

**THE LAW SOCIETY OF HONG KONG'S COMMENTS ON THE
EXCHANGES AND CLEARING HOUSES (MERGER) BILL**

Interpretation - "shares" is defined to include securities. This does not seem to make sense as regards Section 22 (HKSCC becoming a company limited by shares). Nor does it seem necessary for the purposes of Schedule 1, which imposes restrictions on shares held by controllers, since controller is defined in relation to the exercise of voting rights at a general meeting of a company.

Section 4(6) - the reference to individuals committing the offence must be an error since the offence would be committed by the company concerned.

Section 6 - this requires a person to obtain the consent of the SFC in order to become a minority shareholder controller. The test for being such a controller is not the same as the (wider) test set out in the Shareholding Article in the Articles of Association of HKEC as summarised in the Documents sent to shareholders of the two Exchanges in connection with the merger. In view of the provisions of Section 6, the Shareholding Article appears unnecessary and liable to create confusion.

There should be a time limit within which the SFC must give or refuse its consent to a person becoming a minority shareholder controller. As regards HKEC, which will be a listed company, it seems problematic for SFC approval to be needed for any increase in the holding of a minority shareholder controller. This would prevent any dealings in the shares by such a person. Instead, it would be better if approval was needed only to cross certain percentage thresholds eg 5%, 10%, 15% etc.

Section 7 - it is not clear why the Financial Secretary is given the power to grant exemptions from Section 3 (recognition of exchange controller etc). To the extent that transitional provisions are required in relation to the existing exchanges and their clearing houses, this can be dealt with in Part VI without needing Section 7.

Section 12 - in Section 12(2), the reference to "controller" is incorrect and should read "recognized exchange controller". The same comment applies in Section 14. (Controller is itself a defined term in Section 2 with a meaning different from recognized exchange controller).

Section 13 - it does not seem that "listed company" is defined in s2(1) of the SFC Ordinance (either as currently drafted or as incorporating the consequential amendments set out in the Bill).

Section 14 - this provides for the SFC to issue a notice requiring steps to be taken to prevent conflicts of interest. Failure to comply with the notice is a criminal offence, and there is no defence of "due diligence" or of matters being beyond the control of the recognized exchange controller. Also, it seems that the reference to the offence being committed by individuals is not right, as the recognized exchange controller must be a company.

Section 22 - this assumes that a special resolution for converting HKSCC into a company limited by shares shall have been passed prior to Section 22 coming into force. However, such conversion cannot be effected by special resolution, but only by legislation. It does not seem that the legislation should have retrospective effect to validate a prior resolution which would have been ineffective when passed. In fact, the legislation could simply convert HKSCC into a company limited by shares without any resolution being passed.

Schedule 2

Commodities Trading Ordinance/Securities Ordinance

It may be confusing to use, in these Ordinances, two different definitions of “exchange participant”, with a third different definition of this term being used for the purposes of the SFC Ordinance and the Bill.

Stock Exchanges Unification Ordinance

Further changes to this legislation to avoid duplication and inconsistencies in the overall legislative regime would be welcome. In particular, Section 27A is similar but not identical to the obligations of the recognized exchange controller under Section 8 of the Bill.

The Securities Law Committee

The Law Society of Hong Kong

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