

# **LEGISLATIVE COUNCIL BRIEF**

## **Securities and Futures Ordinance (Cap. 571)**

### **SECURITIES AND FUTURES (REGISTRATION OF APPEALS TRIBUNAL ORDERS) RULES**

### **SECURITIES AND FUTURES (REGISTRATION OF MARKET MISCONDUCT TRIBUNAL ORDERS) RULES**

## **INTRODUCTION**

Pursuant to sections 233 and 269 of the Securities and Futures Ordinance (Cap. 571) (SFO), the Chief Justice (CJ) has made the Securities and Futures (Registration of Appeals Tribunal Orders) Rules, at **Annex A**, and the Securities and Futures (Registration of Market Misconduct Tribunal Orders) Rules, at **Annex B**, respectively.

## **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 CJ 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 the 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 sets of draft subsidiary legislation, including the *vires* to make them.

## **THE PROPOSALS**

### **Major policy considerations**

#### ***Securities and Futures (Registration of Appeals Tribunal Orders) Rules***

4. The Rules supplement the Securities and Futures Appeals Tribunal (SFAT) established under Part XI of the SFO. The SFAT is an independent full-time body chaired by a Judge, which may review, on application, the merits of a range of specified decisions (set out in Part 2 of Schedule 8 to the SFO) made by the relevant regulatory authorities. The SFAT is empowered to make a range of orders under the SFO in relation to its review proceedings, such as those relating to the giving of evidence or awarding of costs. Under section 226 of the SFO, the Court of First Instance may, on notice in writing given by the SFAT in the manner prescribed by rules made by the CJ under section 233, register an order of the SFAT in the Court of First Instance. On registration, the SFAT order becomes for all purposes an order of the Court of First Instance. The Rules at Annex A prescribe the manner in which the SFAT is to give notice to the Court of First Instance in respect of registration of its orders.

#### ***Securities and Futures (Registration of Market Misconduct Tribunal Orders) Rules***

5. The Market Misconduct Tribunal (MMT) established under Part XIII of the SFO is an independent full-time body chaired by a Judge. It is empowered to deal with a range of market misconduct through civil proceedings and sanctions. The MMT is based on the existing Insider Dealing Tribunal established under the Securities (Insider Dealing) Ordinance (Cap. 395) with its scope expanded to cover a wider range of market misconduct apart from insider dealing, such as price rigging, false trading and stock market manipulation, etc. The MMT is empowered to make orders in relation to the conduct of its proceedings. It may also impose by order a range of civil sanctions on a person identified as having engaged in market misconduct. These include an order to require the person concerned to pay to Government the amount of profit gained or loss avoided as a result of the market misconduct, to restrict a person's access to the markets and to disqualify a person from being a director or other officer of any corporation, etc.

6. Under section 264(1) of the SFO, the Court of First Instance may, on notice in writing given by the MMT in the manner prescribed by rules made by

the CJ under section 269, register an order of the MMT in the Court of First Instance. On registration, the order becomes for all purposes an order of the Court of First Instance. The Rules at Annex B prescribe the manner in which the MMT is to give notice to the Court of First Instance in respect of registration of its orders.

## **THE RULES**

### ***Securities and Futures (Registration of Appeals Tribunal Orders) Rules***

7. Section 3 of the Rules provides that the SFAT shall, for the purpose of giving notice in respect of an order pursuant to section 226 of the SFO, produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the order and a copy of the order.

### ***Securities and Futures (Registration of Market Misconduct Tribunal Orders) Rules***

8. Section 3 of the Rules provides that the MMT shall, for the purpose of giving notice in respect of an order pursuant to section 264(1) of the SFO, produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the order and a copy of the order.

## **PUBLIC CONSULTATION**

9. The SFC released a consultation document and an exposure draft of the Securities and Futures (Registration of Commission Disciplinary Orders) Rules on 27 March 2002 for comment by the public. That set of Rules (published in the Gazette on 29 November 2002) made by the SFC is basically identical to the Rules now at Annexes A and B, except that they prescribe the manner in which the SFC is to make applications to the Court of First Instance to register its disciplinary orders. The SFC has in its consultation document made it clear that it would recommend essentially identical rules to the CJ for approval to provide for registration of orders of the SFAT and the MMT in the Court of First Instance. One submission was received.

10. A draft of the Rules 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**

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

## **COMMENCEMENT DATE**

12. The Rules 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**

13. The Rules 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 Rules.

## **ENQUIRIES**

14. 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 (REGISTRATION OF APPEALS  
TRIBUNAL ORDERS) RULES**

(Made under section 233 of the Securities and Futures  
Ordinance (Cap. 571))

**1. Commencement**

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

**2. Interpretation**

In these Rules -

"order" (命令) means an order of the Tribunal made under the Ordinance;

"Tribunal" (審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of the Ordinance.

**3. Registration of Tribunal orders in  
Court of First Instance**

The Tribunal shall, for the purpose of giving notice in respect of an order pursuant to section 226 of the Ordinance, produce to the Registrar of the High Court a notice in writing

requesting that the order be registered, together with the order and a copy of the order.

Andrew Li

Chief Justice

3rd December 2002

**Explanatory Note**

These Rules prescribe the manner in which the Securities and Futures Appeals Tribunal gives notice to the Court of First Instance in respect of the registration of an order made by the Tribunal under the Securities and Futures Ordinance (Cap. 571).

**SECURITIES AND FUTURES (REGISTRATION OF MARKET MISCONDUCT  
TRIBUNAL ORDERS) RULES**

(Made under section 269 of the Securities and Futures  
Ordinance (Cap. 571))

**1. Commencement**

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

**2. Interpretation**

In these Rules -

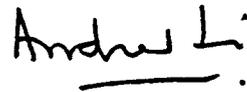
"order" (命令) means an order of the Tribunal made under the Ordinance;

"Tribunal" (審裁處) means the Market Misconduct Tribunal established by section 251 of the Ordinance.

**3. Registration of Tribunal orders in  
Court of First Instance**

The Tribunal shall, for the purpose of giving notice in respect of an order pursuant to section 264(1) of the Ordinance, produce to the Registrar of the High Court a notice in writing

requesting that the order be registered, together with the order and a copy of the order.

Handwritten signature of Andrew Li in black ink, with a horizontal line underneath the name.

Chief Justice

3rd December 2002

**Explanatory Note**

These Rules prescribe the manner in which the Market Misconduct Tribunal gives notice to the Court of First Instance in respect of the registration of an order made by the Tribunal under the Securities and Futures Ordinance (Cap. 571).