

立法會
Legislative Council

LC Paper No. LS87/10-11

**Paper for the House Committee Meeting
on 8 July 2011**

**Legal Service Division Report on
Securities and Futures (Amendment) Bill 2011**

I. SUMMARY

- 1. Objects of the Bill** To amend the Securities and Futures Ordinance (Cap. 571) (SFO) to enhance the regulatory regime for the financial market and improve investor protection by codifying certain requirements to disclose price sensitive information (PSI), empowering the Securities and Futures Commission (SFC) to institute proceedings before the Market Misconduct Tribunal (MMT) and strengthening SFC's investor education role.
- 2. Comments** The Bill proposes to -

 - (a) require listed corporations to disclose PSI (to be named "inside information" in the Bill) in a timely manner to the public and impose civil sanctions for breach of the requirement;
 - (b) enable SFC to institute MMT proceedings direct for market misconduct cases when it has obtained consent from the Secretary for Justice (SJ), appoint Presenting Officers in MMT in place of SJ and apply to the Court of First Instance without having first to consult the Financial Secretary;
 - (c) enable SFC to establish a wholly owned subsidiary to facilitate the performance of its wider investor education functions; and
 - (d) make certain technical amendments to SFO.
- 3. Public Consultation** The public was consulted on paragraph 2(a) and (b) above from March to June 2010, and on paragraph 2(c) from February to May 2010. The respondents generally supported the proposals.
- 4. Consultation with LegCo Panel** The Panel on Financial Affairs discussed paragraph 2(a) and (b) above on 3 May 2010 and 21 February 2011 and paragraph 2(c) on 1 March 2010 and on 3 January 2011. Panel members supported the proposal in general but expressed various concerns.
- 5. Conclusion** Members may wish to consider the need for a Bills Committee to consider the Bill in detail in view of Members' concerns.

II. REPORT

Objects of the Bill

To amend the Securities and Futures Ordinance (Cap. 571) (SFO) to enhance the regulatory regime for the financial market and improve investor protection by codifying certain requirements to disclose price sensitive information (PSI), empowering the Securities and Futures Commission (SFC) to institute proceedings before the Market Misconduct Tribunal (MMT) and strengthening SFC's investor education role.

LegCo Brief Reference

2. SUB/12/2/2/2, SUB/12/2/3 & SUB/12/2/5 issued by the Financial Services Branch of the Financial Services and the Treasury Bureau on 22 June 2011.

Date of First Reading

3. 29 June 2011.

Comments

Disclosure of Information

4. The Bill adds a new Part XIVA to SFO (proposed new sections 307A to 307ZA) requiring listed corporations to disclose PSI to the public as soon as reasonably practicable after it has become aware of the information in a manner that can provide for equal, timely and effective access by the public to PSI disclosed, subject to certain exceptions set out in the new section 307D and rules made by SFC under the new section 307F. The definition of PSI is the same as that of "relevant information" currently used in the "insider dealing" regime in SFO, which will be named "inside information" in the Bill. According to paragraph 4 of the LegCo Brief, this approach is similar to the practice adopted by the United Kingdom and the European Union.

5. The new section 307D sets out exceptions to the disclosure requirement (also known as safe harbours), namely -

- (a) where disclosure of PSI is prohibited under (or would constitute a contravention of a restriction imposed by) an enactment or court order; or
- (b) where -
 - (i) the corporation takes reasonable precautions for preserving the confidentiality of PSI;
 - (ii) the confidentiality of PSI is preserved; and
 - (iii) PSI concerns an incomplete proposal or negotiation, is a trade secret or concerns the provision of liquidity support by a central bank, or disclosure is waived under the new section 307E.

6. Under the new section 307G, if a listed corporation has breached the disclosure requirement, an "officer"¹ will also be in breach if the corporation's breach is a result of his intentional, reckless or negligent conduct; or he has not taken all reasonable measures to ensure that proper safeguards exist to prevent the breach.

7. The Bill proposes that civil liability to pay compensation by way of damages for breaches of the disclosure requirements be imposed, and that alleged breaches be handled by MMT. MMT may order e.g. 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, a listed corporation to appoint an independent professional adviser to review its compliance, an officer of a listed corporation to undergo training etc.

Institution of MMT proceedings by SFC

8. The Bill proposes that, subject to the consent of the Secretary for Justice (SJ) (except in cases of breaches of PSI disclosure requirement), SFC may institute proceedings before MMT directly to enforce the disclosure requirement and to deal with the existing six types of market misconduct stipulated in the SFO² so that it is not necessary to first refer the case to the Financial Secretary (FS) as originally required under SFO. The Bill also

¹ This is already defined in Part 1 of Schedule 1 to SFO, in relation to a corporation, to mean "a director, manager or secretary of, or any other person involved in the management of, the corporation".

² These are insider dealing, false trading, price rigging, disclosure of information about prohibited transactions, disclosure of false or misleading information inducing transactions, and stock market manipulation.

proposes that SFC be responsible for appointing the Presenting Officer in MMT proceedings in place of SJ.

9. The Bill removes the requirement for SFC to consult FS before applying to the Court of First Instance for remedies in cases of unfair prejudice etc. to interests of members of listed corporations such as a court order restraining the carrying out, or requiring the carrying out, of any act or acts.

Establishment of Investor Education Council

10. The Bill proposes to widen the regulatory objectives and functions of SFC in relation to investor education and enable SFC to establish a wholly owned subsidiary to facilitate the performance of its investor education functions. According to paragraphs 11 and 12 of the LegCo Brief, it is proposed that an Investor Education Council (IEC) be established by SFC.

Public Consultation

11. According to paragraph 21 of the LegCo Brief, the public was consulted on PSI disclosure requirement and the institution of MMT proceedings by SFC from March to June 2010. The respondents generally supported the objective of the legislative proposal of cultivating a continuous disclosure culture among listed corporations. According to paragraph 22 of the LegCo Brief, the public was consulted on the proposed establishment of IEC from February to May 2010 and the proposal had received support from a vast majority of respondents.

Consultation with LegCo Panel

12. The Panel on Financial Affairs (FA Panel) discussed the Administration's proposal to establish a statutory regime to oblige listed corporations to disclose PSI on 3 May 2010 and 21 February 2011. Panel members generally supported the proposal. The major concerns expressed by members include the following -

- (a) the standard of care imposed on directors and high level staff responsible for the management of listed corporations in relation to the disclosure obligation;
- (b) the appropriateness of the proposed sanctions, particularly the proposed maximum regulatory fine of HK\$8 million;

- (c) the rationale for the proposed safe harbours, their application in real-life situations, and the legislative procedure for prescribing further safe harbours; and
- (d) reasons for not making the persons hired by listed corporations to provide professional services liable for leaking inside information under the proposed legislation.

13. The FA Panel discussed the Administration's proposal for establishment of IEC on 1 March 2010 and 3 January 2011. Panel members did not raise objection to the proposal. Some members expressed concern about the efficacy of the work of IEC given the varied investment needs and level of financial literacy of investors. A member expressed concern that with the establishment of IEC, the Hong Kong Monetary Authority, SFC and financial institutions might shirk their responsibility of offering advice to investors on the risks of the financial products offered in the market. Another member doubted the need for establishing a separate body to take charge of investor education, and considered it more appropriate to set up a separate department within SFC for the work.

Conclusion

14. Members may wish to consider the need for a Bills Committee to consider the Bill in detail in view of Members' concerns.

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