

Bills Committee on Securities and Futures Legislation (Provision of False Information) Bill 2000

The Law Society expressed its concerns on certain provisions in the Bill and its paper dated 15 March 2000.

At a meeting between representatives of the Law Society's Securities Law Committee and the Securities & Futures Commission ("SFC") on 30 March 2000 discussion took place on the Society's submissions on the Bill to ascertain what common ground could be identified in relation to the Law Society concerns.

A. Areas of concern

1. Type of Information – oral or written, information provided formally or informally

The SFC indicated that they would not be prepared only to have written information covered under the provisions.

2. "Belief" in truth, accuracy and completeness

The SFC have indicated that they are prepared to recommend that, instead of the positive belief wording and the requirement for "complete" information, the legislation should (in principle, subject to refining the drafting) cover statements which are:

"knowingly or recklessly false, or misleading, in a material particular."

(For the avoidance of doubt, a statement may be misleading because of an omission in respect of that statement.)

The SFC does not accept the concept of "knowingly false or misleading" by itself. In relation to "*recklessly*" the definition would at least be consistent with that in other Hong Kong legislation as well as in other jurisdictions.

3. The offence may be committed by any person

The SFC maintains its stance that the provision represents a level "playing field in the market" and it is not prepared to restrict the provision only to "registered persons".

4. Relationship with existing offence – Section 56(A) (4)

The SFC have agreed that the new provisions should not be capable of "*being a back door way of widening existing offences*".

B. Observations

The Law Society re-iterates its concerns that the provisions in the Bill go further than in other comparable jurisdictions, applying not just to information given to fulfil statutory requirements, but also to any information as long as it is relevant to the regulators' functions. This could apply, for example, to meetings and telephone calls in the context of a fast moving corporate financial transaction. If a lawyer has passed on information from the client without checking it, there is still a risk that the regulators would regard this as "reckless".

It would be more satisfactory to define clearly the circumstances in which the provisions of "*false or misleading information to the regulators*" would be criminal and to limit those circumstances to matters such as written or oral information provided in the context of **formal inquiries**, applications for licensing, etc. documents such as financial return.

C. Conclusion

The Law Society, although not satisfied with the Bill, acknowledges that on balance the compromises by the SFC in paragraphs A2 above, remove the Law Society's *principal objection* to the Bill's contents.

**The Law Society of Hong Kong
The Securities Law Committee
24 May 2000**