

**Ref: SU B48/2**

**LEGISLATIVE COUNCIL BRIEF**

Securities and Futures Commission Ordinance

(Chapter 24)

Commodities Trading Ordinance

(Chapter 250)

Stock Exchanges Unification Ordinance

(Chapter 361)

Securities and Futures (Clearing Houses) Ordinance

(Chapter 420)

Exchanges and Clearing Houses (Merger) Ordinance

(12 of 2000)

**SECURITIES AND FUTURES LEGISLATION  
(PROVISION OF FALSE INFORMATION) BILL 2000**

**INTRODUCTION**

At the meeting of the Executive Council on 29 February 2000, the Council ADVISED and the Chief Executive ORDERED that the Securities and Futures Legislation (Provision of False Information) Bill 2000, at the Annex, should be introduced into the Legislative Council.

**BACKGROUND AND ARGUMENT**

**General Background**

2. Under the existing law, a statutory requirement to provide information is usually backed by a specific offence provision making the providing of false or misleading information (including information which is false or misleading by omission) a criminal offence. Offences of this nature may for example be committed by persons applying to be registered by the Securities and Futures Commission (“the SFC”), by registrants in their annual returns, by persons issuing prospectuses and those assisting in an investigation conducted by the SFC. Other than these offence provisions, there are no general offence provisions in relation to the providing of false or misleading information to the SFC in other circumstances. For instance, giving false or misleading information to the SFC by companies and their officers voluntarily or in relation to submission made under the Takeovers and Mergers Code is not subject to sanctions. Neither is the providing of false information to the

exchanges, clearing houses and exchange controllers<sup>1</sup> recognised by the SFC (collectively referred to as “the front-line market operators” hereunder) in relation to the disclosure requirements under the Listing Rules or other rules made by these bodies. Although matters would routinely be referred to the appropriate law enforcement agency where there are grounds to suspect that an offence under the general criminal law, e.g. conspiring to defraud the SFC, might have been committed, in many such instances, the providing of false or misleading information alone is not sufficient to constitute an offence of conspiracy to defraud.

3. The lack of general offence provisions for providing false or misleading information to the SFC and the front-line market operators undermines the effectiveness of the performance of the regulatory functions by these bodies. It is important that the SFC and the other front-line market operators can have the capabilities of ensuring accurate reporting because of the increasing reliance on disclosure as a safeguard of investor interests as well as a means to enhance market transparency, particularly in view of the international trend towards requiring better and more disclosure of information to promote market transparency and efficiency. It is therefore necessary to criminalise the providing of false or misleading information to these bodies.

4. The establishment of the Growth Enterprises Market and the recent spate of market volatilities, particularly those related to technology-related shares, have also added impetus and urgency to the legislative proposal to ensure dissemination of accurate information which is important for investors to make informed decisions and for maintaining a level playing field among market participants.

## **The Proposal**

5. In early September 1998, the Financial Secretary announced a 30-Point Programme to further strengthen the order and transparency of the securities and futures markets. One of the proposed measures is to make the providing of false or misleading information to the SFC and the market operators a criminal offence to help disseminate the unequivocal message to the market that false or misleading reporting to the SFC and other front-line

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<sup>1</sup>Under the Exchanges and Clearing Houses (Merger) Ordinance (which was passed by the Legislative Council on 23 February 2000 and will come into full operation on 6 March 2000), an “exchange controller” is a person who is a shareholder controller or an indirect controller of an Exchange Company or a clearing house. A recognised exchange controller, like the recognised Exchange Company or clearing house, has the duty to ensure, as far as is reasonably practicable, an orderly and fair market in securities or futures contracts traded on or through each Company and to ensure that risks are managed prudently. In addition, it is obliged to ensure that the Exchange Company and clearing house comply with any lawful requirement placed on them under any enactment or rule of law and with other legal requirement placed on them.

market operators will not be tolerated and is to be punished criminally. The proposal is also in line with the regulatory practices in other major international financial markets including Australia, the US and the UK.

6. Under the proposal, the offences committed by giving false, misleading or incomplete information are divided into two tiers according to the basis on which the information is provided –

- (a) regarding information given to the SFC or any of the front-line market operators pursuant to a provision of an ordinance (“Statutory Reporting”); and
- (b) regarding information given to the SFC or any of the front-line market operators in any other circumstances (“General Reporting”), provided that the information so given relates to the performance of a regulatory function of the SFC or the front-line market operator in question.

7. The Statutory Reporting offence provision applies to the providing of information pursuant to a statutory provision. The principal elements of the offence are that –

- (a) the information is false, misleading or incomplete in a material particular; and
- (b) the person providing the information knows that the information provided is false, misleading or incomplete in a material particular, or does not believe that the information provided was true, complete and accurate in every material particular.

Contravention of this provision is liable on conviction on indictment to a fine of \$1 million and to imprisonment for 2 years, or on summary conviction to a fine at level 6 (\$100,000) and to imprisonment for 1 year. It should also be noted that this new offence provision does not apply where an existing statutory provision which imposes an obligation to provide information already has a specific criminal sanction for the providing of false, misleading or incomplete information.

8. In any other circumstance, the providing of false, misleading or incomplete information to the SFC or any of the front-line market operators will be prosecuted under the General Reporting offence provision. In addition to the main elements set out in paragraph 7 above, the prosecution must also satisfy the Court that –

- (a) the information so provided is relevant to or is connected with the performance of a function by the SFC or the front-line market operator in question under the relevant ordinances; and
- (b) the SFC or the front-line market operator in question has relied on the information given or the person giving the information did so knowing or intending that the SFC or the front-line market operator in question might rely on that information, or was reckless as to whether or not it would rely on the information.

Contravention of this provision is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 6 months, or on summary conviction to a fine at level 5 (\$50,000) and to imprisonment for 6 months.

## **THE BILL**

9. Part II of the Bill amends the SFC Ordinance (Cap. 24) –
- (a) clause 2 contains the Statutory Reporting offence provision and the General Reporting offence provision but disapplies the former where the statutory provision imposing the obligation to furnish information is already backed by a specific offence provision; and
  - (b) clause 3 prescribes the penalties for the newly created offences.
10. Parts III to VI of the Bill amend the Commodities Trading Ordinance (Cap. 250), the Stock Exchanges Unification Ordinance (Cap. 361), the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) and the Exchanges and Clearing Houses (Merger) Ordinance (12 of 2000) respectively to add to each ordinance an offence section similar to that provided in Part II.

## **PUBLIC CONSULTATION**

11. The proposal to criminalise the providing of false or misleading information to the SFC and the front-line market operators is part of the 30-point programme unveiled by the Financial Secretary in September 1998 which has been widely publicised thereafter. The SFC has also consulted the Stock Exchange of Hong Kong, the Hong Kong Futures Exchange and the Hong Kong Securities Clearing Limited and they all support the legislative change. The SFC also sought the views of selected industry and professional groups when developing the legislative proposal and has taken into account the views raised in the finalisation of the Bill.

## **BASIC LAW IMPLICATIONS**

12. The Department of Justice advises that the Bill is consistent with the Basic Law.

## **HUMAN RIGHTS IMPLICATIONS**

13. The Department of Justice advises that the Bill is consistent with the human rights provision of the Basic Law.

## **BINDING EFFECT OF THE BILL**

14. The amendments will not affect the current binding effect of the Ordinances covered by the Bill.

## **FINANCIAL AND STAFFING IMPLICATIONS**

15. The proposal has no financial and staffing implications for the Government.

## **ECONOMIC IMPLICATIONS**

16. Legal sanction against the providing of false, misleading or incomplete information to the SFC and the front-line market operators will help ensure the availability of adequate and reliable information for the regulatory functions conducive to healthy development of the securities and futures markets.

## **LEGISLATIVE TIMETABLE**

17. The legislative timetable as approved by the Executive Council is as follows -

Publication in the Gazette	3 March 2000
First Reading and commencement of Second Reading debate	15 March 2000
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **PUBLICITY**

18. A press release will be issued on 2 March 2000 and the Bill will be published in the Gazette on 3 March 2000. A spokesman will be available for answering media enquiries.

## **ENQUIRIES**

19. For any enquiries on this brief, please contact Mr. Bryan Chan, Principal Assistant Secretary for Financial Services at 2528 9161.

Financial Services Bureau  
SU B48/2

**SECURITIES AND FUTURES LEGISLATION (PROVISION OF  
FALSE INFORMATION) BILL 2000**

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A BILL

To

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

Enacted by the Legislative Council.

PART I

PRELIMINARY

**1. Short title and commencement**

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

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

PART II

AMENDMENT OF SECURITIES AND FUTURES COMMISSION ORDINANCE

**2. Section added**

The Securities and Futures Commission Ordinance (Cap. 24) is amended by adding -

**“56A. Provision of false information**

(1) A person who in purported compliance with a

requirement imposed by or under any of the relevant Ordinances provides to the Commission any information that -

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

commits an offence.

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

- (a) is relevant to or is connected with the performance of a function of the Commission under this Ordinance; and
- (b) either -
  - (i) he knows to be false, misleading or incomplete in a material particular; or
  - (ii) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

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

- (a) the Commission has relied on the information to which the offence relates (but it shall not be necessary to prove that any person has been

misled or has suffered any detriment or incurred any loss as a result of the reliance); or

(b) the defendant -

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

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

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

### **3. Penalties for offences**

Section 61 is amended by adding -

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

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

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

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

- (a) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 6 months;
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.”.

### PART III

#### AMENDMENT OF COMMODITIES TRADING ORDINANCE

#### **4. Interpretation**

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

-

““function” (職能) includes power and duty;”.

#### **5. Section added**

The following is added -

##### **“109A. Provision of false information**

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

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

commits an offence.

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

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

(b) either -

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

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

commits an offence.

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

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

(b) the defendant -

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

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

information.

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

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

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

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

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

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

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

PART IV

AMENDMENT OF STOCK EXCHANGES UNIFICATION ORDINANCE

**6. Interpretation**

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

““function” (職能) includes power and duty;”.

**7. Section added**

The following is added -

**“38A. Provision of false information**

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

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

commits an offence.

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

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

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

commits an offence.

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

- (a) the Exchange Company has relied on the information to which the offence relates (but it shall not be necessary to prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or
- (b) the defendant -
  - (i) knew that the Exchange Company might rely on or intended that the Company rely on the information; or
  - (ii) was reckless as to whether the Company would rely on the information.

(4) Subsection (1) shall not apply if, in relation to a provision of this Ordinance or any other enactment by or under which a requirement to provide any information is imposed, there is a provision in this Ordinance or in that

enactment (as the case may be ) making it an offence for a person to provide any false, misleading or incomplete information in purported compliance with the requirement or a provision to similar effect.

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

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

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

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

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

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

## PART V

### AMENDMENT OF SECURITIES AND FUTURES (CLEARING HOUSES)

#### ORDINANCE

#### **8. Section added**

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

**“15A. Provision of false information**

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

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

or

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

commits an offence.

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

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

(b) either -

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

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

commits an offence.

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

offence, also be required to prove for such conviction that -

- (a) the recognized clearing house has relied on the information to which the offence relates (but it shall not be necessary to prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or
- (b) the defendant -
  - (i) knew that the recognized clearing house might rely on or intended that the clearing house rely on the information; or
  - (ii) was reckless as to whether the clearing house would rely on the information.

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

- (5) (a) Any person who commits an offence under subsection (1) is liable -
  - (i) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 2 years;

- (ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (b) Any person who commits an offence under subsection (2) is liable -
  - (i) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 6 months;
  - (ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.”.

## PART VI

### AMENDMENT OF EXCHANGES AND CLEARING HOUSES (MERGER)

#### ORDINANCE

#### **9. Interpretation**

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

““function” (職能) includes power and duty;”.

#### **10. Section added**

The following is added in Part V -

##### **“17A. Provision of false information**

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

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

commits an offence.

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

- (a) is relevant to or is connected with the performance of a function of the exchange controller under this Ordinance or any other enactment; and
- (b) either -
  - (i) he knows to be false, misleading or incomplete in a material particular; or
  - (ii) he does not believe to be true, accurate and complete in every material particular,

commits an offence.

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

- (a) the recognized exchange controller has relied on the information to which the offence relates (but it shall not be necessary to

prove that any person has been misled or has suffered any detriment or incurred any loss as a result of the reliance); or

(b) the defendant -

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

or

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

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

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

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

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

(b) Any person who commits an offence under

subsection (2) is liable -

- (i) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 6 months;
- (ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.”.

### Explanatory Memorandum

The object of this Bill is to amend several Ordinances relating to the regulation of securities and futures markets to introduce offence provisions in relation to the provision of false information to the relevant regulatory body.

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

(c) to prescribe penalties for those offences (clause 3).

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