



THE LAW SOCIETY'S SUBMISSIONS SECURITIES AND FUTURES (AMENDMENT) BILL 2013

1. The Securities and Futures (Amendment) Bill 2013 (“**the Bill**”) was published in Gazette on 28 June 2013. It was introduced into the Legislative Council on 10 July 2013.
2. The Bill aims at introducing a regulatory regime for the over-the-counter (“**OTC**”) derivative transactions as follows:-
 - (a) to introduce mandatory reporting, clearing and trading obligations in line with the G20 commitments;
 - (b) to provide for the establishment and regulation of an infrastructure to facilitate the aforesaid mandatory obligations; and
 - (c) to provide for the regulation and oversight of key players in the OTC derivative market.

In addition, the Bill also takes this opportunity to propose technical amendments to the Securities and Futures Ordinance (“**SFO**”) and the Organized and Serious Crimes Ordinance (“**OSCO**”) to enhance the regulation of the financial market, such as, notifications and reports under Part XV “Disclosure of Interests” of the SFO to be filed electronically. The SFO and OSCO will be amended to enable the courts to make disgorgement orders to recoup illegal gains from market misconduct offences.

3. The Investment Products and Financial Services Committee (“**Committee**”) of The Law Society has reviewed the Bill. The Committee may provide further detailed substantive comment on the drafting of the Bill in due course, but in the meantime, the Committee has the following preliminary observations and comments for the Administration’s consideration:-
 - The provisions in the Bill on the OTC infrastructure, on the face of it, appear to be a workable mechanism. However, the subsidiary legislations must set out clearly and precisely the parameters of what constitutes an OTC derivative transaction for the purpose of the proposed mandatory obligations such as reporting, clearing, etc. There must be prior consultation with stakeholders on the subsidiary legislations.

- It would be helpful for the Administration to issue guidelines on how day-to-day practice will be implemented.
- The reporting rules must expressly, sufficiently and unambiguously exclude any liability which the prescribed persons may incur for disclosing private and confidential information to the regulatory bodies.
- The newly regulated activities (including exemptions and how they interact), on the face of it, appear to be workable. However, the Committee anticipated that there will inevitably be practical interpretation issues going forward.
- Whilst grandfathering (including deeming) provision is a reasonable approach in the context of implementation of the new regulatory regime, the Administration should consider whether the duration of the proposed transitional period is practically sufficient.
- Given the importance of the new regime to Hong Kong as an international financial centre, a review of the operation of the OTC provisions in the market should be conducted 12 months after the date of the commencement of the new provisions or earlier as and when any significant practical issues have arisen, as the case may be.
- The provisions on the disgorgement order embedded in Part 5 are not linked to the main thrust of the Bill, it should therefore be sufficiently highlighted to the market to ensure that they will not be “lost”. In particular, if no guidance is incorporated into the legislation on the proposed use of the proceeds, the Administration should consider publishing guidance in that regard.

Investment Products and Financial Services Committee
30 September 2013