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EXCHANGES AND CLEARING HOUSES (MERGER) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) In subclause (2), by deleting “This” and substituting “Subject to subsection (3), this”.</p> <p>(b) By adding -</p> <p>“(3) Section 22(1) and (2) shall come into operation on the day this Ordinance is published in the Gazette.”.</p>
2	<p>(a) In subclause (1) -</p> <p>(i) in the definition of “associate” -</p> <p>(A) in paragraph (a) -</p> <p>(I) by adding “subject to <u>paragraph (c),</u>” before “means”;</p> <p>(II) by deleting “and” at the</p>

end;

(B) by deleting paragraph (b) and substituting -

“(b) subject to paragraph (c), includes a person, or a person belonging to a class of persons, specified in Part 1 of Schedule 1 to be an associate for the purposes of this Ordinance;

(c) excludes a person, or a person belonging to a class of persons, specified in Part 2 of Schedule 1 not to be an associate for the purposes of this Ordinance;”;

(ii) by deleting the definition of “indirect controller” and substituting -

““indirect controller” (),

in relation to a company -

(a) subject to paragraph (b), 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;

(b) excludes a person, or a person belonging to a class of persons, specified in Part 3 of Schedule 1 not to be an indirect controller for the purposes of this Ordinance;”;

(iii) by deleting the definition of “working day”.

(b) By deleting subclause (2).

(c) In subclause (6), by deleting “(2) or”.

3

(a) In subclause (5) (b), by deleting “all due” and substituting “reasonable”.

(b) By adding -

“(6A) Without prejudice to the generality of steps referred to in subsection (6) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing

to the Commission by that person.”.

(c) In subclause (11), by deleting “all due” and substituting “reasonable”.

(d) In subclause (12), by deleting “Schedule 1” and substituting “Schedule 2”.

4

(a) By adding -

“(2A) Without prejudice to the generality of steps referred to in subsection (1) (ii) which may be specified in a notice under that subsection to be served on a company referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that company.”.

(b) By deleting subclause (7) and substituting -

“(7) It shall be a defence for a person charged with an offence under subsection (6) to prove that the person exercised reasonable diligence to comply with the notice under subsection (1) to which the offence relates.”.

(c) In subclause (8), by deleting “Schedule 1” and substituting “Schedule 2”.

6

(a) In subclause (1) -

(i) in paragraph (a), by adding “subject to paragraph (b),” before “means”;

(ii) by deleting paragraph (b) and

substituting -

“(b) does not include -

- (i) a recognized exchange controller; or
- (ii) a person, or a person belonging to a class of persons, specified in Schedule 3 not to be a minority controller for the purposes of this Ordinance.”.

(b) By deleting subclause (2) and substituting -

“(2) Subject to subsection (12), on and after the commencement of this section a person shall not -

- (a) 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;
- (b) if such approval is given, and subject to any condition specified in the approval disapplying this paragraph in

whole or in part, 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.”.

(b) In subclause (4) -

(i) by deleting paragraph (a) and substituting -

“(a) in the case of subsection (3) (a), that the person -

(i) did not know that the acts or circumstances by virtue of which the person became a minority controller, or increased the interest the person has as a minority controller, as the case may be, of the recognized exchange controller, Exchange Company or clearing house concerned were such as to have that

effect; or

- (ii) exercised reasonable diligence to avoid contravening subsection (2);”;

(ii) in paragraph (b), by deleting “all due” and substituting “reasonable”.

(c) By adding -

“(5A) Without prejudice to the generality of steps referred to in subsection (5) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.”.

(d) In subclause (10), by deleting “all due” and substituting “reasonable”.

(e) In subclause (11), by deleting “Schedule 1” and substituting “Schedule 2”.

7(4) By deleting “all due” and substituting “reasonable”.

8 (a) By deleting subclause (1) and substituting -

“(1) It shall be the duty of a recognized exchange controller which is the controller of an Exchange Company or clearing house to ensure, so far as is reasonably practicable -

- (a) an orderly and fair market in securities or futures contracts traded on or through the Exchange Company;
- (b) that risks are managed prudently;
- (c) 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.”.

(b) In subclause (3) -

- (i) by adding “(including any member of the board of directors of the recognized exchange controller)” after “behalf of a recognized exchange controller”;
- (ii) by adding “, including that subsection as read with subsection (2)” after “subsection (1)”.

10

- (a) In subclause (3), by adding “(together with its reasons for the refusal)” after “refuse to give its approval”.
- (b) In subclause (5), by deleting “on the advice of the Commission and generally or in a particular case” and substituting “after consultation with the Commission and the recognized exchange controller

concerned”.

15(2) (a) By adding “, if any,” after “competition”.

16 By adding “, 2 or 3” after “Schedule 1”.

18 By deleting the definitions of “HKFE”, “HKFECC”, “SEHK” and “SEOCH”.

20 By deleting the clause and substituting -

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

(1) Notwithstanding any enactment or rule of law, 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.

(2) A member of the board of directors of the HKEC who is such a member by virtue of an appointment under subsection (1) 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 By deleting the clause.

22 (a) In subclause (3) -

(i) by deleting paragraph (b) and substituting -

“(b) the shares of HKSCC shall be issued to the HKEC and any nominee of the HKEC in accordance with the directions of the HKEC and by the person specified in those directions.”;

(ii) in paragraph (d) (ii), by deleting “in a” and substituting “substantially in conformity with the guarantee referred to in subparagraph (i) to the satisfaction of the Commission or in another”;

(iii) in paragraph (e), by deleting “5 working” and substituting “7”.

(b) In subclause (4), by adding -

“(ca) section 57B of the Companies Ordinance (Cap. 32) shall not apply to an issue of shares made pursuant to subsection (3) (b).”.

24 By deleting “Schedule 2” and substituting “Schedule 4”.

New By adding immediately after clause 24 the following -

”SCHEDULE 1 [ss. 2(1) & 16]

SPECIFICATION OF PERSONS WHO ARE ASSOCIATES,
SPECIFICATION OF PERSONS WHO ARE NOT
ASSOCIATES, AND SPECIFICATION OF
PERSONS WHO ARE NOT INDIRECT
CONTROLLERS, FOR THE
PURPOSES OF THIS
ORDINANCE

PART 1

SPECIFICATION OF PERSONS WHO ARE ASSOCIATES
FOR THE PURPOSES OF THIS ORDINANCE

PART 2

SPECIFICATION OF PERSONS WHO ARE NOT ASSOCIATES
FOR THE PURPOSES OF THIS ORDINANCE

PART 3

SPECIFICATION OF PERSONS WHO ARE NOT INDIRECT
CONTROLLERS FOR THE PURPOSES OF
THIS ORDINANCE

1. Any person in accordance with whose directions or instructions the directors of a company or of another company of which it is a subsidiary are accustomed to act by reason only that they act on advice given by the person in the person’s professional capacity.”.

- Schedule 1
- (a) By deleting “SCHEDULE 1” and substituting “SCHEDULE 2”.
 - (b) In section 1(8), by adding “, unless otherwise specified by the Court of First Instance,” after “shall”.

New By adding immediately after Schedule 1 the following -

”SCHEDULE 3 [ss. 6(1) & 16]
SPECIFICATION OF PERSONS WHO ARE NOT
MINORITY CONTROLLERS FOR THE
PURPOSES OF THIS ORDINANCE

- Schedule 2
- (a) By deleting “SCHEDULE 2” and substituting “SCHEDULE 4”.

- (b) By adding -

**“17A. Approval of amendments to
the constitution, rules of the
Exchange Company, etc.**

Section 14 is amended -

- (a) in subsection (3), by adding
“together with, where paragraph
(b) is applicable, its reasons for
the refusal” after “thereof”;
- (b) in subsection (5), by repealing
“on the advice of the
Commission and either generally
or in a particular case” and

substituting “after consultation with the Commission and the Exchange Company”.”.

(c) In section 44, by repealing paragraphs (b) and (c) and substituting -

“(b) by repealing subsections (2) and (3) and substituting -

“(2) The amount referred to in subsection (1) shall be deposited in respect of a trading right not later than 1 month after that subsection becomes applicable to the trading right.”.”.

(d) By adding -

“63A. Duty to ensure fair market

Section 27A is amended -

(a) in subsection (3) -

(i) by adding “(including any member of the board of directors of the Exchange Company)” after “behalf of the Exchange Company”;

(ii) by adding “, including that subsection as read with subsection (2)” after “subsection

(1)”;

(b) by adding -

“(4) Where a recognized exchange controller is the controller of the Exchange Company and there is, or appears to be, any conflict between the duty imposed on the recognized exchange controller under section 8 of the Exchange and Clearing Houses (Merger) Ordinance (of 2000) and the duty imposed on the Exchange Company under this section, then the first-mentioned duty shall prevail over the second-mentioned duty to the extent of the conflict, and the other provisions of this section shall be construed accordingly.”.”.

(e) By deleting section 65 and substituting -

“65. Rules of the Unified

Exchange

Section 34 is amended -

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

- “(b) to ensure compliance by its exchange participants with financial resources rules and, without derogation from the generality hereof such rules may -

- (i) prescribe the returns to be made by exchange participants, the form of such returns, the information to be included therein and the manner in which such

information is
to be verified;

(ii) provide for
the manner in
which any
assets are to
be valued and
for the
payment by
exchange
participants
of the costs of
valuation;

(iii) prescribe the
manner in
which records
are to be kept
by exchange
participants
of any assets
which may be
taken into
account for
the purposes
of

financial
resources
rules and the
places at
which such
records are to
be
maintained;

(iv) provide for
the inspection
of records by
any duly
authorized
officer of the
Exchange
Company;

(ba) 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 2000),
seeks to be or is a
listed company within
the meaning of that
section; and”;

(b) by adding -

“(2A) The

Financial Secretary may, by
notice in the Gazette, repeal
subsection (1) (b).

(2B) The

Commission may exercise
the power under subsection
(1) (ba) instead of the
Exchange Company.”.

**65A. Commission to approve proposed
rules and amendments to
constitution, etc.**

Section 35(3) is amended by adding”, together
with the reasons for the disallowance” after
“constitution”.”.

(f) By adding -

**“Securities and Futures (Clearing
Houses) Ordinance**

**70A. Rules of recognized clearing
houses, etc.**

Section 4 of the Securities and Futures

(Clearing Houses) Ordinance (Cap. 420) is amended -

- (a) in subsection (7), by adding “together with, where paragraph (b) is applicable, its reasons for the refusal” after “the submission”;
- (b) in subsection (9), by repealing “on the advice of the Commission and either generally or in a particular case” and substituting “after consultation with the Commission and the recognized clearing house concerned”.

Personal Data (Privacy) Ordinance

70B. Interpretation

Section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486) is amended, in the definition of “financial regulator”, by adding -

- “(ea) a recognized exchange controller within the meaning of section 2(1) of the Exchanges and Clearing Houses (Merger) Ordinance (of 2000);”.

- (g) By deleting section 80(b) and substituting -
 - “(b) in paragraph (1) (vi), by repealing “membership costs” and substituting “costs of being an exchange or clearing participant or member”.”.
- (h) In section 82(b), by deleting “exchange participants/membership” and substituting “as an exchange participant/member”.
- (i) By deleting section 85 and substituting -
 - “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/m
ember”;

(II) by repealing
“membership
” where it
twice appears
and
substituting
“being an
exchange
participant/m
ember”;

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

participant/m
ember”;

(C) in item C15(a), by
repealing “for
membership” and
substituting “to be an
exchange
participant/member”;

(D) in item C16(a), by
repealing
“membership” and
substituting “as an
exchange
participant/member”;

(E) in item C17, by
repealing paragraph (a)
and substituting -

“(a) Has the firm
ever been
revoked or
suspended as
an exchange
participant/m
ember of a
stock or

futures
exchange in
Hong Kong
or
elsewhere?
Yes/No”

(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/m
ember”;

(II) by repealing

“membership
” where it
twice appears
and

substituting

“being an
exchange
participant/m
ember”;

(III) by repealing

“became
member” and
substituting

“became
exchange
participant/m
ember”.

(C) in item D23(a), by

repealing “for
membership” and

substituting “to be an
exchange participant/

member”;

(D) in item D24(a), by
repealing
“membership” and
substituting “as an
exchange
participant/member”;

(E) in item D25, by
repealing paragraph (a)
and substituting -

“(a) Has the
corporation
ever been
revoked or
suspended
as an
exchange
participant/
member of
a stock or
futures
exchange in
Hong Kong
or
elsewhere?
Yes/No”

(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 “being an exchange participant/member”;

(iii) in item 17(a), by repealing “for membership” and substituting “to be an exchange participant/member”;

(iv) in item 18(a), by repealing “membership” and substituting “as an exchange participant/member”;

(v) in item 19, by repealing paragraph (a) and

substituting -

“(a) Has the relevant person or a company of which he/she is/was a director or a firm of which he/she is/was a partner even been revoked or suspended as an exchange participant/member of a stock or futures exchange in Hong Kong or elsewhere? Yes/No”.”.

(j) In section 87, by deleting “adding “exchange

participantship or” after “change in”” and substituting “repealing “membership” and substituting “who is an exchange participant or member””.

(k) By deleting section 91 and substituting -

“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/m

ember”;

(II) by repealing

“membership

” where it

twice appears

and

substituting

“being an

exchange

participant/m

ember”;

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

(B) in item C13(a), by
repealing “for
membership” and
substituting “to be an
exchange
participant/member”;

(C) in item C14(a), by
repealing
“membership” and
substituting “as an
exchange
participant/member”;

(D) in item C15, by
repealing paragraph (a)
and substituting -
“(a) Has the
partnership
ever been
revoked or

suspended as
an exchange
participant/m
ember of a
stock or
futures
exchange in
Hong Kong
or
elsewhere?
Yes/No”;

(ii) in Part D -

(A) in item D20 -

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

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

exchange

participant/m

ember”;

(III) by repealing

“became

member” and

substituting

“became

exchange

participant/m

ember”;

(B) in item D21(a), by

repealing “for

membership” and

substituting “to be an

exchange

participant/member”;

(C) in item D22(a), by

repealing

“membership” and

substituting “as an

exchange

participant/member”;

(D) in item D23, by

repealing paragraph (a)

and substituting -

“(a) Has the

corporation
ever been
revoked or
suspended as
an exchange
participant/m
ember of any
stock or
futures
exchange in
Hong Kong
or
elsewhere?
Yes/No”;

(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

“being an

exchange

participant/me

mber”;

(ii) in item 16(a), by repealing

“for membership” and

substituting “or an exchange

participant/member”;

(iii) in item 17(a), by repealing

“membership” and

substituting “as an exchange

participant/member”;

(iv) in item 18, by repealing

paragraph (a) and

substituting -

“(a) Has the relevant

person or

company of

which he/she

is/was a

director or a
firm of which
he/she is/was a
partner ever
been revoked
or suspended as
an exchange
participant/me
mber of a stock
or futures
exchange in
Hong Kong or
elsewhere?
Yes/No”.”.