

立法會
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**Paper for the House Committee Meeting
of the Legislative Council
on 17 March 2000**

**Legal Service Division Report on
Securities and Futures Legislation
(Provision of False Information) Bill 2000**

Object of the Bill

To amend the Securities and Futures Commission Ordinance (Cap. 24), 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) to make the provision of false, misleading and incomplete information to the relevant authority a criminal offence whether the person is providing the information under a statutory obligation or in other circumstances.

LegCo Brief Reference

2. SU B48/2 issued by the Financial Services Bureau.

Date of First Reading

3. 15 March 2000.

Comments

4. The Bill seeks to introduce criminal offences in relation to

information provided to the respective regulators and companies exercising a regulatory function (i.e. the Securities and Futures Commission, the Stock Exchange of Hong Kong, the Hong Kong Futures Exchange Limited, the clearing houses and the Hong Kong Exchanges and Clearing Limited) whether in compliance with a requirement of any of the relevant Ordinances or in other circumstances.

5. In the context of compliance with a requirement under the relevant Ordinances, an offence is committed when the person provides any information that he either -

- (a) knows to be false, misleading or incomplete in a material particular; or
- (b) does not believe to be true, accurate and complete in every material particular.

6. In other circumstances, the information provided must also be relevant or is connected with the performance of any function and duty or the exercise of any power of the relevant regulator before the "misinformation" as described in paragraph 5 would constitute an offence.

7. To secure a conviction of the offence referred to in paragraph 6 above, the prosecution has the additional burden of proving that -

- (a) the regulator has relied on the information (without the need of proving anybody being misled or having suffered any detriment or loss as a result of such reliance); or
- (b) the accused either knew that the regulator might rely on or intended it to rely on the information or was reckless as to whether the regulator would rely on the information.

8. A person who is guilty of an offence as described in paragraph 5 would be 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 (i.e. \$100,000) and to imprisonment for 1 year.

9. A person who is guilty of an offence in circumstances referred to in paragraph 6 would be 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 (i.e. \$50,000) and to imprisonment for 6 months.

Conclusion

10. The Legal Service Division is seeking clarification from the Administration on the legal and drafting aspects of the Bill. In view of the fact that criminal liability is to be imposed on a wide range of participants in the financial services sector for all reporting and supply of information activities, Members may wish to set up a Bills Committee to study the Bill in detail.

Prepared by

KAU Kin-wah
Assistant Legal Adviser
Legislative Council Secretariat
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