

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571)

SECURITIES AND FUTURES (COLLECTIVE INVESTMENT SCHEMES) NOTICE

INTRODUCTION

Pursuant to section 393 of the Securities and Futures Ordinance (Cap. 571) (SFO), the Financial Secretary has made the Securities and Futures (Collective Investment Schemes) Notice (the Notice) at the **Annex**.

BACKGROUND

The SFO

2. The SFO was enacted in March 2002. It consolidates and modernizes ten existing ordinances governing the securities and futures markets into a composite piece of legislation to keep the regulatory regime on a par with international standards and practices. For effective regulation, the SFO provides flexibility in addressing changing market practices and global conditions by empowering the Chief Executive in Council, the Financial Secretary, the Chief Justice and the Securities and Futures Commission (SFC) to prescribe detailed and technical requirements as necessary by way of subsidiary legislation, to supplement the regulatory framework laid down under the primary legislation.

3. On 22 February 2002, the House Committee of the Legislative Council established a Subcommittee on Draft Subsidiary Legislation to be made under the SFO (the Subcommittee) to study the subsidiary legislation necessary for commencing the SFO. From March 2002 to October 2002, the Subcommittee held 12 meetings and considered a total of 37 items of draft subsidiary legislation, including the *vires* to make them.

THE PROPOSALS

Major policy considerations

4. Part IV of the SFO deals with the regulatory framework for the offering of investment products drawing on the provisions of the existing Protection of Investors Ordinance (Cap. 335) (PIO). It imposes a general prohibition on the issue to the public of advertisements, invitations and documents relating to a wide range of investments. These investments mainly fall into a category described as “collective investment schemes”.

5. Similar to the approach in the PIO, the SFO does not exhaustively define what is meant by “collective investment schemes”. There is a definition in Schedule 1 to the SFO but this provides flexibility in that the scope of the term may be adjusted from time to time by a notice made by the Financial Secretary under section 393 of the SFO. In particular, new investment products may be brought within the regulatory regime from time to time to facilitate market development.

6. The Notice at the Annex is basically identical to the existing Protection of Investors (Gold Purchase) Order (Cap. 335 Sub. Leg. A), with no change in policy. It prescribes the arrangements for the purchase of gold coins or gold bullion with certain specified characteristics as “collective investment schemes”. Such schemes are commonly known as “paper gold schemes”. The effect of the Notice is that any person who offers “paper gold schemes” to the public is subject to the general prohibition on the issue of advertisements etc. under section 103 of the SFO, and has to obtain prior authorization from the SFC under section 105 of the SFO.

7. The Notice specifically provides that the definition of “securities” in Schedule 1 to the SFO (which includes “any interest in a collective investment scheme”) does not apply to the prescribed arrangements. This is to preserve existing policy that whilst the issue of advertisement relating to paper gold schemes are subject to the approval of the SFC, dealing of such schemes are not subject to the licensing regime provided for under Part V of the SFO.

THE NOTICE

8. Section 2 of the Notice prescribes that the arrangements set out in the Schedule to the Notice are to be regarded as collective investment schemes for the purposes of the SFO (other than the definition of “securities”).

9. The Schedule prescribes that arrangements for the purchase of gold coins or gold bullion that are made available in the course of business and have the purpose or effect of enabling the participating persons to do the following are to be regarded as collective investment schemes –

- (a) to acquire the ownership of the coins or bullion for valuable consideration;
- (b) to defer taking possession of the coins or bullion; and
- (c) to transfer or retransfer the ownership of the coins or bullion to specified persons.

PUBLIC CONSULTATION

10. The SFC released a consultation document and an exposure draft of the Notice on 25 March 2002 for comment by the public. Two submissions were received.

11. A draft of the Notice was considered by the Subcommittee at its meeting held on 6 June 2002. No major concerns were expressed by Members of the Subcommittee at the meeting.

FINANCIAL AND STAFFING IMPLICATIONS

12. There are no financial or staffing implications for the Government.

COMMENCEMENT DATE

13. The Notice will come into operation on the day appointed for the commencement of the SFO, together with other subsidiary legislation necessary for the commencement. We expect this to take place shortly, after completion of the negative vetting procedure through the Legislative Council and allowing the industry a reasonable period of time for making necessary adjustments with reference to the subsidiary legislation. We aim to announce the target commencement date by the end of 2002.

PUBLICITY

14. The Notice will be published in the Gazette on 6 December 2002. We will issue a press release on the same day. A spokesman will be available for answering media and public enquires on the Notice.

ENQUIRIES

15. For any enquiries on this brief, please contact Mr Frank Tsang of the Financial Services and the Treasury Bureau at 2528 9224.

Financial Services and the Treasury Bureau
6 December 2002

SECURITIES AND FUTURES (COLLECTIVE INVESTMENT SCHEMES) NOTICE

(Made under section 393 of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

This Notice shall come into operation on the day appointed for the commencement of the Securities and Futures Ordinance (Cap. 571).

2. Certain arrangements to be regarded as collective investment schemes

For the purposes of the Ordinance (other than the definition of "securities" in section 1 of Part 1 of Schedule 1 to the Ordinance), the arrangements set out in the Schedule are to be regarded as collective investment schemes.

SCHEDULE

[s. 2]

ARRANGEMENTS TO BE REGARDED AS COLLECTIVE INVESTMENT SCHEMES

Item	Description of arrangements
1.	Any arrangements for the purchase of gold coins or gold bullion that are made available in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling the participating persons - (a) to acquire the ownership of the coins or bullion for valuable consideration;

- (b) to defer taking possession of the coins or bullion; and
- (c) to transfer or retransfer the ownership of the coins or bullion to a person who is a party to, or is referred to in, the arrangements.



Financial Secretary

29 November 2002

Explanatory Note

This Notice prescribes that, for the purposes of the Securities and Futures Ordinance (Cap. 571) (other than the definition of "securities" in section 1 of Part 1 of Schedule 1 to the Ordinance), any arrangements set out in the Schedule to the Notice for the purchase of gold coins or gold bullion are to be regarded as collective investment schemes.