

GFOX:DMA#15861v7

1st draft: 7.12.99

2nd draft: 13.12.99

3rd draft: 14.12.99

4th draft: 17.12.99

5th draft: 22.12.99

6th draft: 10.1.00

7th draft: 13.1.00

8th draft: 14.1.00

9th draft: 15.1.00

EXCHANGES AND CLEARING HOUSES (MERGER) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services

Clause

Amendment Proposed

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

“(1) In this section, “minority controller” (), in relation

to a recognized exchange controller, Exchange Company or clearing house -

(a) subject to paragraph (b), 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 recognized exchange controller, Exchange Company or clearing house, as the case may be, or of a company of which the recognized exchange controller, Exchange Company or clearing house, as the case may be, is a subsidiary;

(b) does not include -

(i) a recognized exchange controller; or

(ii) a person, or a person belonging to a class of

persons, specified in Part 1 of Schedule 3 not to be a minority controller for the purposes of this Ordinance.

(2) Subject to subsections (2A) and (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.

(2A) The Commission shall not give an approval under subsection (2) (a) or (b) unless it is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(2B) Where the Commission refuses to give an approval under subsection (2) (a) or (b), it shall give notice in writing of its reasons for the refusal to the person concerned.”.

(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 (a) In subclause (4), by deleting “all due” and substituting “reasonable”.

(b) By adding -

“(4A) Without prejudice to the generality of the Financial Secretary’s power under subsection (1), a person is exempt from section 3(1) in the cases specified in Part 2 of Schedule 3.”.

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 or of any committee established by 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)”.

9(4) and (5) By deleting the clause and substituting -

“(4) The recognized exchange controller shall appoint not more than 2 of the members referred to in subsection (2) (b) of whom not less than one shall be a member of the board of directors of the recognized exchange controller who -

(a) is such a member otherwise than by virtue of an appointment under section 20(1); and

(b) is not the chief executive of the recognized exchange controller.”.

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 but subject to subsection (2), 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) The Financial Secretary shall exercise his power under subsection (1) in such a way that, after the annual general meeting of the HKEC held in 2003, the number of members of the board of directors of the HKEC who are such members by virtue of an appointment under that subsection is not more than the number of members of that board who are such members otherwise than by virtue of such an appointment, (but excluding the chief executive of the HKEC).

(3) Subject to subsection (4), 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.

(4) No person appointed under subsection (1) as a member of the board of directors of the HKEC may be removed from that office except -

- (a) pursuant to the order of a court under any enactment or rule of law; or

(b) by the Financial Secretary revoking the person's 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).”.

(c) By adding -

“(5) The Commission may, at the request of the HKSCC, extend the period specified in subsection (3) (e) and whether or not the period has expired.”.

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

A person (“first person”) is not an associate of another person (“second person”) for the purposes of this Ordinance insofar as -

(a) the first person or second person is

a clearing house (or its nominee) acting in its capacity as such;

(b) the first person is the chairman of a general meeting of a company entitled to exercise voting rights in the company due to his appointment as a proxy by the second person where the appointment -

(i) is for that meeting only; and

(ii) does not involve any valuable consideration; or

(c) the first person and the second person are persons who have appointed the chairman of the general meeting of a company as a proxy to exercise voting rights in the company where each appointment -

(i) is for that meeting only; and

(ii) does not involve any valuable consideration.

PART 3

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

A person is not an indirect controller for the purposes of this Ordinance insofar as the person is a 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 subsection (2) -
 - (i) in paragraph (d), by deleting “otherwise.” and substituting “otherwise;”;
 - (ii) by adding -
 - “(e) that the holder of the shares shall cause the shares to be transferred to a nominee of the Commission specified in the notice and within the period specified in the notice.”.
- (c) In section 1(8), by adding”, unless otherwise specified by the Court of First Instance,” after “shall”.
- (d) By adding -
 - “(12)It is hereby declared that the

operation of subsection (2) (b) or (e) shall not of itself cause any person to contravene section 3(1) or 6(2).”.

(e) In section 2(1) -

(i) by deleting paragraphs (a) and (b) and substituting -

“(a) exercises or purports to exercise any right to dispose of any shares, or of any right to be issued with any such shares, knowing that to do so contravenes any restrictions under section 1(2) to which the shares are subject;

(b) votes in respect of any such shares as holder or proxy knowing that to do so contravenes any such restrictions;

(ba) appoints a proxy in respect of any such shares knowing that to vote in respect of any such shares would contravene any such restrictions;”;

(ii) in paragraph (c), by deleting “proxy; or” and substituting “proxy;”;

(iii) in paragraph (d), by deleting “or (4),”

and substituting “or (4); or”;

(iv) by adding -

“(e) without reasonable excuse, fails to comply with a restriction under section 1(2) (e) to which any such shares are subject.”.

(f) In section 3, by adding -

“(1A) Where a person is or may become a prohibited person in respect of a company, the Commission shall serve on the company a copy of the notice concerned under section 3(6) or 4(1) of this Ordinance.”.

New

By adding immediately after Schedule 1 the following -

“SCHEDULE 3 [ss. 6(1), 7(4A) & 16]

PERSONS WHO ARE NOT MINORITY CONTROLLERS
AND EXEMPTION FROM SECTION 3(1)
OF THIS ORDINANCE

PART I

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

A person is not a minority controller for the purposes of this Ordinance insofar as the person is -

- (a) a clearing house (or its nominee) acting in its capacity as such; or
- (b) the chairman of a general meeting of a

company entitled to exercise voting rights in the company due to his appointment as a proxy where the appointment -

- (i) is for that meeting only; and
- (ii) does not involve any valuable consideration.

PART 2

EXEMPTION FROM SECTION 3(1) OF THIS ORDINANCE

A person is exempt from section 3(1) of this Ordinance insofar as the person is -

- (a) a clearing house (or its nominee) acting in its capacity as such; or
- (b) the controller of a company by virtue only of being the chairman of a general meeting of the company entitled to exercise voting rights in the company due to his appointment as a proxy where the appointment -
 - (i) is for that meeting only; and
 - (ii) does not involve any valuable consideration.”.

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 or of any committee established by 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 Secretary for Financial
Services 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/member”;

(II) by repealing

“membership” where it
twice appears and
substituting “being an
exchange
participant/member”;

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

(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/member 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/member”;

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

member”;

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

(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/member”;

(II) by repealing “membership”

where it twice appears and

substituting “being an

exchange

participant/member”;

(III) by repealing “became

member” and substituting

“became exchange

participant/member”;

(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/member 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/member”;

(II) by repealing “membership”

where it twice appears and

substituting “being an

exchange

participant/member”;

(III) by repealing “became

member” and substituting

“became exchange

participant/member”;

(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/member

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/member”;

(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

/member of a stock

or futures exchange

in Hong Kong or

elsewhere?

Yes/No”.”.