

**立法會**  
**Legislative Council**

LC Paper No. LS69/03-04

**Comparison of provisions governing the proposed Clearing  
and Settlement Systems Appeals Tribunal under  
the Clearing and Settlement Systems Bill and other similar statutory tribunals**

<b>Topics</b>	<b>Proposed Clearing and Settlement Systems Appeals Tribunal (CSSAT) under the Clearing and Settlement Systems Bill</b>	<b>Proposed Deposit Protection Appeals Tribunal (DPAT) under the Deposit Protection Scheme Bill</b>	<b>Securities and Futures Appeals Tribunal (SFAT) under the Securities and Futures Ordinance (Cap. 571) (SFO)</b>	<b>Market Misconduct Tribunal (MMT) under the SFO</b>
Appointment and composition of Tribunal	<p>(a) The Tribunal will consist of the Chairman, and not fewer than 2 persons appointed from a panel of persons who are not public officers.</p> <p>(b) The Chairman, being a judge or former judge of the Court of First Instance or a former justice of Appeal of the Court of Appeal, is to be appointed by the Chief Executive on the Chief Justice's recommendation.</p>	<p>Provisions relating to appointment and composition of DPAT are essentially the same as those applicable to CSSAT, but the following differences are noted:</p> <p>(a) The Chief Executive is required to give notice of each appointment relating to DPAT by notice published in the Gazette. There is no such provision for CSSAT.</p>	<p>(a) The Tribunal shall consist of a chairman and 2 other members appointed from a panel of persons.</p> <p>(b) The chairman of SFAT shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may be reappointed. Panel members shall be appointed for such period as the Chief Executive considers appropriate, and may be reappointed.</p>	<p>(a) The Tribunal shall consist of a chairman and 2 other members.</p> <p>(b) The chairman of MMT shall be appointed for a term of 3 years or appointed to act in relation to any specified proceedings, and may be reappointed. The other 2 members of MMT are appointed to act in relation to any specified proceedings, and may be reappointed.</p>

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	<p>(c) Members of the Tribunal are to be appointed by the Financial Secretary on the recommendation of the Chairman of the Tribunal. The panel of persons from whom members of the Tribunal are to be appointed is appointed by the Chief Executive.</p> <p>(d) The Chairman and panel members of CSSAT shall be appointed for a term not exceeding 3 years and each is eligible for reappointment for such further term as the Chief Executive may specify.</p>	<p>(b) Additional DPATs may be established where the Chief Executive considers appropriate. There is no such provision for CSSAT.</p>	<p>(c) The other 2 members of SFAT are appointed by the Secretary for Financial Services and the Treasury on the recommendation of the chairman of the Tribunal.</p> <p>(d) Additional SFATs may be established where the Chief Executive considers appropriate. There is no such provision for CSSAT.</p> <p>(e) Apart from the above, the appointment and composition of SFAT are essentially the same as CSSAT.</p>	<p>(c) The other 2 members of MMT who are not public officers are appointed by the Chief Executive. Unlike CSSAT, DPAT and SFAT, the ordinary members of a MMT are not appointed from a panel of persons.</p> <p>(d) Additional MMTs may be established where the Chief Executive considers appropriate. There is no such provision for CSSAT.</p> <p>(e) Apart from the above, the appointment and composition of MMT are essentially the same as CSSAT.</p>

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Remuneration of members of Tribunal	Remuneration payable to the Chairman of CSSAT (except where the Chairman is a judge of the Court of First Instance) shall be a charge on the general revenue, and the remuneration payable to the members shall be a charge on the Exchange Fund.	<p>(a) The provision on remuneration payable to the Chairman of DPAT is the same as that applicable to CSSAT.</p> <p>(b) Remuneration payable to members of DPAT is to be a charge on the Deposit Protection Scheme Fund.</p>	Remuneration payable to members of SFAT (with the exception of the chairman who is a judge of the Court of First Instance) shall be a charge on the general revenue.	Provisions on remuneration are the same as those applicable to SFAT.
Procedure and practice of Tribunal	Subject to the provisions in the Clearing and Settlement Systems Bill and rules made by the Chief Justice, the Chairman of CSSAT may determine the procedures and practice of the Tribunal.	Same as CSSAT.	Subject to the provisions of the SFO and rules made by the Chief Justice, the SFAT may, on its own motion or on the application of any of the parties to the review, determine the procedure to be followed in the review.	Same as CSSAT.
Powers of Tribunal	Clause 34 of the Clearing and Settlement Systems Bill is modelled on clause 40 of the Deposit Protection Scheme Bill.	Same as CSSAT.	Similar to CSSAT.	Similar to CSSAT.

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Orders made by Tribunal	The CSSAT may confirm, vary or set aside the decision appealed against, or remit the matter to the decision-maker with any direction that it considers appropriate.	Same as CSSAT.	Similar to CSSAT. However, where the decision concerned is set aside, the SFAT may substitute for the decision any other decision which the Tribunal considers appropriate. There is no such provision for CSSAT.	Since the function of the MMT is to determine whether any market misconduct has taken place rather than review the decision made by another body, the orders made by MMT are different in nature from those made by CSSAT, DPAT and SFAT. Examples of orders made by MMT are an order prohibiting a person to be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation.

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Costs	<p>(a) The CSSAT may order that costs be paid to any party to the review or any person who is required to attend before it for the purpose of the review.</p> <p>(b) Unlike SFAT and MMT, there are no provisions applicable to CSSAT providing for how the costs awarded are recoverable, and whether the award and taxation of costs are to be governed by rules made by the Chief Justice.</p>	Same as CSSAT.	Similar to CSSAT. However, there are 2 provisions which are applicable to SFAT but have not been provided for CSSAT and DPAT. These provisions provide that costs awarded is recoverable as a civil debt and the Rules of the High Court or rules made by the Chief Justice under the SFO apply to the award of costs, and to the taxation of any costs awarded by SFAT.	Similar to SFAT. However, any costs awarded by MMT are a charge on the general revenue.

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Use of evidence provided to Tribunal	The incriminating evidence given by a person to the Tribunal shall not be admissible in evidence against the person in criminal proceedings in a court of law, except where the person is charged with perjury, or giving false statements or declarations, etc.	Same as CSSAT.	Same as CSSAT.	Evidence given by any person at or for the purposes of any market misconduct proceedings shall not be admissible in evidence against that person for any other purposes in any proceedings (civil or criminal) in a court of law brought by or against him, except in civil proceedings before SFAT, civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the market misconduct proceedings, and in criminal proceedings for perjury, or giving false statements or declarations, etc.
Contempt	The Tribunal has the same powers as the Court of First Instance to punish for contempt.	Same as CSSAT.	Same as CSSAT.	Same as CSSAT.

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Appeal	<p>(a) An appeal against the determination of CSSAT may be made to the Court of Appeal on a point of law.</p> <p>(b) The Court of Appeal may affirm, reverse or vary the determination appealed against.</p> <p>(c) The Rules of High Court apply to the appeal to the Court of Appeal.</p>	Same as CSSAT.	<p>(a) Similar to CSSAT, but the Court of Appeal, on hearing an appeal, has the following additional powers which are not provided for CSSAT and DPAT:</p> <p>(i) Where the decision in question is set aside, the Court of Appeal may substitute for the decision any other decision it considers appropriate.</p> <p>(ii) The Court of Appeal may remit the matter in question to the SFAT with the directions it considers appropriate.</p>	<p>(a) An appeal against the finding or determination of the MMT may be made to the Court of Appeal on a point of law, or on a question of fact with the leave of the Court of Appeal.</p> <p>(b) Powers of the Court of Appeal on appeal are similar to those relating to appeal against a SFAT decision.</p>

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	<p>(d) No express provision on whether the lodging of an appeal to the Court of Appeal will operate as a stay of execution of a determination of CSSAT. However, O. 59 r. 13(1)(a) of the Rules of the High Court provides that an appeal to the Court of Appeal shall not operate as a stay of execution of the decision of the court below except so far as the court below or the Court of Appeal may otherwise direct. This rule is applicable to appeal against a CSSAT determination by virtue of clause 37(3) of the Clearing and Settlement Systems Bill.</p>		<p>(b) There is an express provision providing that the lodging of an appeal to the Court of Appeal does not by itself operate as a stay of execution of a SFAT decision unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, etc. as the Court of Appeal considers appropriate.</p>	<p>(c) An express provision providing for no stay of execution on appeal, similar to that provided for SFAT, is provided for MMT.</p>

Prepared by

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