

Securities and Futures Ordinance



The Securities and Futures Ordinance consolidates and modernises the 10 previous ordinances regulating the securities and futures markets in Hong Kong*. Effective on 1 April 2003, the SFO and its subsidiary legislation introduce a number of significant changes to the regulation of the securities and futures markets. We explain here some of these changes and how they may affect you as an investor or industry participant.

18

New and Improved Investor Compensation Arrangements

▶ A new single Investor Compensation Fund replaces the previous schemes. It is based on a per-investor compensation limit of \$150,000 for trading securities and futures contracts respectively. This enables more transparency and allows investors to know precisely what level of compensation will be available to them should their intermediary fail. Coverage is now extended to a much broader range of firms, including both exchange and non-exchange participants, banks and securities margin financiers.

More Transparent Market Disclosure

▶ Substantial shareholders of listed companies need to disclose their interests. The notification period has been reduced from five days to three business days and the disclosure threshold for substantial shareholders reduced from 10% to 5%. In addition, there are new requirements for the disclosure of interests in shares arising under derivatives, and for disclosure of changes in the nature of an interest in shares (e.g. on exercise of an option). All these requirements will give a more complete picture of dealings by substantial shareholders and directors.

Combating Market Misconduct

▶ The possible use of civil and criminal actions will enable us to combat market misconduct more effectively. A Market Misconduct Tribunal has been set up to handle civil cases of all forms of market misconduct, including insider dealing, market manipulation, price rigging and related abuses and the dissemination of false and misleading information about securities or futures contracts. As an alternative, market misconduct may be subject to criminal prosecution which may result in a maximum penalty on conviction of 10 years' imprisonment and a fine of \$10 million. The decision to choose the criminal or civil route will be made in accordance with the Department of Justice's Prosecution Policy.

Dual Filing System to Ensure Better Corporate Disclosure

▶ The introduction of dual filing establishes the SFC as the statutory regulator of listed company disclosure. Under this arrangement, all corporate disclosure and listing application materials will be filed with both the Stock Exchange and the SFC. The SFC can exercise its enforcement powers against persons issuing false or misleading corporate information. The vetting of listing applications by the SFC will not cause any delay to the process as it will run concurrently with the Stock Exchange's process.

Redress Through Civil Courts for Market Misconduct

▶ A new private right of civil action can assist investors to obtain damages for loss suffered as a result of market misconduct. The threat of potential civil liability should also serve as an added deterrent. Under the previous regime, if a person had suffered loss as a result of market misconduct, seeking redress through the civil courts was difficult as the person had to first establish a cause of action in law against those responsible for the misconduct. With the new statutory rights of action, findings of the Market Misconduct Tribunal in relation to market misconduct will be admissible in evidence in a private civil action.

Private Action for False Public Communication

▶ The investing public are entitled to expect that persons responsible for issuing information to them about securities and futures contracts, such as prospectuses, exercise all due care and diligence. Investors suffering loss as a result of false or misleading public statements concerning securities (or affecting the price of securities) made fraudulently or negligently, have a clear statutory right of action against those involved in issuing such statements.

A New Single Licensing Regime

▶ A new streamlined licensing system results in reduced costs for market operators without compromising investor protection. There is a universally applicable single licensing system, with one licence covering all regulated activities which a person is permitted to undertake. The public only have to check the “Public Register of Licensed Persons” on the SFC website to find out what regulated activities a licensee is eligible to conduct. The licensing regime is also extended to cater for companies providing Automated Trading Services.

Improving the Regulation of Intermediaries

▶ Proportionate disciplinary sanctions are an important deterrent to improper conduct by intermediaries. We can fine up to \$10 million, or three times the amount gained or loss avoided due to misconduct, whichever is higher. We can also suspend or revoke a licence in respect of only part of a licensee’s business. To ensure a level playing field, banks engaging in securities and futures activities are also governed by the same rules, codes and guidelines as SFC licensed corporations. They and their relevant staff are equally subject to sanctions under the SFO.

Enhancing SFC’s Inspection and Investigatory Powers

▶ Our power to obtain documents and explanations from listed companies is now extended to the parties most closely connected with the listed company. These parties include a listed company’s auditor, banks and transaction counterparties. We are able to look at the company auditor’s working papers. Such enhanced power, with adequate checks and balances, serves as a more effective tool for conducting inquiries into misconduct of listed companies which may have prejudiced the interests of shareholders.

Greater Accountability of the SFC

▶ The checks and balances on the SFC have been enhanced. These include the establishment of the Securities and Futures Appeals Tribunal, an independent full-time appeals tribunal chaired by a judge. A wide range of our decisions, primarily relating to licensing and registration, discipline and intervention, are appealable to the Tribunal. An investor may appeal to the Tribunal in relation to the amount of his or her claim on the Investor Compensation Fund as assessed by the Investor Compensation Company.

* Securities and Futures Commission Ordinance (Cap. 24)
Commodities Trading Ordinance (Cap. 250)
Securities Ordinance (Cap. 333)
Protection of Investors Ordinance (Cap. 335)
Stock Exchanges Unification Ordinance (Cap. 361)

Securities (Insider Dealing) Ordinance (Cap. 395)
Securities (Disclosure of Interests) Ordinance (Cap. 396)
Securities and Futures (Clearing Houses) Ordinance (Cap. 420)
Leveraged Foreign Exchange Trading Ordinance (Cap. 451)
Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555)

