

C033-e

Amend the Securities and Futures Commission Ordinance, the Commodities Trading Ordinance, the Stock Exchanges Unification Ordinance, the Securities and Futures (Clearing Houses) Ordinance and the Exchanges and Clearing Houses (Merger) Ordinance.

Enacted by the Legislative Council.

PART I

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Securities and Futures Legislation (Provision of False Information) Ordinance 2000.

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

PART II

Amendment of Securities and Futures

Commission Ordinance

2. Section added

The Securities and Futures Commission Ordinance (Cap. 24) is amended by adding---
"56A. Provision of false information

(1) A person who in purported compliance with a requirement imposed by or under any of the relevant Ordinances provides to the Commission any information that--

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(a) he knows to be false, misleading or incomplete in a material particular; or

(b) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(2) Subject to subsection (3), a person who in circumstances other than those mentioned in subsection (1) provides to the Commission any information that---

(a) is relevant to or is connected with the performance of a function of the Commission under this Ordinance; and

(b) either---

(i) he knows to be false, misleading or incomplete in a material particular; or

(ii) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(3) In the prosecution of an offence under subsection (2), the prosecution shall, in addition to any other matters it is required to prove to obtain a conviction for that offence, also be required to prove for such conviction that---

(a) the Commission has relied on the information to which the offence relates (but it shall not be necessary to prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or

(b) the defendant---

(i) knew that the Commission might rely on or intended that the Commission rely on the information; or

(ii) was reckless as to whether the Commission would rely on the information.

(4) Subsection (1) shall not apply if, in relation to a provision of any of the relevant Ordinances by or under which a requirement to provide any information is imposed, there is a provision in that Ordinance making it an offence for a person to provide any false, misleading or incomplete information in purported compliance with the requirement or a provision to similar effect."

3. Penalties for offences

Section 61 is amended by adding---

"(3) Any person who commits an offence under section 56A(1) is liable---

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

(b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(4) Any person who commits an offence under section 56A(2) is liable---

(a) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 6 months;

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months."

PART III

Amendment of Commodities Trading Ordinance

4. Interpretation

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

" "function" (職能) includes power and duty;"

5. Section added

The following is added---

"109A. Provision of false information

(1) A person who in purported compliance with a requirement imposed by or under this Ordinance or any other enactment provides to the Exchange Company any information that---

(a) he knows to be false, misleading or incomplete in a material particular; or

(b) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(2) Subject to subsection (3), a person who in circumstances other than those mentioned in subsection (1) provides to the Exchange Company any information that---

(a) is relevant to or is connected with the performance of a function of the Exchange Company under this Ordinance or any other enactment; and

(b) either---

(i) he knows to be false, misleading or incomplete in a material particular; or

(ii) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(3) In the prosecution of an offence under subsection (2), the prosecution shall, in addition to any other matters it is required to prove to obtain a conviction for that offence, also be required to prove for such conviction that---

(a) the Exchange Company has relied on the information to which the offence relates (but it shall not be necessary to prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or

(b) the defendant---

(i) knew that the Exchange Company might rely on or intended that the Company rely on the information; or

(ii) was reckless as to whether the Company would rely on the information.

(4) Subsection (1) shall not apply if, in relation to a provision of this Ordinance or any other enactment by or under which a requirement to provide any information is imposed, there is a provision in this Ordinance or in that enactment (as the case may be) making it an offence for a person to provide any false, misleading or incomplete information in purported compliance with the requirement or a provision to similar effect.

(5) (a) Any person who commits an offence under subsection (1) is liable---

(i) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 2 years;

(ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(b) Any person who commits an offence under subsection (2) is liable---

(i) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 6 months;

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months."

PART IV

Amendment of Stock Exchanges Unification Ordinance

6. Interpretation

Section 2(1) of the Stock Exchanges Unification Ordinance (Cap. 361) is amended

by adding---

" "function" (職能) includes power and duty;".

7. Section added

The following is added---

"38A. Provision of false information

(1) A person who in purported compliance with a requirement imposed by or under this Ordinance or any other enactment provides to the Exchange Company any information that---

(a) he knows to be false, misleading or incomplete in a material particular; or

(b) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(2) Subject to subsection (3), a person who in circumstances other than those mentioned in subsection (1) provides to the Exchange Company any information that---

(a) is relevant to or is connected with the performance of a function of the Exchange Company under this Ordinance or any other enactment; and

(b) either---

(i) he knows to be false, misleading or incomplete in a material particular; or

(ii) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(3) In the prosecution of an offence under subsection (2), the prosecution shall, in addition to any other matters it is required to prove to obtain a conviction for that offence, also be required to prove for such conviction that---

(a) the Exchange Company has relied on the information to which the offence relates (but it shall not be necessary to prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or

(b) the defendant---

(i) knew that the Exchange Company might rely on or intended that the Company rely on the information; or

(ii) was reckless as to whether the Company would rely on the information.

(4) Subsection (1) shall not apply if, in relation to a provision of this Ordinance or any other enactment by or under which a requirement to provide any information is imposed, there is a provision in this Ordinance or in that enactment (as the case may be) making it an offence for a person to provide any false, misleading or incomplete information in purported compliance with the requirement or a provision to similar effect.

(5) (a) Any person who commits an offence under subsection (1) is liable---

(i) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 2 years;

(ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(b) Any person who commits an offence under subsection (2) is liable---

(i) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 6 months;

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months."

PART V

Amendment of Securities and Futures

(Clearing Houses) Ordinance

8. Section added

The Securities and Futures (Clearing Houses) Ordinance (Cap. 420) is amended by adding---

"15A. Provision of false information

(1) A person who in purported compliance with a requirement imposed by or under this Ordinance or any other enactment provides to a recognized clearing house any information that---

(a) he knows to be false, misleading or incomplete in a material particular; or

(b) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(2) Subject to subsection (3), a person who in circumstances other than those mentioned in subsection (1) provides to a recognized clearing house any information that---

(a) is relevant to or is connected with the performance of a function of the clearing house under this Ordinance or any other enactment; and

(b) either---

(i) he knows to be false, misleading or incomplete in a material particular; or

(ii) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(3) In the prosecution of an offence under subsection (2), the prosecution shall, in addition to any other matters it is required to prove to obtain a conviction for that offence, also be required to prove for such conviction that---

(a) the recognized clearing house has relied on the information to which the offence relates (but it shall not be necessary to prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or

(b) the defendant---

(i) knew that the recognized clearing house might rely on or intended that the clearing house rely on the information; or

(ii) was reckless as to whether the clearing house would rely on the information.

(4) Subsection (1) shall not apply if, in relation to a provision of this Ordinance or any other enactment by or under which a requirement to provide any information is imposed, there is a provision in this Ordinance or in that enactment (as the case may be) making it an offence for a person to provide any false, misleading or incomplete information in purported compliance with the requirement or a provision to similar effect.

(5) (a) Any person who commits an offence under subsection (1) is liable---

(i) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 2 years;

(ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(b) Any person who commits an offence under subsection (2) is liable---

(i) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 6 months;

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months."

PART VI

Amendment of Exchanges and Clearing Houses

(Merger) Ordinance

9. Interpretation

Section 2(1) of the Exchanges and Clearing Houses (Merger) Ordinance (12 of 2000) is amended by adding---

" "function" (職能) includes power and duty;"

10. Section added

The following is added in Part V---

"17A. Provision of false information

(1) A person who in purported compliance with a requirement imposed by or under this Ordinance or any other enactment provides to a recognized exchange controller any information that---

(a) he knows to be false, misleading or incomplete in a material particular; or

(b) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(2) Subject to subsection (3), a person who in circumstances other than those

mentioned in subsection (1) provides to a recognized exchange controller any information that---

(a) is relevant to or is connected with the performance of a function of the exchange controller under this Ordinance or any other enactment; and

(b) either---

(i) he knows to be false, misleading or incomplete in a material particular; or

(ii) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

(3) In the prosecution of an offence under subsection (2), the prosecution shall, in addition to any other matters it is required to prove to obtain a conviction for that offence, also be required to prove for such conviction that---

(a) the recognized exchange controller has relied on the information to which the offence relates (but it shall not be necessary to prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or

(b) the defendant---

(i) knew that the recognized exchange controller might rely on or intended that the exchange controller rely on the information; or

(ii) was reckless as to whether the exchange controller would rely on the information.

(4) Subsection (1) shall not apply if, in relation to a provision of this Ordinance or any other enactment by or under which a requirement to provide any information is imposed, there is a provision in this Ordinance or in that enactment (as the case may be) making it an offence for a person to provide any false, misleading or incomplete information in purported compliance with the requirement or a provision to similar effect.

(5) (a) Any person who commits an offence under subsection (1) is liable---

(i) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 2 years;

(ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(b) Any person who commits an offence under subsection (2) is liable---

(i) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 6 months;

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months."

Explanatory Memorandum

The object of this Bill is to amend several Ordinances relating to the regulation of securities and futures markets to introduce offence provisions in relation to the

provision of false information to the relevant regulatory body.

2. Part I provides for preliminary matters such as commencement.

3. Part II amends the Securities and Futures Commission Ordinance (Cap. 24)---
(a) to create an offence for a person to provide false, misleading or incomplete information to the Securities and Futures Commission in purported compliance with a statutory requirement (proposed section 56A(1) at clause 2);
(b) to create an offence for a person to provide false, misleading or incomplete information to the Commission in other circumstances subject to, inter alia, the prosecution proving reliance on the part of the Commission or certain mental element on the part of the defendant (proposed section 56A(2) and (3) at clause 2);
(c) to prescribe penalties for those offences (clause 3).

4. Parts III to VI amend the Commodities Trading Ordinance (Cap. 250), the Stock Exchanges Unification Ordinance (Cap. 361), the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) and the Exchanges and Clearing Houses (Merger) Ordinance (12 of 2000) respectively to add to each Ordinance an offence section similar to that provided in Part II.