

[213.07] The test for interim orders

In *Securities and Futures Commission v 'A'* (Unreported HCMP 1407/2007), the Securities and Futures Commission applied for an interim injunction under s 213(6) SFO. The SFC invoked the statutory power under s 213 for an order to restrain disposition of property in a case of suspected insider dealing - this was the first time such an application had been made under this section. Although the traditional equitable principles that govern the granting of interlocutory injunctions, such as whether there is a serious question to be tried, the risk of dissipation of assets to defeat a judgment, and where the balance of convenience lies; do not limit the scope of the exercise of the statutory power, these traditional principles of equity nevertheless provide a sound basis for a preliminary assessment (*Mauer-Swisse Securities Ltd*, supra at 613-614; *Australian Securities and Investments Commission v Triton Underwriting Insurance Agency Pty Ltd & Ors* (2004) 48 ACSR 249 at 256, per Barrett J; *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict & Ors* [2004] 3 SLR 12 at 19, para 19, per Lai Kew Chai J; *Australian Securities and Investments Commission v Arafura Equities Pty Ltd* (2006) 56 ACSR 429 at 441, per Atkinson J). Before any interim injunction can be granted, there must be established a *prima facie* case of contravention of a relevant provision of the statute and there is an appreciable, not a fanciful, risk that without the injunction, proper compliance under the statute would be frustrated (*Tang Yoke Kheng*, supra 19, para 20). Where the application for an injunction is made at the initial stage of an investigation, Waddell CJ had this to say in *Corporate Affairs Commission (NSW) v Walker & Ors* (1986-1987) 11 ACLR 884 at 888:

'What evidence is necessary before an order should be made will depend on the circumstances. In the case of an application made shortly after an investigation has begun, the evidence may be regarded as sufficient if it establishes the general circumstances, the nature of the investigation and the reason why it is thought that there may be some liability on the part of a relevant person.'

Having found there was a risk of dissipation of assets which would prevent the enforcement of any order to disgorge profits or to pay a penalty, Kwan J found there had been a material non-disclosure at the ex parte application, but that it did not justify setting aside the injunction. The SFC was not required to give an undertaking in damages.

[213.08] Injunctions for prospective financial penalty and disgorgement of profits

In granting an interim injunction under s 213 in *Securities and Futures Commission v 'A'* (Unreported HCMP 1407/2007), Kwan J found that on a proper reading of section 213(2)(c), the section empowers the courts to make orders restraining the disposal of property where it appears to the SFC that a person has breached the provisions of the Ordinance and would come under a potential financial liability, whether this be the disgorging of profits or a penalty in a disciplinary action. The value of the property to be subject to restraint would be by reference to the anticipated action that may be taken regarding the breach, and may include both the elements of profits and penalty, as these consequences are not mutually exclusive.

[213.09] Top up of assets subject to injunction

In *SFC v Wong Kwong Yu* (Unreported HCMP 1496/2009, Kwan J, 8 September 2009), the SFC obtained an ex parte injunction under s 213 requiring the Defendants to lodge in Court shares up to the value of approximately HK\$1.6 billion. On the return date of the inter partes summons, the SFC, on account of the drop in prices of the shares lodged, requested the Defendants deposit further shares to make up for the drop in prices and for a provision to be made for a mechanism to take into consideration the fluctuation in the value of the shares concerned. The learned Judge refused the top up application on account of the narrow range of volatility exhibited; the incorporation of an automatic mechanism to top up was also refused on the ground that it would fetter the Court's discretion in respect of the variation of interlocutory orders and that it could result in the freezing of a large portion of the Defendants' assets beyond the limit in the order.

It should be noted, however, that in *Securities and Futures Commission v Du Jun (previously 'A')* Unreported HCMP 1407/2007, 12 April 2010, the Court allowed a similar application by the SFC to amend its summons - the SFC had sought an order freezing \$46,595,033 of the Defendant's assets, which represented the SFC's estimate of twice the notional profits from the applicant's insider dealing. Over time, the value of the frozen assets was reduced by various court orders. The Court allowed the amendments, subject to the SFC filing an affidavit identifying the counterparties or other persons who (it is alleged) have suffered loss as a result of the Defendant's activities, and quantifying as best as can be just what that loss is.

[213.10] Lack of substantive relief and territorial jurisdiction

In *Securities and Futures Commission v 'C' & Ors* (Unreported HCMP 727/2008), it was stated that an order under s 213(2)(c) to restrain or prohibit a person from acquiring, disposing of or otherwise dealing in any property specified in the order is not a form of substantive relief, as it does not decide upon rights or give effect to rights in respect of the property under restraint. It is merely to preserve the property pending the completion of investigation by the SFC of the contravention of any of the relevant provisions in this Ordinance, or the completion of proceedings that should be brought as a result of the investigation. The deciding of substantive rights would take place in the framework of a distinct and separate procedure, such as proceedings to be brought in the Market Misconduct Tribunal. It was thus held that as a matter of interpretation, the statutory enlargement of the territorial jurisdiction in Order 11 Rule 1(1)(b) of the Rules of the High Court does not empower the Court to permit service of an originating process which does not seek the adjudication of substantive rights, enforceable through the medium of a judgment or order in the same proceedings, and that the SFC had failed to establish a good arguable case that Order 11 Rule 1(1)(b) applied to the *sui generis* form of relief in s 213(2)(c). Borrowing the words of Lord Mustill at 303C, the extra-territorial jurisdiction of the Court in Order 11 Rule 1 had not gained an extra dimension when s 213(2)(c) was enacted to empower the SFC to seek a form of statutory injunction to protect the enforcement of relief in other proceedings.

This was appealed (Unreported CACV 319/2008, 22 May 2009) - the Court of Appeal confirmed that:

- the SFC has statutory authority under s 213 to apply to the court for orders to freeze assets involved in suspected insider dealing;
- the proceedings are free-standing and are not contingent or conditional on there being other substantive proceedings on foot (including proceedings in the MMT);
- the court may grant permission to serve legal proceedings on persons outside of Hong Kong, so as to bring them to the jurisdiction of Hong Kong courts; and
- the court may grant orders to restore all the parties to the transactions to their respective former positions where those transactions contravene this Ordinance.

Leave in this case has now been granted to the Court of Final Appeal on the grounds that there is serious and important question arises as to the true function and scope of s 213.

In *Kayden Ltd v SFC* [2009] 4 HKLRD 315, the SFC initially sought s 213(2)(c) orders under s 213(1)(b). Leave to serve outside jurisdiction against two defendants was sought on the basis that there were proceeds in Hong Kong and against another defendant on the basis that it was a necessary and proper party to claims against those defendants, under Order 11 Rules 1(1)(b) & 1(1)(c) of the Rules of High Court. The Court of Final Appeal found that in considering whether the Court should exercise the extra-territorial jurisdiction by granting leave to serve outside jurisdiction, the considerations of *Mercedes Benz AG v Leiduck* [1996] 1 AC 284 apply, and O 11 leave should not be granted because the orders sought under s 213(2)(c) were neither substantive nor final. At the Court of Final Appeal, the SFC sought to rely on a differently constituted case - for s 213(2)(b) orders under s 213(1)(a). The Court of Final Appeal refused to entertain the differently constituted case and left open the question of whether final relief can validly be sought under s 213.

But O 11 RHC has since been amended to permit leave for service outside jurisdiction by adding O 11, r 1(1)(oc) to include a claim for interim relief. In the premises, a s 213 application should be allowed to be served outside jurisdiction whether or not the orders sought are for final orders or the orders sought require acts to be done within the jurisdiction, subject only to an application to set aside or stay by the defendant(s) under O 12, r 8 RHC.

[213.11] Vary or discharge

In *Securities & Futures Commission v Du Jun (previously 'A')* (Unreported HCMP 1407/2007), application was made for the discharge of an injunction against the Defendant restraining him from disposing or transferring assets out of the jurisdiction on the basis that there had been a material change in circumstance. Applying by analogy the principles applicable in the variation of a Mareva injunction, the Court exercised its discretion to vary the interim injunction for the release of the funds in order for the Defendant to pay his legal expenses in the sum of \$10 million.

In *Securities & Futures Commission v Jun Du (previously 'A')* (Unreported HCMP 1407/2007), 12 April 2010, the Court allowed a similar application when it found that as a practical matter, the Defendant's assets were frozen to meet eventualities such as the payment of monies based on the the Defendant's notional profit. A fine having been imposed on that basis, in the absence of compelling reason, the Defendant should be entitled to pay the fine from the frozen assets, and by analogous reasoning, the Court found that the Defendant should be allowed to pay the investigation costs out of his frozen assets.

[213.12] Rescission and restitution

It should be noted that s 213(2)(b) is similar in terms to s 6(2) of the Financial Services Act 1986 (UK), which is a form of statutory rescission and restitution. It was held by the English CA in *Securities and Investment Board v Pantell SA (No 2)* [1993] 1 All ER 134 (considered by Kwan J in *SFC v C HCM* 727/08, 22 October 2008) that since the purpose of an order under s 6(2) must be to restore the parties to the transaction to the position they were in before the transaction was entered into, an order ought not require a contravener to repay the purchase price for shares sold unless there is also provision for the return of shares by the other party to the transaction: see sections 143C-143E. In the case of insider dealing, both the 'buy' transactions and the 'sell' transactions would have to be rescinded. In other words, the contravener would not only have to repay the purchase price for the shares eventually sold (in exchange for the return of the shares by the counter-parties) in order to rescind each of the 'sell' transactions, the counter-parties in each of the 'buy' transactions would have to take back the shares originally purchased by the client and repay the purchase price received for those shares.

[213.13] Exchange participant

'Exchange participant' means a person-

- (a) who, in accordance with the rules of a recognized exchange company, may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company; and
- (b) whose name is entered in a list, roll or register kept by that recognized exchange company as a person who may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company.

[213.14] Clearing participant

'Clearing participant' is defined in Sch 1 Pt 1 as a person-

- (a) who, in accordance with the rules of a recognized clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house; and
- (b) whose name is entered in a list, roll or register kept by that recognized clearing house as a person who may participate in one or more of the services provided by that clearing house.

[213.15] Clearing house

'Clearing house' means a person-

- (a) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on a recognized stock market or subject to the rules of a recognized exchange company;
- (b) whose activities or objects include the provision of services for-
 - (i) the clearing and settlement of transactions in futures contracts; or
 - (ii) the day-to-day adjustment of the financial position of futures contracts,

effected on a recognized futures market or subject to the rules of a recognized exchange company; or

- (c) who guarantees the settlement of any such transactions as are referred to in paragraph (a) or (b), but does not include a corporation operated by or on behalf of the Government.

[213.16] Structured products

Under the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance, the regulation of public offers of structured products in the form of shares or debentures was transferred from the Companies Ordinance to the SFO such that structured products (regardless of legal form) are regulated under one regime - the offers of investments regime under Part IV.

The definition of 'structured products' has been widened to avoid issuers designing new structured products that fall outside the scope of regulation but embed derivatives or have similar risk and return profiles to regulated products. As the public offer of shares and debentures for equity or debt capital-raising purposes is to continue to be regulated by the Companies Ordinance prospectus regime, convertible and exchangeable bonds and subscription warrants for capital raising purposes have been carved out of the definition of 'structured products' - see s 1A, Part 1, Sch 1 below. Section 392 has also been expanded to allow the Financial Secretary to prescribe interests, rights or property not to be regarded as structured products.

This section was amended so that the power of the Court of First Instance to make an order declaring a contract relating to any securities to be void or voidable also applies to a contract relating to any structured product. This power is exercisable by the Court in the circumstances set out in section 213(1) (for example, where a person has contravened provisions of this Ordinance).

214 Remedies in cases of unfair prejudice, etc. to interests of members of listed corporations, etc.

- (1) Where, in relation to a corporation which is or was listed, it appears to the Commission that at any relevant time the business or affairs of the corporation have been conducted in a manner-

- (a) oppressive to its members or any part of its members;
 - (b) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;
 - (c) resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or
 - (d) unfairly prejudicial to its members or any part of its members, the Commission may, subject to subsection (3), by petition apply to the Court of First Instance for an order under this section.
- (2) If, on an application under this section, the Court of First Instance is of the opinion that the business or affairs of a corporation have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or any failure to act, the Court may-
- (a) make an order restraining the carrying out, or requiring the carrying out, of any act or acts;
 - (b) order that the corporation shall bring in its name such proceedings as the Court considers appropriate against such persons, and on such terms, as may be specified in the order;
 - (c) unless the corporation is an authorized financial institution, appoint a receiver or manager of the whole or any part of the property or business of the corporation and may specify the powers and duties of the receiver or manager and fix his remuneration;
 - (d) order that a person wholly or partly responsible for the business or affairs of the corporation having been so conducted shall not, without the leave of the Court-
 - (i) be, or continue to be, a director, liquidator, or receiver or manager of the property or business, of the corporation or any other corporation; or
 - (ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the corporation or any other corporation, for such period (not exceeding 15 years) as may be specified in the order;
 - (e) make any other order it considers appropriate, whether for regulating the conduct of the business or affairs of the corporation in future, or for the purchase of the shares of any members of the corporation by other

It should be noted that under the Securities and Futures (Amendment) Bill 2011, it is proposed that this Ordinance be amended to provide that Saturdays are not business days, conforming to existing practice in the industry.

[348.06] Definitions

For 'associated corporation', 'duty of disclosure', 'listed', 'listed corporation', 'relevant event', 'short position' and 'specified percentage level' see s 308(1). For 'business day' and 'debenture' see Sch 1, Pt 1, s 1.

349 Particulars to be contained in notification by director and chief executive

- (1) Where a duty of disclosure arises under section 341, a person shall, in performing the duty of disclosure, specify in the notification his name, identifying him also as a director or chief executive (as the case may be), and his address, and (so far as he is aware)-
- (a) the date on which the relevant event occurred and-
 - (i) the date (if later) on which he became aware of the occurrence of the relevant event; or
 - (ii) in the case referred to in section 348(2)(b), the date on which he became aware that he has the interest in the shares in or debentures of, or the short position in the shares in, the listed corporation or the associated corporation of the listed corporation (as the case may be);
 - (b) subject to subsection (3), the total number and class of-
 - (i) shares in the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time specifying the percentage figure of his interest in the shares in each class; and
 - (ii) shares in the listed corporation and any associated corporation of the listed corporation in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the shares in each class;
 - (c) subject to subsection (3), the amount of-
 - (i) debentures of the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time; and
 - (ii) debentures of the listed corporation and any

- associated corporation of the listed corporation in which he is interested immediately after the relevant time;
- (d) subject to subsection (3), the total number and class of-
 - (i) shares in the listed corporation and any associated corporation of the listed corporation in which he had a short position immediately before the relevant time specifying the percentage figure of his short position in the shares in each class; and
 - (ii) shares in the listed corporation and any associated corporation of the listed corporation in which he has a short position immediately after the relevant time specifying the percentage figure of his short position in the shares in each class;
 - (e) the circumstances in which he comes under the duty of disclosure;
 - (f) where the duty of disclosure arises under section 341(1)-
 - (i) the number and class of shares in the listed corporation or any associated corporation of the listed corporation in which-
 - (A) he has acquired an interest, or ceased to have an interest, at the relevant time;
 - (B) he has come to have, or ceased to have, a short position at the relevant time; or
 - (C) the nature of his interest changes at the relevant time; and
 - (ii) the amount of debentures of the listed corporation or any associated corporation of the listed corporation in which-
 - (A) he has acquired an interest, or ceased to have an interest, at the relevant time; or
 - (B) the nature of his interest changes at the relevant time;
 - (g) where he acquires or disposes of the interest referred to in paragraph (f)(i)(A)-
 - (i) through an on-exchange transaction, the highest price and the average price paid or received per share for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or
 - (ii) through an off-exchange transaction, the nature of the consideration given or received, and the

highest amount and the average amount of the consideration given or received per share, for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

(h) where he acquires or disposes of the interest referred to in paragraph (f)(ii)(A)-

(i) through an on-exchange transaction, the highest price and the average price paid or received per unit for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or

(ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per unit, for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

(i) subject to subsection (3), the capacity in which the interest in shares in or debentures of, or the short position in shares in, the listed corporation or any associated corporation of the listed corporation is held immediately after the relevant time and, if the interest in the shares or debentures, or the short position in the shares, is held in more than one capacity, the number of shares or amount of debentures held in each capacity;

(j) subject to subsection (3), where the duty of disclosure arises on the occurrence of an event in consequence of which the nature of his interest in shares in or debentures of the listed corporation or any associated corporation of the listed corporation changes, the nature of his interest immediately before and immediately after the relevant time;

(k) subject to subsection (3), where he is taken to be interested in shares in or debentures of, or have a short position in shares in, the listed corporation or any associated corporation of the listed corporation under section 344(1), 344(2), 344(3) or 345(14)-

(i) the number and class of the shares or amount of the debentures; and

(ii) the name and address of, and his relationship with, each of the other persons having an interest in the shares or debentures or having a short position in the shares,

in which he is so taken to be interested or have a short position under each of those sections taken separately;

(l) where he no longer has an interest in shares in or debentures of, or a short position in shares in, the listed corporation or any associated corporation of the listed corporation, the fact that he no longer has such an interest or short position; and

(m) such other information as may be required in the form specified for the purpose.

(2) Where any shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (d), (f), (j) or (k) are the underlying shares of equity derivatives, the person shall also specify, subject to subsection (3), separately in the notification-

(a) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time-

(i) cash settled equity derivatives (specifying separately if they are futures or options); or

(ii) physically settled equity derivatives (specifying separately if they are futures or options);

(b) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time-

(i) cash settled equity derivatives (specifying separately if they are futures or options); or

(ii) physically settled equity derivatives (specifying separately if they are futures or options);

(c) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (a) in which he is interested, or has a short position, immediately after the relevant time;

(d) the total number of shares which are the underlying shares of any of the equity derivatives referred to in

Miscellaneous

39. Except as otherwise provided in this Ordinance, the Tribunal and its members, any Presenting Officer, and any party, witness, counsel, solicitor, or any other person involved, in any proceedings, shall have the same privileges and immunities in respect of the proceedings as they would have if the proceedings were civil proceedings before the Court of First Instance.
40. The Tribunal may, at any time—
- consolidate proceedings; or
 - order that proceedings be heard together.

[Sch9.37] Enactment History

The Securities and Futures (Amendment) Bill 2011 was gazetted on 24 June 2011. A Bills Committee in respect of the Bill was formed on 8 July 2011, deliberations in respect of which are expected to be complete by 14 February 2012.

[Sch9.38] General Note

This new section has been added by the Bill to enable the MMT to consolidate proceedings or hear proceedings together. Though this section was part of a series of amendments to this Schedule for the purposes of procedural provisions for the MMT in disclosure proceedings (for breaches of price-sensitive information disclosure requirements), this power will presumably extend to MMT proceedings for market misconduct.

SCHEDULE 10

SAVINGS, TRANSITIONAL, CONSEQUENTIAL AND RELATED PROVISIONS, ETC.

[Sections 237, 240, 242, 406, 407, 408 & 409]

PART 1

SAVINGS, TRANSITIONAL AND SUPPLEMENTAL ARRANGEMENTS

Interpretation of Part 1

- In this Part, a heading to any provision of this Part shall not have legislative effect and shall not in any way vary, limit or extend the interpretation of any provision of this Part.

Part II of this Ordinance (Securities and Futures Commission)

- Without prejudice to section 3 of this Ordinance—
 - anything done under or by virtue of the repealed Securities and Futures Commission Ordinance before the commencement of Part II of this Ordinance by or in relation to the Commission and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision;
 - anything which immediately before the commencement of Part II of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures Commission Ordinance by or in relation to the Commission may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, be continued upon such commencement under or by virtue of that provision;
 - any person holding office as the chairman or deputy chairman, or as an executive director or non-executive director, of the Commission immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold the corresponding office under that Part and Schedule 2 to this Ordinance and be deemed to have been appointed, on the same terms and conditions as were applicable had this Ordinance not been enacted, to the corresponding office under that Part and Schedule 2 to this Ordinance;
 - the Advisory Committee constituted under section 10 of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence and be

deemed to have been constituted under section 7 of and Schedule 2 to this Ordinance;

- (e) any committee which has been established under section 6 of the repealed Securities and Futures Commission Ordinance and which is in existence immediately before the commencement of Part II of this Ordinance shall upon such commencement continue in existence and be deemed to have been established under section 8 of this Ordinance;
- (f) any person holding office as a member of the Advisory Committee referred to in paragraph (d), or as a member of a committee referred to in paragraph (e), immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to hold the corresponding office under that Part and Schedule 2 to this Ordinance and be deemed to have been appointed, on the same terms and conditions as were applicable had this Ordinance not been enacted, to the corresponding office under that Part and Schedule 2 to this Ordinance;
- (g) any person employed or engaged in any office, other than that referred to in paragraph (c) or (f), by the Commission under or pursuant to any provision of the repealed Securities and Futures Commission Ordinance immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to be employed or engaged in the same office under or pursuant to that Part and be deemed to have been employed or engaged in the same office, on the same terms and conditions as were applicable had this Ordinance not been enacted, under or pursuant to that Part.

Part III of this Ordinance (Exchanges, Clearing Houses and Investor Compensation Companies)

3. In sections 6 and 9-

'HKFECC' (期貨結算公司) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name HKFE Clearing Corporation Limited;

'HKSCC' (香港結算公司) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name Hong Kong Securities Clearing Company Limited;

'SECH' (期權結算公司) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name The SEHK Options Clearing House Limited.

4. In sections 10 and 13-

'HKEC' (交易結算公司) means the company incorporated under the Companies Ordinance (Cap 32) and registered under that Ordinance by the name Hong Kong Exchanges and Clearing Limited.

5. On the commencement of Division 2 of Part III of this Ordinance-

- (a) the Stock Exchange Company and the Futures Exchange Company shall each be deemed to have been recognized as an exchange company under section 19(2) of this Ordinance;
- (b) the rules of-
 - (i) the Stock Exchange Company made under section 34 (except subsection (1)(b)) of the repealed Stock Exchanges Unification Ordinance and approved under section 35 of that Ordinance; and
 - (ii) the Futures Exchange Company approved under section 14 of the repealed Commodities Trading Ordinance, which are in effect immediately before such commencement shall upon such commencement continue to have effect and be deemed to have been made under section 23 of this Ordinance and approved under section 24(3) of this Ordinance;
- (c) the respective constitutions of the Stock Exchange Company and the Futures Exchange Company which are in effect immediately before such commencement shall upon such commencement continue to have effect and be deemed to have been approved under section 24(3) of this Ordinance; and
- (d) any appointment of a person as chief executive of the Stock Exchange Company or the Futures Exchange Company which is in effect immediately before such commencement shall upon such commencement continue to have effect and be deemed to have been approved under section 26 of this Ordinance.

6. On the commencement of Division 3 of Part III of this Ordinance, the HKSCC, HKFECC and SECH shall each be deemed to have been recognized as a clearing house under section 37(1) of this Ordinance.

7. Anything done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance before the commencement of Division 3 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision.

8. Anything which immediately before the commencement of Division 3 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures (Clearing Houses) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.

9. Without limiting the generality of section 7-

- (a) a notice which is published under section 4(4) of the repealed Securities and Futures (Clearing Houses) Ordinance and which is in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been published under section 41(7) of this Ordinance; and

- (b) the rules of the HKSCC, HKFECC and SEOCH which-
- (i) have been approved under section 4(7) of the repealed Securities and Futures (Clearing Houses) Ordinance; or
 - (ii) have been submitted or cause to be submitted under section 4(5) of that Ordinance, and which are in effect immediately before the commencement of Division 3 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been- (A) in the case of subparagraph (i), approved under section 41(3) of this Ordinance; or (B) in the case of subparagraph (ii), submitted or caused to be submitted under section 41(2)(b) of this Ordinance.
10. On the commencement of Division 4 of Part III of this Ordinance, the HKEC shall be deemed to have been recognized as an exchange controller under section 59(2) of this Ordinance.
11. Anything done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance before the commencement of Division 4 of Part III of this Ordinance and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision.
12. Anything which immediately before the commencement of Division 4 of Part III of this Ordinance is in the process of being done under or by virtue of the repealed Exchanges and Clearing Houses (Merger) Ordinance may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Division, be continued upon such commencement under or by virtue of that provision.
13. Without limiting the generality of section 11-
- (a) a notice which is published under section 10(6) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been published under section 67(7) of this Ordinance;
 - (b) the rules of the HKEC which have been approved under section 10 (3) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which are in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been approved under section 67(3) of this Ordinance;
 - (c) any approval which is given under section 6(2) of the repealed Exchanges and Clearing Houses (Merger) Ordinance and which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue

- to have effect and be deemed to have been given under section 61(1) of this Ordinance;
- (d) any approval in writing of the Chief Executive for a person to hold the office of the chairman of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been given under section 69 of this Ordinance;
 - (e) any appointment of a person as chief executive or chief operating officer of a recognized exchange controller which is in effect immediately before the commencement of Division 4 of Part III of this Ordinance shall upon such commencement continue to have effect and be deemed to have been approved under section 70 of this Ordinance; and
 - (f) the Risk Management Committee established under section 9 of the repealed Exchanges and Clearing Houses (Merger) Ordinance shall upon the commencement of Division 4 of Part III of this Ordinance continue in existence and be deemed to have been established under section 65 of this Ordinance.
14. Anything done under or by virtue of-
- (a) section 50 of the repealed Securities and Futures Commission Ordinance before the commencement of section 92 of this Ordinance; or
 - (b) section 51 of the repealed Securities and Futures Commission Ordinance before the commencement of section 93 of this Ordinance, and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that section 92 or 93 (as the case may be).
15. Anything which immediately before the commencement of-
- (a) section 92 of this Ordinance is in the process of being done under or by virtue of section 50 of the repealed Securities and Futures Commission Ordinance; or
 - (b) section 93 of this Ordinance is in the process of being done under or by virtue of section 51 of the repealed Securities and Futures Commission Ordinance, may, in so far as it could upon such commencement have been done under or by virtue of section 92 or 93 of this Ordinance, be continued upon such commencement under or by virtue of that section 92 or 93 (as the case may be).

Part IV of this Ordinance (Offers of investments)

16. Subject to sections 18 and 19-
- (a) any corporation or arrangement that is immediately before the commencement of Part IV of this Ordinance authorized under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or