by s. 7 of 48 of 1996, please see the Revised Edition of the Laws and ss. 2 & 3 of 8 of 1993.

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|--------------|-------------------------------|-----------------------------|
| Chapter: 201 | Title: PREVENTION OF BRIBERY  | Gazette Number: L.N. 157 of |
|              | ORDINANCE                     | 1999                        |
| Schedule: 2  | Heading: <b>PUBLIC BODIES</b> | Version Date: 17/06/1999    |
| :            | <b>SPECIFIED FOR</b>          |                             |
|              | <b>PURPOSES OF</b>            |                             |
|              | <b>DEFINITION OF "PUBLIC</b>  |                             |
|              | <b>SERVANT"</b>               |                             |

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[sections 2(1) & 35]

1. The Stock Exchange of Hong Kong Limited.
2. Hong Kong Futures Exchange Limited.
3. Hong Kong Securities Clearing Company Limited.
4. The SEHK Options Clearing House Limited.
5. HKFE Clearing Corporation Limited.

(Added 20 of 1999 s. 7)

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|          |            |          |  |                 |                     |
|----------|------------|----------|--|-----------------|---------------------|
| Chapter: | 542        | Title:   | LEGISLATIVE COUNCIL<br>ORDINANCE   | Gazette Number: | L.N. 210 of<br>1999 |
| Section: | <b>20U</b> | Heading: | <b>Composition of the financial<br/>services functional<br/>constituency</b> | Version Date:   | 30/07/1999          |

Remarks:

This section shall come into operation on-

- (a) 30 July 1999 for the purpose only of enabling arrangements to be made for the holding of the Election Committee subsector elections in 2000 to elect members of the Election Committee for the second term of office of the Legislative Council and for the holding of the second general election in 2000 to elect all Members of that Council;
- (b) 1 July 2000 in so far as this section has not already come into operation.

The financial services functional constituency is composed of-

- (a) members of the Exchange Company within the meaning of the Stock Exchanges Unification Ordinance (Cap 361) entitled to vote at general meetings of the Company; and
- (b) members of the Exchange Company within the meaning of the Commodities Trading Ordinance (Cap 250) entitled to vote at general meetings of the Company; and
- (c) members of The Chinese Gold & Silver Exchange Society entitled to vote at general meetings of the Society.

(Added 48 of 1999 s. 13)

|          |           |          |  |                 |                     |
|----------|-----------|----------|--|-----------------|---------------------|
| Chapter: | 542       | Title:   | LEGISLATIVE COUNCIL<br>ORDINANCE   | Gazette Number: | L.N. 210 of<br>1999 |
| Section: | <b>25</b> | Heading: | <b>Who is eligible to be<br/>registered as an elector:<br/>functional constituencies</b> | Version Date:   | 30/07/1999          |

Remarks:

The amendments made to this section by Ord. No. 48 of 1999 shall come into operation on-

- (a) 30 July 1999 for the purpose only of enabling arrangements to be made for the holding of the Election Committee subsector elections in 2000 to elect members of the Election Committee for the second term of office of the Legislative Council and for the holding of the second general election in 2000 to elect all Members of that Council;
- (b) 1 July 2000 in so far as the amendments have not already come into operation.

(1) Subject to this Part, a person is eligible to be registered as an elector for a functional constituency only if the person-

- (a) is a person specified-
  - (i) for the Heung Yee Kuk functional constituency, in section 20A; or
  - (ii) for the agriculture and fisheries functional constituency, in section 20B; or
  - (iii) for the insurance functional constituency, in section 20C; or
  - (iv) for the transport functional constituency, in section 20D; or
  - (v) for the education functional constituency, in section 20E; or

- (vi) for the legal functional constituency, in section 20F; or
  - (vii) for the accountancy functional constituency, in section 20G; or
  - (viii) for the medical functional constituency, in section 20H; or
  - (ix) for the health services functional constituency, in section 20I; or
  - (x) for the engineering functional constituency, in section 20J; or
  - (xi) for the architectural, surveying and planning functional constituency, in section 20K; or
  - (xii) for the labour functional constituency, in section 20L; or
  - (xiii) for the social welfare functional constituency, in section 20M; or
  - (xiv) for the real estate and construction functional constituency, in section 20N; or
  - (xv) for the tourism functional constituency, in section 20O; or
  - (xvi) for the commercial (first) functional constituency, in section 20P; or
  - (xvii) for the commercial (second) functional constituency in section 20Q; or
  - (xviii) for the industrial (first) functional constituency, in section 20R; or
  - (xix) for the industrial (second) functional constituency, in section 20S; or
  - (xx) for the finance functional constituency, in section 20T; or
  - (xxi) for the financial services functional constituency, in section 20U; or
  - (xxii) for the sports, performing arts, culture and publication functional constituency, in section 20V; or
  - (xxiii) for the import and export functional constituency, in section 20W; or
  - (xxiv) for the textiles and garment functional constituency, in section 20X; or
  - (xxv) for the wholesale and retail functional constituency, in section 20Y; or
  - (xxvi) for the information technology functional constituency, in section 20Z; or
  - (xxvii) for the catering functional constituency, in section 20ZA; or
  - (xxviii) for the District Council functional constituency, in section 20ZB; and  
(Replaced 48 of 1999 s. 16)
- (b) if a natural person, is either-
- (i) registered as an elector under this Part for a geographical constituency; or
  - (ii) eligible to be registered as an elector under this Part for a geographical constituency and has made an application to be so registered.
- (2) A person who, but for this subsection, would be eligible to be registered in 2 or more functional constituencies may be registered in only one of those constituencies of that person's choice.
- (3) Despite subsection (2)-
- (a)-(b) (Repealed 48 of 1999 s. 16)
  - (c) a person eligible to be registered as an elector for the Heung Yee Kuk functional constituency and who would, but for this paragraph, be eligible to be registered in another functional constituency of that person's choice may be registered only for the Heung Yee Kuk functional constituency and not for that other functional constituency; and
  - (d) subject to paragraph (c), a person eligible to be registered as an elector for the agriculture and fisheries, the insurance or the transport functional constituency and who would, but for this paragraph, be eligible to be registered in another functional constituency of that person's choice may be registered only for that functional constituency and not for that other functional constituency.
- (4) A body specified in section 20C, 20L, 20M(1)(c) or (d), 20T, 20V(1)(b), (d), (e), (j) or (k), 20W(a) to (d), 20X(d) or (e), 20Z(l) or 20ZA(a) is eligible to be registered as a corporate elector for the relevant functional constituency only if it has been operating for the 12 months immediately before making its application for registration as an elector.
- (5) A body that is a corporate member of a body specified in section 20B(a), 20M(1)(b), 20N to 20S, 20U, 20V(1)(a) or (g) to (i), 20W(e), 20X(a) or (b) or 20Z(k) or Schedule 1C is eligible to be registered as a corporate elector for the relevant functional constituency only if it has been a corporate member of the second-mentioned body and has been operating for the 12 months immediately before making its application for registration as an elector.

(6) A natural person who is a member of a body specified in sections 20B to 20Z (other than a body specified in section 20E(b), 20F(a) or (b), 20I(b), 20J(b), 20K(b), (d), (f) or (h) or 20Z(a) to (j)) is eligible to be registered as an elector for the relevant functional constituency only if the person has been a member of the body for the 12 months immediately before making an application for registration as an elector.

(7) It does not matter that a period of 12 months referred to in this section may have begun before the commencement of this section.

(Amended 48 of 1999 s. 16)

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