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# Securities and Futures (Amendment) Bill 2011

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# A BILL

## To

Amend the Securities and Futures Ordinance to require listed corporations to disclose inside information to the public and impose civil sanctions for breach of the requirement, to provide the Securities and Futures Commission with direct access to the Market Misconduct Tribunal, to strengthen the Commission's investor education role and to make miscellaneous minor amendments, and to make consequential amendments to subsidiary legislation under that Ordinance.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Securities and Futures (Amendment) Ordinance 2011.
  - (2) This Ordinance (except Part 2) comes into operation on the day on which it is published in the Gazette.
  - (3) Part 2 comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.
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## **Part 2**

### **Disclosure of Inside Information**

#### **Division 1**

#### **Amendments to Securities and Futures Ordinance**

##### **Subdivision 1**

##### **Enactment Amended**

**2. Securities and Futures Ordinance amended**

The Securities and Futures Ordinance (Cap. 571) is amended as set out in Subdivisions 2 and 3.

##### **Subdivision 2**

##### **Part XIVA Added**

**3. Part XIVA added**

After Part XIV—

**Add**

## “Part XIVA

### Disclosure of Inside Information

#### Division 1

#### Interpretation

##### 307A. Interpretation of Part XIVA

(1) In this Part—

*breach of a disclosure requirement* (違反披露規定)—see subsection (2) and section 307G(2);

*derivatives* (衍生工具), in relation to listed securities, means any of the following (whether or not they are listed and regardless of who issued or made them)—

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—
  - (i) the listed securities; or
  - (ii) any rights, options or interests referred to in paragraph (a);
- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of—
  - (i) any rights, options or interests referred to in paragraph (a); or
  - (ii) any contracts referred to in paragraph (b);

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(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—

(i) the listed securities; or

(ii) the rights, options or interests or the contracts;

***inside information*** (內幕消息), in relation to a listed corporation, means specific information that—

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation;  
or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities;

***listed*** (上市) means listed on a recognized stock market—  
see also subsection (3);

***listed corporation*** (上市法團) means a corporation which has issued securities that are, at the time of the breach of a disclosure requirement in relation to the corporation, listed;

***listed securities*** (上市證券) means—

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- (a) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have been issued by the corporation and are listed;
- (b) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed; or
- (c) securities which, at the time of a breach of a disclosure requirement in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

*securities* (證券) means—

- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

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- (d) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities; or
- (e) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 392 as being regarded as securities in accordance with the terms of the notice;

***Tribunal*** (審裁處) means the Market Misconduct Tribunal established by section 251.

- (2) For the purposes of this Part—
  - (a) a breach of a disclosure requirement takes place if any of the requirements in section 307B or 307C is contravened in relation to a listed corporation; and
  - (b) in those circumstances, the listed corporation is in breach of the disclosure requirement.

**Note—**

Section 307G(2) provides that, in certain circumstances, an officer of a listed corporation may also be in breach of a disclosure requirement.

- (3) For the purposes of this Part, securities listed on a recognized stock market are to continue to be regarded as listed during any period of suspension of dealings in those securities on that market.

## **Division 2**

### **Disclosure of Inside Information**

#### **307B. Requirement for listed corporations to disclose inside information**

- (1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.
- (2) For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if—
  - (a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and
  - (b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.
- (3) Without limiting subsection (1), a listed corporation fails to disclose the inside information required under that subsection if—
  - (a) the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
  - (b) an officer of the corporation knows or ought reasonably to have known that, or is reckless or negligent as to whether, the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.
- (4) This section is subject to sections 307C, 307D, 307E and 307F.

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**307C. Manner of disclosure**

- (1) A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed.
- (2) Without limiting the manner of disclosure permitted under subsection (1), a listed corporation complies with that subsection if it has disseminated the inside information required to be disclosed under section 307B through an electronic publication system operated by a recognized exchange company for disseminating information to the public.

**307D. Exceptions to disclosure requirement**

- (1) A listed corporation is not required to disclose any inside information under section 307B if and so long as the disclosure is prohibited under, or would constitute a contravention of a restriction imposed by, an enactment or an order of a court.
- (2) A listed corporation is not required to disclose any inside information under section 307B if and so long as—
  - (a) the corporation takes reasonable precautions for preserving the confidentiality of the information;
  - (b) the confidentiality of the information is preserved; and
  - (c) one or more of the following applies—
    - (i) the information concerns an incomplete proposal or negotiation;
    - (ii) the information is a trade secret;
    - (iii) the information concerns the provision of liquidity support from the Exchange Fund

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- established by the Exchange Fund Ordinance (Cap. 66) or from an institution which performs the functions of a central bank (including such an institution of a place outside Hong Kong) to the corporation or, if the corporation is a member of a group of companies, to any other member of the group;
- (iv) the disclosure is waived by the Commission under section 307E(1), and any condition imposed under section 307E(2) in relation to the waiver is complied with.
- (3) For the purposes of subsection (2)—
- (a) a listed corporation has not failed to take reasonable precautions for preserving the confidentiality of any inside information only because the corporation has, in the ordinary course of business, disclosed the information to any person who—
- (i) requires the information to perform the person's functions in relation to the corporation; and
- (ii) by virtue of any enactment, rule of law, contract, or the articles of association of the corporation, is under a duty to the corporation not to disclose the information to any other person; and
- (b) in those circumstances, the confidentiality of the information is to be regarded as having been preserved.
- (4) Despite subsection (2)(b), a listed corporation is not in breach of a disclosure requirement in respect of inside information the confidentiality of which is not preserved if—



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- (a) the corporation has taken reasonable measures to monitor the confidentiality of the information; and
- (b) the corporation discloses the information in accordance with section 307C as soon as reasonably practicable after the corporation becomes aware that the confidentiality of the information has not been preserved.

**307E. Waiver**

- (1) The Commission may, on an application by a listed corporation, grant a waiver in relation to the disclosure of any inside information required to be disclosed under section 307B if the Commission is satisfied that the disclosure—
  - (a) is prohibited under, or would constitute a contravention of a restriction imposed by, the legislation of a place outside Hong Kong;
  - (b) is prohibited under, or would constitute a contravention of a restriction imposed by, an order of a court exercising jurisdiction under the law of a place outside Hong Kong;
  - (c) would constitute a contravention of a restriction imposed by a law enforcement agency of a place outside Hong Kong; or
  - (d) would constitute a contravention of a restriction imposed by a government authority of a place outside Hong Kong in the exercise of a power conferred by the legislation of that place.
- (2) The Commission may grant a waiver under subsection (1) subject to any condition that it considers appropriate to impose.

**307F. Commission may make rules to prescribe circumstances in which disclosure requirement does not apply**

- (1) The Commission may, if it considers it is in the public interest to do so, make rules to prescribe the circumstances in which a listed corporation is not required to disclose any inside information under section 307B.
- (2) The Commission must consult the Financial Secretary before making rules under subsection (1).
- (3) Section 307B does not apply in the circumstances prescribed by rules made under subsection (1).

**307G. Duty of officers of listed corporations**

- (1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.
- (2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation—
  - (a) whose intentional, reckless or negligent conduct has resulted in the breach; or
  - (b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,is also in breach of the disclosure requirement.

### **Division 3**

## **Disclosure Proceedings in Market Misconduct Tribunal**

### **307H. Jurisdiction of Tribunal under this Part**

The Tribunal has jurisdiction to hear and determine in accordance with this Part, Part XIII and Schedule 9 any question or issue arising out of or in connection with any proceedings instituted under section 307I.

### **307I. Institution of disclosure proceedings**

- (1) If it appears to the Commission that a breach of a disclosure requirement has or may have taken place, the Commission may institute proceedings (*disclosure proceedings*) in the Tribunal concerning the matter.
- (2) The Commission institutes disclosure proceedings by giving the Tribunal a notice in writing containing a statement specifying the matters prescribed in Schedule 9.

### **307J. Object and conduct of disclosure proceedings**

- (1) Without limiting section 307H, the object of disclosure proceedings is for the Tribunal to determine—
  - (a) whether a breach of a disclosure requirement has taken place; and
  - (b) the identity of any person who is in breach of the disclosure requirement.
- (2) Subject to section 261(3), the standard of proof required to determine any question or issue before the Tribunal in disclosure proceedings is the standard of proof applicable to civil proceedings in a court of law.

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- (3) Sections 253 and 254 apply to disclosure proceedings as if a reference in those sections to proceedings instituted under section 252 were a reference to disclosure proceedings.

**307K. Right to be heard**

Before the Tribunal—

- (a) identifies a person under section 307J(1)(b); or
- (b) makes an order under section 307N(1) in respect of a person,

the Tribunal must give the person a reasonable opportunity of being heard.

**307L. Use of evidence received for purposes of disclosure proceedings**

- (1) Despite any other provision of this Ordinance, evidence given by any person at or for the purposes of any disclosure proceedings (including any material, record or document received by the Tribunal from the person or produced to the Tribunal by the person under section 253, and any record or document or information given, provided, produced or disclosed to the Tribunal by the person under section 254)—
- (a) is admissible in evidence for all the purposes of this Part, including in the disclosure proceedings, any proceedings (civil or criminal) arising out of the disclosure proceedings and any action brought under section 307Z(1); but
  - (b) subject to subsection (2), is not admissible in evidence against the person for any other purposes in any other proceedings (civil or criminal) in a court of law brought by or against the person.

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- (2) Evidence referred to in subsection (1) is admissible in evidence against the person—
- (a) in civil proceedings instituted under or pursuant to Part XI;
  - (b) in civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the disclosure proceedings; or
  - (c) in criminal proceedings where the person is charged with an offence under section 219(2)(a), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of answers given by the person to questions put to the person at or for the purposes of the disclosure proceedings.

**307M. Privileged information**

Nothing in this Part, Part XIII or Schedule 9 requires an authorized financial institution, acting as the banker or financial adviser of a person whose conduct is the subject, whether wholly or in part, of any disclosure proceedings, to disclose information as to the affairs of any of its customers other than that person.

**307N. Orders of Tribunal**

- (1) Subject to section 307K, at the conclusion of any disclosure proceedings the Tribunal may make one or more of the following orders in respect of a person identified under section 307J(1)(b) as being in breach of a disclosure requirement—
- (a) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance—

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- (i) be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation; or
  - (ii) in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation;
- (b) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;
- (c) an order that the person must not again perpetrate any conduct that constitutes a breach of a disclosure requirement;
- (d) if the person is a listed corporation or is in breach of the disclosure requirement as a director or chief executive of a listed corporation, an order that the person pay to the Government a regulatory fine not exceeding \$8,000,000;
- (e) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings;
- (f) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Commission the sum the Tribunal considers

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appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—

- (i) the proceedings;
  - (ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or
  - (iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings;
- (g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against the person;
- (h) if the person is a listed corporation, any order that the Tribunal considers necessary to ensure that a breach of a disclosure requirement does not again take place in respect of the corporation including, but not limited to, an order that the corporation appoint an independent professional adviser approved by the Commission to review the corporation's procedure for compliance with this Part or to advise the corporation on matters relating to compliance with this Part;
- (i) if the person is an officer of a listed corporation, any order that the Tribunal considers necessary to ensure that the officer does not again perpetrate any conduct that constitutes a breach of a disclosure requirement including, but not limited to, an order that the officer undergo a training program approved by the Commission on compliance with this Part, directors' duties and corporate governance.

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- (2) When making an order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—
- (a) previously resulted in the person being convicted of an offence in Hong Kong;
  - (b) previously resulted in the person being identified by the Tribunal—
    - (i) under section 252(3)(b) as having engaged in any market misconduct; or
    - (ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or
  - (c) at any time before the commencement of Part XIII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.
- (3) The Tribunal must not impose a regulatory fine on a person under subsection (1)(d) unless, in all the circumstances of the case, the fine is proportionate and reasonable in relation to the breach of the disclosure requirement. For that purpose, the Tribunal may take into account, in addition to any conduct referred to in subsection (2), any of the following matters—
- (a) the seriousness of the conduct that resulted in the person being in breach of the disclosure requirement;
  - (b) whether or not that conduct was intentional, reckless or negligent;
  - (c) whether that conduct may have damaged the integrity of the securities and futures market;



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- (d) whether that conduct may have damaged the interest of the investing public;
  - (e) whether that conduct resulted in any benefit to the person or any other person, including any profit gained or loss avoided;
  - (f) the person's financial resources.
- (4) An order made under subsection (1)(a) may specify a corporation by name or by reference to a relationship with any other corporation.
- (5) Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the taxation of any sum ordered under subsection (1)(e) or (f) for costs reasonably incurred in relation or incidental to the proceedings.
- (6) In this section—  
*chief executive* (最高行政人員) has the meaning given by section 308(1).

**307O. Notice and effect of orders of Tribunal**

- (1) The Tribunal must by notice in writing notify a person of an order made in respect of the person under section 307N(1).
- (2) The order takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.
- (3) If the Tribunal makes an order under section 307N(1)(b), the Commission may notify any licensed person or registered institution of the order in any manner the Commission considers appropriate.

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- (4) A person who fails to comply with an order made under section 307N(1)(a), (b) or (c) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

**307P. Costs**

- (1) Subject to subsection (4), at the conclusion of any disclosure proceedings, or as soon as reasonably practicable after the conclusion of the proceedings, the Tribunal may by order award to any of the following persons a sum it considers appropriate in respect of the costs reasonably incurred by the person in relation to the proceedings—
- (a) a person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the proceedings;
  - (b) a person whose conduct is the subject, whether wholly or in part, of the proceedings.
- (2) Any costs awarded under this section are a charge on the general revenue.
- (3) Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under this section.
- (4) Subsection (1)(a) and (b) does not apply to—
- (a) a person who has been identified under section 307J(1)(b) as being in breach of a disclosure requirement;

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- (b) a person whose conduct the Tribunal considers has caused, whether wholly or in part, the Tribunal to investigate or consider the person's conduct during the course of the disclosure proceedings; or
- (c) a person whom the Tribunal considers has by the person's conduct caused, whether wholly or in part, the institution of the disclosure proceedings.

### **307Q. Report of Tribunal**

- (1) After the conduct of any disclosure proceedings, the Tribunal must prepare a written report of the proceedings, which must contain—
  - (a) any determinations under section 307J(1) and orders under section 307N, and the reasons for making the determinations and orders; and
  - (b) any order under section 307P and the reasons for making the order.
- (2) The Tribunal must issue the report prepared under subsection (1)—
  - (a) first by giving a copy of the report to the Commission;
  - (b) then, except where the Tribunal sat in private for the whole or any part of its proceedings, by—
    - (i) publishing the report so that copies of the report are available to the public;
    - (ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings;
    - (iii) where the Tribunal considers appropriate, giving a copy of the report to any body

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which may take disciplinary action against a person who is a member of the body and who is identified under section 307J(1)(b) as being in breach of a disclosure requirement.

- (3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Commission may, if the Commission is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to the public or to a particular person or body in the manner the Commission directs.
- (4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(b) or (3).

**307R. Form and proof of orders of Tribunal**

Section 263 applies to an order of the Tribunal in disclosure proceedings.

**307S. Registration and filing of orders of Tribunal**

- (1) Section 264(1) applies to an order of the Tribunal in disclosure proceedings.
- (2) The Tribunal must file an order made under section 307N(1)(a) with the Registrar of Companies as soon as reasonably practicable after it is made.

**307T. Stay of execution of orders of Tribunal**

On application by a person in respect of whom an order has been made under section 307N or 307P, the Tribunal may by order grant a stay of execution of the order, subject to any conditions as to costs, payment of money into the

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Tribunal or otherwise, as the Tribunal considers appropriate.

**307U. Appeal to Court of Appeal**

- (1) If the Tribunal has made any finding or determination for the purposes of any disclosure proceedings and the Commission, or a person identified under section 307J(1)(b) as being in breach of a disclosure requirement, is dissatisfied with the finding or determination, the Commission or the person may, after the Tribunal has made orders (if any) under section 307N or 307P for the purposes of the proceedings, appeal to the Court of Appeal against the finding or determination—
  - (a) on a point of law; or
  - (b) with the leave of the Court of Appeal, on a question of fact.
- (2) A person in respect of whom an order has been made under section 307N or 307P may appeal to the Court of Appeal against the order.

**307V. Powers of Court of Appeal on appeal**

- (1) In an appeal under section 307U(1), the Court of Appeal may—
  - (a) allow the appeal;
  - (b) dismiss the appeal;
  - (c) vary or set aside the finding or determination and, if the finding or determination is set aside, substitute for the finding or determination any other finding or determination it considers appropriate; or

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- (d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the proceedings afresh for the purpose of determining any question specified by the Court of Appeal.
- (2) In an appeal under section 307U(2), the Court of Appeal may—
    - (a) confirm, vary or set aside the order appealed against; and
    - (b) if the order is set aside, substitute for the order any other order it considers appropriate.
  - (3) If the Court of Appeal varies, or substitutes any other finding, determination or order for a finding, determination or order under subsection (1)(c) or (2)(a) or (b), the finding, determination or order as varied or the other finding, determination or order substituting for the finding, determination or order may be—
    - (a) in the case of subsection (1)(c), any finding or determination (whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or
    - (b) in the case of subsection (2)(a) or (b), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant, whether or not under the same provision as that under which the finding, determination or order has been made.
  - (4) If the Court of Appeal remits a matter to the Tribunal under subsection (1)(d), the Tribunal may be constituted by the same members as, or different members from, those that originally dealt with the matter, unless the Court of Appeal otherwise directs.

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- (5) In an appeal under section 307U, the Court of Appeal may make any order as to costs that it considers appropriate.

**307W. No stay of execution on appeal**

- (1) Without prejudice to section 307T, neither the lodging of an appeal nor the filing of an application for leave to appeal under section 307U by itself operates as a stay of execution of a finding, determination or order of the Tribunal unless the Court of Appeal otherwise orders.
- (2) A stay of execution ordered under subsection (1) may be subject to any conditions as to costs, payment of money into the Tribunal or otherwise, as the Court of Appeal considers appropriate.

**307X. Rules by Chief Justice**

The Chief Justice may make rules—

- (a) providing for the taxation of costs required to be paid under an order referred to in section 307N(1)(e) or (f) and for the award of costs under section 307P and the taxation of those costs;
- (b) regulating the procedure for—
- (i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 307U; and
- (ii) the hearing of appeals under that section;
- (c) requiring the payment of the fees specified in the rules for any matter relating to disclosure proceedings;

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- (d) providing for matters of procedure or other matters relating to disclosure proceedings which are not provided for in this Part, Part XIII or Schedule 9;
- (e) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 9; and
- (f) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

## **Division 4**

### **Civil Liability for Breach of a Disclosure Requirement**

#### **307Y. Interpretation and application**

- (1) In this Division—

*transaction* (交易) includes an offer and an invitation (however expressed).

- (2) Nothing in this Division affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

#### **307Z. Civil liability for breach of a disclosure requirement**

- (1) Subject to subsection (2), a person who is in breach of a disclosure requirement is liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the breach.



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- (2) A person is not liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that the person should be so liable.
- (3) Subsection (1) applies—
  - (a) whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the breach of the disclosure requirement; and
  - (b) whether or not the person who is in breach of the disclosure requirement incurs any other liability (under this Part or otherwise).
- (4) To avoid doubt, a court that has jurisdiction to determine an action brought under subsection (1) may grant an injunction in addition to, or in substitution for, damages, on any terms and conditions that it considers appropriate, if apart from this section the court has jurisdiction to grant an injunction.

**307ZA. Evidentiary provisions**

- (1) In an action brought under section 307Z(1)—
  - (a) the fact that there is a determination by the Tribunal under section 307J(1)(a) that a breach of a disclosure requirement has taken place is admissible in evidence for the purpose of proving that a breach of a disclosure requirement has taken place; and
  - (b) the fact that there is a determination by the Tribunal under section 307J(1)(b) identifying a person as being in breach of a disclosure requirement is admissible in evidence for the purpose of proving that the person is in breach of a disclosure requirement.

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- (2) In an action brought under section 307Z(1), if the fact that there is a determination referred to in subsection (1) is admissible in evidence under that subsection—
- (a) then—
- (i) in the case of a determination referred to in subsection (1)(a), the breach that is the subject of the determination is to be taken, unless the contrary is proved, to have taken place; and
- (ii) in the case of a determination referred to in subsection (1)(b), the person who is the subject of the determination is to be taken, unless the contrary is proved, to be in breach of the disclosure requirement; and
- (b) the contents of either of the following are admissible in evidence for the purpose of identifying the facts on which the determination was based—
- (i) a report of the Tribunal containing the determination and published under section 307Q(2)(b)(i); or
- (ii) a copy of a report of the Tribunal containing the determination and made available under subsection (4).
- (3) Subsection (2)(b) is without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based.
- (4) If, in an action brought under section 307Z(1)—
- (a) the fact that there is a determination referred to in subsection (1) is admissible in evidence under that subsection; and

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(b) a report of the Tribunal containing the determination has not been published under section 307Q(2)(b)(i),

the court may require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (2)(b) and the Tribunal must cause a copy of the report to be made available to the court accordingly.

(5) Nothing in this section limits section 62 of the Evidence Ordinance (Cap. 8).”.

**Subdivision 3**

**Consequential Amendments**

**4. Section 182 amended (Investigations)**

After section 182(1)(c)—

**Add**

“(ca) the Commission has reasonable cause to believe that a breach of a disclosure requirement may have taken place under Part XIVA;”.

**5. Section 245 amended (Interpretation of Part XIII)**

(1) Section 245(1), definition of *Presenting Officer*, after “section 252”—

**Add**

“or any disclosure proceedings”.

(2) Section 245(2)—

**Repeal the definition of *relevant information*.**

(3) Section 245(2)—

**Add in alphabetical order**

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“*inside information* (内幕消息), in relation to a corporation, means specific information that—

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation;  
 or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities;”.

**6. Section 251 amended (Market Misconduct Tribunal)**

(1) Section 251(1)—

**Repeal**

“section 252.”

**Substitute**

“section 252.

**Note—**

The Tribunal also has jurisdiction under Part XIVA—see section 307H.”.

(2) Section 251(4), after “section 252”—

**Add**

“or any disclosure proceedings”.

(3) Section 251(7), after “section 252”—

**Add**

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“or any disclosure proceedings”.

**7. Section 257 amended (Orders, etc. of Tribunal)**

Section 257(2)—

**Repeal paragraph (b)**

**Substitute**

- “(b) previously resulted in the person being identified by the Tribunal—
- (i) under section 252(3)(b) as having engaged in any market misconduct; or
  - (ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or”.

**8. Section 258 amended (Further orders in respect of officers of corporation)**

Section 258(2)—

**Repeal paragraph (b)**

**Substitute**

- “(b) previously resulted in the person being identified by the Tribunal—
- (i) under section 252(3)(b) as having engaged in any market misconduct; or
  - (ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or”.

**9. Section 285 amended (Interpretation of Part XIV)**

(1) Section 285(2)—

**Repeal the definition of *relevant information*.**

(2) Section 285(2)—

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**Add in alphabetical order**

“*inside information* (内幕消息), in relation to a corporation, means specific information that—

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation;  
or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities;”.

**10. Section 303 amended (Penalties)**

Section 303(3)—

**Repeal paragraph (b)****Substitute**

“(b) previously resulted in the person being identified by the Tribunal—

(i) under section 252(3)(b) as having engaged in any market misconduct; or

(ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or”.

**11. Schedule 1 amended (Interpretation and general provisions)**

Schedule 1, Part 1, section 1—

**Add in alphabetical order**

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“*disclosure proceedings* (關於披露的研訊程序) has the meaning given by section 307I(1) of this Ordinance;”.

**12. Schedule 2 amended (Non-delegable functions of Commission)**

Schedule 2, Part 2, after section 2(81)—

**Add**

“(81A) to institute disclosure proceedings under section 307I(1) of this Ordinance;”.

**13. Schedule 9 amended (Market Misconduct Tribunal)**

(1) Schedule 9—

**Repeal**

“& 269]”

**Substitute**

“, 269, 307H, 307I, 307M & 307X]”.

(2) Schedule 9, section 1, definition of *party*—

**Repeal paragraph (b)**

**Substitute**

“(b) any identified person for the proceedings;”.

(3) Schedule 9, section 1, definition of *proceedings*, after “Ordinance”—

**Add**

“or disclosure proceedings”.

(4) Schedule 9, section 1—

**Add in alphabetical order**

“*identified person* (被識辨的人) means—

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- (a) for proceedings instituted under section 252 of this Ordinance, a person whose identity is specified under section 13(b) in the statement for the proceedings as described in section 13;
- (b) for disclosure proceedings, a person whose identity is specified under section 14A(b) in the statement for the proceedings as described in section 14A;”.

(5) Schedule 9, section 11(b)—

**Repeal subparagraph (i)**

**Substitute**

“(i) any identified person for the proceedings; and”.

(6) Schedule 9, after section 14—

**Add**

“14A. The statement required to be contained in a notice given by the Commission under section 307I(2) of this Ordinance must specify—

- (a) the provision or provisions of Part XIVA of this Ordinance by reference to which a person appears to be in breach of a disclosure requirement; and
- (b) the identity of the person, and brief particulars that are sufficient to disclose reasonable information concerning the nature and essential elements of the breach.”.

(7) Schedule 9—

**Repeal section 15**

**Substitute**



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“15. At any time during the conduct of proceedings instituted under section 252 of this Ordinance, the Tribunal may order the Presenting Officer to amend the statement for the proceedings as described in section 13 in any manner the Tribunal considers appropriate, except that—

- (a) there must be no amendment to the identity of the identified person for the proceedings; and
- (b) after the amendment the financial product which is the subject of any market misconduct specified in the statement must remain the same as the financial product which is the subject of the market misconduct originally specified in the statement.

15A. At any time during the conduct of disclosure proceedings, the Tribunal may order the Presenting Officer to amend the statement for the proceedings as described in section 14A in any manner the Tribunal considers appropriate, except that there must be no amendment to the identity of the identified person for the proceedings.”.

(8) Schedule 9—

**Repeal sections 16, 17 and 18**

**Substitute**

“16. To avoid doubt—

- (a) the Tribunal has jurisdiction exercisable by reference to a statement as amended under section 15 in the same manner as it has jurisdiction exercisable by reference to a statement described in section 13; and

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- (b) the Tribunal has jurisdiction exercisable by reference to a statement as amended under section 15A in the same manner as it has jurisdiction exercisable by reference to a statement described in section 14A.
- 17. Despite anything in Part XIII or XIVA of this Ordinance—
  - (a) unless the identity of a person is specified under section 13(b) in a statement as described in section 13 for any proceedings instituted under section 252 of this Ordinance—
    - (i) the person must not be identified in those proceedings under section 252(3)(b) of this Ordinance as having engaged in market misconduct; and
    - (ii) an order must not be made in those proceedings under section 257 or 258 of this Ordinance in respect of the person; and
  - (b) unless the identity of a person is specified under section 14A(b) in a statement as described in section 14A for any disclosure proceedings—
    - (i) the person must not be identified in those proceedings under section 307J(1)(b) of this Ordinance as being in breach of a disclosure requirement; and
    - (ii) an order must not be made in those proceedings under section 307N of this Ordinance in respect of the person.
- 18. Any identified person for proceedings is to be provided with a copy of the statement identifying them as described in section 13 or 14A (as the case may be) and, if the statement has been amended under section 15 or 15A, of

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the statement as so amended, in the manner directed by the Tribunal.”.

- (9) Schedule 9, after section 19—

**Add**

“19A. After the conduct of any disclosure proceedings, where it appears to the Tribunal that a breach of a disclosure requirement has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 307Q(1) of this Ordinance, a recommendation to the Commission to institute disclosure proceedings concerning the matter.”.

- (10) Schedule 9, section 21, after “proceedings”—

**Add**

“instituted under section 252 of this Ordinance”.

- (11) Schedule 9, after section 21—

**Add**

“21A. Without prejudice to a Presenting Officer’s powers and functions under Part XIII or XIVA of this Ordinance, in any disclosure proceedings, the Presenting Officer—

- (a) represents the Commission; and
- (b) must present to the Tribunal any evidence available to the Commission, including any evidence that the Tribunal requests the Presenting Officer to present, and make any submissions, that will enable the Tribunal to reach an informed decision as to whether a breach of a disclosure requirement has taken place and, if so, the nature of the breach.”.

- (12) Schedule 9, section 26(b)—

**Repeal subparagraph (i)**

**Substitute**

“(i) any identified person for the proceedings; or”.

(13) Schedule 9, section 28—

**Repeal**

everything from “a person” to “shall be”

**Substitute**

“an identified person for the proceedings is”.

(14) Schedule 9, section 30—

**Repeal**

“under section 252 of this Ordinance”.

(15) Schedule 9, section 30(a)—

**Repeal subparagraph (i)**

**Substitute**

“(i) any identified person for the proceedings; or”.

(16) Schedule 9, section 32A—

**Repeal**

“under section 252 of this Ordinance”.

(17) Schedule 9, section 33—

**Repeal**

“under section 252 of this Ordinance”.

(18) Schedule 9, section 34, after “Part XIII”—

**Add**

“or XIVA”.

(19) Schedule 9, section 36—

**Repeal**

“under section 252 of this Ordinance”.

(20) Schedule 9, after section 39—

**Add**

“40. The Tribunal may, at any time—

(a) consolidate proceedings; or

(b) order that proceedings be heard together.”.

**14. “Inside information” substituted for “relevant information”**

(1) The following provisions—

(a) section 247(1);

(b) section 248(1);

(c) section 270(1) and (2);

(d) section 271(2), (3), (4), (5) and (8);

(e) section 273(b);

(f) section 287(1);

(g) section 288(1);

(h) section 291(1), (2), (3), (4), (5), (6) and (7);

(i) section 292(2), (3), (4), (5) and (8);

(j) section 294(b)—

**Repeal**

“relevant information” (wherever appearing)

**Substitute**

“inside information”.

(2) The following provisions—

(a) section 248, heading;

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(b) section 288, heading—

**Repeal**

“**relevant information**” (wherever appearing)

**Substitute**

“**inside information**”.

## **Division 2**

### **Amendment to Securities and Futures (Fees) Rules**

**15. Securities and Futures (Fees) Rules amended**

The Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) are amended as set out in section 16.

**16. Schedule 1 amended (Fees prescribed for purposes of section 395(1)(a)(i), (iii) and (iv) of Ordinance)**

Schedule 1, immediately after item 13—

**Add**

**“Fees relating to Part XIVA of Ordinance**

13A. Fee payable on an application for a waiver under section 307E(1) of the Ordinance      \$24,000”.

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## Part 3

### Direct Access to Market Misconduct Tribunal

#### 17. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as set out in this Part.

#### 18. Section 214 amended (Remedies in cases of unfair prejudice, etc. to interests of members of listed corporations, etc.)

Section 214(3)—

**Repeal paragraph (a).**

#### 19. Section 251 amended (Market Misconduct Tribunal)

(1) Section 251(4)—

**Repeal**

“Secretary for Justice”

**Substitute**

“Commission”.

(2) Section 251(5)—

**Repeal**

“legal officer”.

(3) Section 251—

**Repeal subsection (8)**

**Substitute**

“(8) There may be paid to a member of the Tribunal (other than the chairman if he or she is a judge within the meaning of paragraph (a) of the definition of *judge* in section 245(1)) an amount, as a fee for the member’s

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services, that the Financial Secretary considers appropriate, and that amount is a charge on the general revenue.

- (8A) There may be paid by the Commission to a Presenting Officer and to a person appointed to assist a Presenting Officer an amount, as a fee for his or her services, that the Commission considers appropriate.”.

**20. Section 252 amended (Market misconduct proceedings)**

- (1) Section 252—

**Repeal subsections (1) and (2)****Substitute**

“(1) Subject to section 252A, if it appears to the Commission that market misconduct has or may have taken place, the Commission may institute proceedings in the Tribunal concerning the matter.

- (2) The Commission institutes proceedings under this section by giving the Tribunal a notice in writing containing a statement specifying the matters prescribed in Schedule 9.”.

- (2) Section 252(3)—

**Repeal**

“subsection (1)”

**Substitute**

“this section”.

- (3) Section 252—

**Repeal subsections (8), (9) and (10).****21. Section 252A added**

After section 252—



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**Add****“252A. Consent of Secretary for Justice for market misconduct proceedings**

- (1) The Commission must not institute proceedings under section 252 unless it has obtained the consent of the Secretary for Justice.
- (2) The Secretary for Justice may withhold the giving of consent under subsection (1) to proceedings under section 252 in respect of any conduct only if and so long as—
  - (a) proceedings for an offence under Part XIV are contemplated in respect of the same conduct; or
  - (b) proceedings for an indictable offence (other than an offence under Part XIV) are contemplated, or have been instituted, in respect of the same conduct and the institution of proceedings under section 252 would be likely to cause serious prejudice to the investigation or prosecution of that offence.
- (3) To avoid doubt, the consent of the Secretary for Justice under subsection (1) does not preclude proceedings for any offence (other than an offence under Part XIV) in respect of the same conduct.
- (4) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.”.

**22. Section 257 amended (Orders, etc. of Tribunal)**

- (1) Section 257(1)(e)—

**Repeal**

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everything after “by the Government”

**Substitute**

“in relation or incidental to the proceedings;”.

(2) Section 257(1)—

**Repeal paragraph (f)****Substitute**

“(f) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—

(i) the proceedings;

(ii) any investigation of the person’s conduct or affairs carried out before the proceedings were instituted; or

(iii) any investigation of the person’s conduct or affairs carried out for the purposes of the proceedings;”.

**23. Section 261 amended (Contempt dealt with by Tribunal)**

(1) Section 261(2)(a), after “or (f);”—

**Add**

“or”.

(2) Section 261(2)(b)—

**Repeal**

“; or”

**Substitute a full stop.**

(3) Section 261(2)—

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**Repeal paragraph (c).**

(4) Section 261(4)(a)(i)—

**Repeal**

“, 254(6), 257(10) or 258(10)”

**Substitute**

“or 254(6)”.

(5) Section 261(4)(b)—

**Repeal**

“, 254(6), 257(10) or 258(10)”

**Substitute**

“or 254(6)”.

**24. Section 262 amended (Report of Tribunal)**

(1) Section 262(2)(a)—

**Repeal**

“Financial Secretary”

**Substitute**

“Commission”.

(2) Section 262(2)(b)(ii), after “proceedings;”—

**Add**

“and”.

(3) Section 262(2)(b)—

**Repeal subparagraphs (iii) and (iv).**

(4) Section 262(3)—

**Repeal**

“Financial Secretary may, where he”

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**Substitute**

“Commission may, if the Commission”.

(5) Section 262(3)—

**Repeal**

“he directs”

**Substitute**

“it directs”.

**25. Section 266 amended (Appeal to Court of Appeal)**

Section 266(1)—

**Repeal**

“Secretary for Justice” (wherever appearing)

**Substitute**

“Commission”.

**26. Section 307 amended (No further proceedings after Part XIII market misconduct proceedings)**

(1) Section 307—

**Renumber the section as section 307(1).**

(2) After section 307(1)—

**Add**

“(2) Subsection (1) does not apply in relation to any proceedings instituted under section 252 without the consent of the Secretary for Justice under section 252A(1).”.

**27. Schedule 2 amended (Non-delegable functions of Commission)**

Schedule 2, Part 2, section 2—

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**Repeal paragraph (81)****Substitute**

“(81) to institute proceedings in the Market Misconduct Tribunal under section 252(1) of this Ordinance;”.

**28. Schedule 9 amended (Market Misconduct Tribunal)**

(1) Schedule 9, section 1—

**Add in alphabetical order**

“*party* (各方), in relation to proceedings, means—

(a) the Commission; or

(b) any person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13;”.

(2) Schedule 9, section 13—

**Repeal**

“Financial Secretary”

**Substitute**

“Commission”.

(3) Schedule 9, section 14—

**Repeal**

“Financial Secretary”

**Substitute**

“Commission”.

(4) Schedule 9, section 19—

**Repeal**

“Financial Secretary”

**Substitute**

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“Commission”.

(5) Schedule 9—

**Repeal section 21**

**Substitute**

“21. Without prejudice to a Presenting Officer’s powers and functions under Part XIII of this Ordinance, in any proceedings, the Presenting Officer—

(a) represents the Commission; and

(b) must present to the Tribunal any evidence available to the Commission, including any evidence that the Tribunal requests the Presenting Officer to present, and make any submissions, that will enable the Tribunal to reach an informed decision as to whether market misconduct has taken place and, if so, the nature of the market misconduct.”.

(6) Schedule 9, section 22—

**Repeal**

“Secretary for Justice”

**Substitute**

“Commission”.

(7) Schedule 9, after section 32—

**Add**

“32A. At any time after proceedings have been instituted under section 252 of this Ordinance but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings (other than a conference held in accordance with a direction of the chairman under section 30), the

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Commission may withdraw or discontinue the proceedings, or any part of them, by serving written notice of withdrawal or discontinuance on—

- (a) the party in respect of whom the proceedings or part are being withdrawn or discontinued; and
  - (b) the Tribunal.”.
-

## Part 4

### Investor Education

#### 29. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as set out in this Part.

#### 30. Section 4 amended (Regulatory objectives of Commission)

Section 4—

##### Repeal paragraph (b)

##### Substitute

“(b) to promote understanding by the public of financial services including the operation and functioning of the securities and futures industry;”.

#### 31. Section 5 amended (Functions and powers of Commission)

(1) Section 5(1)—

##### Repeal paragraph (i)

##### Substitute

“(i) to enhance the understanding and knowledge of members of the public of financial services including—

(i) the operation and functioning of the securities and futures industry; and

(ii) the benefits, risks and liabilities associated with purchasing financial services including investing in financial products;”.

(2) Section 5(1)(j), after “benefits of”—

##### Add



Part 4

Clause 32

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“purchasing different types of financial services including”.

(3) Section 5(1)—

**Repeal paragraph (k)**

**Substitute**

“(k) to promote understanding by the public of the importance of—

(i) making informed decisions regarding the purchasing of financial services and transactions and activities related to financial products; and

(ii) taking responsibility for those decisions;”.

(4) After section 5(4)(d)—

**Add**

“(da) establish a wholly owned subsidiary of the Commission to facilitate the performance of functions under subsection (1)(i), (j) and (k);”.

**32. Section 10 amended (Delegation and sub-delegation of Commission’s functions)**

After section 10(1)—

**Add**

“(1A) The Commission may delegate any of its functions under section 5(1)(i), (j) or (k) to a wholly owned subsidiary established under section 5(4)(da).”.

**33. Schedule 2 amended (Non-delegable functions of Commission)**

Schedule 2, Part 2, after section 2(1)—

**Add**

“(1A) to establish a wholly owned subsidiary, under section 5(4)(da) of this Ordinance;”.

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## **Part 5**

### **Miscellaneous Amendments**

#### **Division 1**

#### **Miscellaneous Amendments to Securities and Futures Ordinance**

**34. Securities and Futures Ordinance amended**

The Securities and Futures Ordinance (Cap. 571) is amended as set out in this Division.

**35. Section 10 amended (Delegation and sub-delegation of Commission's functions)**

After section 10(2)—

**Add**

“(2A) The Commission may delegate any of its functions under section 17 (investment of funds) or 241 (investment of money forming part of the compensation fund) to a consultant, agent or adviser engaged by the Commission under section 9(3).”.

**36. Section 109 amended (Offence to issue advertisements relating to carrying on of regulated activities, etc.)**

(1) Section 109(1), Chinese text, before “作出”—

**Add**

“(該人)”.

(2) Section 109(1)(a)(i), Chinese text—

**Repeal**

Part 5—Division 1

Clause 37

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“另一人”

**Substitute**

“某人”。

(3) Section 109(1)(a)(ii), Chinese text—

**Repeal**

“另一人”

**Substitute**

“第 (i) 節所指的人”。

**37. Section 134 amended (Modification or waiver of requirements)**

(1) Section 134(6)—

**Repeal**

“by notice published in the Gazette specifying, subject to subsection (7)”

**Substitute**

“subject to subsection (7), publish, by the use of an on-line medium, notice of”。

(2) Section 134(7)—

**Repeal**

“specifying” (wherever appearing)

**Substitute**

“publishing notice of”。

**38. Section 185 amended (Application to Court of First Instance relating to non-compliance with requirements under section 179, 180, 181 or 183)**

Section 185(1)—

**Repeal**

Part 5—Division 1

Clause 39

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“authorized person or the investigator (as the case may be)”

**Substitute**

“Commission”.

**39. Section 194 amended (Disciplinary action in respect of licensed persons, etc.)**

After section 194(6)—

**Add**

“(6A) Where the Commission exercises its power under subsection (1) or (2) against a regulated person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.”.

**40. Section 196 amended (Disciplinary action in respect of registered institutions, etc.)**

After section 196(6)—

**Add**

“(6A) Where the Commission exercises its power under subsection (1) or (2) against a regulated person, the Commission may disclose to the public details of the decision including the reasons for it and any material facts relating to the case.”.

**41. Section 378 amended (Preservation of secrecy, etc.)**

Section 378—

**Repeal subsection (14).**

**42. Section 387A added**

After section 387—

Part 5—Division 1

Clause 43

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**Add****“387A. Civil proceedings by Commission**

The Commission may begin or carry on any civil proceedings by a solicitor or otherwise.”.

**43. Schedule 2 amended (Non-delegable functions of Commission)**

Schedule 2, Part 2, section 2—

**Repeal paragraphs (11) and (80).**

**44. Schedule 10 amended (Savings, transitional, consequential and related provisions, etc.)**

(1) Schedule 10, Part 1, section 76(1)—

**Repeal paragraph (b)**

**Substitute**

“(b) rules 2, 4, 5, 6 (other than rule 6(4)), 6B, 6C, 6D, 6E, 6F and 6G (other than rule 6G(4)) of the repealed Securities Rules;”.

(2) Schedule 10, Part 1, section 76—

**Repeal subsection (2)**

**Substitute**

“(2) Where, prior to the appointed day—

- (a) there arises any of the circumstances described in section 52(2) or (11) of the repealed Securities Ordinance, section 33(1) or (11) of the repealed Commodities Trading Ordinance or rule 6D(1), 6E or 6G(1) of the repealed Securities Rules; and
- (b) no transfer, payment, forfeiture or application for release of the deposit or security (as the case may be) paid, deposited or lodged by the dealer or the

## Part 5—Division 1

## Clause 44

registered financier concerned has been made under any of those sections or rules,

then a transfer, payment, forfeiture or application for release and any subsequent application of the deposit or security may be made under the applicable provisions specified in subsection (1).”.

- (3) Schedule 10, Part 1, section 76(4), after “repealed Commodities Trading Ordinance”—

**Add**

“or the security lodged under section 121K(1) of the repealed Securities Ordinance”.

- (4) Schedule 10, Part 1, section 76(5), after “deposit”—

**Add**

“or security”.

- (5) Schedule 10, Part 1, section 76(6), after “rule 6(5)—

**Add**

“or 6G(5)”.

- (6) Schedule 10, Part 1, section 76(8)—

- (a) After “deposit” (wherever appearing)—

**Add**

“or the security”;

- (b) After “dealer”—

**Add**

“or the registered financier”.

## Part 5—Division 1

Clause 44

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- (7) Schedule 10, Part 1, section 76(9)(a), after “repealed Commodities Trading Ordinance”—

**Add**

“or a security lodged under section 121K(1) of the repealed Securities Ordinance”.

- (8) Schedule 10, Part 1, section 76(9)(b), after “the deposit”—

**Add**

“or the security”.

- (9) Schedule 10, Part 1, section 76(9)—

**Repeal**

“deposit to the dealer”

**Substitute**

“deposit or the security to the dealer or the registered financier”.

- (10) Schedule 10, Part 1, section 76(10), after “dealer”—

**Add**

“or the registered financier”.

- (11) Schedule 10, Part 1, section 76(11)(a)—

- (a) After “a deposit”—

**Add**

“or a security”;

- (b) After “a dealer” (wherever appearing)—

**Add**

“or a registered financier”.

Part 5—Division 1

Clause 44

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- (12) Schedule 10, Part 1, section 76(11)(b), after “the dealer”—  
**Add**  
“or the registered financier”.
- (13) Schedule 10, Part 1, section 76(11), after “the deposit”—  
**Add**  
“or the security”.
- (14) Schedule 10, Part 1, section 76(12), after “repealed  
Commodities Trading Ordinance”—  
**Add**  
“or against any security lodged under section 121K(1) of  
the repealed Securities Ordinance”.
- (15) Schedule 10, Part 1, section 76(14), definition of *default*,  
after “rule 6(2)”—  
**Add**  
“or 6G(2)”.
- (16) Schedule 10, after Part 3—  
**Add**



## **“Part 4**

### **Savings and Transitional Provisions relating to Securities and Futures (Amendment) Ordinance 2011**

1. Any application made under section 185 of this Ordinance that was pending or otherwise not finally determined before the date of commencement of section 38 of the Securities and Futures (Amendment) Ordinance 2011 (      of 2011) may be continued and determined on or after that date as if section 38 of the Securities and Futures (Amendment) Ordinance 2011 (      of 2011) had not been enacted.
2. The Commission may make an application under section 185 of this Ordinance on or after the date of commencement of section 38 of the Securities and Futures (Amendment) Ordinance 2011 (      of 2011) whether the subject matter of the application arose before, on or after that date, unless an application had been made under section 185 of this Ordinance in relation to the same subject matter before that date.
3. Any proceedings instituted under section 252 of this Ordinance that were pending or otherwise not finally determined before the date of commencement of Part 3 of the Securities and Futures (Amendment) Ordinance 2011 (      of 2011) may be continued and determined on or after that date as if Part 3 of the Securities and Futures (Amendment) Ordinance 2011 (      of 2011) had not been enacted.
4. The Commission may institute proceedings under section 252 of this Ordinance on or after the date of

Part 5—Division 2—Subdivision 1

Clause 45

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commencement of Part 3 of the Securities and Futures (Amendment) Ordinance 2011 ( of 2011) whether the subject matter of the proceedings arose before, on or after that date, unless proceedings had been instituted under section 252 of this Ordinance in relation to the same subject matter before that date.”.

## **Division 2**

### **Business Day Amendments**

#### **Subdivision 1**

##### **Enactments Amended**

#### **45. Enactments amended**

The enactments specified in Subdivisions 2, 3 and 4 are amended as set out in those Subdivisions.

#### **Subdivision 2**

##### **Securities and Futures Ordinance (Cap. 571)**

#### **46. Schedule 1 amended (Interpretation and general provisions)**

(1) Schedule 1, English text, Part 1, section 1, definition of *business day*, paragraph (a)—

##### **Repeal**

“and”.

(2) Schedule 1, Part 1, section 1, definition of *business day*, after paragraph (a)—

##### **Add**

“(ab) a Saturday; and”.

**Subdivision 3**

**Securities and Futures (Client Securities) Rules  
(Cap. 571 sub. leg. H)**

**47. Section 8A amended (Repledging Limit)**

Section 8A(4)—

**Repeal the definition of *business day*.**

**Subdivision 4**

**Securities and Futures (Contracts Limits and Reportable  
Positions) Rules (Cap. 571 sub. leg. Y)**

**48. Section 2 amended (Interpretation)**

(1) Section 2(1), English text, definition of *reportable position*, paragraph (b)—

**Repeal the semicolon**

**Substitute a full stop.**

(2) Section 2(1)—

**Repeal the definition of *reporting day*.**

**49. Section 6 amended (Notice of reportable positions)**

Section 6(1)—

**Repeal**

“reporting day”

**Substitute**

“business day”.

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### Explanatory Memorandum

The object of this Bill is to amend the Securities and Futures Ordinance (Cap. 571) (*Ordinance*) to require listed corporations to disclose inside information to the public and impose civil sanctions for breach of the requirement, to give the Securities and Futures Commission (*Commission*) direct access to the Market Misconduct Tribunal (*Tribunal*), to strengthen the Commission's investor education role and to make miscellaneous amendments.

2. Part 2 of the Bill deals with the disclosure of inside information by listed corporations.
3. Clause 3 adds a new Part XIVA to the Ordinance imposing disclosure requirements on listed corporations. Part XIVA consists of sections 307A to 307ZA.
4. Section 307A sets out definitions for the purposes of Part XIVA. The most important definition is that of *inside information*, which is defined in the same way as *relevant information* in Part XIII of the Ordinance (which deals with market misconduct).
5. Section 307B requires listed corporations to disclose inside information to the public, subject to certain exceptions set out in section 307D and rules made by the Commission under section 307F.
6. Section 307C sets out the required manner of disclosure of inside information by a listed corporation.
7. Section 307D sets out exceptions to the disclosure requirement (also known as safe harbours). These include where disclosure of the inside information is prohibited by an enactment or court order, or where the information is confidential and it concerns an incomplete proposal or negotiation, is a trade secret or

Explanatory Memorandum  
Paragraph 8

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- concerns the provision of liquidity support by a central bank, or disclosure is waived under section 307E.
8. Section 307E empowers the Commission to waive the disclosure requirement in certain specified circumstances.
  9. Section 307F is a rule-making power for the Commission to prescribe circumstances in which the requirement to disclose inside information does not apply.
  10. Section 307G imposes duties on officers of listed corporations in relation to the disclosure of inside information.
  11. Section 307H invests jurisdiction in the Tribunal in relation to disclosure of inside information.
  12. Section 307I provides for the institution of proceedings (*disclosure proceedings*) in the Tribunal for a breach of the requirement to disclose inside information.
  13. Section 307J sets out the object of disclosure proceedings, which is for the Tribunal to determine if there has been a breach of a disclosure requirement and the identity of any person in breach, and specifies that the civil standard of proof applies to the proceedings. The section also applies the Tribunal's procedural powers under sections 253 and 254 of the Ordinance to disclosure proceedings.
  14. Section 307K requires the Tribunal to give a person a reasonable opportunity to be heard before identifying them as being in breach of a disclosure requirement or making an order in respect of them.
  15. Section 307L restricts the use in other proceedings of evidence given in disclosure proceedings. The restrictions are similar to those in section 255 of the Ordinance for market misconduct proceedings.

Explanatory Memorandum  
Paragraph 16

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16. Section 307M protects information about customers of an authorized financial institution from disclosure in disclosure proceedings. This is similar to the protection in section 256 of the Ordinance that applies to market misconduct proceedings.
17. Section 307N empowers the Tribunal to make orders in respect of a person it has identified as being in breach of a disclosure requirement. These orders are broadly similar to those the Tribunal may make under section 257 or 258 of the Ordinance in market misconduct proceedings, except that there would be no order for disgorgement of profits (see section 257(1)(d) of the Ordinance), and that the Tribunal may order a listed corporation or a person who is in breach of a disclosure requirement as a director or chief executive of a listed corporation to pay a regulatory fine not exceeding \$8,000,000. Additionally, the Tribunal may order a listed corporation to appoint an independent professional adviser, and order an officer of a listed corporation to undergo training.
18. Section 307O requires the Tribunal to notify a person in writing of an order made in respect of them in disclosure proceedings. The section also creates an offence for non-compliance with certain Tribunal orders in disclosure proceedings. This is similar to the offence for non-compliance with orders in market misconduct proceedings (see section 257(10) of the Ordinance).
19. Section 307P provides for the Tribunal to make costs orders in disclosure proceedings. These orders are similar to those the Tribunal may make under section 260 of the Ordinance in market misconduct proceedings.
20. Section 307Q requires the Tribunal to prepare a written report of disclosure proceedings and provides for the report's publication. The procedures and requirements are similar to those in section 262 of the Ordinance for market misconduct proceedings.

Explanatory Memorandum  
Paragraph 21

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21. Section 307R applies section 263 of the Ordinance, regarding the form and proof of Tribunal orders, to disclosure proceedings.
22. Section 307S applies section 264(1) of the Ordinance, regarding registration of Tribunal orders in the Court of First Instance, to disclosure proceedings. The section also provides for certain orders to be filed with the Registrar of Companies.
23. Section 307T empowers the Tribunal to order a stay of execution of any of its orders in disclosure proceedings. This is similar to the Tribunal's power under section 265 of the Ordinance in market misconduct proceedings.
24. Section 307U provides for appeals from the Tribunal to the Court of Appeal in disclosure proceedings. The rights of appeal are similar to those in section 266 of the Ordinance in market misconduct proceedings.
25. Section 307V sets out the Court of Appeal's powers on an appeal under section 307U in disclosure proceedings. These powers are similar to those on an appeal under section 266 of the Ordinance in market misconduct proceedings.
26. Section 307W provides that the institution of an appeal does not stay the finding, determination or order appealed against unless the Court of Appeal orders a stay. This is similar to the position under section 268 of the Ordinance in market misconduct proceedings.
27. Section 307X empowers the Chief Justice to make rules for disclosure proceedings, similar to the rule-making power under section 269 of the Ordinance for market misconduct proceedings.

Explanatory Memorandum  
Paragraph 28

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28. Division 4 of Part XIVA deals with civil liability for breach of a disclosure requirement. Section 307Y sets out a definition for the purposes of the Division, and provides that the Division is in addition to any rights or liabilities under the common law or any other enactment. Section 307Z imposes a statutory civil liability on a person who is in breach of a disclosure requirement, which is similar to the liability of a person under section 281 of the Ordinance for market misconduct. Section 307ZA contains evidentiary provisions that apply in an action brought under section 307Z, similar to those that apply in an action brought under section 281 of the Ordinance.
29. Clause 4 amends section 182(1) of the Ordinance to empower the Commission to investigate a suspected breach of a disclosure requirement.
30. Clause 5 replaces the concept of *relevant information* in section 245(2) of the Ordinance with *inside information*, for consistency with the new Part XIVA. The substance of the concept remains the same. Clause 5 also makes a consequential amendment to the definition of *Presenting Officer* in section 245(1) of the Ordinance.
31. Clause 6 adds a note to section 251(1) of the Ordinance to alert readers to the Tribunal's jurisdiction under Part XIVA and makes other consequential amendments to section 251 of the Ordinance as a result of that new jurisdiction.
32. Clauses 7 and 8 amend sections 257(2) and 258(2) of the Ordinance to provide that, when making an order in respect of a person in market misconduct proceedings, the Tribunal may take into account any conduct that previously resulted in the person being identified by the Tribunal as being in breach of a disclosure requirement.



## Explanatory Memorandum

Paragraph 33

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33. Clause 9 replaces the concept of *relevant information* in section 285(2) of the Ordinance with *inside information*, for consistency with the new Part XIVA. The substance of the concept remains the same.
34. Clause 10 amends section 303(3) of the Ordinance to provide that, when making an order in respect of a person under section 303(2) of the Ordinance, the court may take into account any conduct that previously resulted in the person being identified by the Tribunal as being in breach of a disclosure requirement.
35. Clause 11 adds a definition of *disclosure proceedings* to Schedule 1 to the Ordinance.
36. Clause 12 amends Schedule 2 to the Ordinance to provide that the Commission's function of instituting disclosure proceedings is non-delegable.
37. Clause 13 amends Schedule 9 to the Ordinance to include procedural provisions for the Tribunal in disclosure proceedings.
38. Clause 14 replaces the concept of *relevant information* in various sections of Parts XIII and XIV of the Ordinance with *inside information*, for consistency with the new Part XIVA. The substance of the concept remains the same.
39. Clause 16 amends the Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) to prescribe a fee of \$24,000 for an application to the Commission for waiver of a disclosure requirement under section 307E.
40. Part 3 of the Bill amends the Ordinance to provide the Commission with direct access to the Tribunal. Currently, proceedings in the Tribunal are instituted by the Financial Secretary.

Explanatory Memorandum  
Paragraph 41

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41. Clause 18 amends section 214 of the Ordinance to remove the requirement for the Commission to consult the Financial Secretary before making an application to the Court of First Instance under that section.
42. Clause 19 amends section 251 of the Ordinance so that the Commission, rather than the Secretary for Justice, will appoint the Presenting Officer in Tribunal proceedings.
43. Clause 20 amends section 252 of the Ordinance so that the Commission, rather than the Financial Secretary, may institute market misconduct proceedings in the Tribunal.
44. Clause 21 adds section 252A to the Ordinance to require the consent of the Secretary for Justice before proceedings are instituted under section 252 of the Ordinance and to provide limited grounds for withholding that consent.
45. Clause 22 amends section 257 of the Ordinance to change the scope of orders the Tribunal may make as to costs and expenses of the Government and of the Commission as a consequence of the new role of the Commission in relation to market misconduct proceedings.
46. Clause 23 amends section 261 of the Ordinance to remove the Tribunal's specific power to punish for contempt a person who fails to comply with certain orders of the Tribunal under section 257 or 258 of the Ordinance (such as cold shoulder orders and cease and desist orders). Failure to comply with those orders remains an offence under section 257(10) or 258(10) of the Ordinance.
47. Clauses 24 to 28 contain consequential amendments to various sections of Parts XIII and XIV of and Schedules 2 and 9 to the Ordinance because of the amendments made by clauses 19, 20 and 21.

## Explanatory Memorandum

Paragraph 48

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48. Part 4 of the Bill amends the Ordinance to strengthen the Commission's investor education role.
49. Clause 30 substitutes section 4(b) of the Ordinance to widen the regulatory objectives of the Commission in relation to investor education.
50. Clause 31 amends section 5 of the Ordinance which sets out functions and powers of the Commission. Subclauses (1), (2) and (3) amend section 5(1) of the Ordinance to widen the Commission's functions in relation to investor education. Subclause (4) amends section 5(4) of the Ordinance to enable the Commission to establish a wholly owned subsidiary to facilitate the performance of its investor education functions.
51. Clause 32 amends section 10 of the Ordinance to enable the Commission to delegate any of its investor education functions to a wholly owned subsidiary established under the new section 5(4)(da) of the Ordinance, which is added by clause 31(4).
52. Clause 33 amends Part 2 of Schedule 2 to the Ordinance to provide that the Commission's power to establish a wholly owned subsidiary to facilitate the performance of its investor education functions is non-delegable.
53. Part 5 of the Bill contains miscellaneous amendments to the Ordinance and consequential amendments to subsidiary legislation made under the Ordinance.
54. Clause 35 amends section 10 of the Ordinance to enable the Commission to delegate certain investment functions to consultants, agents or advisers engaged by the Commission under section 9(3) of the Ordinance. See also the amendment to Schedule 2 to the Ordinance made by clause 43.
55. Clause 36 amends the Chinese text of section 109 of the Ordinance for greater consistency with the English text.

## Explanatory Memorandum

Paragraph 56

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56. Clause 37 amends section 134 of the Ordinance to provide for the Commission to publish notice of modifications or waivers of licensing conditions or requirements by the use of an on-line medium rather than in the Gazette.
57. Clause 38 amends section 185 of the Ordinance to provide for the Commission, rather than an authorized person or investigator, to apply to the Court of First Instance in respect of non-compliance with requirements related to regulatory supervision or investigations. See also clause 44(16), which contains savings and transitional provisions relating to this amendment.
58. Clause 39 amends section 194 of the Ordinance to clarify that the Commission may publish details of disciplinary action taken against regulated persons under that section.
59. Clause 40 amends section 196 of the Ordinance to clarify that the Commission may publish details of disciplinary action taken against regulated persons under that section.
60. Clause 41 repeals section 378(14) of the Ordinance as a consequence of the amendments made to sections 194 and 196 of the Ordinance by clauses 39 and 40.
61. Clause 42 adds a new section 387A to the Ordinance to clarify that the Commission may bring civil proceedings under the Ordinance by a solicitor or otherwise. This will ensure that the Commission may bring civil proceedings in its own name.
62. Clause 43 repeals section 2(11) and (80) of Part 2 of Schedule 2 to the Ordinance. This has the effect of enabling the Commission to delegate certain investment powers under section 10(1) of the Ordinance, and is related to the amendment made to section 10 of the Ordinance by clause 35.

Explanatory Memorandum

Paragraph 63

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63. Clause 44 amends Schedule 10 to the Ordinance with respect to transitional arrangements for the Deposit Scheme for Securities Margin Financiers. The effect of the amendments is to enable the winding up of that Scheme. Clause 44 also adds a new Part 4 to Schedule 10 to the Ordinance, to provide savings and transitional provisions for the Bill. In particular, those provisions ensure the continuity of proceedings instituted under section 185 or 252 of the Ordinance before the amendments made by clause 38 and Part 3 respectively.
64. Clauses 46 to 49 amend the Ordinance and subsidiary legislation made under it to provide that Saturdays are not business days for the purposes of the Ordinance and subsidiary legislation, which conforms with existing practice in the industry.