SECURITIES AND FUTURES ORDINANCE

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 5 OF 2002

L.S.

TUNG Chee-hwa
Chief Executive
27 March 2002

An Ordinance to consolidate and amend the law relating to financial products, the securities and futures market and the securities and futures industry, the regulation of activities and other matters connected with financial products, the securities and futures market and the securities and futures industry, the protection of investors, and other matters incidental thereto or connected therewith, and for connected purposes.

[ ]

Enacted by the Legislative Council.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Securities and Futures Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.

2. Interpretation

(1) Schedule 1 contains interpretation provisions which apply to this Ordinance in accordance with their terms.

(2) Individual Parts and provisions of this Ordinance contain interpretation provisions which have application in accordance with their terms.

(3) The Commission may, by notice published in the Gazette, amend Parts 2, 3, 4 and 5 of Schedule 1.

PART II

SECURITIES AND FUTURES COMMISSION

Division 1—The Commission

3. Securities and Futures Commission

(1) Notwithstanding the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 406, the body established by section 3 of that Ordinance as the Securities and Futures Commission shall continue in existence in its original name as a body corporate with power to sue and be sued in that name.

(2) Subject to the provisions of this Ordinance, the corporate identity of the Commission, and the rights, privileges, powers, obligations and liabilities of the Commission and those of others in relation to the Commission, are not affected by the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 406, and any reference to the Commission (whether by reference to that Ordinance or otherwise) in any Ordinance or any instrument, record or document, or in or for the purposes of any proceedings, agreement or arrangement (whether in writing or not) shall be construed accordingly.

(3) The receipts of the Commission are not subject to taxation under the Inland Revenue Ordinance (Cap. 112).

(4) Part 1 of Schedule 2 contains provisions relating to the constitution and proceedings of and other matters relating to the Commission.

4. Regulatory objectives of Commission

The regulatory objectives of the Commission are—

(*a*) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;

(*b*) to promote understanding by the public of the operation and functioning of the securities and futures industry;

(*c*) to provide protection for members of the public investing in or holding financial products;

(*d*) to minimize crime and misconduct in the securities and futures industry;

(*e*) to reduce systemic risks in the securities and futures industry; and

(*f*) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

5. Functions and powers of Commission

(1) The functions of the Commission are, so far as reasonably practicable—

(*a*) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;

(*b*) to supervise, monitor and regulate—

(i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and

(ii) such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions;

(*c*) to promote and develop an appropriate degree of self-regulation in the securities and futures industry;

(*d*) to promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;

(*e*) to encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;

(*f*) to take such steps as it considers appropriate to ensure that the relevant provisions are complied with;

(*g*) to maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;

(*h*) to co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;

(*i*) to promote understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;

(*j*) to encourage the public to appreciate the relative benefits of investing in financial products through persons carrying on activities regulated by the Commission under any of the relevant provisions;

(*k*) to promote understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor;

(*l*) to secure an appropriate degree of protection for members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in or holding financial products;

(*m*) to promote, encourage and enforce—

(i) the adoption of appropriate internal controls and risk management systems by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and

(ii) the adoption of appropriate internal controls and risk management systems by registered institutions in the conduct of activities regulated by the Commission under any of the relevant provisions;

(*n*) to suppress illegal, dishonourable and improper practices in the securities and futures industry;

(*o*) to take appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;

(*p*) to recommend reforms of the law relating to the securities and futures industry;

(*q*) to advise the Financial Secretary on matters relating to the securities and futures industry and provide him with such information in relation thereto as it considers appropriate; and

(*r*) to perform functions conferred or imposed on it by or under this or any other Ordinance.

(2) Subsection (1)(*c*) does not limit or otherwise affect any other function of the Commission.

(3) The Commission, in performing any of its functions in relation to—

(*a*) any authorized financial institution as a registered institution or as an associated entity of an intermediary; or

(*b*) any person as an associated entity of an authorized financial institution that is a registered institution,

may rely, in whole or in part, on the supervision of such authorized financial institution or person (as the case may be) by the Monetary Authority.

(4) For the purposes of this Ordinance, the Commission may—

(*a*) acquire, hold and dispose of property of any description;

(*b*) make contracts or other agreements;

(*c*) receive and expend moneys;

(*d*) with the approval of the Financial Secretary, borrow money on security or other conditions;

(*e*) publish or otherwise make available materials (however described) indicating to persons who are, or who carry on activities, regulated by the Commission under any of the relevant provisions and, where the Commission considers appropriate, to any other persons the manner in which, in the absence of any particular consideration or circumstance, the Commission proposes to perform any of its functions; and

(*f*) publish or otherwise make available materials (however described) indicating to the public any matter relating or incidental to the performance of any of the functions of the Commission.

(5) Materials published or otherwise made available under subsection (4)(*e*) or (*f*) are not subsidiary legislation.

6. General duties of Commission

(1) In performing its functions, the Commission shall, so far as reasonably practicable, act in a way which—

(*a*) is compatible with its regulatory objectives; and

(*b*) it considers most appropriate for the purpose of meeting those objectives.

(2) In pursuing its regulatory objectives and performing its functions, the Commission shall have regard to—

(*a*) the international character of the securities and futures industry and the desirability of maintaining the status of Hong Kong as a competitive international financial centre;

(*b*) the desirability of facilitating innovation in connection with financial products and with activities regulated by the Commission under any of the relevant provisions;

(*c*) the principle that competition among persons carrying on activities regulated by the Commission under any of the relevant provisions should not be impeded unnecessarily;

(*d*) the importance of acting in a transparent manner, having regard to its obligations of preserving secrecy and confidentiality; and

(*e*) the need to make efficient use of its resources.

7. Advisory Committee

(1) There shall be an Advisory Committee to advise the Commission on matters of policy regarding any of its regulatory objectives and functions.

(2) The Advisory Committee is constituted in accordance with Part 1 of Schedule 2 and shall conduct its business in accordance with that Part.

(3) The Advisory Committee shall meet at least once every 3 months to advise the Commission.

(4) The Commission may request the Advisory Committee to advise it on matters of policy regarding any of its regulatory objectives and functions.

8. Commission may establish committees

(1) The Commission may establish—

(*a*) standing committees; and

(*b*) special committees.

(2) The Commission may refer a matter to a committee established under this section for consideration, inquiry or management.

(3) The Commission may appoint a person to be a member of a committee established under this section, whether or not the person is a member of the Commission, and may appoint a member of the committee to be the chairman of the committee.

(4) A reference of a matter to a committee under subsection (2) does not prevent the Commission from performing any of its functions.

(5) The Commission may—

(*a*) withdraw a reference under subsection (2) from a committee;

(*b*) revoke an appointment of a member or chairman of a committee under subsection (3).

(6) A committee established under this section may elect one of its members—

(*a*) to be its chairman if a chairman has not been appointed by the Commission under subsection (3); or

(*b*) to act as its chairman for any period during which a chairman appointed by the Commission under subsection (3) is unable to act as chairman due to illness, absence from Hong Kong or any other cause,

and may at any time remove the member so elected from the office of the chairman.

(7) A committee established under this section may, subject to the provisions of this Ordinance, regulate its own procedure and business.

(8) A committee established under this section shall meet when and where the chairman of the committee determines, subject to any procedure fixed by the committee and any direction given by the Commission under subsection (9).

(9) The Commission may give directions to a committee established under this section, whether generally or in any particular case, and whether regarding the manner in which it shall act or otherwise, and the committee shall act in accordance with any such directions.

9. Staff of Commission

(1) The Commission may employ persons for such remuneration and allowances, and on such other terms and conditions, as the Commission determines.

(2) The Commission may provide and maintain schemes (whether contributory or not) for the payment of retirement benefits, gratuities or other allowances to its employees and their dependants.

(3) The Commission may engage consultants, agents and advisers to assist it in the performance of its functions.

10. Delegation and sub-delegation of Commission's functions

(1) Subject to subsection (2), the Commission may delegate any of its functions to—

(*a*) a member of the Commission;

(*b*) a committee established under section 8; or

(*c*) an employee of the Commission, whether by reference to his name or to the office held by him.

(2) No delegation shall be made under subsection (1) in respect of—

(*a*) the power of the Commission to delegate under this section; or

(*b*) a function specified in Part 2 of Schedule 2.

(3) Where the Commission delegates a function under this section, it may at the same time authorize the delegate to sub-delegate the function and the authorization may contain restrictions or conditions on the exercise of the power to sub-delegate.

(4) A delegation or sub-delegation under this section does not prevent the Commission or its delegate from concurrently performing the function delegated or sub-delegated.

(5) The Commission may—

(*a*) revoke a delegation under this section;

(*b*) revoke an authorization in respect of a sub-delegation under this section,

whereupon the delegation or sub-delegation (as the case may be) shall cease to have effect.

(6) Where a person or committee purports to act pursuant to a delegation or sub-delegation under this section, he or it shall be presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.

(7) Without prejudice to subsection (4), where there is a delegation or sub-delegation under this section in respect of a function of the Commission, any reference in this or any other Ordinance to the Commission in connection with the performance of the function shall, unless the context otherwise requires, be construed accordingly.

(8) The Legislative Council may by resolution amend Part 2 of Schedule 2.

11. Directions to Commission

(1) After consultation with the chairman of the Commission, the Chief Executive may, upon being satisfied that it is in the public interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objectives or the performance of any of its functions.

(2) The Commission shall comply with any written direction given under subsection (1).

(3) Where any written direction is given under subsection (1), any requirement under any other provision of this or any other Ordinance that the Commission shall, for the purpose of performing any of the functions to which the written direction relates—

(*a*) form any opinion;

(*b*) be satisfied as to any matter (including existence of particular circumstances); or

(*c*) consult any person,

shall not apply for all purposes connected with the performance of functions pursuant to, or consequent upon, the written direction.

(4) Written directions given under subsection (1) are not subsidiary legislation.

12. Commission to furnish information

The Commission shall, when required by the Financial Secretary, furnish to the Financial Secretary such information as he specifies on the principles, practices and policy it is pursuing or adopting, or proposes to pursue or adopt, in furthering any of its regulatory objectives or performing any of its functions, and the reasons therefor.

Division 2—Accounting and financial arrangements

13. Financial year and estimates

(1) The financial year of the Commission commences on 1 April in each year.

(2) The Commission shall, not later than 31 December in each financial year of the Commission, submit to the Chief Executive for his approval estimates of its income and expenditure for the next financial year.

(3) The Financial Secretary shall cause the estimates as approved pursuant to subsection (2) to be laid on the table of the Legislative Council.

14. Appropriation

For each financial year of the Commission, the Government shall pay to the Commission out of the general revenue the moneys appropriated by the Legislative Council for that purpose.

15. Accounts and annual report

(1) The Commission shall keep proper accounts and records of its transactions.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare financial statements which shall—

(*a*) give a true and fair view of the state of affairs of the Commission as at the end of the financial year and of the results of its operations and cash flows in the financial year; and

(*b*) be signed by the chairman, and one non-executive director, of the Commission.

(3) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, prepare a report on its activities during the financial year and send a copy of the report to the Financial Secretary who shall cause a copy thereof to be laid on the table of the Legislative Council.

16. Auditors and audit

(1) The Commission shall, with the approval of the Financial Secretary, appoint auditors.

(2) The Commission shall, as soon as reasonably practicable after the end of each financial year of the Commission, submit to the auditors appointed under subsection (1) for audit the financial statements prepared for the financial year under section 15(2).

(3) The auditors appointed under subsection (1) shall prepare a report on the financial statements submitted to them under subsection (2) and send the report to the Commission which shall, as soon as reasonably practicable after its receipt, send to the Financial Secretary a copy of the report and a copy of the financial statements to which the report relates.

(4) The auditors appointed under subsection (1) shall include in their report a statement as to whether, in their opinion, the financial statements to which the report relates give a true and fair view of the state of affairs of the Commission as at the end of the financial year for which the financial statements are prepared and of the results of its operations and cash flows in the financial year.

(5) An auditor appointed under subsection (1) has a right of access at all reasonable times to the books, accounts, vouchers, records and documents kept by the Commission and is entitled to require from the officers of the Commission such information and explanations as he considers necessary for the performance of his duties as auditor.

(6) The Financial Secretary shall cause a copy of the report referred to in subsection (3), and a copy of the financial statements to which the report relates, to be laid on the table of the Legislative Council.

(7) The Director of Audit or another public officer authorized by the Director under subsection (8) may at any reasonable time—

(*a*) examine any books, accounts, vouchers, records or documents kept by the Commission; and

(*b*) if the Director or the public officer (as the case may be) considers appropriate, make a copy of the whole of, or any entry in, such books, accounts, vouchers, records or documents.

(8) The Director of Audit may authorize any public officer to perform any function for the purposes of subsection (7).

17. Investment of funds

The Commission may invest its funds which are not immediately required in the manner that the Financial Secretary approves.

PART III

EXCHANGE COMPANIES, CLEARING HOUSES, EXCHANGE CONTROLLERS, INVESTOR COMPENSATION COMPANIES AND AUTOMATED TRADING SERVICES

Division 1—Interpretation

18. Interpretation of Part III

(1) In this Part, unless the context otherwise requires—

"associated person" (相聯者), in relation to a person entitled to exercise, or control the exercise of, voting power in relation to, or holding securities in, a corporation—

(*a*) subject to paragraph (*c*), means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of securities or other interests in that corporation or under which they act together in exercising their voting power in relation to it;

(*b*) subject to paragraph (*c*), includes, in relation to such provisions of Division 4 as are specified in Part 2 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part to be an associated person;

(*c*) excludes, in relation to such provisions of Division 4 as are specified in Part 3 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part not to be an associated person;

"controller" (控制人), in relation to a corporation, means any person who is—

(*a*) a shareholder controller of the corporation; or

(*b*) an indirect controller of the corporation;

"default proceedings" (違責處理程序) means any proceedings or other action taken by a recognized clearing house under its default rules;

"default rules" (違責處理規則), in relation to a recognized clearing house, means the rules of the clearing house required by section 40(2);

"defaulter" (違責者) means a clearing participant who is the subject of any default proceedings;

"indirect controller" (間接控制人), in relation to a corporation—

(*a*) subject to paragraph (*b*), means a person in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act;

(*b*) excludes, in relation to such provisions of Division 4 as are specified in Part 4 of Schedule 3, a person, or a person belonging to a class of persons, specified in that Part not to be an indirect controller;

"market charge" (市場押記) means a charge, whether fixed or floating, granted in favour of a recognized clearing house—

(*a*) over any property which is held by or deposited with the clearing house; and

(*b*) for the purpose of securing liabilities arising directly in connection with the clearing house's ensuring the settlement of a market contract;

"market collateral" (市場抵押品) means any property which is held by or deposited with a recognized clearing house for the purpose of securing liabilities arising directly in connection with the clearing house's ensuring the settlement of a market contract;

"relevant corporation" (相關法團) means a corporation of which a relevant recognized exchange controller is a controller;

"relevant office-holder" (有關人員) means—

(*a*) the Official Receiver;

(*b*) a person acting in relation to a company as its liquidator, receiver or manager;

(*c*) a person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property; or

(*d*) a person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person;

"relevant recognized exchange controller" (相關認可控制人) means a recognized exchange controller which is a controller of the Stock Exchange Company;

"settlement" (交收), in relation to a market contract, includes partial settlement;

"shareholder controller" (股東控制人), in relation to a corporation, means any person who, either alone or with any associated person or persons, is entitled to exercise, or control the exercise of, more than 35% of the voting power at any general meeting of the corporation or of another corporation of which it is a subsidiary.

(2) Where a charge is granted partly for the purpose specified in the definition of "market charge" in subsection (1) and partly for other purposes, the charge is in Division 3 a market charge in so far as it has effect for that specified purpose.

(3) Where any collateral is granted partly for the purpose specified in the definition of "market collateral" in subsection (1) and partly for other purposes, the collateral is in Division 3 market collateral in so far as it has been provided for that specified purpose.

(4) In Division 3, a reference to the law of insolvency includes a reference to every provision made by or under—

(*a*) the Bankruptcy Ordinance (Cap. 6);

(*b*) the Companies Ordinance (Cap. 32); and

(*c*) any other enactment which is concerned with or in any way related to the insolvency of a person.

(5) In Division 3, a reference to settlement in relation to a market contract is a reference to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(6) Where there is a reference in this or any other Ordinance to a controller of a recognized exchange company or recognized clearing house (however expressed), the term controller shall be construed in accordance with the provisions of this section.

Division 2—Exchange companies

19. Recognition of exchange company

(1) No person shall—

(*a*) operate a stock market unless the person is—

(i) the Stock Exchange Company;

(ii) a recognized exchange company of which a relevant recognized exchange controller is a controller; or

(iii) a relevant recognized exchange controller which is itself a recognized exchange company;

(*b*) operate a futures market unless the person is a recognized exchange company;

(*c*) assist in the operation of a stock market which is operated in contravention of this subsection;

(*d*) assist in the operation of a futures market which is operated in contravention of this subsection.

(2) Where the Commission is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the proper regulation of markets in securities or futures contracts,

it may, after consultation with the public and then the Financial Secretary, by notice in writing served on a company, recognize the company as an exchange company—

(i) subject to such conditions as it considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(3) Without limiting the generality of conditions which may be specified in a notice under subsection (2), the Commission may, by notice in writing served on a recognized exchange company, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—

(*a*) is satisfied that it is appropriate to do so on a ground specified in paragraph (*a*) or (*b*) of that subsection; and

(*b*) has consulted the Financial Secretary.

(4) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (3), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(5) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) Where a company becomes a recognized exchange company, the Commission shall cause notice of that fact to be published in the Gazette.

(7) Where a company is seeking to be a recognized exchange company and the Commission is minded not to recognize the company under subsection (2), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

(8) Where the Commission refuses to recognize a company as an exchange company under subsection (2), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.

(9) A person shall not be regarded as contravening—

(*a*) subsection (1)(*b*) by reason only of—

(i) carrying on a business of providing automated trading services that constitutes an operation of a futures market if—

(A) that person is authorized to provide the services under section 95(2) or is an intermediary licensed or registered for Type 7 regulated activity; and

(B) by virtue of the authorization, licence or registration, that person is permitted to engage in activities that constitute an operation of a futures market; or

(ii) carrying on a business of dealing in futures contracts that constitutes an operation of a futures market if—

(A) that person is an intermediary licensed or registered for Type 2 regulated activity; and

(B) by virtue of the licence or registration, that person is permitted to engage in activities that constitute an operation of a futures market; or

(*b*) subsection (1)(*d*) by reason only of assisting in carrying on a business of providing automated trading services that constitutes an operation of a futures market or carrying on a business of dealing in futures contracts that constitutes an operation of a futures market if the conditions referred to in paragraph (*a*)(i)(A) and (B) or (ii)(A) and (B) (as the case may be) are fulfilled in relation to the business of providing automated trading services or the business of dealing in futures contracts.

(10) In subsection (1), "stock market" (證券市場) shall have the meaning assigned to it in the definition of "stock market" in section 1 of Part 1 of Schedule 1, except that a reference to securities in that definition shall be construed as not including a reference to interests in any collective investment scheme.

20. Transactions that may be conducted on recognized stock market and recognized futures market

(1) No transaction may be conducted on a recognized stock market other than dealings in—

(*a*) securities; and

(*b*) other financial products which are approved by the Commission by notice published in the Gazette, either generally or in a particular case.

(2) No transaction may be conducted on a recognized futures market other than dealings in—

(*a*) futures contracts; and

(*b*) other financial products,

which are approved by the Commission by notice published in the Gazette, either generally or in a particular case.

(3) A notice under subsection (1) or (2) is not subsidiary legislation.

21. Duties of recognized exchange company

(1) It shall be the duty of a recognized exchange company to ensure—

(*a*) so far as reasonably practicable, an orderly, informed and fair market—

(i) in the case of a recognized exchange company which operates a stock market, in securities that are traded on that stock market or through the facilities of that company; or

(ii) in the case of a recognized exchange company which operates a futures market, in futures contracts that are traded on that futures market or through the facilities of that company; and

(*b*) that risks associated with its business and operations are managed prudently.

(2) In discharging its duty under subsection (1), a recognized exchange company shall—

(*a*) act in the interest of the public, having particular regard to the interest of the investing public; and

(*b*) ensure that the interest of the public prevails where it conflicts with the interest of the recognized exchange company.

(3) A recognized exchange company shall operate its facilities in accordance with the rules made under section 23 and approved under section 24.

(4) A recognized exchange company shall formulate and implement appropriate procedures for ensuring that its exchange participants comply with the rules of the company.

(5) A recognized exchange company shall immediately notify the Commission if it becomes aware—

(*a*) that any of its exchange participants is unable to comply with any rules of the company or any financial resources rules; or

(*b*) of a financial irregularity or other matter which in the opinion of the company may indicate that the financial standing or integrity of an exchange participant is in question, or that an exchange participant may not be able to meet his legal obligations.

(6) A recognized exchange company shall at all times provide and maintain—

(*a*) adequate and properly equipped premises;

(*b*) competent personnel; and

(*c*) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support,

for the conduct of its business.

22. Immunity, etc.

(1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(*a*) a recognized exchange company; or

(*b*) any person acting on behalf of a recognized exchange company, including—

(i) any member of the board of directors of the company; or

(ii) any member of any committee established by the company,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the company under section 21 or in the performance or purported performance of its functions under its rules.

(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an instruction or direction or makes a request to a recognized exchange company of which it is a controller, the company's duties under section 21 or under its rules are not applicable to the company in respect of anything done or omitted to be done in good faith by the company in compliance with the instruction, direction or request.

23. Rules by recognized exchange company

(1) Without limiting any of its other powers to make rules, a recognized exchange company may make rules for such matters as are necessary or desirable—

(*a*) for the proper regulation and efficient operation of the market which it operates;

(*b*) for the proper regulation of its exchange participants and holders of trading rights;

(*c*) for the establishment and maintenance of compensation arrangements for the investing public.

(2) Without limiting the generality of subsection (1), a recognized exchange company which may operate a stock market may make rules for—

(*a*) applications for the listing of securities and the requirements to be met before securities may be listed;

(*b*) the entering into of agreements between the recognized exchange company and other persons in connection with the listing of securities, and the enforcement of those agreements by the company;

(*c*) the cancellation and withdrawal of the listing of, and the suspension and resumption of dealings in, securities listed on the recognized stock market operated by the recognized exchange company;

(*d*) the imposition on any person of obligations to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed in connection with the listing or continued listing of securities;

(*e*) the admission of securities which are regulated in a jurisdiction outside Hong Kong to trading on a recognized stock market operated by the recognized exchange company;

(*f*) the penalties or sanctions which may be imposed by the recognized exchange company for a breach of rules made under this section;

(*g*) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the rules made under this section;

(*h*) dealing with possible conflicts of interest that might arise where a relevant corporation or a relevant recognized exchange controller seeks to be or is a listed corporation;

(*i*) such other matters as are necessary or desirable for the proper and efficient operation and management of the recognized exchange company.

(3) The Commission may, by notice in writing served on a recognized exchange company, request the company—

(*a*) to make rules specified in the request within the period specified in that request; or

(*b*) to amend rules referred to in the request in the manner and within the period specified in that request.

(4) Before making a request under subsection (3), the Commission shall consult the Financial Secretary and the recognized exchange company to which the request relates.

(5) Where the Commission is satisfied that a recognized exchange company has not complied with a request referred to in subsection (3) within the period specified in the request, the Commission may make or amend the rules specified in the request instead of the company.

(6) The following persons or anyone who seeks to become any such person shall, if required to do so by the rules of a recognized exchange company, make a statutory declaration concerning such matters as may be specified in the rules—

(*a*) an exchange participant or holder of trading rights of the company;

(*b*) a director of a corporation which uses the facilities of the company;

(*c*) a director of a corporation which is seeking to have any of its securities listed; and

(*d*) a director or adviser of a listed corporation.

(7) In making rules under this section, a recognized exchange company shall take into account that a solicitor or professional accountant acting in his professional capacity in private practice has duties imposed by law and under rules of professional conduct.

(8) A recognized exchange company shall, in circumstances stipulated in arrangements agreed from time to time between it and The Law Society of Hong Kong or the Hong Kong Society of Accountants, refer breaches of rules made under this section—

(*a*) which are alleged to have been committed by a solicitor or professional accountant in private practice; and

(*b*) which may also constitute a breach of duty imposed by law or under rules of professional conduct,

to The Law Society of Hong Kong or the Hong Kong Society of Accountants (as the case may be), for determination of whether to make a finding, impose a penalty or sanction or take other disciplinary action.

(9) For the purposes of subsections (7) and (8), a person shall be regarded as acting in the capacity of a solicitor or professional accountant in private practice if in the course of private practice he provides legal or professional accountancy services to a client, but shall not be regarded as so acting where, in respect of a matter governed by rules made under this section, he is also connected with the matter in any other capacity.

24. Approval of rules or amendments to rules of recognized exchange company

(1) Subject to subsection (7), no rule (whether or not made under section 23) of a recognized exchange company or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized exchange company shall submit or cause to be submitted to the Commission—

(*a*) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(*b*) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(*a*) from a recognized exchange company, by notice in writing served on the company, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized exchange company concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized exchange company concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized exchange company to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the company which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) Neither the rules under section 23 nor a notice under subsection (7) is subsidiary legislation.

25. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order ("transfer order") published in the Gazette, to a recognized exchange company ("designated exchange company")—

(*a*) a function to which this section applies; or

(*b*) that function in so far as it applies to the exchange participants or applicants to be exchange participants of the designated exchange company,

if the Commission is satisfied that the designated exchange company is willing and able to perform the function.

(2) This section applies to a function of the Commission under—

(*a*) Part V;

(*b*) section 145; and

(*c*) Parts II and XII of the Companies Ordinance (Cap. 32).

(3) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—

(*a*) a reservation that the Commission is to perform the function concurrently with the designated exchange company; and

(*b*) such other conditions as the Commission considers appropriate.

(4) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(5) The Commission shall not request that a transfer order be made in respect of the making of financial resources rules unless the proposed designated exchange company has first supplied the Commission with a draft of the financial resources rules which it proposes to make, and the Commission is satisfied that the rules, if made, will afford the investing public an adequate level of protection.

(6) The Commission may at the request or with the consent of a designated exchange company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated exchange company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

(8) A transfer order may provide for a designated exchange company to retain all or any of the fees payable in relation to the performance of a transferred function, and an order made under subsection (6) or (7) may provide for the Commission to retain all or any such fees, from a date specified in the order.

26. Appointment of chief executive of recognized exchange company requires approval of Commission

No appointment of a person as chief executive of a recognized exchange company shall have effect unless the appointment has the approval in writing of the Commission.

27. Production of records, etc. by recognized exchange company

(1) The Commission may, by notice in writing served on a recognized exchange company, require the company to provide to the Commission, within such period as the Commission may specify in the notice—

(*a*) such books and records kept by it in connection with or for the purposes of its business or in respect of any trading in securities or futures contracts; and

(*b*) such other information relating to its business or any trading in securities or futures contracts,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized exchange company served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

28. Withdrawal of recognition of exchange company and direction to cease to provide facilities or services

(1) Subject to subsections (4), (5) and (6), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized exchange company—

(*a*) withdraw the company's recognition as an exchange company with effect from a date specified in the notice for the purpose; or

(*b*) direct the company to cease with effect from a date specified in the notice for the purpose—

(i) to provide or operate such facilities as are specified therein; or

(ii) to provide such services as are specified therein.

(2) The Commission may by the notice served under subsection (1) permit the recognized exchange company to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice for the purpose of—

(*a*) closing down the operations of the company or ceasing to provide the services specified in the notice; or

(*b*) protecting the interest of the investing public or the public interest.

(3) Where the Commission has granted a permission to a recognized exchange company under subsection (2), the company shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 19(1).

(4) The Commission may only serve a notice under subsection (1) in relation to a recognized exchange company that—

(*a*) fails to comply with any requirement of this Ordinance or with a condition imposed under section 19;

(*b*) is being wound up;

(*c*) ceases to operate a market that it has been authorized to operate by virtue of section 19; or

(*d*) requests the Commission to do so.

(5) Except where responding to a request under subsection (4)(*d*), the Commission shall not exercise its power under subsection (1) in relation to a recognized exchange company unless it has given the company a reasonable opportunity of being heard.

(6) Except where responding to a request under subsection (4)(*d*), the Commission shall give the recognized exchange company not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.

(7) Where the Commission withdraws a company's recognition as an exchange company under subsection (1)(*a*), it shall cause notice of that fact to be published in the Gazette.

(8) A notice served under subsection (1)(*a*) shall not take effect—

(*a*) subject to paragraph (*b*), until the expiration of the period within which an appeal against the notice may be made under section 33; or

(*b*) if an appeal against the notice is made under section 33, until the appeal is withdrawn, abandoned or determined.

(9) A notice served under subsection (1)(*b*) shall take effect immediately.

29. Direction to cease to provide facilities or services in emergencies

(1) In addition to the powers of the Commission under section 28, the Commission may, after consultation with a recognized exchange company, by notice in writing served on the company, direct the company to cease to provide or operate such facilities or cease to provide such services as are specified in the notice for a period not exceeding 5 business days.

(2) The Commission may only serve a notice under subsection (1) if it is of the opinion that the orderly transaction of business on the stock market or futures market (as the case may be) is being, or is likely to be, impeded because—

(*a*) an emergency or natural disaster has occurred in Hong Kong; or

(*b*) there exists an economic or financial crisis, whether in Hong Kong or elsewhere, or any other circumstances, which is likely to prejudice orderly transaction of business on the stock market or futures market (as the case may be).

(3) The Commission may, by notice in writing served on the recognized exchange company, extend the direction under subsection (1) for further periods not exceeding 10 business days in all.

(4) A notice served under this section shall take effect immediately.

30. Contravention of notice constitutes offence

A person who, without reasonable excuse—

(*a*) provides or operates facilities; or

(*b*) provides services,

in contravention of a notice under section 28(1)(*b*) or 29(1) or (3) commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

31. Prevention of entry into closed trading markets

(1) The Commission may take all necessary steps to ensure compliance with a notice under section 28(1)(*b*) or 29(1) or (3) and may, in particular, secure—

(*a*) the facilities to which the notice relates; or

(*b*) the premises on which such facilities are kept or the premises on which the services to which the notice relates are provided,

against use for dealings in securities or futures contracts or other purposes.

(2) A person commits an offence and is liable on conviction to a fine at level 5 if, without the authority of the Commission or reasonable excuse, he—

(*a*) makes use of any facilities or services to which the notice under section 28(1)(*b*) or 29(1) or (3) relates; or

(*b*) enters the premises on which such facilities are kept or the premises on which such services are provided.

32. Publication of directions

Where the Commission—

(*a*) directs a recognized exchange company under section 28(1)(*b*) or 29(1) to cease to provide or operate any facilities or cease to provide any services; or

(*b*) extends under section 29(3) a direction referred to in that section,

it shall cause notice of the particulars of the direction or extension (as the case may be) to be published in the Gazette.

33. Appeals

(1) A company served with a notice under section 28(1) or 29(1) or (3) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

34. Restriction on use of titles relating to exchanges, markets, etc.

(1) A person commits an offence if he, without the authority of the Commission or reasonable excuse, takes or uses the title—

(*a*) "stock exchange";

(*b*) "stock market";

(*c*) "commodity exchange";
(*d*) "futures exchange";
(*e*) "futures market";
(*f*) "unified exchange";
(*g*) "united exchange";
(*h*) "證券交易所";
(*i*) "股票交易所";
(*j*) "證券市場";
(*k*) "股票市場";
(*l*) "商品交易所";
(*m*) "期貨交易所";
(*n*) "期貨市場";
(*o*) "聯合交易所",

or anything which closely resembles any such title.

(2) A person who commits an offence under this section is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

35. Contract limits and reportable open position

(1) Without prejudice to section 398(7) and (8), the Commission may make rules to—

(*a*) prescribe limits on, or conditions relating to, the number of futures contracts which may be held or controlled, directly or indirectly, by any person, whether or not such contracts are traded on a recognized futures market or through the facilities of a recognized exchange company;

(*b*) prescribe limits on, or conditions relating to, the number of options contracts which may be held or controlled, directly or indirectly, by any person, whether or not such contracts are traded on a recognized stock market or recognized futures market or through the facilities of a recognized exchange company;

(*c*) require a person holding or controlling a reportable position to lodge a notice of that reportable position with a recognized exchange company or the Commission;

(*d*) prescribe the manner in which and the period within which a notice of a reportable position is to be lodged;

(*e*) prescribe the information by which a notice of a reportable position is to be accompanied.

(2) The Commission shall consult the Financial Secretary before making rules under subsection (1)(*e*).

(3) Subsection (1) does not prohibit the Commission from prescribing different limits or conditions, or different reportable positions, for different types or classes of futures or options contracts, or from exempting specified futures or options contracts.

(4) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may make rules for the purposes of this section to prohibit a person from—

(*a*) directly or indirectly entering, during a specified period, into transactions of a specified class in excess of a specified amount; or

(*b*) directly or indirectly holding or controlling positions of a specified class in excess of a specified position limit.

(5) Rules made under this section may provide that a person who, without reasonable excuse, contravenes any specified provision of the rules that applies to the person commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine at level 6 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 3 and a term of imprisonment of 6 months.

(6) In this section "reportable position" (須申報的持倉量) means an open position in futures or options contracts the number or total value of which is in excess of a number or total value specified by rules made under this section.

36. Rules by Commission

(1) Without prejudice to section 398(7) and (8), the Commission may make rules in respect of the following matters—

(*a*) the listing of securities, and in particular—

(i) prescribing the requirements to be met before securities may be listed;

(ii) prescribing the procedure for dealing with applications for the listing of securities;

(iii) providing for the cancellation of the listing of any specified securities if the Commission's requirements for listing, or the requirements of the undertaking referred to in paragraph (*e*), are not complied with or the Commission considers that such action is necessary to maintain an orderly market in Hong Kong;

(*b*) the conditions subject to which, and the circumstances in which, a recognized exchange company shall suspend dealings in securities or shall direct that dealings in securities recommence;

(*c*) the procedure for and the method of allotment of any securities arising out of an offer made to members of the public in respect of those securities;

(*d*) persons who may be admitted as an exchange participant of a recognized exchange company;

(*e*) requiring companies the securities of which are listed or accepted for listing to enter into an undertaking in the form prescribed in the rules with a recognized exchange company which may operate a stock market under section 19 to provide such information at such times as may be specified, and to carry out such duties in relation to its securities as may be imposed, in the undertaking;

(*f*) requiring a recognized exchange company which has become aware of any matter which adversely affects, or is likely to adversely affect, the ability of any exchange participant of the company to meet its obligations as an exchange participant, to make a report concerning the matter to the Commission as soon as reasonably practicable after becoming aware of the matter;

(*g*) requiring a recognized exchange company when it expels any of its exchange participants, or suspends any of its exchange participants from trading on the recognized stock market or recognized futures market it operates or through its facilities, or requests any of its exchange participants to resign as an exchange participant, to notify the Commission of that fact within 3 business days after the expulsion, suspension or making of the request (as the case may be) and, in addition, to cause the expulsion, suspension or request to be notified to the public in such manner and within such period as may be prescribed in the rules;

(*h*) any matter which is to be or may be prescribed by rules made under section 23.

(2) Before making any rules in respect of any matter specified in subsection (1), the Commission shall consult—

(*a*) the Financial Secretary; and

(*b*) the recognized exchange company or all the recognized exchange companies (as the case may be) to which that matter relates.

(3) Nothing in this section prevents a recognized exchange company from making rules under section 23 on any matter referred to in subsection (1), but any such rules shall have effect only to the extent that they are not repugnant to any rule made by the Commission under subsection (1).

Division 3—Clearing houses

37. Recognition of clearing house

(1) Where the Commission is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the proper regulation of markets in securities or futures contracts,

it may, after consultation with the Financial Secretary, by notice in writing served on a company, recognize the company as a clearing house—

(i) subject to such conditions as it considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(2) Without limiting the generality of conditions which may be specified in a notice under subsection (1), the Commission may, by notice in writing served on a recognized clearing house, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—

(*a*) is satisfied that it is appropriate to do so on a ground specified in paragraph (*a*) or (*b*) of that subsection; and

(*b*) has consulted the Financial Secretary.

(3) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (2), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(4) Where a company becomes a recognized clearing house, the Commission shall cause notice of that fact to be published in the Gazette.

(5) Where a company is seeking to be a recognized clearing house and the Commission is minded not to recognize the company under subsection (1), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

(6) Where the Commission refuses to recognize a company as a clearing house under subsection (1), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.

38. Duties of recognized clearing house

(1) It shall be the duty of a recognized clearing house to ensure—

(*a*) so far as reasonably practicable, that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through its facilities; and

(*b*) that risks associated with its business and operations are managed prudently.

(2) In discharging its duty under subsection (1), a recognized clearing house shall—

(*a*) act in the interest of the public, having particular regard to the interest of the investing public; and

(*b*) ensure that the interest of the public prevails where it conflicts with the interest of the recognized clearing house.

(3) A recognized clearing house shall operate its facilities in accordance with the rules made under section 40 and approved under section 41.

(4) A recognized clearing house shall formulate and implement appropriate procedures for ensuring that its clearing participants comply with the rules of the clearing house.

(5) A recognized clearing house shall at all times provide and maintain—

(*a*) adequate and properly equipped premises;

(*b*) competent personnel; and

(*c*) automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support,

for the conduct of its business.

39. Immunity, etc.

(1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(*a*) a recognized clearing house; or

(*b*) any person acting on behalf of a recognized clearing house, including—

(i) any member of the board of directors of the clearing house; or

(ii) any member of any committee established by the clearing house,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the clearing house under sections 38 and 47 or in the performance or purported performance of its functions under its rules, including its default rules.

(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an instruction or direction or makes a request to a recognized clearing house of which it is a controller, the clearing house's duties under sections 38 and 47 or under its rules (including its default rules) are not applicable to the clearing house in respect of anything done or omitted to be done in good faith by the clearing house in compliance with the instruction, direction or request.

(3) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(*a*) a person performing, by virtue of a delegation under the default rules of a recognized clearing house, a function of the clearing house in connection with any default proceedings; or

(*b*) any person acting on behalf of a person referred to in paragraph (*a*), including—

(i) any member of the board of directors of that person; or

(ii) any member of any committee established by that person,

in respect of anything done or omitted to be done in good faith in the performance and purported performance of that function.

(4) Any failure by a recognized clearing house to comply with its rules in relation to a matter does not prevent the matter from being treated for the purposes of this Ordinance as done in accordance with the rules so long as the failure does not substantially affect the rights of a person entitled to require compliance with the rules.

(5) Where a relevant office-holder takes action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognized clearing house, and believes on reasonable grounds that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage (as the case may be) is caused by the office-holder's own negligence.

40. Rules by recognized clearing houses

(1) Without limiting any of its other powers to make rules, a recognized clearing house may make rules for such matters as are necessary or desirable—

(*a*) for the proper regulation and efficient operation of the clearing or settlement facilities which it operates;

(*b*) for the proper regulation of its clearing participants;

(*c*) for the establishment and maintenance of compensation arrangements for the investing public.

(2) A recognized clearing house shall make rules which—

(*a*) provide for the taking of proceedings or other action if a clearing participant appears to be unable, or likely to become unable, to meet his obligations in respect of all unsettled or open market contracts to which he is a party; and

(*b*) comply with Part 5 of Schedule 3.

(3) Where a recognized clearing house takes default proceedings, all subsequent proceedings or other action taken under its rules for the settlement of market contracts to which the defaulter is a party shall be treated as taken under the default rules.

(4) The Commission may, by notice in writing served on a recognized clearing house, request the clearing house—

(*a*) to make rules specified in the request within the period specified in that request; or

(*b*) to amend rules referred to in the request in the manner and within the period specified in that request.

(5) Before making a request under subsection (4), the Commission shall consult the Financial Secretary and the recognized clearing house to which the request relates.

(6) Where the Commission is satisfied that a recognized clearing house has not complied with a request referred to in subsection (4) within the period specified in the request, the Commission may make or amend the rules specified in the request instead of the recognized clearing house.

41. Approval of rules or amendments to rules of recognized clearing house

(1) Subject to subsection (7), no rule (whether or not made under section 40) of a recognized clearing house or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized clearing house shall submit or cause to be submitted to the Commission—

(*a*) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(*b*) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(*a*) from a recognized clearing house, by notice in writing served on the clearing house, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized clearing house concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized clearing house concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized clearing house (except any default rules of the clearing house) to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the clearing house which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) Neither the rules under section 40 nor a notice under subsection (7) is subsidiary legislation.

42. Production of records, etc. by recognized clearing house

(1) The Commission may, by notice in writing served on a recognized clearing house, require the clearing house to provide to the Commission, within such period as the Commission may specify in the notice—

(*a*) such books and records kept by it in connection with or for the purposes of its business or in respect of any clearing and settlement arrangements for any transactions in securities or futures contracts; and

(*b*) such other information relating to its business or any clearing and settlement arrangements for any transactions in securities or futures contracts,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized clearing house served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

43. Withdrawal of recognition of clearing house and direction to cease to provide facilities

(1) Subject to subsections (3), (4) and (5), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized clearing house—

(*a*) withdraw the company's recognition as a clearing house with effect from a date specified in the notice for the purpose; or

(*b*) direct the clearing house to cease to provide or operate with effect from a date specified in the notice for the purpose such clearing or settlement facilities as are specified therein.

(2) The Commission may by the notice served under subsection (1) permit the recognized clearing house to continue, on or after the date on which the withdrawal or direction is to take effect, to carry on such activities affected by the withdrawal or direction as the Commission may specify in the notice for the purpose of—

(*a*) closing down the operations of the clearing house; or

(*b*) protecting the interest of the investing public or the public interest.

(3) The Commission may only serve a notice under subsection (1) in relation to a recognized clearing house that—

(*a*) fails to comply with any requirement of this Ordinance or with a condition imposed under section 37;

(*b*) is being wound up;

(*c*) ceases to operate as a clearing house; or

(*d*) requests the Commission to do so.

(4) Except where responding to a request under subsection (3)(*d*), the Commission shall not exercise its power under subsection (1) in relation to a recognized clearing house unless it has given the clearing house a reasonable opportunity of being heard.

(5) Except where responding to a request under subsection (3)(*d*), the Commission shall give the recognized clearing house not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.

(6) Where the Commission withdraws a company's recognition as a clearing house under subsection (1)(*a*), it shall cause notice of that fact to be published in the Gazette.

(7) Where the Commission directs under subsection (1)(*b*) a recognized clearing house to cease to provide or operate any clearing or settlement facilities, it shall cause notice of the particulars of the direction to be published in the Gazette.

(8) A notice served under subsection (1)(*a*) shall not take effect—

(*a*) subject to paragraph (*b*), until the expiration of the period within which an appeal against the notice may be made under section 44; or

(*b*) if an appeal against the notice is made under section 44, until the appeal is withdrawn, abandoned or determined.

(9) A notice served under subsection (1)(*b*) shall take effect immediately.

44. Appeals

(1) A company served with a notice under section 43(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

45. Proceedings of recognized clearing house take precedence over law of insolvency

(1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver over any of the assets of a person—

(*a*) a market contract;

(*b*) the rules of a recognized clearing house relating to the settlement of a market contract;

(*c*) any proceedings or other action taken under the rules of a recognized clearing house relating to the settlement of a market contract;

(*d*) a market charge;

(*e*) the default rules of a recognized clearing house; or

(*f*) any default proceedings.

(2) The powers of a relevant office-holder in his capacity as such, and the powers of a court acting under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with—

(*a*) the settlement in accordance with the rules of a recognized clearing house of a market contract; or

(*b*) any default proceedings.

(3) Subsection (2) shall not operate to prevent a relevant office-holder from recovering an amount under section 51 after the completion of a matter referred to in paragraph (*a*) or (*b*) of that subsection.

46. Supplementary provisions as to default proceedings

(1) A court may, on an application by a relevant office-holder, make such order as it considers appropriate altering or releasing him from compliance with the functions of his office that are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.

(2) The functions of the relevant office-holder referred to in subsection (1) shall be construed subject to an order made under that subsection.

(3) Section 12, 14 or 20 to 20K of the Bankruptcy Ordinance (Cap. 6) and sections 166, 181, 183, 186 and 254 of the Companies Ordinance (Cap. 32) do not prevent or interfere with any default proceedings.

47. Duty to report on completion of default proceedings

(1) A recognized clearing house shall, upon the completion by it of any default proceedings, make a report on such proceedings stating in respect of each defaulter—

(*a*) the net sum (if any) certified by the clearing house to be payable by or to the defaulter; or

(*b*) the fact that no sum is so payable,

(as the case may be) and the clearing house may include in that report such other particulars in respect of such proceedings as it considers appropriate.

(2) A recognized clearing house which has made a report pursuant to subsection (1) shall supply the report to—

(*a*) the Commission; and

(*b*) (i) any relevant office-holder acting in relation to—

(A) the defaulter to whom the report relates; or

(B) that defaulter's estate; or

(ii) if there is no relevant office-holder referred to in subparagraph (i), the defaulter to whom the report relates.

(3) Where the Commission receives pursuant to subsection (2) a report made pursuant to subsection (1), it may publish notice of that fact in such manner as it considers appropriate to bring it to the attention of creditors of the defaulter to whom the report relates.

(4) Where a relevant office-holder or defaulter receives pursuant to subsection (2) a report made pursuant to subsection (1), he shall, at the request of a creditor of the defaulter to whom the report relates—

(*a*) make the report available for inspection by the creditor;

(*b*) on payment of such reasonable fee as the relevant office-holder or defaulter (as the case may be) determines, supply to the creditor all or any part of that report.

(5) In subsections (2), (3) and (4), "report" (報告) includes a copy of a report.

48. Net sum payable on completion of default proceedings

(1) This section applies with respect to any net sum referred to in section 47(1)(*a*).

(2) Where a bankruptcy or winding-up order has been made, or a resolution for voluntary winding up has been passed, any net sum shall, notwithstanding any provision of section 34 or 35 of the Bankruptcy Ordinance (Cap. 6) or section 264 of the Companies Ordinance (Cap. 32), be—

(*a*) provable in the bankruptcy or winding up or (as the case may be) payable to the relevant office-holder; and

(*b*) taken into account, where appropriate, under section 35 of the Bankruptcy Ordinance (Cap. 6) or that section as applied in the case of a winding-up order under the Companies Ordinance (Cap. 32).

49. Disclaimer of property, rescission of contracts, etc.

(1) Section 59 of the Bankruptcy Ordinance (Cap. 6) and section 268 of the Companies Ordinance (Cap. 32) do not apply in relation to—

(*a*) a market contract;

(*b*) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;

(*c*) a market charge; or

(*d*) any default proceedings.

(2) Section 42 of the Bankruptcy Ordinance (Cap. 6) and section 182 of the Companies Ordinance (Cap. 32) do not apply in relation to any act, matter or thing which has been done pursuant to—

(*a*) a market contract;

(*b*) a disposal of property pursuant to a market contract;

(*c*) the provision of market collateral;

(*d*) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral, or any disposal of property pursuant to such a contract;

(*e*) a disposal of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;

(*f*) a disposal of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposal is made;

(*g*) a disposal of property made in enforcing a market charge;

(*h*) a market charge; or

(*i*) any default proceedings.

50. Adjustment of prior transactions

(1) No order shall be made pursuant to—

(*a*) section 49 or 50 of the Bankruptcy Ordinance (Cap. 6);

(*b*) section 266 of the Companies Ordinance (Cap. 32); or

(*c*) section 60 of the Conveyancing and Property Ordinance (Cap. 219),

in relation to any matter to which this section applies.

(2) The matters to which this section applies are—

(*a*) a market contract;

(*b*) a disposal of property pursuant to a market contract;

(*c*) the provision of market collateral;

(*d*) a contract effected by a recognized clearing house for the purpose of realizing property provided as market collateral;

(*e*) a disposal of property in accordance with the rules of a recognized clearing house as to the application of property provided as market collateral;

(*f*) a market charge; and

(*g*) any default proceedings.

51. Right of relevant office-holder to recover certain amounts arising from certain transactions

(1) Where a clearing participant ("the first participant") enters into a transaction for the sale or purchase of securities with another clearing participant ("the second participant") at an undervalue or an over-value in circumstances described in subsection (2), and thereafter a relevant office-holder is acting in relation to—

(*a*) the second participant;

(*b*) the person who was, in respect of the transaction, the principal of the second participant ("the second principal"); or

(*c*) the estate of the second participant or the second principal,

then, unless a court otherwise orders, the relevant office-holder may recover, from the first participant, or the person who was, in respect of the transaction, the principal of the first participant ("the first principal"), an amount equal to the prescribed gain obtained under the transaction by the first participant or the first principal (as the case may be). The amount is recoverable even if the transaction may have been discharged in accordance with the rules of a recognized clearing house and replaced by a market contract.

(2) The circumstances referred to in subsection (1) in which a transaction is entered into occur when—

(*a*) a prescribed event has occurred in relation to the second participant or the second principal; or

(*b*) the first participant or the first principal knew or ought reasonably to have known—

(i) in the case of the first participant, that a prescribed event was likely to occur in relation to the second participant or the second principal;

(ii) in the case of the first principal, that a prescribed event was likely to occur in relation to the second principal,

and the event occurs within the period of 6 months immediately following the date on which the transaction was so entered into.

(3) In this section—

"prescribed event" (訂明事件), in relation to a second participant or a second principal, means—

(*a*) grounds exist for a creditor to present a bankruptcy petition against the second participant or the second principal (as the case may be);

(*b*) the making of a statutory declaration in respect of the second participant or the second principal (as the case may be) pursuant to section 228A(1) of the Companies Ordinance (Cap. 32);

(*c*) a meeting of creditors summoned in relation to the second participant or the second principal (as the case may be) pursuant to section 241 of the Companies Ordinance (Cap. 32); or

(*d*) the presentation of a petition for the winding up of the second participant or the second principal (as the case may be) by a court;

"prescribed gain" (訂明收益), in relation to a transaction referred to in subsection (1), means the difference between—

(*a*) the market value of the securities the subject of the transaction; and

(*b*) the value of the consideration for the transaction,

as at the time the transaction was entered into.

52. Application of market collateral not affected by certain other interests, etc.

(1) The provisions of this section have effect with respect to the application by a recognized clearing house of property provided as market collateral.

(2) So far as necessary to enable the property to be applied in accordance with the rules of a recognized clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the clearing house had actual notice of the interest, right or breach of duty (as the case may be) at the time the property was provided as market collateral.

(3) No right or remedy arising subsequently to the property being provided as market collateral may be enforced so as to prevent or interfere with the application of the property by the recognized clearing house in accordance with its rules.

(4) Where a recognized clearing house has power by virtue of the provisions of this section to apply property notwithstanding an interest, right or remedy, a person to whom the clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

53. Enforcement of judgments over property subject to market charge, etc.

(1) Where property is subject to a market charge or has been provided as market collateral, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of the recognized clearing house concerned.

(2) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

54. Law of insolvency in other jurisdictions

(1) A court shall not, pursuant to any enactment or rule of law, recognize or give effect to—

(*a*) an order of a court exercising jurisdiction under the law of insolvency in a place outside Hong Kong; or

(*b*) an act of a person appointed in that place to perform a function under the law of insolvency there,

in so far as making the order or doing the act would be prohibited in the case of a court in Hong Kong or a relevant office-holder by provisions made by or under this Ordinance.

(2) In this section, "law of insolvency" (破產清盤法), in relation to a place outside Hong Kong, means any law of that place which is similar to, or serves the same purposes as, any part of the law of insolvency in Hong Kong.

55. Clearing participant to be party to certain transactions as principal

(1) Where a clearing participant—

(*a*) in his capacity as such enters into any transaction (including a market contract) with a recognized clearing house; and

(*b*) but for this subsection, would be a party to that transaction as agent,

then, notwithstanding any other enactment or rule of law, as between, but only as between, the clearing house and any other person (including the clearing participant and the person who is his principal in respect of that transaction), the clearing participant shall for all purposes (including any action, claim or demand, either civil or criminal)—

(i) be deemed not to be a party to that transaction as agent; and

(ii) be deemed to be a party to that transaction as principal.

(2) Where—

(*a*) 2 or more clearing participants in their capacities as such enter into any transaction; and

(*b*) but for this subsection, any such clearing participant would be a party to that transaction as agent,

then, notwithstanding any other enactment or rule of law, any such clearing participant to whom paragraph (*b*) applies shall for all purposes (including any action, claim or demand, either civil or criminal), except as between, but only as between, him and the person who is his principal in respect of that transaction—

(i) be deemed not to be a party to that transaction as agent; and

(ii) be deemed to be a party to that transaction as principal.

56. Property deposited with recognized clearing house

(1) Subject to subsections (2) and (3), where any property is deposited as market collateral by a clearing participant with a recognized clearing house in accordance with the rules of the clearing house, then, notwithstanding any other enactment or rule of law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person lies, or shall be commenced or allowed, against the clearing house or its nominees.

(2) The operation of subsection (1) in respect of any property deposited as market collateral with a recognized clearing house is subject to the modifications and exclusions provided in the rules of the clearing house.

(3) This section does not operate to prejudice the operation of section 100 of the Companies Ordinance (Cap. 32).

57. Preservation of rights, etc.

Except to the extent that they expressly provide, the provisions of this Division do not operate to limit, restrict or otherwise affect—

(*a*) any right, title, interest, privilege, obligation or liability of a person;

(*b*) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.

58. Amendment of Schedule 3

(1) The Financial Secretary may, by notice published in the Gazette, amend Part 5 of Schedule 3.

(2) For the avoidance of doubt, it is hereby declared that the power of the Financial Secretary under subsection (1) to amend Part 5 of Schedule 3 may be exercised in such a way as to include in that Part a provision which requires a recognized clearing house to have, as part of its default rules, rules which prohibit the clearing house from taking any proceedings or other action specified in the provision, either generally or in a particular case.

Division 4—Exchange controllers

59. Recognition of exchange controller

(1) Subject to subsection (20) and section 62, no person shall become or continue to be a controller of a recognized exchange company or recognized clearing house unless the person is a recognized exchange controller.

(2) Where the Commission is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the proper regulation of markets in securities or futures contracts,

it may, with the consent in writing of the Financial Secretary, by notice in writing served on a company, recognize the company as an exchange controller—

(i) subject to such conditions as it considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(3) Without limiting the generality of conditions which may be specified in a notice under subsection (2), the Commission may, by notice in writing served on a recognized exchange controller, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—

(*a*) is satisfied that it is appropriate to do so on a ground specified in paragraph (*a*) or (*b*) of that subsection; and

(*b*) has the consent in writing of the Financial Secretary to do so.

(4) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (3), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(5) Subject to subsection (6), a person who contravenes subsection (1) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) Where a person is charged with an offence under subsection (5), it is a defence to the charge for the person to prove that the person did not know that the acts or circumstances by virtue of which the person became a controller of the recognized exchange company or recognized clearing house concerned were such as to have that effect.

(7) Where a person—

(*a*) is a controller of a recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention);

(*b*) did not know and had no reason to suspect the existence of any of the acts or circumstances by virtue of which the person became the controller of the recognized exchange company or recognized clearing house; and

(*c*) subsequently becomes aware of the fact that the person has become such a controller,

the person shall serve on the Commission, not later than 14 days after becoming aware of that fact, a notice in writing stating that the person has become such a controller.

(8) The Commission may, upon the service of a notice under subsection (7)—

(*a*) recognize the person as an exchange controller in accordance with subsection (2); or

(*b*) refuse to recognize the person as an exchange controller.

(9) Where a person is a controller of a recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention)—

(*a*) the Commission may, by notice published in the Gazette—

(i) declare that any votes cast at any meeting of the recognized exchange company or recognized clearing house (as the case may be) by the person after the person became the controller shall be void and of no effect; and

(ii) give such directions as it considers appropriate for any such meetings to be reconvened for voting anew on the business on which such votes were cast;

(*b*) the person or any of his associated persons shall not exercise any rights conferred on the person as a holder of securities in the recognized exchange company or recognized clearing house, or any rights in securities in any such company which are otherwise controlled by the person, except for the purpose of ceasing to be such controller; and

(*c*) the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice—

(i) for the purpose of causing the person to cease to be such controller; and

(ii) within such period as is specified in the notice for the purpose.

(10) Without limiting the generality of steps referred to in subsection (9)(*c*) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.

(11) The steps specified in a notice under subsection (9)(*c*) may be framed so as to afford the person on whom the notice is served a choice between different ways of ceasing to be a controller of the recognized exchange company or recognized clearing house concerned.

(12) A notice served under subsection (9)(*c*) shall not take effect—

(*a*) subject to paragraph (*b*), until the expiration of the period within which an appeal against the notice may be made under section 73; or

(*b*) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(13) Subject to subsection (14), a person served with a notice under subsection (9)(*c*) who fails to comply with the notice commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(14) It is a defence for a person charged with an offence under subsection (13) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (9)(*c*) served on the person.

(15) Where a person served with a notice under subsection (9)(*c*) fails to comply with the notice (and whether or not the person is charged with an offence under subsection (13) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.

(16) The provisions of this section, except subsection (5), shall apply to a person who became a controller of a recognized exchange company or recognized clearing house before the commencement of this section as they apply to a person who became a controller of a recognized exchange company or recognized clearing house on or after that commencement.

(17) Where a company becomes a recognized exchange controller, the Commission shall cause notice of that fact to be published in the Gazette.

(18) Where a company is seeking to be a recognized exchange controller and the Commission is minded not to recognize the company under subsection (2), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

(19) Where the Commission refuses to recognize a company or a person as an exchange controller under subsection (2) or (8)(*b*), the Commission shall, by notice in writing served on the company or the person (as the case may be), inform the company or the person of the refusal and of the reasons for it.

(20) Subsection (1) shall not apply to a person who is a controller of a recognized exchange company or recognized clearing house if the recognized exchange company or recognized clearing house is itself a recognized exchange controller.

(21) A notice under subsection (9)(*a*) is not subsidiary legislation.

60. Interest of recognized exchange controller in recognized exchange company or recognized clearing house cannot be increased or decreased except with approval of Commission

Where a recognized exchange controller is a controller of a recognized exchange company or recognized clearing house, then, by virtue of this section and notwithstanding any other enactment or rule of law—

(*a*) any interest the recognized exchange controller has in the recognized exchange company or recognized clearing house (as the case may be) as such controller cannot be increased or decreased except with the approval in writing of the Commission;

(*b*) any attempt (whether in the form of an agreement or otherwise and by whomsoever) to increase or decrease any such interest in contravention of paragraph (*a*) is void for all purposes.

61. Person not to become minority controller of exchange controller, etc. without approval of Commission

(1) Subject to subsections (2) and (16), on or after the commencement of this section, a person shall not—

(*a*) be or become a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house except with the approval in writing of the Commission after consultation with the Financial Secretary; and

(*b*) if such approval is given, and subject to any condition specified in the approval disapplying this paragraph in whole or in part, increase the interest the person has as such minority controller except with the further approval in writing of the Commission after consultation with the Financial Secretary.

(2) The Commission shall not give an approval under subsection (1)(*a*) or (*b*) unless it is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(3) Where the Commission refuses to give an approval under subsection (1)(*a*) or (*b*), it shall give notice in writing of its reasons for the refusal to the person concerned.

(4) Subject to subsection (5), a person who contravenes subsection (1) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) Where a person is charged with an offence under subsection (4), it is a defence to the charge for the person to prove that the person—

(*a*) did not know that the acts or circumstances by virtue of which the person became a minority controller, or increased the interest the person has as a minority controller (as the case may be) of the recognized exchange controller, recognized exchange company or recognized clearing house concerned were such as to have that effect; or

(*b*) exercised reasonable diligence to avoid contravening subsection (1).

(6) Where a person—

(*a*) is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention);

(*b*) did not know and had no reason to suspect the existence of any of the acts or circumstances by virtue of which the person became the minority controller of that recognized exchange controller, recognized exchange company or recognized clearing house; and

(*c*) subsequently becomes aware of the fact that the person has become such a minority controller,

the person shall serve on the Commission, not later than 14 days after becoming aware of that fact, a notice in writing stating that the person has become such a minority controller.

(7) The Commission may, upon the service of a notice under subsection (6)—

(*a*) approve the person as a minority controller in accordance with subsection (1); or

(*b*) refuse to approve the person as a minority controller.

(8) Where a person is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention), the Commission may, by notice published in the Gazette—

(*a*) declare that any votes cast at any meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) by the person after the person became the minority controller, shall be void and of no effect; and

(*b*) give such directions as it considers appropriate for any such meetings to be reconvened for voting anew on the business on which such votes were cast.

(9) Where a person is a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (1) or has failed to comply with a condition specified in an approval under that subsection (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention)—

(*a*) the person or any of his associated persons shall not exercise any rights conferred on the person as a holder of securities in the recognized exchange controller, recognized exchange company or recognized clearing house concerned or any rights in securities in any such company which are otherwise controlled by the person, except for the purpose of ceasing to be such controller; and

(*b*) the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice—

(i) for the purpose of causing the person to cease to be a minority controller of the recognized exchange controller, recognized exchange company or recognized clearing house the subject of that contravention or failure; and

(ii) within such period as is specified in the notice for the purpose.

(10) Without limiting the generality of steps referred to in subsection (9)(*b*) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.

(11) The steps specified in a notice under subsection (9)(*b*) may be framed so as to afford the person on whom the notice is served a choice between different ways of ceasing to be a minority controller of the recognized exchange controller, recognized exchange company or recognized clearing house concerned.

(12) A notice served under subsection (9)(*b*) shall not take effect—

(*a*) subject to paragraph (*b*), until the expiration of the period within which an appeal against the notice may be made under section 73; or

(*b*) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(13) Subject to subsection (14), a person served with a notice under subsection (9)(*b*) who fails to comply with the notice commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(14) It is a defence for a person charged with an offence under subsection (13) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (9)(*b*) served on the person.

(15) Where a person served with a notice under subsection (9)(*b*) fails to comply with the notice (and whether or not the person is charged with an offence under subsection (13) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.

(16) The Commission may, after consultation with the Financial Secretary, make rules to exempt a person, or a person belonging to a class of persons, specified in the rules from one or more of the requirements of subsection (1) subject to such conditions (if any) as are specified in the rules.

(17) Where a person is seeking to be a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house and the Commission is minded not to give approval under subsection (1) in relation thereto, the Commission shall give the person a reasonable opportunity of being heard before making a decision not to give such approval.

(18) Nothing in this section shall operate to prevent the Commission from approving under this or any other Ordinance the provisions of the constitution, or the provisions of an amendment to the constitution, of a recognized exchange controller, recognized exchange company or recognized clearing house which impose requirements additional to this section in relation to—

(*a*) interests held in the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) including, but not limited to, the exercise, or the control of the exercise, of voting power at any general meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be); or

(*b*) steps to be taken for the purpose of causing a person to dispose of any such interest including, but not limited to, ceasing to be a minority controller (by whatever name called) of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be).

(19) A notice under subsection (8) is not subsidiary legislation.

(20) In this section, "minority controller" (次要控制人), in relation to a recognized exchange controller, recognized exchange company or recognized clearing house—

(*a*) subject to paragraph (*b*), means any person who, either alone or with any associated person or persons, is entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) or of a corporation of which the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) is a subsidiary;

(*b*) does not include—

(i) a recognized exchange controller; or

(ii) a person, or a person belonging to a class of persons, specified in Part 7 of Schedule 3 not to be a minority controller for the purposes of this Division.

62. Exemption from section 59(1) and revocation of exemption

(1) Where the Financial Secretary is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person, exempt the person from section 59(1)—

(i) subject to such conditions as he considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(2) Where the Financial Secretary is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person the subject of an exemption under subsection (1) stating the reasons in support of the ground or grounds for the notice, revoke the exemption—

(i) subject to such conditions as he considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose, being a date reasonable in all the circumstances of the case.

(3) Subject to subsection (4), a person who fails to comply with a condition specified in a notice under subsection (1) or (2) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (1) or (2) served on the person.

(5) Without limiting the generality of the Financial Secretary's power under subsection (1), a person is exempt from section 59(1) in the cases specified in Part 8 of Schedule 3.

(6) For the avoidance of doubt, it is hereby declared that the Financial Secretary's power under subsection (2) to revoke an exemption under subsection (1) includes the power to revoke and replace the exemption.

63. Duties of recognized exchange controller

(1) It shall be the duty of a recognized exchange controller which is a controller of a recognized exchange company or recognized clearing house to ensure so far as reasonably practicable—

(*a*) an orderly, informed and fair market in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company or through the facilities of the company;

(*b*) that there are orderly, fair and expeditious clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through the facilities of the recognized clearing house;

(*c*) that risks associated with its business and operations are managed prudently;

(*d*) that the recognized exchange company or recognized clearing house (as the case may be) complies with any lawful requirement placed on it under any enactment or rule of law and with any other legal requirement placed on it.

(2) In discharging its duty under subsection (1)(*a*), (*b*) or (*c*), a recognized exchange controller shall—

(*a*) act in the interest of the public, having particular regard to the interest of the investing public; and

(*b*) ensure that the interest of the public prevails where it conflicts with the interest of the recognized exchange controller.

64. Immunity, etc.

Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(*a*) a recognized exchange controller; or

(*b*) any person acting on behalf of a recognized exchange controller, including—

(i) any member of the board of directors of the recognized exchange controller; or

(ii) any member of any committee established by the recognized exchange controller,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties of the controller under section 63 or in the performance or purported performance of its functions under its rules.

65. Establishment and functions of Risk Management Committee

(1) A recognized exchange controller shall establish and keep established a committee, to be called the Risk Management Committee, to formulate policies on risk management matters relating to the activities of the recognized exchange controller and of any recognized exchange company or recognized clearing house of which the recognized exchange controller is a controller and to submit such policies to the recognized exchange controller for its consideration.

(2) The Risk Management Committee shall consist of—

(*a*) the chairman of the recognized exchange controller who shall also be the chairman of the Committee; and

(*b*) not less than 4 or more than 7 other members.

(3) The Financial Secretary shall appoint not less than 3 or more than 5 of the members referred to in subsection (2)(*b*).

(4) The recognized exchange controller shall appoint not more than 2 of the members referred to in subsection (2)(*b*) of whom not less than one shall be a member of the board of directors of the recognized exchange controller who—

(*a*) is such a member otherwise than by virtue of an appointment under section 77(1); and

(*b*) is not the chief executive of the recognized exchange controller.

66. Rules by recognized exchange controllers

(1) Without limiting any of its other powers to make rules, a recognized exchange controller may make rules for such matters as are necessary or desirable—

(*a*) for the discharge of its duties under section 63;

(*b*) for the establishment and maintenance of compensation arrangements for the investing public.

(2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, declare a person or body of persons specified in the notice to be a person or body of persons (as the case may be) to which paragraph (*c*)(ii)(C) of the definition of "rules" in section 1 of Part 1 of Schedule 1 shall apply.

67. Approval of rules or amendments to rules of recognized exchange controller

(1) Subject to subsection (7), no rule (whether or not made under section 66) of a recognized exchange controller or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized exchange controller shall submit or cause to be submitted to the Commission—

(*a*) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(*b*) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(*a*) from a recognized exchange controller, by notice in writing served on the controller, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized exchange controller concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized exchange controller concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized exchange controller to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the controller which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) Neither the rules under section 66(1) nor a notice under subsection (7) is subsidiary legislation.

68. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order ("transfer order") published in the Gazette, to a recognized exchange controller ("designated exchange controller"), a function to which this section applies, if the Commission is satisfied that the designated exchange controller is willing and able to perform the function.

(2) This section applies to a function of the Commission under—

(*a*) Part V;

(*b*) section 145; and

(*c*) Parts II and XII of the Companies Ordinance (Cap. 32).

(3) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—

(*a*) a reservation that the Commission is to perform the function concurrently with the designated exchange controller; and

(*b*) such other conditions as the Commission considers appropriate.

(4) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(5) The Commission shall not request that a transfer order be made in respect of the making of financial resources rules unless the proposed designated exchange controller has first supplied the Commission with a draft of the financial resources rules which it proposes to make, and the Commission is satisfied that the rules, if made, will afford the investing public an adequate level of protection.

(6) The Commission may at the request or with the consent of a designated exchange controller resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated exchange controller by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

(8) A transfer order may provide for a designated exchange controller to retain all or any of the fees payable in relation to the performance of a transferred function, and an order made under subsection (6) or (7) may provide for the Commission to retain all or any such fees, from a date specified in the order.

69. Chairman of recognized exchange controller

(1) No person shall be the chairman of a company which is a recognized exchange controller unless he has the approval in writing of the Chief Executive to hold that office.

(2) Where the Chief Executive is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the proper regulation of markets in securities or futures contracts,

he may, by notice in writing served on a person who is the chairman of a recognized exchange controller, remove the person from that office with effect from a date specified in the notice for the purpose.

70. Appointment of chief executive or chief operating officer of recognized exchange controller requires approval of Commission

(1) No appointment of a person as chief executive or chief operating officer of a company which is a recognized exchange controller shall have effect unless the appointment has the approval in writing of the Commission.

(2) Where the Commission, after consultation with the Financial Secretary and the chairman of a recognized exchange controller, is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the proper regulation of markets in securities or futures contracts,

it may, by notice in writing served on a person who is the chief executive or chief operating officer of the controller, remove the person from that office with effect from a date specified in the notice for the purpose.

(3) A notice served under subsection (2) shall take effect immediately.

71. Production of records, etc. by recognized exchange controller

(1) The Commission may, by notice in writing served on a recognized exchange controller, require the controller to provide to the Commission, within such period as the Commission may specify in the notice—

(*a*) such books and records kept by it—

(i) in connection with or for the purposes of its business;

(ii) in respect of any trading in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company of which it is a controller, or through the facilities of that company; or

(iii) in respect of any clearing and settlement arrangements for any transactions in securities or futures contracts cleared or settled through the facilities of the recognized clearing house of which it is a controller; and

(*b*) such other information relating to its business or any such trading or clearing and settlement arrangements,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized exchange controller served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

72. Withdrawal of recognition of exchange controller

(1) Subject to subsection (2), where the Commission is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the proper regulation of markets in securities or futures contracts,

it may, with the consent in writing of the Financial Secretary, by notice in writing served on a recognized exchange controller stating the reasons in support of the ground or grounds for the notice—

(i) withdraw the company's recognition as an exchange controller with effect from a date specified in the notice for the purpose; or

(ii) direct the company to take such steps as are specified in the notice—

(A) for the purpose of causing the company to cease to be such controller; and

(B) within such period as is specified in the notice for the purpose.

(2) The Commission shall not exercise its power under subsection (1) in relation to a recognized exchange controller unless it has given the controller a reasonable opportunity of being heard.

(3) Without limiting the generality of steps referred to in subsection (1)(ii) which may be specified in a notice under that subsection to be served on a company referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that company.

(4) The steps specified in a notice under subsection (1)(ii) may be framed so as to afford the company on which the notice is served a choice between different ways of ceasing to be a controller of the recognized exchange company or recognized clearing house concerned.

(5) Where the Commission withdraws a company's recognition as an exchange controller under subsection (1)(i), it shall cause notice of that fact to be published in the Gazette.

(6) A notice served under subsection (1) shall not take effect—

(*a*) subject to paragraph (*b*), until the expiration of the period within which an appeal against the notice may be made under section 73; or

(*b*) if an appeal against the notice is made under section 73, until the appeal is withdrawn, abandoned or determined.

(7) Subject to subsection (8), a company served with a notice under subsection (1) which fails to comply with the notice commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) It is a defence for a person charged with an offence under subsection (7) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (1) served on the person.

(9) Where a company served with a notice under subsection (1) fails to comply with the notice (and whether or not the company is charged with an offence under subsection (7) in relation to the failure), the provisions of Part 6 of Schedule 3 shall immediately apply.

73. Appeals

(1) A person served with a notice under section 59(9)(*c*), 61(9)(*b*), 70(2), 72(1) or 75(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

74. Provisions applicable where recognized exchange controller, etc. seeks to be listed corporation

(1) A relevant recognized exchange controller, or a relevant corporation, shall not become a listed corporation unless and until the Commission states in writing that it is satisfied that—

(*a*) subject to subsection (2), rules made under section 23 adequately deal with possible conflicts of interest that might arise if the relevant recognized exchange controller or relevant corporation (as the case may be) were to be a listed corporation; and

(*b*) the relevant recognized exchange controller or relevant corporation (as the case may be) has entered into arrangements with the Commission that adequately ensure—

(i) the integrity of the market in securities or futures contracts traded on the stock market or futures market operated by the recognized exchange company concerned or through the facilities of that recognized exchange company; and

(ii) the compliance with obligations as a listed corporation which would fall on the relevant recognized exchange controller or relevant corporation (as the case may be) if it were to become a listed corporation.

(2) Rules referred to in subsection (1)(*a*) shall make provision to the effect that the Commission shall, instead of the Stock Exchange Company, take all actions and make all decisions in relation to the relevant recognized exchange controller or relevant corporation that would be taken by the Stock Exchange Company in the case of a corporation that was neither a recognized exchange controller nor a relevant corporation except in the case of any action or decision in respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action or decision were to be taken or made (as the case may be) by the Stock Exchange Company.

(3) By virtue of this section, the Commission shall have such functions as are provided for it under—

(*a*) rules made for the purposes of subsections (1)(*a*) and (2);

(*b*) arrangements referred to in subsection (1)(*b*).

(4) Where a fee is payable to the Stock Exchange Company by a person for the taking of an action or the making of a decision which may be taken or made (as the case may be) by the Commission by virtue of subsections (1)(*a*) and (2), then, notwithstanding any other enactment or rule of law, that person shall pay that fee to the Commission in any case where the Commission takes that action or makes that decision (as the case may be) by virtue of those subsections.

75. Commission may give directions to recognized exchange controller where it is satisfied that conflict of interest exists, etc.

(1) Where the Commission is satisfied that—

(*a*) a conflict of interest exists or may come into existence between—

(i) the interest of a recognized exchange controller or a relevant corporation; and

(ii) the interest of the proper performance of the functions conferred by this or any other Ordinance (including any rules made under any Ordinance, whether or not they are subsidiary legislation) on the controller or the relevant corporation; or

(*b*) such a conflict of interest has existed in circumstances that make it likely that the conflict of interest will continue or be repeated,

then the Commission may, by notice in writing served on the controller or relevant corporation (as the case may be) stating the reasons in support of the ground or grounds for the notice, direct the controller or relevant corporation

(as the case may be) to forthwith take such steps as are specified in the notice (including steps in relation to any of its affairs, business and property whatsoever) for the purposes of remedying the conflict of interest or the matters occasioning the conflict of interest (as the case may be).

(2) A notice served under subsection (1) shall take effect immediately.

(3) A recognized exchange controller or relevant corporation served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

76. Fees to be approved by Commission

(1) No fee imposed on or after the commencement of this section by—

(*a*) a recognized exchange controller in its capacity as a recognized exchange controller; or

(*b*) a recognized exchange company or recognized clearing house—

(i) of which the recognized exchange controller is a controller; and

(ii) in its capacity as a recognized exchange company or recognized clearing house (as the case may be),

shall have effect unless the fee is specified in the rules of the recognized exchange controller, recognized exchange company or recognized clearing house (as the case may be) and has the approval in writing of the Commission.

(2) The Commission shall, in deciding whether or not to approve a fee referred to in subsection (1), have regard to, among other matters—

(*a*) the level of competition (if any) in Hong Kong for the matter for which the fee is to be imposed; and

(*b*) the level of fee (if any) imposed by another recognized exchange controller, recognized exchange company or recognized clearing house or any similar body outside Hong Kong, for the same or a similar matter to which the fee relates.

77. Financial Secretary may appoint not more than 8 persons to board of directors of HKEC

(1) Notwithstanding any enactment or rule of law but subject to subsection (2), the Financial Secretary may appoint not more than 8 persons to be members of the board of directors of the HKEC where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(2) The Financial Secretary shall exercise his power under subsection (1) in such a way that immediately following the annual general meeting of the HKEC held in 2003 and thereafter, the number of members of its board of directors who are such members by virtue of an appointment under that subsection is not more than the maximum number of members of that board who may be such members otherwise than by virtue of such an appointment (but excluding the chief executive of the HKEC).

(3) Subject to subsection (4), a member of the board of directors of the HKEC who is such a member by virtue of an appointment under subsection (1) shall have the same rights, privileges, obligations and liabilities under any enactment or rule of law as a member of that board who is such a member otherwise than by virtue of such an appointment.

(4) Notwithstanding any enactment or rule of law, no person appointed under subsection (1) as a member of the board of directors of the HKEC may be removed from that office by a resolution of the other directors of the board or a special resolution of the HKEC.

(5) In this section, "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.

78. Amendment of Schedule 3

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2, 3, 4, 6, 7 or 8 of Schedule 3.

Division 5—Investor compensation companies

79. Recognition of investor compensation company

(1) Where the Commission is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest; or

(*b*) for the facilitation of the management and administration of the compensation fund under Part XII,

it may, after consultation with the Financial Secretary, by notice in writing served on a company, recognize the company as an investor compensation company—

(i) subject to such conditions as it considers appropriate specified in the notice; and

(ii) with effect from a date specified in the notice for the purpose.

(2) Without limiting the generality of conditions which may be specified in a notice under subsection (1), the Commission may, by notice in writing served on a recognized investor compensation company, amend or revoke any condition specified in the first-mentioned notice or impose new conditions, where the Commission—

(*a*) is satisfied that it is appropriate to do so on a ground specified in paragraph (*a*) or (*b*) of that subsection; and

(*b*) has consulted the Financial Secretary.

(3) Where the Commission amends or revokes any condition or imposes any new condition by a notice under subsection (2), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(4) Where a company becomes a recognized investor compensation company, the Commission shall cause notice of that fact to be published in the Gazette.

(5) Where a company is seeking to be a recognized investor compensation company and the Commission is minded not to recognize the company under subsection (1), the Commission shall give the company a reasonable opportunity of being heard before making a decision not to recognize the company.

(6) Where the Commission refuses to recognize a company as an investor compensation company under subsection (1), the Commission shall, by notice in writing served on the company, inform the company of the refusal and of the reasons for it.

80. Transfer and resumption of functions of Commission

(1) The Commission may request the Chief Executive in Council to transfer, by order ("transfer order") published in the Gazette, to a recognized investor compensation company ("designated investor compensation company"), a function to which this section applies, if the Commission is satisfied that the designated investor compensation company is willing and able to perform the function.

(2) This section applies to a function of the Commission under Part XII (other than sections 240(4) and (9) and 244(2)) or rules made under that Part.

(3) For the purposes of subsection (2), the function of the Commission under Part XII to maintain the compensation fund includes a function to maintain all or any part of the compensation fund, and the other provisions of this Ordinance shall apply accordingly.

(4) A function to which this section applies may be transferred by a transfer order either in whole or in part, and the transfer may be subject to—

(*a*) a reservation that the Commission is to perform the function concurrently with the designated investor compensation company; and

(*b*) such other conditions as the Commission considers appropriate.

(5) A transfer order may contain such incidental, supplemental and consequential provisions as may be necessary or expedient for the purpose of giving full effect to the order.

(6) The Commission may at the request or with the consent of a designated investor compensation company resume a function transferred by a transfer order, but the resumption takes effect only by order of the Chief Executive in Council.

(7) The Chief Executive in Council may order that the Commission resume a function transferred to a designated investor compensation company by a transfer order if the Commission so requests and if it appears to the Chief Executive in Council to be in the public interest to do so.

81. Immunity, etc.

(1) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(*a*) a recognized investor compensation company; or

(*b*) any person acting on behalf of a recognized investor compensation company, including—

(i) any member of the board of directors of the company; or

(ii) any member of any committee established by the company,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties to which this subsection applies.

(2) The duties to which subsection (1) applies are those—

(*a*) that relate to or arise out of a function that has been transferred to the recognized investor compensation company under section 80; or

(*b*) to which the company is subject under rules made under Part XII.

82. Rules by recognized investor compensation company

Without limiting any of its other powers to make rules, a recognized investor compensation company may make rules for such matters as are necessary or desirable—

(*a*) for the proper and efficient management and operation of the company;

(*b*) for the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement by the company as may be necessary or appropriate for the purposes of its operation;

(*c*) for the proper and efficient performance of a function transferred to the company under section 80.

83. Approval of rules or amendments to rules of recognized investor compensation companies

(1) Subject to subsection (7), no rule (whether or not made under section 82) of a recognized investor compensation company or any amendment thereto shall have effect unless it has the approval in writing of the Commission.

(2) A recognized investor compensation company shall submit or cause to be submitted to the Commission—

(*a*) for its approval the rules and every amendment thereto that require approval under subsection (1), together with explanations of their purpose and likely effect, including their effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them; and

(*b*) for its information the rules which belong to a class the subject of a declaration under subsection (7) and every amendment to the rules, as soon as reasonably practicable after they have been made.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2)(*a*) from a recognized investor compensation company, by notice in writing served on the company, give its approval or refuse to give its approval (together with its reasons for the refusal) to the rules or amendment of the rules (as the case may be) or any part thereof, the subject of the submission.

(4) The Commission may give its approval under subsection (3) subject to requirements which shall be satisfied before the rules or amendment of the rules or any part thereof take effect.

(5) The Commission may in a particular case, with the agreement of the recognized investor compensation company concerned, extend the time prescribed in subsection (3).

(6) The Financial Secretary may, after consultation with the Commission and the recognized investor compensation company concerned, extend the time prescribed in subsection (3).

(7) The Commission may, by notice published in the Gazette, declare any class of rules of a recognized investor compensation company to be a class of rules which are not required to be approved under subsection (1) and, accordingly, any rules of the company which belong to that class (including any amendment thereto) shall have effect notwithstanding that they have not been so approved.

(8) A recognized investor compensation company shall make its rules available to the public in a manner approved by the Commission.

(9) Neither the rules under section 82 nor a notice under subsection (7) is subsidiary legislation.

84. Production of records, etc. by recognized investor compensation company

(1) The Commission may, by notice in writing served on a recognized investor compensation company, require the company to provide to the Commission, within such period as the Commission may specify in the notice—

(*a*) such books and records kept by it in connection with or for the purposes of its business or in respect of the management and administration of the compensation fund under Part XII; and

(*b*) such other information relating to its business or the management and administration of the compensation fund under Part XII,

as the Commission may reasonably require for the performance of its functions.

(2) A recognized investor compensation company served with a notice under subsection (1) which, without reasonable excuse, fails to comply with the notice commits an offence and is liable on conviction to a fine at level 5.

85. Withdrawal of recognition of investor compensation company

(1) Subject to subsections (3), (4) and (5), the Commission may, after consultation with the Financial Secretary, by notice in writing served on a recognized investor compensation company, withdraw the company's recognition as an investor compensation company with effect from a date specified in the notice for the purpose.

(2) The Commission may by the notice served under subsection (1) permit the recognized investor compensation company to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of—

(*a*) closing down the operations of the company; or

(*b*) protecting the interest of the investing public or the public interest.

(3) The Commission may only serve a notice under subsection (1) in relation to a recognized investor compensation company that—

(*a*) fails to comply with any requirement of this Ordinance or with a condition imposed under section 79;

(*b*) is being wound up;

(*c*) ceases to perform any function transferred to it under section 80; or

(*d*) requests the Commission to do so.

(4) Except where responding to a request under subsection (3)(*d*), the Commission shall not exercise its power under subsection (1) in relation to a recognized investor compensation company unless it has given the company a reasonable opportunity of being heard.

(5) Except where responding to a request under subsection (3)(*d*), the Commission shall give the recognized investor compensation company not less than 14 days' notice in writing of its intention to serve a notice under subsection (1) and the grounds for doing so.

(6) Where the Commission withdraws a company's recognition as an investor compensation company under subsection (1), it shall cause notice of that fact to be published in the Gazette.

(7) A notice served under this section shall take effect immediately.

86. Appeals

(1) A company served with a notice under section 85(1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period (if any) as the Commission specifies in the notice.

(2) The decision of the Chief Executive in Council on an appeal under subsection (1) shall be final.

87. Subrogation of recognized investor compensation company to rights, etc. of claimant on payment from compensation fund

(1) Where a recognized investor compensation company makes any payment out of the compensation fund in respect of any claim made under rules made under Part XII—

(*a*) the company shall be subrogated, to the extent which that payment bears to the loss sustained (without taking into account any compensation paid or payable out of the compensation fund for the loss) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss; and

(*b*) the respective rights of the claimant and the company in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss—

(i) any sum out of the assets of the person concerned who is in default; or

(ii) any property held on trust by that person for the claimant,

shall rank equally.

(2) All assets (whether in cash or otherwise) recovered by the recognized investor compensation company under subsection (1) shall be dealt with in such manner as the Commission may direct and shall become part of the compensation fund.

88. Financial statements of a recognized investor compensation company

(1) Subject to subsection (3), a recognized investor compensation company shall—

(*a*) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 397 for the purposes of this section; and

(*b*) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the end of the financial year to which they relate.

(2) Without limiting the generality of subsection (1), the requirements under that subsection relating to the financial statements and other documents, and the auditor's report, referred to in that subsection include the requirements that—

(*a*) the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 397 for the purposes of this section;

(*b*) the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;

(*c*) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with such principles or bases as are prescribed by the rules; and

(*d*) without limiting the generality of section 129B of the Companies Ordinance (Cap. 32), the financial statements and other documents are to be signed by the chief executive officer of the recognized investor compensation company, by which they are prepared.

(3) On an application in writing by the recognized investor compensation company by which any financial statements and other documents, and any auditor's report, are required under subsection (1) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) shall apply subject to the extension accordingly.

(4) A recognized investor compensation company shall cause a copy of each of the financial statements and other documents and the auditor's report that are required under subsection (1) to be submitted by it to be sent to the Financial Secretary and to be published in the Gazette.

(5) A reference in this section to financial statements shall not be construed as including a reference to financial statements of the compensation fund.

89. Employees of and delegations by a recognized investor compensation company

(1) The Commission may arrange for any of its officers, employees, agents or consultants to assist in the operations of a recognized investor compensation company.

(2) A recognized exchange company or recognized exchange controller may, with the consent of a recognized investor compensation company, arrange for any of its officers, employees, agents or consultants to assist in the operations of that recognized investor compensation company.

(3) A recognized investor compensation company may by resolution and subject to the approval of the Commission, with or without restrictions or conditions as the company considers appropriate, delegate in writing to any person any of its powers and duties other than its power under section 82.

90. Further activities of recognized investor compensation company

(1) A recognized investor compensation company may, in addition to performing a function transferred to it under section 80, conduct such activities or businesses as may be approved in writing by the Commission.

(2) The Commission shall not approve the conduct of any activities or businesses referred to in subsection (1) unless it is satisfied that such activities or businesses are incidental to the management or administration of the compensation fund under Part XII.

Division 6—General—Exchange companies, clearing houses, exchange controllers and investor compensation companies

91. Supply of information

(1) The Commission, a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company shall be entitled to supply each other with information about its affairs and—

(*a*) in the case of a recognized exchange company, the affairs of any of its exchange participants;

(*b*) in the case of a recognized clearing house, the affairs of any of its clearing participants;

(*c*) in the case of a recognized exchange controller, the affairs of any of its subsidiaries; or

(*d*) in the case of a recognized investor compensation company, any claim made against the compensation fund,

if the supply of information is reasonably required for the performance of—

(i) in the case where the information is supplied to the Commission, the functions of the Commission under the relevant provisions; or

(ii) in any other cases, the functions of the recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company to which the information is supplied, under this Part or their respective rules.

(2) The Commission may, by notice in writing served on a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, require it to supply the Commission with such information as the Commission may reasonably require for the performance of the functions of the Commission under any of the relevant provisions, including information in its possession relating to—

(*a*) in the case of a recognized exchange company, the affairs of any of its exchange participants;

(*b*) in the case of a recognized clearing house, the affairs of any of its clearing participants;

(*c*) in the case of a recognized exchange controller, the affairs of any of its subsidiaries; or

(*d*) in the case of a recognized investor compensation company, any claim made against the compensation fund.

(3) The supply of information under subsection (1) or (2) shall not be treated as publication for the purposes of the law of defamation and, without limiting the generality of section 380(3) but subject to section 378, a person supplying the information does not incur liability as a consequence thereof.

(4) Where any information is supplied under subsection (1) to a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, the company concerned, the clearing house or the controller to whom the information is supplied shall not disclose the information, or any part of it, to any other person without the consent of the Commission.

92. Additional powers of Commission—restriction notices

(1) Subject to subsections (2), (6) and (14), where the Commission is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest;

(*b*) for the protection of investors; or

(*c*) for the proper regulation of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company,

it may by notice in writing ("restriction notice") served on the exchange company, clearing house, exchange controller or investor compensation company do any or all of the following—

(i) require the exchange company, clearing house, exchange controller or investor compensation company before the expiry of a period specified in the notice—

(A) to amend, supplement, withdraw or revoke, in the manner specified in the notice, a provision of its rules or other instrument so specified;

(B) to take such action relating to the management, conduct or operation of its business as may be so specified;

(ii) prohibit the exchange company, clearing house, exchange controller or investor compensation company from doing, during a period so specified, such act or other thing relating to the management, conduct or operation of its business as may be so specified.

(2) The Commission shall not serve a restriction notice unless—

(*a*) it has previously consulted the Financial Secretary in relation to the notice;

(*b*) it has previously requested in writing the exchange company, clearing house, exchange controller or investor compensation company concerned to put, or cause to be put, into effect a provision (which includes a request to refrain from doing any act or other thing) specified in the request and similar in effect to the requirement or prohibition specified in the restriction notice or, where there is more than one such requirement or prohibition so specified, provisions the combined effect of all of which is similar to the combined effect of the requirements or prohibitions so specified; and

(*c*) in the case of a request under paragraph (*b*) which—

(i) contains a provision requesting the exchange company, clearing house, exchange controller or investor compensation company concerned to amend, supplement, withdraw or revoke any provision of its constitution under subsection (1)(i), the provision has not been complied with before the expiration of the period specified in relation thereto in the request being not less than 45 days; or

(ii) contains a provision requesting the exchange company, clearing house, exchange controller or investor compensation company concerned to do or refrain from doing any act or other thing, the Commission is satisfied that the provision has not been complied with.

(3) A recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company may appeal to the Chief Executive in Council against a restriction notice that requires the exchange company, clearing house, exchange controller or investor compensation company to amend, supplement, withdraw or revoke any provision of its constitution.

(4) The decision of the Chief Executive in Council on an appeal under subsection (3) shall be final.

(5) A restriction notice served under this section shall take effect immediately.

(6) A period specified in a restriction notice in relation to a prohibition under subsection (1)(ii) shall not exceed 6 months beginning on the date of the notice.

(7) The Commission may, after consultation with the Financial Secretary, by notice in writing served on the exchange company, clearing house, exchange controller or investor compensation company concerned, extend, for a period or successive periods of not more than 3 months each, the period during which a restriction notice is to remain in force.

(8) Where a restriction notice is issued or extended under this section, the Commission may publish in the Gazette a copy of the notice or, as may be appropriate, particulars of the extension.

(9) A restriction notice may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.

(10) Where a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company is in breach of a requirement in a restriction notice under subsection (1)(i)(A) relating to a provision of its rules or other instrument—

(*a*) in the case of a requirement to amend or supplement such provision, the provision shall be deemed to have effect as if the requirement had been complied with; or

(*b*) in the case of a requirement to withdraw or revoke such provision, the provision ceases to have effect.

(11) Where—

(*a*) a restriction notice includes a requirement described in subsection (1)(i)(A) and the requirement relates to the constitution of a company; and

(*b*) by virtue of subsection (10) the provision to which the requirement relates has effect as if the requirement had been complied with or has ceased to have effect (as the case may be),

the Commission shall, as soon as may be, deliver to the Registrar of Companies a copy of the notice.

(12) If there is an appeal under subsection (3) against the notice and the appeal is not withdrawn, the Commission shall, as soon as may be, inform the Registrar of Companies in writing of the outcome of the appeal.

(13) Without limiting the generality of section 380(1), no civil liability, whether arising in contract, tort, defamation, equity or otherwise, shall be incurred by—

(*a*) a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;

(*b*) an officer or employee of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company;

(*c*) an exchange participant; or

(*d*) a clearing participant,

in respect of anything done or omitted to be done in good faith in compliance or purported compliance with a restriction notice.

(14) This section shall not be construed as enabling the Commission to do under this section anything which may be done by the Commission by direction under section 28(1)(*b*) or 29.

93. Additional powers of Commission—suspension orders

(1) Where the Commission is satisfied that it is appropriate to do so—

(*a*) in the interest of the investing public or in the public interest;

(*b*) for the protection of investors; or

(*c*) for the proper regulation of a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company,

it may, after consultation with the Financial Secretary, make an order ("suspension order") relating to all or any of the following—

(i) the functions of the board of directors or governing body of the exchange company, clearing house, exchange controller or investor compensation company;

(ii) the functions of a director of a board or a member of a body referred to in paragraph (i);

(iii) the functions of a committee, including a sub-committee, established by a board or body referred to in paragraph (i);

(iv) the functions of the chief executive officer (by whatever name called) of the exchange company, clearing house, exchange controller or investor compensation company.

(2) While a suspension order is in force the following provisions apply—

(*a*) neither the recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company to which the order relates nor any board, governing body, committee or officer of it shall perform a function to which the order relates;

(*b*) a function to which paragraph (*a*) applies may be performed by the person specified in the order in relation to that function;

(*c*) a person referred to in paragraph (*a*) shall not, by act or omission, either directly or indirectly, affect the manner in which a function referred to in that paragraph is performed.

(3) A recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company may appeal to the Chief Executive in Council against a suspension order made in respect of the exchange company, clearing house, exchange controller or investor compensation company.

(4) The decision of the Chief Executive in Council on an appeal under subsection (3) shall be final.

(5) Subject to subsection (9), a suspension order shall continue in force for the period not exceeding 6 months specified in the order.

(6) A suspension order or an extension of it under subsection (9) shall take effect when a copy of the order or notice of the extension is served under subsection (10)(*a*) on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates.

(7) Where a suspension order is made or extended under this section, the Commission shall, as soon as reasonably practicable to do so, give a copy of a suspension order or, as may be appropriate, notice of its extension to the chief executive officer of the exchange company, clearing house, exchange controller or investor compensation company to which the order relates and to the directors or members of its committee (if any) as the Commission considers appropriate in the circumstances.

(8) Nothing in subsection (7) affects subsection (6).

(9) The Commission may, after consultation with the Financial Secretary, extend for a period or successive periods of not more than 3 months each the period during which a suspension order is to remain in force.

(10) Where a suspension order is made or extended under this section, the Commission shall—

(*a*) forthwith serve a copy of the order or notice in writing of the extension on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates; and

(*b*) publish in the Gazette and publish through at least one other medium a copy of the suspension order or, as may be appropriate, notice of its extension.

(11) A suspension order may, on the application of the Commission to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.

(12) The exchange company, clearing house, exchange controller or investor compensation company concerned shall pay to the Commission on demand costs and expenses reasonably incurred by the Commission or a member or employee of the Commission in connection with a suspension order.

(13) The amount of the costs and expenses demanded under subsection (12) are recoverable by the Commission as a civil debt.

(14) A person who knowingly contravenes subsection (2)(*c*) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

94. Application of Companies Ordinance

Where there is any inconsistency between this Part and the Companies Ordinance (Cap. 32) in its application to a recognized exchange company, a recognized clearing house, a recognized exchange controller or a recognized investor compensation company, this Part prevails.

Division 7—Automated trading services

95. Authorization for providing automated trading services

(1) No person shall—

(*a*) provide automated trading services; or

(*b*) offer to provide automated trading services,

unless that person—

(i) is authorized under subsection (2);

(ii) is an employee or agent of a person authorized under subsection (2), and is acting in that capacity for or on behalf of that person;

(iii) is an intermediary licensed or registered for Type 7 regulated activity;

(iv) is a licensed representative for Type 7 regulated activity, and is acting in that capacity for the licensed corporation to which the representative is accredited; or

(v) is an individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged in respect of Type 7 regulated activity by a registered institution registered for that regulated activity, and is acting in that capacity for the registered institution.

(2) Where the Commission is satisfied that it is appropriate to do so, the Commission may upon application by a person, by notice in writing served on that person, authorize that person to provide automated trading services—

(*a*) subject to such conditions as it considers appropriate specified in the notice; and

(*b*) with effect from a date specified in the notice for the purpose.

(3) Where a person is granted an authorization under subsection (2), the Commission shall cause notice of that fact to be published in the Gazette.

(4) Where a person is seeking an authorization to provide automated trading services and the Commission is minded not to grant the authorization under subsection (2), the Commission shall give the person a reasonable opportunity of being heard before making a decision not to grant the authorization.

(5) Where the Commission refuses to authorize a person to provide automated trading services under subsection (2), the Commission shall, by notice in writing served on the person, inform the person of the refusal and of the reasons for it.

(6) The Commission shall prepare and publish in the Gazette or otherwise guidelines setting out the principles, procedures and standards in relation to authorization for providing automated trading services under this section.

(7) Guidelines published under subsection (6) are not subsidiary legislation.

(8) Subject to subsection (9), for the purposes of subsection (1)(*b*), a person offers to provide automated trading services only if the services are actively marketed, whether in Hong Kong or elsewhere, to persons in Hong Kong by the first-mentioned person or by another person on his behalf.

(9) For the purposes of subsection (1)(*b*), a person shall not be regarded as offering to provide automated trading services if the persons to whom the offer is made are persons to whom the first-mentioned person or a related corporation thereof, at any time during the period of 3 years immediately preceding the day on which the offer is made, has provided or has agreed to provide any financial services, including automated trading services.

96. Application for authorization

(1) An application under section 95(2) shall be accompanied by—

(*a*) such information and particulars as the Commission may reasonably require; and

(*b*) an application fee prescribed by rules made under section 395 for the purposes of this section.

(2) Without limiting the generality of subsection (1)(*a*), an application under section 95(2) shall also be accompanied by such information as may reasonably be required by the Commission regarding—

(*a*) the services and facilities which the applicant will hold itself out as being able to provide if the application is allowed;

(*b*) the business which the applicant proposes to carry on and to which the application relates, and any person whom the applicant proposes to employ or with whom the applicant intends to be associated in the course of carrying on the business;

(*c*) the business which the applicant is carrying on, the officers it employs and the persons with whom the applicant is associated in the course of carrying on the business; and

(*d*) its directors and substantial shareholders and, if any of its substantial shareholders is a corporation, the directors and substantial shareholders of that corporation.

(3) In considering an application under section 95(2), the Commission may have regard to any information in its possession whether provided by the applicant or not.

97. Conditions for authorization

(1) Without limiting the generality of conditions which may be specified in a notice under section 95(2), the Commission may, by notice in writing served on a person authorized under that section, amend or revoke any conditions specified under that section or impose new conditions, where the Commission is satisfied that it is appropriate to do so.

(2) Where the Commission amends or revokes any condition or imposes any new condition under subsection (1), the amendment, revocation or imposition takes effect at the time of service of the notice or at the time specified in the notice, whichever is the later.

(3) Without limiting the generality of subsection (1) or section 95(2), a notice served thereunder may contain a condition that the person authorized to provide automated trading services shall comply with all or any of the following requirements, that is to say, the person shall—

(*a*) provide the services according to rules approved by the Commission for the purpose;

(*b*) ensure as far as is reasonably practicable that there is an orderly, informed and fair market in relation to all transactions which are carried out by means of or through the services;

(*c*) ensure that the securities or futures contract, the sale or purchase of which is to be negotiated or concluded by means of or through the services, belongs to a class of securities or futures contracts specified in the notice by the Commission for this purpose;

(*d*) ensure that the transaction that is to be novated, cleared, settled or guaranteed by means of or through the services belongs to a class of transactions specified in the notice by the Commission for this purpose;

(*e*) disclose to the Commission within the time and in the manner specified in the notice, such information as the Commission may request for the purpose of performing its functions under this Ordinance;

(*f*) permit any person authorized in that behalf by the Commission to enter at any reasonable time the premises on which the services are provided and to inspect the electronic facilities by means of which the services are provided;

(*g*) provide and maintain automated systems with adequate capacity, facilities to meet contingencies or emergencies, security arrangements and technical support for the provision of the services;

(*h*) notify the Commission of any changes to the information and particulars required by the Commission under section 96(1) or (2);

(*i*) pay to the Commission a fee prescribed by rules made under section 395 for the purposes of this section.

98. Withdrawal of authorization

(1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest, it may, by notice in writing served on a person who has been granted an authorization under section 95(2), stating the reasons in support of the ground or grounds for the notice, withdraw the authorization with effect from a date specified in the notice for the purpose.

(2) The Commission may by the notice served under subsection (1) permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of—

(*a*) ceasing to provide the automated trading services to which the withdrawal relates; or

(*b*) protecting the interest of the investing public or the public interest.

(3) Where the Commission has granted a permission to a person under subsection (2), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 95.

(4) The Commission shall not exercise its power under subsection (1) in relation to a person who has been granted an authorization under section 95(2) unless it has given the person a reasonable opportunity of being heard.

(5) Where the Commission withdraws an authorization under subsection (1), it shall cause notice of that fact to be published in the Gazette.

(6) A notice served under this section shall take effect immediately.

99. Commission to maintain register of authorized automated trading services

(1) The Commission shall maintain a register of authorized automated trading services in such form as it considers appropriate.

(2) The register maintained under subsection (1) shall contain in relation to each person who has been granted an authorization under section 95(2)—

(*a*) the name and business address of the person;

(*b*) such conditions of the authorization as the Commission considers appropriate; and

(*c*) such other particulars as are prescribed by rules made under section 397 for the purposes of this subsection.

(3) The register may be maintained—

(*a*) in a documentary form; or

(*b*) by recording the information required under subsection (2) otherwise than in a legible form, so long as the information is capable of being reproduced in a legible form.

(4) For the purposes of enabling any member of the public to ascertain whether he is dealing with a person who has been granted an authorization under section 95(2) in matters of or connected with any automated trading services and to ascertain the particulars of the authorization of such person, the register shall be made available for public inspection at all reasonable times.

(5) At all reasonable times, a member of the public may—

(*a*) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and

(*b*) obtain a copy of an entry in or extract of the register on payment of a fee prescribed by rules made under section 395.

(6) A document purporting to be—

(*a*) a copy of an entry in or extract of the register maintained under this section; and

(*b*) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (*a*),

shall be admissible as evidence of its contents in any legal proceedings.

(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record.

100. Rules by Commission

(1) Without prejudice to section 398(7) and (8), the Commission may make rules to—

(*a*) require a person authorized to provide automated trading services to supply the Commission with such information as the Commission requires to satisfy the Commission that the conditions specified in a notice served on the person under section 95(2) or 97 are complied with;

(*b*) provide for the time within which and the manner in which the information under paragraph (*a*) shall be provided;

(*c*) provide for the regulation of automated trading services and any other matters incidental thereto.

(2) Without limiting the generality of rules which may be made under subsection (1), such rules may—

(*a*) provide for the standards of conduct and practices to be complied with in relation to the provision of automated trading services;

(*b*) prohibit the use of misleading or deceptive advertisements in relation to the provision of automated trading services or impose conditions for the use of advertisements in relation to the provision of such services;

(*c*) require a person authorized to provide automated trading services—

(i) to take steps to avoid conflicts of interests, and specify the steps that shall be taken in the event that there is a potential or actual conflict of interest; and

(ii) to take such steps as the Commission may specify to ensure that there is integrity, orderliness, transparency and fairness in transactions conducted through the services, including steps to ensure that—

(A) a request for the services is to be dealt with properly and as expeditiously as is appropriate in the circumstances; and

(B) access rights to the services and the relevant trading conventions relating to the transactions to be conducted through the services are properly explained to the persons to whom the services are provided;

(*d*) provide for measures designed to discourage and identify any money laundering activities.

(3) Rules made under this section may provide that a person who, without reasonable excuse, contravenes any specified provision of the rules that apply to the person commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine at level 6 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 3 and a term of imprisonment of 6 months.

101. Providing automated trading services without authorization

A person who, without reasonable excuse, contravenes section 95(1) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine of $500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

PART IV

OFFERS OF INVESTMENTS

Division 1—Interpretation

102. Interpretation of Part IV

(1) In this Part, unless the context otherwise requires—

"advertisement" (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

"approved person" (核准人士)—

(*a*) in relation to a collective investment scheme, means an individual approved by the Commission under section 104(3); or

(*b*) in relation to the issue of an advertisement, invitation or document, means an individual approved by the Commission under section 105(3);

"document" (文件) means any publication (including a newspaper, magazine or journal, a poster or notice, a circular, brochure, pamphlet or handbill, or a prospectus)—

(*a*) directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public; and

(*b*) whether produced mechanically, electronically, magnetically, optically, manually or by any other means;

"exempted body" (獲豁免團體) means a body specified in Part 3 of Schedule 4;

"invitation" (邀請) includes an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

"issue" (發出), in relation to any material (including any advertisement, invitation or document), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(*a*) by any visit in person;

(*b*) in a newspaper, magazine, journal or other publication;

(*c*) by the display of posters or notices;

(*d*) by means of circulars, brochures, pamphlets or handbills;

(*e*) by an exhibition of photographs or cinematograph films;

(*f*) by way of sound or television broadcasting;

(*g*) by any information system or other electronic device; or

(*h*) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued;

"relevant authority" (監管當局), in relation to a place outside Hong Kong, means an authority which the Monetary Authority is satisfied is a recognized banking supervisory authority of that place;

"representative" (代表)—

(*a*) in relation to a licensed corporation, means an individual—

(i) who is licensed as a licensed representative for a regulated activity; and

(ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or

(*b*) in relation to a registered institution, means an individual—

(i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity; and

(ii) who carries on that regulated activity for the registered institution.

(2) For the purposes of this Part—

(*a*) an advertisement, invitation or document issued by a person shall be regarded as being issued by him on every day on which he causes or authorizes it to be so issued;

(*b*) an advertisement, invitation or document issued by one person on behalf of another shall be regarded as an advertisement, invitation or document (as the case may be) issued by both persons.

Division 2—Regulation of offers of investments, etc.

103. Offence to issue advertisements, invitations or documents relating to investments in certain cases

(1) Subject to subsections (2), (3) and (5) to (9), a person commits an offence if he issues, or has in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to the public—

(*a*) to enter into or offer to enter into—

(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) a regulated investment agreement; or

(*b*) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

unless the issue is authorized by the Commission under section 105(1).

(2) Subsection (1) does not apply to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document—

(*a*) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of securities;

(*b*) made by or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent) in respect of futures contracts;

(*c*) made by or on behalf of—

(i) an authorized financial institution (whether acting as principal or agent); or

(ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent),

in respect of leveraged foreign exchange contracts;

(*d*) made by or on behalf of a recognized exchange company or recognized clearing house in respect of the provision of services by such recognized exchange company or recognized clearing house (as the case may be);

(*e*) made by or on behalf of a corporation to holders of securities or creditors of, or employees employed by or agents acting in a professional capacity on behalf of, that corporation, or a related corporation of that corporation, in respect of securities of that corporation or that related corporation;

(*f*) made by or on behalf of the Government in respect of securities issued by it;

(*g*) made by or on behalf of a credit union in respect of shares in the credit union;

(*h*) made by or on behalf of a person acting as a trustee of a trust, not being a collective investment scheme, to beneficiaries under the trust; or

(*i*) made by or on behalf of a person who is engaged in the business of selling and purchasing property other than securities (whether acting as principal or agent) in the ordinary course of that business.

(3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue—

(*a*) of—

(i) a prospectus which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap. 32);

(ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is exempt from compliance with Part XII of that Ordinance;

(iii) an extract from or abridged version of a prospectus referred to in subparagraph (i) or (ii), the publication of which would not contravene section 38B(1) of that Ordinance by virtue of the operation of section 38B(2) of that Ordinance;

(*b*) of a document relating to the securities of a body corporate incorporated in Hong Kong that is not a registered company, being a document which—

(i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(*b*) or 38A of that Ordinance; and

(ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation;

(*c*) of a form of application for the shares or debentures of a corporation, where it is issued, or the possession is for the purposes of issue, together with—

(i) a prospectus with respect to those shares or debentures which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or

(ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation with respect to those shares or debentures;

(*d*) of a form of application for the securities of a corporation, where it is issued, or the possession is for the purposes of issue, in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;

(*e*) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;

(*f*) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit—

(i) the amount or denomination of which is not less than the sum specified in Part 1 of Schedule 4; and

(ii) by—

(A) a multilateral agency; or

(B) a bank incorporated outside Hong Kong and having no place of business in Hong Kong, where the Monetary Authority has declared in writing that he is satisfied that the bank is likely to be adequately supervised by the relevant authority of any place in which it is incorporated or has its principal place of business;

(*g*) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of any instrument specified in Part 2 of Schedule 4 (other than a certificate of deposit), where the amount or denomination of the instrument is not less than the sum specified in Part 1 of Schedule 4 and the instrument—

(i) is issued by an authorized financial institution or a multilateral agency, or by an exempted body which, if it is a corporation or a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4, complies with the relevant condition;

(ii) is issued by a corporation which complies with the relevant condition, and is guaranteed by an authorized financial institution or a multilateral agency, or by an exempted body (other than a corporation specified in item 11 of Part 3 of Schedule 4 which does not comply with the relevant condition, or a wholly owned subsidiary of the corporation); or

(iii) is issued by a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and which complies with the relevant condition;

(*h*) of any advertisement, invitation or document made in respect of the issue of securities the listing of which on a recognized stock market has been approved by the recognized exchange company by which the recognized stock market is operated, where the advertisement, invitation or document complies with the rules made under section 23 or 36 governing the listing of securities, except to the extent that compliance is, in accordance with those rules, waived, modified or not required;

(*i*) of any advertisement, invitation or document made in respect of securities regulated in a jurisdiction outside Hong Kong which have been admitted to trading on a recognized stock market under or pursuant to rules made under section 23 or 36;

(*j*) of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme or regulated investment agreement, which are or are intended to be disposed of only to persons outside Hong Kong;

(*k*) of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme or regulated investment agreement, which are or are intended to be disposed of only to professional investors.

(4) A person who commits an offence under subsection (1) is liable—

(*a*) on conviction on indictment to a fine of $500,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of $20,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue—

(*a*) as or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of securities;

(*b*) as or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of futures contracts;

(*c*) as or on behalf of—

(i) an authorized financial institution (whether acting as principal or agent); or

(ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent),

any advertisement, invitation or document made in respect of leveraged foreign exchange contracts.

(6) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement, invitation or document, or has any advertisement, invitation or document in his possession for the purposes of issue—

(*a*) in the case of any advertisement, invitation or document made in respect of securities, to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

(*b*) in the case of any advertisement, invitation or document made in respect of futures contracts, to an intermediary licensed or registered for Type 2 or Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or

(*c*) in the case of any advertisement, invitation or document made in respect of leveraged foreign exchange contracts, to—

(i) an authorized financial institution; or

(ii) an intermediary licensed for Type 3 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.

(7) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement, invitation or document if—

(*a*) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;

(*b*) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself; and

(*c*) for the purposes of the issue—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be).

(8) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues by way of live broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement, invitation or document if—

(*a*) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(*b*) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(*c*) for the purposes of the issue—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be); and

(*d*) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.

(9) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.

(10) For the purposes of any proceedings under this section—

(*a*) an advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, to the doing of any act referred to in subsection (1)(*a*) or (*b*) shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to do such act;

(*b*) an advertisement, invitation or document which is or contains an invitation directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to the public.

(11) Nothing in subsection (2)(*a*), (*b*), (*c*) or (*i*) or (5)(*a*), (*b*) or (*c*) applies to anything done by any person in respect of any interest in a collective investment scheme that is not authorized by the Commission under section 104.

(12) In this section—

"guaranteed" (作出擔保) means guaranteed fully, unconditionally, irrevocably and in writing;

"registered company" (註冊公司) means a company registered under the Companies Ordinance (Cap. 32);

"relevant condition" (有關條件), in relation to a corporation (including a wholly owned subsidiary of any other corporation), means a condition that the amount by which the aggregate of the corporation's assets exceeds the aggregate of its liabilities, as calculated in accordance with generally accepted accounting principles, is not less than the sum specified in Part 4 of Schedule 4.

104. Commission may authorize collective investment schemes

(1) On an application to the Commission, the Commission may, where it considers appropriate, authorize any collective investment scheme, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.

(2) It shall be a condition of authorization of a collective investment scheme under subsection (1) that at any time when the scheme is authorized—

(*a*) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme; and

(*b*) the Commission is informed of particulars—

(i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (*a*), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

(ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.

(3) For the purposes of subsection (2)(*a*), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of a collective investment scheme as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme, and may, by notice in writing served on the person, withdraw the approval.

(4) The Commission may at any time, by notice in writing served on the approved person for a collective investment scheme, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the scheme.

(5) Without limiting any other ground on which the Commission may refuse to authorize any collective investment scheme under subsection (1), the Commission may refuse to do so where it is not satisfied that the authorization is in the interest of the investing public.

(6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.

(7) Where the Commission refuses to authorize a collective investment scheme, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.

(8) The Commission may publish in such manner as it considers appropriate particulars of any collective investment scheme authorized under subsection (1).

(9) Particulars published under subsection (8) are not subsidiary legislation.

105. Commission may authorize issue of advertisements, invitations or documents

(1) On an application to the Commission, the Commission may, where it considers appropriate, authorize the issue of any advertisement, invitation or document which is or contains an invitation to do any act referred to in section 103(1)(*a*) or (*b*), subject to the condition specified in subsection (2) and to any other conditions it considers appropriate, including conditions on the matter to which the advertisement, invitation or document relates.

(2) It shall be a condition of authorization of the issue of any advertisement, invitation or document under subsection (1) that at any time when the issue is authorized—

(*a*) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the issue; and

(*b*) the Commission is informed of particulars—

(i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (*a*), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

(ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.

(3) For the purposes of subsection (2)(*a*), on an application by any person to the Commission, the Commission may, where it considers appropriate, approve any individual nominated in the application in respect of the issue of any advertisement, invitation or document as an approved person for the purpose of being served by the Commission with notices and decisions for the issue, and may, by notice in writing served on the person, withdraw the approval.

(4) The Commission may at any time, by notice in writing served on the approved person for the issue of any advertisement, invitation or document, amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization granted under subsection (1) in respect of the issue.

(5) Without limiting any other ground on which the Commission may refuse to authorize the issue of any advertisement, invitation or document under subsection (1), the Commission may refuse to do so where it is not satisfied that the matter to which the advertisement, invitation or document relates is in the interest of the investing public.

(6) An application made pursuant to subsection (1) or (3) shall be accompanied by such information and documents as the Commission requires.

(7) Where the Commission refuses to authorize the issue of any advertisement, invitation or document, or to approve an individual as an approved person, pursuant to subsection (1) or (3), it shall by notice in writing notify the person making the application in question of the decision and the reasons for which it is made.

106. Withdrawal of authorization under section 104 or 105, etc.

(1) Subject to subsection (5), where, in relation to an authorization of a collective investment scheme under section 104, or an authorization of the issue of an advertisement, invitation or document under section 105, the Commission decides that—

(*a*) any information provided to the Commission pursuant to section 104(6) or 105(6) (as the case may be) was at the time when it was provided false or misleading in a material particular;

(*b*) any of the conditions imposed in respect of the authorization under section 104 or 105 (as the case may be) are not being complied with;

(*c*) any information provided to the Commission in purported compliance with any of the conditions imposed in respect of the authorization under section 104 or 105 (as the case may be) was at the time when it was provided false or misleading in a material particular; or

(*d*) it is desirable to withdraw the authorization in order to protect the interest of the investing public,

the Commission may withdraw the authorization.

(2) Subject to subsection (3), the Commission shall, upon a request in writing made by an approved person for a collective investment scheme or the issue of an advertisement, invitation or document to withdraw the authorization of the scheme or of the issue (as the case may be), withdraw the authorization.

(3) Subject to subsection (5), the Commission may refuse to withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (2) where it considers that—

(*a*) in the case of an authorization of a collective investment scheme, it is in the public interest that any matter concerning the scheme should be investigated before the authorization is withdrawn under subsection (2); or

(*b*) the withdrawal of the authorization would not be in the interest of the investing public.

(4) Subject to subsection (5), where the Commission withdraws an authorization under subsection (1) or (2), it may impose such conditions on the withdrawal of the authorization as it considers appropriate.

(5) The Commission shall not—

(*a*) withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (1);

(*b*) refuse to withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (3); or

(*c*) impose any conditions on the withdrawal of an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (4),

without first giving the approved person for the scheme or the issue (as the case may be) a reasonable opportunity of being heard.

(6) Where the Commission—

(*a*) withdraws an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (1);

(*b*) withdraws an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (2);

(*c*) refuses to withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (3); or

(*d*) imposes any conditions on the withdrawal of an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (4),

it shall by notice in writing notify the approved person for the scheme or the issue (as the case may be) of the decision and, in the case of paragraph (*a*), (*c*) or (*d*), the reasons for which it is made.

(7) Where the Commission withdraws an authorization under subsection (1) or (2), it may publish notice of the withdrawal and the reasons therefor in such manner as it considers appropriate.

(8) A notice or any other matter published under subsection (7) is not subsidiary legislation.

107. Offence to fraudulently or recklessly induce others to invest money

(1) A person commits an offence if he makes any fraudulent misrepresentation or reckless misrepresentation for the purpose of inducing another person—

(*a*) to enter into or offer to enter into—

(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) a regulated investment agreement; or

(*b*) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme.

(2) A person who commits an offence under subsection (1) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) For the purposes of this section—

(*a*) "fraudulent misrepresentation" (欺詐的失實陳述) means—

(i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;

(ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;

(iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or

(iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(*b*) "reckless misrepresentation" (罔顧實情的失實陳述) means—

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;

(iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or

(iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive.

108. Civil liability for inducing others to invest money in certain cases

(1) Where a person makes any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced—

(*a*) to enter into or offer to enter into—

(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) a regulated investment agreement; or

(*b*) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

the first-mentioned person shall, whether or not he also incurs any other liability (whether under this Part or otherwise), be liable to pay compensation by way of damages to the other person for any pecuniary loss that the other person has sustained as a result of the reliance by the other person on the misrepresentation.

(2) For the purposes of this section, where a company or other body corporate has made any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced to do any act referred to in subsection (1)(*a*) or (*b*), any person who was a director of the company or body corporate at the time when the misrepresentation was made shall, unless it is proved that he did not authorize the making of the misrepresentation, be presumed also to have made the misrepresentation.

(3) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(4) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance (Cap. 32) (whether with or without reference to section 342E of that Ordinance) applies.

(5) A person may bring an action under subsection (1) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of a contravention of this Part.

(6) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

(7) For the purposes of this section—

(*a*) "fraudulent misrepresentation" (欺詐的失實陳述) means—

(i) any statement which, at the time when it is made, is to the knowledge of its maker false, misleading or deceptive;

(ii) any promise which, at the time when it is made, its maker has no intention of fulfilling, or is to the knowledge of its maker not capable of being fulfilled;

(iii) any forecast which, at the time when it is made, is to the knowledge of its maker not justified on the facts then known to him; or

(iv) any statement or forecast from which, at the time when it is made, its maker intentionally omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(*b*) "reckless misrepresentation" (罔顧實情的失實陳述) means—

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made recklessly;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made recklessly;

(iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made recklessly; or

(iv) any statement or forecast from which, at the time when it is made, its maker recklessly omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive;

(*c*) "negligent misrepresentation" (疏忽的失實陳述) means—

(i) any statement which, at the time when it is made, is false, misleading or deceptive and is made without reasonable care having been taken to ensure its accuracy;

(ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made without reasonable care having been taken to ensure that it can be fulfilled;

(iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made without reasonable care having been taken to ensure the accuracy of those facts; or

(iv) any statement or forecast from which, at the time when it is made, its maker negligently omits a material fact, with the result that—

(A) in the case of the statement, the statement is rendered false, misleading or deceptive; or

(B) in the case of the forecast, the forecast is rendered misleading or deceptive.

109. Offence to issue advertisements relating to carrying on of regulated activities, etc.

(1) Subject to subsections (3) to (6), a person commits an offence if he issues, or has in his possession for the purposes of issue—

(*a*) an advertisement in which to his knowledge—

(i) a person holds himself out as being prepared to carry on Type 4, Type 5, Type 6 or Type 9 regulated activity; and

(ii) the person is not licensed or registered for such regulated activity as required under this Ordinance; or

(*b*) any document which to his knowledge contains such advertisement.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(3) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement or document, or has any advertisement or document in his possession for the purposes of issue—

(*a*) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 4 regulated activity, to an intermediary licensed or registered for Type 4 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

(*b*) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 5 regulated activity, to an intermediary licensed or registered for Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

(*c*) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 6 regulated activity, to an intermediary licensed or registered for Type 6 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or

(*d*) in the case of an advertisement in which a person holds himself out as being prepared to carry on Type 9 regulated activity, to an intermediary licensed or registered for Type 9 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.

(4) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement or document if—

(*a*) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;

(*b*) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself; and

(*c*) for the purposes of the issue—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be).

(5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues by way of live broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement or document if—

(*a*) the advertisement or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(*b*) the contents of the advertisement or document (as the case may be) were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(*c*) for the purposes of the issue—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the advertisement or document (as the case may be); and

(*d*) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.

(6) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.

Division 3—Miscellaneous

110. Submission of information to Commission

(1) A person that is—

(*a*) an authorized financial institution;

(*b*) an exempted body or, in the case of a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 but incorporated outside Hong Kong, an authorized representative of that subsidiary;

(*c*) a multilateral agency or an authorized representative of that agency; or

(*d*) a bank incorporated outside Hong Kong or an authorized representative of that bank,

commits an offence if he fails, within 10 business days, or such longer period as is prescribed by rules made under section 397 for the purposes of this subsection, after the issue of any advertisement, invitation or document referred to in section 103(3)(*e*), (*f*) or (*g*) by the authorized financial institution, the exempted body or the wholly owned subsidiary, the multilateral

agency or the bank (as the case may be), to submit to the Commission such information in respect of the advertisement, invitation or document as is prescribed by the rules.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine of $5,000 for every day during which the offence continues.

(3) In subsection (1), "authorized representative" (獲授權代表), in relation to the issue of any advertisement, invitation or document, means—

(*a*) in the case of a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 but incorporated outside Hong Kong, the listed corporation of which it is the subsidiary; or

(*b*) in the case of a multilateral agency or a bank incorporated outside Hong Kong, a person resident in Hong Kong who is authorized by the agency or the bank (as the case may be) to act on behalf of the agency or the bank (as the case may be) in respect of that issue.

111. Service of notices, etc. on approved persons

(1) Notwithstanding section 400, any written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on an approved person by the Commission for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served only if—

(*a*) it is delivered to him by hand; or

(*b*) it is—

(i) left at, or sent by post to, the last address;

(ii) sent by facsimile transmission to the last facsimile number; or

(iii) sent by electronic mail transmission to the last electronic mail address,

shown by the particulars of which the Commission is informed in respect of the approved person for the purposes of section 104(2)(*b*) or 105(2)(*b*) (as the case may be).

(2) Where a notice, decision or direction or other document (however described) is regarded as duly issued or served to or on an approved person under subsection (1)(*b*), it shall for all purposes be regarded as issued or served to or on the approved person, and as coming to his notice, at the time when—

(*a*) where it is left at an address, it is so left at that address;

(*b*) where it is sent by post to an address, it would in the ordinary course of post be delivered to that address;

(*c*) where it is sent by facsimile transmission to a facsimile number, it would in the ordinary course of transmission by facsimile be received at that number; or

(*d*) where it is sent by electronic mail transmission to an electronic mail address, it would in the ordinary course of transmission by electronic mail be received at that address.

112. Amendment of Schedule 4

(1) The Financial Secretary may, by notice published in the Gazette, amend Part 1 of Schedule 4.

(2) The Commission may, after consultation with the Financial Secretary, by notice published in the Gazette, amend Parts 2, 3 and 4 of Schedule 4.

PART V

LICENSING AND REGISTRATION

113. Interpretation of Part V

(1) In this Part, unless the context otherwise requires—

"executive director" (執行董事), in relation to a licensed corporation, means a director of the corporation who—

(*a*) actively participates in; or

(*b*) is responsible for directly supervising,

the business of a regulated activity for which the corporation is licensed;

"prescribed fee" (訂明費用) means a fee prescribed by rules made under section 395;

"prescribed manner" (訂明方式) means such manner as is prescribed by rules made under section 397;

"principal" (主事人), in relation to a licensed representative, means the licensed corporation to which the representative is accredited;

"regulated function" (受規管職能), in relation to a regulated activity carried on as a business by any person, means any function performed for or on behalf of or by arrangement with the person relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier;

"specified titles" (指明稱銜) means the titles specified in column 3 of Schedule 6.

(2) In this Part, a reference to a licence to carry on a regulated activity shall be construed—

(*a*) in relation to a licensed corporation, as a licence to carry on a business in the regulated activity; and

(*b*) in relation to a licensed representative, as a licence to perform for or on behalf of or by arrangement with a licensed corporation to which he is accredited any regulated function in relation to the regulated activity.

(3) Registration for a regulated activity under section 119 shall be construed as registration for carrying on a business in the regulated activity.

114. Restriction on carrying on business in regulated activities, etc.

(1) Subject to subsections (2), (5) and (6), no person shall—

(*a*) carry on a business in a regulated activity; or

(*b*) hold himself out as carrying on a business in a regulated activity.

(2) Subsection (1) shall not apply to—

(*a*) a corporation licensed under section 116 or 117 for the regulated activity;

(*b*) an authorized financial institution registered under section 119 for the regulated activity; or

(*c*) a person authorized under section 95(2) for the regulated activity.

(3) Without prejudice to subsection (1) but subject to subsection (4), no person shall—

(*a*) perform any regulated function in relation to a regulated activity carried on as a business; or

(*b*) hold himself out as performing such function.

(4) Subsection (3) shall not apply to—

(*a*) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;

(*b*) an individual—

(i) who carries on for a registered institution a regulated activity for which the registered institution is registered; and

(ii) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity; or

(*c*) an employee of a person authorized under section 95(2) for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.

(5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more of the activities specified in Part 3 of Schedule 5.

(6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate—

(*a*) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or

(*b*) the continued holding of such securities.

(7) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding as referred to in subsection (6)(*a*) and (*b*), that person shall be presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used.

(8) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine of $500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(9) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $20,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $2,000 for every day during which the offence continues.

115. Application of section 114 in relation to conduct or activities outside Hong Kong

(1) If—

(*a*) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that he provides; and

(*b*) such services, if provided in Hong Kong, would constitute a regulated activity,

then—

(i) the provision of such services so marketed shall be regarded for the purposes of section 114(1)(*a*) as carrying on a business in that regulated activity;

(ii) the person's marketing of such services as referred to in paragraph (*a*) shall be regarded for the purposes of section 114(1)(*b*) as holding himself out as carrying on a business in that regulated activity; and

(iii) to the extent that the provision of such services involves the performance by a person of a function that, if performed in Hong Kong in relation to a regulated activity, would constitute a regulated function, the performance of such function by that person shall be regarded for the purposes of section 114(3)(*a*) as performance of that regulated function in relation to that regulated activity.

(2) If—

(*a*) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any function that he performs; and

(*b*) such function, if performed in Hong Kong in relation to a regulated activity carried on as a business, would constitute a regulated function,

then—

(i) the performance of such function so marketed shall be regarded for the purposes of section 114(3)(*a*) as performance of that regulated function in relation to that regulated activity; and

(ii) the person's marketing of such function as referred to in paragraph (*a*) shall be regarded for the purposes of section 114(3)(*b*) as holding himself out as performing that regulated function in relation to that regulated activity.

116. Corporations to be licensed for carrying on regulated activities

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless—

(*a*) the applicant is—

(i) a company;

(ii) an overseas company which has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents; or

(iii) a corporation (other than a company or an overseas company)—

(A) which carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

(B) to which section 114(1) would not apply but for the provisions of section 115(1)(i) and (ii); and

(C) to which Part XI of the Companies Ordinance (Cap. 32) would apply if it established a place of business in Hong Kong;

(*b*) applications have been lodged under section 126 in respect of such persons as referred to in section 125(1)(*a*) and (*b*) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and

(*c*) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that—

(*a*) it is a fit and proper person to be licensed for the regulated activity;

(*b*) it will be able, if licensed, to comply with the financial resources rules; and

(*c*) it—

(i) has lodged and maintains with the Commission such security in accordance with rules made under subsection (4); or

(ii) is insured in accordance with rules made under subsection (5).

(4) The Commission may make rules for the purposes of subsection (3)(*c*)(i) that provide for—

(*a*) any security to be lodged and maintained by a licensed corporation with the Commission;

(*b*) the manner in which the security is lodged;

(*c*) the terms on which the security is maintained;

(*d*) the Commission's power to apply a security lodged and maintained with the Commission in such circumstances, for such purposes and in such manner as may be prescribed in the rules;

(*e*) any other matter relating to the security.

(5) The Commission may make rules for the purposes of subsection (3)(*c*)(ii) that provide for—

(*a*) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;

(*b*) the terms on which the insurance is to be taken out and maintained;

(*c*) any other matter relating to the insurance.

(6) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(7) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (6), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(8) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.

(9) Without prejudice to the Commission's powers under Part IX, a licence granted to a corporation to carry on Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the corporation's being granted an authorization under section 95(2) to provide automated trading services.

117. Grant of temporary licences to corporations for carrying on regulated activities

(1) The Commission may, upon application by a corporation in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities) as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that—

(*a*) it carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

(*b*) it seeks to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity;

(*c*) it carries on such business in the activity in the place referred to in paragraph (*a*) under an authorization (however described) by an authority or regulatory organization in that place which—

(i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

(ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and

(iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;

(*d*) the granting of the licence would not result in its being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months;

(*e*) it is a fit and proper person to be so licensed for the regulated activity;

(*f*) it has nominated at least one individual for approval by the Commission for the purposes of subsection (5)(*a*); and

(*g*) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(5) Without limiting the generality of subsection (3), it shall be a condition of a licence granted under subsection (1) for carrying on a regulated activity—

(*a*) that, in relation to the regulated activity, there is at least one individual who is—

(i) nominated by the licensed corporation and approved by the Commission for the purposes of this paragraph; and

(ii) available at all times to supervise the business of the regulated activity for which the corporation is licensed; and

(*b*) that the licensed corporation shall not hold any client assets in carrying on the regulated activity.

(6) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.

118. Licensing conditions in certain cases

(1) Without limiting the generality of section 116(6), it shall be a condition of a licence granted under section 116(1) for carrying on—

(*a*) a regulated activity—

(i) that the licensed corporation—

(A) shall lodge (whether or not in addition to any security that it may have lodged) and maintain with the Commission such security in respect of that regulated activity as may be required by rules made under section 116(4); or

(B) is insured, in lieu of lodging (where applicable) and maintaining such security, in accordance with rules made under section 116(5); and

(ii) that, in relation to the regulated activity, there is at least one responsible officer of the licensed corporation who is available at all times to supervise the business of the regulated activity for which the corporation is licensed;

(*b*) Type 3 regulated activity, that in relation to any dispute between the licensed corporation and a client regarding or touching upon any matter concerning the carrying on of that regulated activity, the licensed corporation is obliged, if the client so requires, to have the dispute settled by arbitration in accordance with rules made under subsection (2);

(*c*) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the licensed corporation shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the licence under section 195(2);

(*d*) Type 8 regulated activity, that—

(i) the licensed corporation shall carry on no business other than securities margin financing, except business that is necessarily incidental to the carrying on of such business; and

(ii) where the licensed corporation carries on a business in one or more of the activities specified in Part 3 of Schedule 5, it shall comply with the requirements of such rules made under Part VI as apply to it in relation to such business.

(2) The Commission may make rules for the purposes of subsection (1)(*b*) that provide for—

(*a*) the establishment and functions of an arbitration panel and relevant matters;

(*b*) the appointment by the Financial Secretary of members of the arbitration panel, including a chairman and one or more than one deputy chairman;

(*c*) the appointment from the arbitration panel of a tribunal to hear a dispute between a licensed corporation and its client and the constitution and composition of the tribunal;

(*d*) the liability or entitlement to costs of a party to a dispute and the recovery of costs;

(*e*) the practice and procedure in the hearing of a dispute;

(*f*) the Commission to use the findings of a tribunal for performing its functions under any of the relevant provisions;

(*g*) the exercise of any discretion by a person under the rules.

119. Registered institutions

(1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, register the applicant for one or more than one regulated activity (other than Type 3 and Type 8 regulated activities) and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.

(2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).

(3) Upon receiving an application for registration for a regulated activity referred to him under subsection (2), the Monetary Authority shall—

(*a*) consider the application;

(*b*) consult the Commission upon the merits of the application; and

(*c*) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be registered for that regulated activity.

(4) In deciding whether to register or refuse to register an applicant under subsection (1), the Commission—

(*a*) shall have regard to any advice given to it by the Monetary Authority pursuant to subsection (3)(*c*); and

(*b*) may rely wholly or partly on that advice in making that decision.

(5) Any registration under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered institution concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) Without prejudice to the Commission's powers under Part IX, the registration of an authorized financial institution for Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the institution's being granted an authorization under section 95(2) to provide automated trading services.

(8) Without limiting the generality of subsection (5), it shall be a condition of any registration under subsection (1) for—

(*a*) a regulated activity, that—

(i) in relation to the regulated activity, there is at least one executive officer of the registered institution who is available at all times to supervise the business of the regulated activity for which the institution is registered; and

(ii) any individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity is a fit and proper person to be so engaged;

(*b*) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the registered institution shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that

regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the registration under section 197(2).

(9) The Commission shall not exercise its power under subsection (5) or (8)(*b*) unless the Commission has first consulted the Monetary Authority.

120. Representatives to be licensed

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence for a corporation licensed under section 116 to which he is accredited.

(2) The Commission in its absolute discretion may, upon request by the applicant in the prescribed manner and payment of the prescribed fee, grant to the applicant a provisional licence to carry on, for such corporation, the regulated activity in respect of which the application is made.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) or (2) unless the applicant satisfies the Commission that he is a fit and proper person to be so licensed for the regulated activity.

(4) The Commission shall refuse to grant a licence under subsection (2) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interest of the investing public.

(5) A licence granted under subsection (1) or (2) shall be subject to the condition specified in subsection (6) and to any other reasonable conditions as the Commission may impose.

(6) It shall be a condition of a licence granted under subsection (1) or (2) that the licensed representative concerned shall—

(*a*) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and

(*b*) inform the Commission of any change in the particulars within 14 days after the change takes place.

(7) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (5) or impose new conditions as may be reasonable in the circumstances.

(8) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (7), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(9) A provisional licence shall be deemed to be revoked—

(*a*) upon the Commission's refusal of the relevant application made under subsection (1); or

(*b*) upon the grant of the licence sought under the application,

whichever first occurs.

(10) Without prejudice to the Commission's powers under Part IX, the Commission may, after having regard to the interest of the investing public and in its absolute discretion, by notice in writing served on the licensed representative concerned, revoke a provisional licence granted under subsection (2).

(11) On the revocation of a provisional licence under subsection (9) or (10), the person who was formerly the licensed representative under such licence shall return the licence to the Commission within 7 business days after the revocation.

(12) A person who, without reasonable excuse, contravenes subsection (11) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of $2,000 for every day during which the offence continues.

(13) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1) or (2), use a name other than the name specified in the licence.

121. Temporary licences for representatives

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities) as the Commission may specify in the licence—

(*a*) for a corporation licensed under section 116 to which he is accredited; or

(*b*) for a corporation licensed under section 117 to which he is accredited.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission—

(*a*) that he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity, under an authorization (however described) by an authority or regulatory organization in that place which—

(i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

(ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and

(iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;

(*b*) where the application is for a licence under subsection (1)(*a*), that—

(i) he carries on the activity referred to in paragraph (*a*) for or on behalf of a corporation which carries on the activity as a business principally in a place outside Hong Kong under an authorization (however described) by an authority or regulatory organization in that place which—

(A) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part; and

(B) confirms to the satisfaction of the Commission that the corporation has been so authorized; and

(ii) the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in subparagraph (i);

(*c*) where the application is for a licence under subsection (1)(*b*), that he seeks to be so licensed solely for the conduct of his principal's business in the activity referred to in section 117(2)(*a*);

(*d*) that the granting of the licence would not result in his being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months; and

(*e*) that he is a fit and proper person to be so licensed for the regulated activity.

(3) A licence granted under subsection (1) shall be subject to the condition specified in subsection (4) and to any other reasonable conditions as the Commission may impose.

(4) It shall be a condition of a licence granted under subsection (1) that the licensed representative concerned—

(*a*) shall at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address;

(*b*) shall inform the Commission of any change in the particulars within 14 days after the change takes place; and

(*c*) shall not hold any client assets in carrying on the regulated activity for which he is so licensed.

(5) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (3) or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1), use a name other than the name specified in the licence.

122. Approval and transfer of accreditation

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the accreditation of a licensed representative—

(*a*) who is licensed under section 120(1) or (2) or 121(1)(*a*), to a corporation licensed under section 116; or

(*b*) who is licensed under section 121(1)(*b*), to a corporation licensed under section 117,

and shall specify in the licence, upon such approval, the corporation as his principal.

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative licensed under section 120(1) or (2) or 121(1), approve the transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be), and upon approving the transfer, the Commission shall re-issue the licence to the licensed representative with the name of the corporation specified in the licence as his principal.

(3) The Commission shall refuse to—

(*a*) approve an accreditation under subsection (1); or

(*b*) approve a transfer of accreditation under subsection (2),

unless the applicant satisfies the Commission that he will be competent to carry out his duties to the requisite standard as a licensed representative for or on behalf of the licensed corporation concerned.

(4) Without limiting the generality of subsection (3), where a licensed representative who is licensed under section 121(1)(*a*) applies—

(*a*) under subsection (1)(*a*) for approval of an accreditation; or

(*b*) under subsection (2) for approval of a transfer of accreditation,

to a corporation licensed under section 116, the Commission shall refuse to grant the approval unless the applicant satisfies the Commission that the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in section 121(2)(*b*)(i).

123. Commission to be notified, etc. if licensed representative ceases to act for principal

(1) If an individual licensed under section 120(1) or (2) or 121(1) ceases to act for or on behalf of his principal as a licensed representative, he thereupon ceases to be accredited to the principal and—

(*a*) the principal shall, within 7 business days after such cessation, notify the Commission of the cessation;

(*b*) the individual shall, within 7 business days after such cessation, return the licence to the Commission; and

(*c*) where the individual has not applied for transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be) within 180 days after such cessation, the licence shall be deemed to have been revoked upon such cessation.

(2) A person who contravenes subsection (1)(*a*) commits an offence and is liable on conviction to a fine at level 6.

(3) A person who, without reasonable excuse, contravenes subsection (1)(*b*) commits an offence and is liable on conviction to a fine at level 6.

124. Duplicate licence, etc.

(1) Subject to subsection (2), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed person or a registered institution on the ground that his licence or certificate of registration is lost, defaced or destroyed, issue to the licensed person or the registered institution a duplicate of the licence or certificate of registration (as the case may be).

(2) In support of an application under subsection (1), the licensed person or the registered institution shall—

(*a*) submit to the Commission a statutory declaration made by the licensed person or the registered institution stating the ground of the application and such other particulars as the case may require in order to verify the loss, defacement or destruction (as the case may be) of the licence or certificate of registration; and

(*b*) furnish to the Commission such other information as the Commission may reasonably require in relation to the application.

125. Requirement for executive officers

(1) A corporation licensed under section 116 shall not carry on any regulated activity for which it is licensed unless—

(*a*) every executive director of the licensed corporation who is an individual is approved by the Commission as a responsible officer of the corporation in relation to the regulated activity; and

(*b*) not less than 2 individuals, at least one of whom shall be an executive director of the licensed corporation, are approved by the Commission as the responsible officers of the corporation in relation to the regulated activity.

(2) A registered institution shall not carry on any regulated activity for which it is registered unless it has complied with section 71D of the Banking Ordinance (Cap. 155) in respect of the appointment of executive officers and such executive officers are in compliance with section 71C of that Ordinance (including section 71C of that Ordinance as read with section 71E of that Ordinance).

(3) If a licensed corporation contravenes subsection (1) or a registered institution contravenes subsection (2), without reasonable excuse, the licensed corporation or registered institution (as the case may be) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of $2,000 for every day during which the offence continues.

126. Approval of responsible officers

(1) The Commission may, upon application by a licensed representative in the prescribed manner and payment of the prescribed fee, approve the applicant as a responsible officer of the licensed corporation to which he is accredited.

(2) The Commission shall refuse to approve an applicant as a responsible officer of a licensed corporation under subsection (1) unless the applicant satisfies the Commission that—

(*a*) he is a fit and proper person to be so approved; and

(*b*) he has sufficient authority within the licensed corporation.

(3) An approval under subsection (1) shall be subject to such reasonable conditions as the Commission may impose on the licensed corporation and the responsible officer concerned, and the Commission may at any time, by notice in writing served on the licensed corporation or the responsible officer concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) The approval of an individual as a responsible officer of a licensed corporation shall be deemed to be revoked if the individual—

(*a*) ceases to act as a licensed representative for or on behalf of; or

(*b*) ceases to be accredited to,

the licensed corporation.

127. Variation of regulated activity specified in licence or certificate of registration

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, vary the regulated activity specified in the applicant's licence or certificate of registration by adding to or reducing the regulated activity so specified.

(2) Where a person applies for variation of the regulated activity specified in his licence or certificate of registration by adding any regulated activity, such application shall, for the purposes of this Part, be regarded as an application for a licence or registration (as the case may be) in respect of that regulated activity.

128. Applicant to provide information

(1) A person who applies—

(*a*) for a licence under section 116, 117, 120 or 121;

(*b*) for registration under section 119;

(*c*) for approval of accreditation or approval of transfer of accreditation to a principal, under section 122;

(*d*) for approval to be a responsible officer under section 126;

(*e*) for variation, under section 127, of the regulated activity for which the person is licensed or registered;

(*f*) for approval of premises under section 130(1);

(*g*) for approval to become or continue to be (as the case may be) a substantial shareholder under section 132;

(*h*) for a modification or waiver under section 134; or

(*i*) for any other matter requiring the approval of the Commission under this Part,

shall provide the Commission with such information as it may reasonably require to enable it to consider the application.

(2) In considering an application referred to in subsection (1), the Commission may have regard to any information in its possession whether provided by the applicant or not.

(3) The Commission may make rules providing for—

(*a*) the information to be provided by an applicant to enable the Commission to consider his application;

(*b*) the form, manner and time period in which such information is to be provided;

(*c*) any other matter relating thereto.

129. Determination of "fit and proper"

(1) In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission or the Monetary Authority (as the case may be) shall, in addition to any other matter that the Commission or the Monetary Authority (as the case may be) may consider relevant, but subject to section 134, have regard to—

(*a*) the financial status or solvency;

(*b*) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is allowed, the person will perform;

(*c*) the ability to carry on the regulated activity competently, honestly and fairly; and

(*d*) the reputation, character, reliability and financial integrity,

of—

(i) where the person is an individual, the person himself;

(ii) where the person is a corporation (other than an authorized financial institution), the corporation and any officer of the corporation; or

(iii) where the person is an authorized financial institution, the institution and any director, chief executive, manager (as defined in section 2(1) of the Banking Ordinance (Cap. 155)) and executive officer of the institution.

(2) Without limiting the generality of subsection (1), the Commission or the Monetary Authority (as the case may be) may, in considering whether a person is a fit and proper person for the purposes of any provision of this Ordinance—

(*a*) take into account a decision made in respect of the person by—

(i) (in the case of the Commission) the Monetary Authority or (in the case of the Monetary Authority) the Commission;

(ii) the Insurance Authority;

(iii) the Mandatory Provident Fund Schemes Authority; or

(iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function similar to the functions of the Commission;

(*b*) take into account any information in the possession of the Commission or the Monetary Authority (as the case may be), whether provided by the person or not, relating to—

(i) where such consideration relates to a licence under section 116 or 117 or an application for the licence, any other person who is or is to be employed by, or associated with, the person for the purposes of the regulated activity for which the licence is granted or the application is made (as the case may be);

(ii) where such consideration relates to a licence under section 116 or 117 to carry on a regulated activity or any registration for a regulated activity under section 119 or an application for the licence or registration, any other person who will be acting for or on behalf of the person in relation to the regulated activity; or

(iii) where the person is a corporation in a group of companies—

(A) any other corporation in the same group of companies; or

(B) any substantial shareholder or officer of the corporation or any corporation referred to in sub-subparagraph (A);

(*c*) take into account, where such consideration relates to a licence under section 116 or 117 or any registration under section 119 or an application for the licence or registration, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under any of the relevant provisions, having regard in particular to the information provided in accordance with section 128; and

(*d*) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

130. Suitability of premises for keeping records or documents

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve premises to be used by a licensed corporation for keeping records or documents required under this Ordinance.

(2) The Commission shall refuse to approve premises under subsection (1) unless the applicant satisfies the Commission that—

(*a*) the premises are suitable for being used for the purpose referred to in that subsection; and

(*b*) where the premises are used partly for residential purposes, such residential use of the premises will not affect the exercise of any powers under this Part or Part VI or VIII.

(3) A licensed corporation shall not, without the prior approval in writing of the Commission, use any premises for the keeping of records or documents relating to the carrying on of the regulated activity for which it is licensed.

(4) The Commission shall inform the applicant in writing of its decision under subsection (1) as soon as reasonably practicable after receipt of the application.

131. Restriction on substantial shareholding, etc.

(1) A person shall not become and continue to be a substantial shareholder of a corporation licensed under section 116 without first being approved by the Commission under section 132(1)(*a*).

(2) A person who contravenes subsection (1) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years, and to a further fine of $5,000 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 132(1)(*b*); or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months, and to a further fine of $500 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 132(1)(*b*).

(3) It is a defence for a person charged with an offence under subsection (2) to prove—

(*a*) that he did not know, and could not have by the exercise of reasonable diligence ascertained, the existence of the act or circumstances by virtue of which he became such a substantial shareholder; and

(*b*) where he subsequently became aware of such act or circumstances, that he applied under section 132(1)(*b*), as soon as reasonably practicable and in any event within 3 business days after he became so aware, for approval to continue to be a substantial shareholder of the corporation.

(4) If a person becomes a substantial shareholder of a corporation licensed under section 116 without the Commission's prior approval under section 132(1)(*a*) by virtue of—

(*a*) a transfer of shares;

(*b*) an issue of shares; or

(*c*) a transfer of the right to be issued with shares,

then, unless and until the Commission approves the person to continue to be a substantial shareholder of the corporation under section 132(1)(*b*), the voting rights conferred by the shares concerned are not exercisable.

(5) A person who purportedly exercises any voting right that is not exercisable by virtue of subsection (4) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) It is a defence for a person charged with an offence under subsection (5) to prove that he—

(*a*) did not know; and

(*b*) could not have by the exercise of reasonable diligence known, that the voting right which he purportedly exercised is by virtue of subsection (4) not exercisable.

132. Approval to become or continue to be substantial shareholder

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the applicant—

(*a*) to become; or

(*b*) to continue to be,

as the case may be, a substantial shareholder of a corporation licensed under section 116.

(2) The Commission shall refuse to approve an applicant to become or continue to be (as the case may be) a substantial shareholder of the licensed corporation concerned unless the applicant satisfies the Commission that the corporation will remain a fit and proper person to be licensed if the application is approved.

(3) An approval under subsection (1)(*a*) or (*b*) shall be subject to such reasonable conditions as the Commission may impose on the applicant and on the licensed corporation concerned, and the Commission may at any time, by notice in writing served on the approved substantial shareholder and the corporation, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(5) Without limiting the generality of subsection (3), it shall be a condition of an approval under subsection (1)(*a*) or (*b*) that the approved substantial shareholder shall—

(*a*) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his business address, residential address, telephone and facsimile numbers and electronic mail address; and

(*b*) inform the Commission of any change in the particulars within 14 days after the change takes place.

133. Commission's power to give directions

(1) Where a person became a substantial shareholder without the Commission's prior approval under section 132(1)(*a*), whether or not he has applied under section 132(1)(*b*) for approval to continue to be such shareholder and regardless of whether such approval is granted or not, the Commission may by notice in writing direct the licensed corporation concerned—

(*a*) not to permit or acquiesce in the involvement of the person in the management of the business of the corporation;

(*b*) to deem void and of no effect any votes cast by the person and any of his associates (if any) at any meeting of the corporation;

(*c*) to reconvene any such meeting for voting anew on the business on which the votes were cast; and

(*d*) to take such other reasonable steps as it may specify in the notice.

(2) Without prejudice to the operation of subsection (1), where the Commission refuses to approve an application to continue to be a substantial shareholder made under section 132(1)(*b*), it may by notice in writing direct the applicant—

(*a*) to reduce, within such reasonable time as the Commission may require, the interest in shares by virtue of which he became a substantial shareholder of the licensed corporation concerned to the extent that he is no longer a substantial shareholder of the corporation; and

(*b*) to take such other reasonable steps as the Commission may specify in the notice.

(3) If a person fails to comply with any direction under subsection (1) or (2), the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—

(*a*) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and

(*b*) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(4) An originating summons under subsection (3) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).

134. Modification or waiver of requirements

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by—

(*a*) a licensed corporation;
(*b*) an applicant for a licence under section 116 or 117;
(*c*) a registered institution;
(*d*) an applicant for registration under section 119;
(*e*) a licensed representative;
(*f*) an applicant for a licence under section 120 or 121;
(*g*) a responsible officer approved under section 126;
(*h*) a substantial shareholder approved under section 132;
(*i*) an applicant for approval under section 132 to become or continue to be (as the case may be) a substantial shareholder; or
(*j*) an associated entity,

grant a modification or waiver, in relation to the applicant, in respect of any condition specified in section 118 or imposed under section 116, 117, 119, 120, 121, 126 or 132 or any of the requirements of the following—

(i) sections 116(2)(*b*) and 125(1) and (2);
(ii) sections 116(2)(*c*) and 130;
(iii) rules made under section 118(2);
(iv) section 121(2)(*a*);
(v) section 129;
(vi) rules made under section 145;
(vii) rules made under section 148;
(viii) rules made under section 149;
(ix) rules made under section 151;
(x) rules made under section 152;
(xi) rules made under section 168;
(xii) rules made under section 173;
(xiii) section 175(1), (2) and (3); or
(xiv) any provision of rules made by the Commission under this Ordinance.

(2) The grant of a modification or waiver under subsection (1) shall be effected by a notice in writing served on the applicant specifying the period (if any) for which the modification or waiver is valid.

(3) The Commission shall refuse to grant a modification or waiver under subsection (1) unless it is satisfied by the applicant that to do so will not prejudice—

(*a*) in the case of a modification or waiver granted in respect of a condition imposed under section 116, 117 or 119, the interests of any client of the applicant; or

(*b*) in the case of a modification or waiver granted in respect of a condition specified in section 118 or imposed under section 120, 121, 126 or 132, or in respect of any requirement of a provision specified in subsection (1)(i) to (xiv), the interest of the investing public.

(4) A modification or waiver granted under subsection (1) to a person shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on—

(*a*) the person;

(*b*) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; or

(*c*) where the modification or waiver is granted pursuant to an application made under subsection (1)(*e*), (*f*) or (*g*), the principal to which the person is accredited,

amend such modification or waiver, or amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(5) Subject to subsection (4), a modification or waiver granted under subsection (1) remains in force—

(*a*) if a period is specified in the notice served under subsection (2) in respect of the modification or waiver, until the end of the period; or

(*b*) if no such period is specified, until revoked by the Commission by notice in writing served on—

(i) the person;

(ii) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; or

(iii) where the modification or waiver is granted pursuant to an application made under subsection (1)(*e*), (*f*) or (*g*), the principal to which the person is accredited.

(6) In relation to a modification or waiver under subsection (1) to a person, the Commission shall—

(*a*) on the grant of the modification or waiver;

(*b*) on its amendment or an amendment or revocation of its conditions or the imposition of any new condition on it under subsection (4); or

(*c*) on its revocation under subsection (5)(*b*),

by notice published in the Gazette specifying, subject to subsection (7)—

(i) the name of the person;

(ii) the event referred to in paragraph (*a*), (*b*) or (*c*) (as the case may be) and the reasons for the event;

(iii) any condition imposed on the modification or waiver on its grant, or the condition amended or revoked or newly imposed subsequently under subsection (4) (as the case may be); and

(iv) (if applicable) the period for which the grant or amendment or the condition so imposed is valid.

(7) If the applicant satisfies the Commission that specifying any condition in compliance with subsection (6)(iii) would prejudice, to an unreasonable degree, the commercial interests of the applicant, the Commission may, in lieu of specifying the condition, include in the notice referred to in subsection (6)—

(*a*) a brief account of its reasons for not specifying the condition; and

(*b*) such appropriate information on the condition as the Commission considers incapable of prejudicing, to an unreasonable degree, the commercial interests of the applicant.

(8) The Commission may by rules grant a modification or waiver, in relation to a class of licensed persons or registered institutions or associated entities, in respect of any of the requirements of the rules referred to in subsection (1)(vi), (vii), (viii), (ix), (x) or (xi).

(9) The Commission shall not make any rules under subsection (8) to grant a modification or waiver referred to in that subsection unless the Commission is satisfied that to do so will not prejudice the interest of the investing public.

(10) The Commission may specify in the rules referred to in subsection (8) the conditions subject to which the modification or waiver is granted and the rules may provide that a person who fails to comply with such a condition commits an offence and is liable on conviction to a fine not exceeding level 6.

(11) The Commission may at any time by rules—

(*a*) revoke a modification or waiver granted under subsection (8); or

(*b*) amend, revoke or add to, any condition subject to which such modification or waiver is granted.

(12) The Commission shall not exercise its power under subsection (1), (4), (8), (10) or (11) in relation to any registered institution or any associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority.

(13) A person who fails to comply with a condition imposed under subsection (4) commits an offence and is liable on conviction to a fine at level 6.

135. Events to be reported by licensed persons and registered institutions

(1) A licensed person or registered institution who intends to cease to carry on any regulated activity for which he is licensed or registered shall notify the Commission and (in the case of a registered institution) the Monetary Authority in writing of such intended cessation as soon as reasonably practicable and in any event not later than 7 business days before such intended cessation.

(2) An intermediary shall give to the Commission and (in the case of a registered institution) the Monetary Authority at least 7 business days' advance notice in writing of any intended change of address at which it proposes to carry on the regulated activity for which it is licensed or registered.

(3) Subject to subsection (5), where a person has provided any information to the Commission under any provision of this Part and a change in the information occurs, then in such circumstances as are prescribed by rules made under section 397 for the purposes of this subsection, the person shall, within 7 business days of the change, give notice in writing of the change containing a full description of it.

(4) The notice referred to in subsection (3) shall be given to the following person or persons—

(*a*) (where the information has been provided in connection with an application under any provision of this Part and the Commission is still considering the application) the Commission; or

(*b*) (in other cases) the Commission and (if the information provided relates to a registered institution) the Monetary Authority.

(5) Where the information has been provided in connection with an application under any provision of this Part and the application has been refused or withdrawn, subsection (3) shall no longer apply in relation to the information.

(6) Where a person becomes or ceases to be a director of a licensed corporation, both the person and the corporation shall, within 7 business days thereafter, notify the Commission in writing of the name and address of the person and of the nature of the position which he occupies or has ceased to occupy (as the case may be).

(7) A person who, without reasonable excuse, contravenes subsection (1), (2), (3) or (6) commits an offence and is liable on conviction to a fine at level 5.

136. Commission to maintain register of licensed persons and registered institutions

(1) The Commission shall maintain a register of licensed persons and registered institutions in such form as it considers appropriate.

(2) The register maintained under subsection (1) shall contain in relation to each licence or registration—

(*a*) the name and business address of the licensed person or registered institution (as the case may be);

(*b*) such conditions of the licence or registration (as the case may be) as the Commission considers appropriate;

(*c*) in relation to each licensed representative, the name of his principal;

(*d*) in relation to the licensed corporation or registered institution (as the case may be) the name and business address of each of its executive officers; and

(*e*) such other particulars as are prescribed by rules made under section 397 for the purposes of this subsection.

(3) The register may be maintained—

(*a*) in a documentary form; or

(*b*) by recording the information required under subsection (2) otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.

(4) For the purposes of enabling any member of the public to ascertain whether he is dealing with a licensed person or a registered institution in matters of or connected with any regulated activity and to ascertain the particulars of the licence or registration of such person or institution (as the case may be), the register shall be made available for public inspection at all reasonable times.

(5) At all reasonable times, a member of the public may—

(*a*) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and

(*b*) obtain a copy of an entry in or extract of the register on payment of the prescribed fee.

(6) A document purporting to be—

(*a*) a copy of an entry in or extract of the register maintained under this section; and

(*b*) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (*a*),

shall be admissible as evidence of its contents in any legal proceedings.

(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record.

137. Publication of names of licensed persons and registered institutions

(1) The Commission shall at least once in each year publish at such time and in such manner as it considers appropriate the name and address of each licensed person and registered institution, the regulated activities for which the person or institution is licensed or registered and such conditions of the licence or registration as the Commission considers appropriate.

(2) If the Commission amends the register maintained under section 136 by adding or removing the name of a licensed person or registered institution or varying the regulated activity for which a licensed person or registered institution is licensed or registered or any condition of a licence or registration, it shall publish particulars of the amendment within one month after making the amendment.

138. Annual fee and return

(1) A person licensed under section 116 or 120(1) or a registered institution shall pay to the Commission an annual fee prescribed by rules made under section 395 for the purposes of this subsection.

(2) The annual fee shall be payable within one month after each anniversary of the date of grant of the licence or certificate of registration (as the case may be), or on such other date as may be approved by the Commission by notice in writing.

(3) In default of full payment of the annual fee as required under subsection (2), the person shall pay to the Commission an additional sum calculated as follows—

(*a*) 10% of the fee or such part of the fee (as the case may be) that remains unpaid for the first month after the due date for its payment;

(*b*) 20% of the fee or such part of the fee (as the case may be) for each subsequent month when it remains unpaid,

and in calculating the additional sum for the purposes of this subsection, any fraction of a month shall be treated as a month.

(4) A person licensed under section 116 or 120(1) shall submit an annual return to the Commission—

(*a*) within one month after each anniversary of the date on which the person is licensed; or

(*b*) by such other date as may be approved by the Commission by notice in writing,

which return shall contain such information as is prescribed by rules made under section 397 for the purposes of this subsection.

139. Prohibition of use of certain titles

(1) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(*a*) the person is licensed or registered for Type 1 regulated activity; or

(*b*) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(2) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(*a*) the person is licensed or registered for Type 2 regulated activity; or

(*b*) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(3) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless the person—

(*a*) is licensed for Type 3 regulated activity;

(*b*) is an authorized financial institution; or

(*c*) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of "leveraged foreign exchange trading" in Part 2 of Schedule 5 but for paragraph (xii) of that definition.

(4) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(*a*) the person is licensed or registered for Type 4 regulated activity; or

(*b*) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 4 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(5) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(*a*) the person is licensed or registered for Type 5 regulated activity; or

(*b*) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 5 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(6) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(*a*) the person is licensed or registered for Type 6 regulated activity; or

(*b*) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 6 regulated activity by a person registered for that regulated activity, while acting in that capacity.

(7) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless—

(*a*) the person is licensed or registered for Type 7 regulated activity;

(*b*) the person is granted an authorization under section 95(2) to provide automated trading services;

(*c*) his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 7 regulated activity by a person registered for that regulated activity, while acting in that capacity; or

(*d*) the person is an employee of a person authorized under section 95(2) to provide automated trading services, while acting for that person in that regulated activity.

(8) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 2 of Schedule 6 unless the person—

(*a*) is licensed for Type 8 regulated activity;

(*b*) is an authorized financial institution; or

(*c*) is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of "securities margin financing" in Part 2 of Schedule 5 but for paragraph (v) of that definition.

(9) A person shall not take or use any title, other than any specified title referred to in subsection (1), (2), (3), (4), (5), (6), (7) or (8), which suggests that—

(*a*) he carries on a business in any regulated activity referred to in any of those subsections; or

(*b*) he performs any regulated function in relation to a regulated activity referred to in any of those subsections which is carried on as a business,

unless he falls within the description specified in a paragraph of such of those subsections.

(10) A person who contravenes subsection (1), (2), (3), (4), (5), (6), (7), (8) or (9) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of $2,000 for every day during which the offence continues.

140. Procedural requirements

(1) If the Commission forms a preliminary view to—

(*a*) refuse the whole or a part of an application made under this Part;

(*b*) impose conditions on approving an application; or

(*c*) amend or revoke the conditions of, or impose new conditions to—

(i) a licence granted under section 116, 117, 120 or 121, or any registration under section 119;

(ii) an accreditation approved or transferred under section 122;

(iii) an approval for a person to be a responsible officer under section 126 or to become or continue to be (as the case may be) a substantial shareholder under section 132; or

(iv) a modification or waiver granted under section 134(1),

then the Commission shall, before making its final decision—

(i) inform the applicant or the relevant licensed corporation, registered institution, licensed representative, responsible officer or approved substantial shareholder (as the case may be) of the ground for the preliminary view; and

(ii) give such person a reasonable opportunity of being heard.

(2) When the Commission makes a final decision, it shall, as soon as reasonably practicable, notify the applicant or the relevant licensed corporation, registered institution, licensed representative, responsible officer or approved substantial shareholder (as the case may be) in writing of its decision and the reasons for making such decision.

141. Service of notices, etc. on licensed persons

(1) Notwithstanding section 400, any written notice, decision or direction or other document (however described) to be, or required to be, issued or served (however described) to or on a licensed person for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served only if—

(*a*) in the case of an individual, it is—

(i) delivered to him by hand; or

(ii) (A) left at, or sent by post to, the last residential address;

(B) sent by facsimile transmission to the last facsimile number; or

(C) sent by electronic mail transmission to the last electronic mail address,

provided by the person to the Commission pursuant to section 120(6) or 121(4) (as the case may be); or

(*b*) in the case of a corporation, it is—

(i) delivered to any officer of the corporation by hand; or

(ii) (A) left at, or sent by post to, the last address;

(B) sent by facsimile transmission to the last facsimile number; or

(C) sent by electronic mail transmission to the last electronic mail address,

provided by the corporation to the Commission pursuant to section 116, 117, 130(1), 135(2) or 138(4) (as the case may be).

(2) Where a notice, decision or direction or other document (however described) is regarded as duly issued or served to or on a licensed person under subsection (1)(*a*)(ii) or (*b*)(ii), it shall for all purposes be regarded as issued or served to or on the licensed person, and as coming to his notice, at the time when—

(*a*) where it is left at an address, it is so left at that address;

(*b*) where it is sent by post to an address, it would in the ordinary course of post be delivered to that address;

(*c*) where it is sent by facsimile transmission to a facsimile number, it would in the ordinary course of transmission by facsimile be received at that number; or

(*d*) where it is sent by electronic mail transmission to an electronic mail address, it would in the ordinary course of transmission by electronic mail be received at that address.

142. Amendment of Schedule 5

The Financial Secretary may, by notice published in the Gazette, amend Schedule 5.

143. Amendment of Schedule 6

The Commission may, by notice published in the Gazette, amend Schedule 6.

PART VI

CAPITAL REQUIREMENTS, CLIENT ASSETS, RECORDS AND AUDIT RELATING TO INTERMEDIARIES

Division 1—Interpretation

144. Interpretation of Part VI

In this Part, unless the context otherwise requires—

"specified amount requirements" (指明數額規定) means the requirements specified in the financial resources rules pursuant to section 145(2)(*a*)(i).

Division 2—Capital requirements

145. Financial resources of licensed corporations

(1) The Commission may, after consultation with the Financial Secretary, make rules requiring licensed corporations to maintain such financial resources as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(*a*) require licensed corporations to maintain financial resources in accordance with—

(i) specified requirements as to the amount in which they are to be maintained; and

(ii) any other specified requirements;

(*b*) specify the assets, liabilities and other matters to be taken into account under the rules to determine the amount of the financial resources of licensed corporations for the purposes of the rules and the extent to which, and the manner in which, they are to be taken into account for that purpose;

(*c*) provide for the different treatment of the assets, liabilities and other matters for the purposes of the rules according to whether or not they are approved by the Commission for that purpose;

(*d*) provide that the rules, or any of the provisions of the rules, do not apply to licensed corporations which maintain financial resources, in Hong Kong or elsewhere, in accordance with an authorization of an authority, in Hong Kong or elsewhere, which in the opinion of the Commission performs a function which involves the imposition of requirements relating to financial resources of persons carrying on activities similar to any regulated activity for which a licensed person may be licensed, or apply to such licensed corporations with specified modifications or only in specified circumstances;

(*e*) provide for the grant of approvals for specified purposes and for the amendment or revocation of such approvals, and for the publication of such approvals and of any amendment or revocation of such approvals in the specified manner;

(*f*) require licensed corporations to submit to the Commission—

(i) at specified intervals, returns relating to their financial resources and trading activities; and

(ii) notice in writing of specified circumstances relating to their financial resources and trading activities;

(*g*) require licensed corporations to submit returns to the Commission in response to a request by the Commission for information relating to their financial resources and trading activities;

(*h*) provide for any other matter relating to financial resources of licensed corporations.

146. Failure to comply with financial resources rules

(1) If a licensed corporation becomes aware of its inability to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, it shall—

(*a*) as soon as reasonably practicable notify the Commission by notice in writing of that fact; and

(*b*) subject to subsection (2), immediately cease carrying on any regulated activity for which it is licensed, otherwise than for the purpose of completing such transactions as the Commission may permit.

(2) Where the Commission considers appropriate, the Commission may permit a licensed corporation which gives notice to the Commission under subsection (1)(*a*) to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(3) If a licensed corporation becomes aware of its inability to comply with, or to ascertain whether it complies with, all or any of the requirements of the financial resources rules that apply to it, other than the specified amount requirements, it shall within one business day thereafter notify the Commission by notice in writing of that fact.

(4) Without limiting the generality of the financial resources rules and the rules that may be made under section 151, a licensed corporation to which any of the requirements of the financial resources rules apply shall—

(*a*) keep its records in sufficient detail to establish readily whether all of such requirements are being complied with; and

(*b*) where the Commission by notice in writing served on it requires it to do so, make its records available to the Commission within 5 business days after the service of the notice.

(5) Without prejudice to sections 194 and 195, where the Commission reasonably believes that a licensed corporation is unable to maintain, or to ascertain whether it maintains, financial resources in accordance with the specified amount requirements that apply to it, the Commission may, whether or not notice has been given under subsection (1)(*a*)—

(*a*) by notice in writing served on the licensed corporation suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or

(*b*) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(6) Where any conditions are imposed pursuant to subsection (2) or (5)(*b*) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended—

(*a*) such conditions shall have effect subject to the amendment accordingly; and

(*b*) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(*b*) (as the case may be).

(7) Where any conditions are imposed pursuant to subsection (2) or (5)(*b*), or amended under subsection (6), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment—

(*a*) the conditions shall have effect subject to the amendment accordingly; and

(*b*) subsection (6) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (2) or (5)(*b*) (as the case may be).

(8) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (2) or (5)(*b*), or amend any conditions under subsection (6), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (12) in respect of the imposition or amendment (as the case may be) made a request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.

(9) The suspension of a licence under subsection (5)(*a*) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later.

(10) The imposition of any conditions pursuant to subsection (2) or (5)(*b*), or the amendment of any conditions under or pursuant to subsection (6) or (7), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.

(11) Where a licence of a licensed corporation is suspended under subsection (5)(*a*), sections 200(1), 201(2) and (5), 202 and 203 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 194 or 195.

(12) Notwithstanding anything in this section, the Commission shall not exercise any power under subsection (1)(*b*), (2), (4)(*b*), (5), (6), (7), (9) or (10) in respect of a licensed corporation unless the Commission has given the licensed corporation a reasonable opportunity of being heard.

(13) A licensed corporation which contravenes subsection (1)(*a*) or (*b*) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(14) A licensed corporation which contravenes a condition imposed pursuant to subsection (2) or (5)(*b*), or as amended under or pursuant to subsection (6) or (7), commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(15) A licensed corporation which, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(*b*) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(16) A licensed corporation which contravenes subsection (4) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(17) The financial resources rules may provide that a licensed corporation which, without reasonable excuse, contravenes any specified provision of the financial resources rules that applies to it, other than that imposing any of the specified amount requirements, commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $200,000 and a term of imprisonment of 1 year;

(*b*) on summary conviction a fine at level 5 and a term of imprisonment of 6 months.

(18) A licensed corporation is not excused from complying with subsection (3) only on the ground that to do so might tend to incriminate it.

147. Monitoring compliance with financial resources rules

(1) The Commission may at any time, by notice in writing served on an executive officer of a licensed corporation, require the licensed corporation to satisfy the Commission that it complies with all of the requirements of the financial resources rules that apply to it.

(2) Without limiting the generality of subsection (1), the Commission and any person authorized by the Commission under subsection (12) may exercise any of the powers of an auditor referred to in section 162 for the purpose of ascertaining whether a licensed corporation complies with all of the requirements of the financial resources rules that apply to it.

(3) Without prejudice to sections 194 and 195, where a licensed corporation, upon being required to do so under subsection (1), fails to satisfy the Commission that it maintains financial resources in accordance with the specified amount requirements that apply to it, the Commission may—

(*a*) by notice in writing served on the licensed corporation suspend the licensed corporation's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is licensed for such period or until the occurrence of such event as the Commission may specify; or

(*b*) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as may be imposed by the Commission by notice given to it, whether orally or in writing.

(4) Where any conditions are imposed pursuant to subsection (3)(*b*) by notice given to a licensed corporation in writing, the Commission may amend any of the conditions in such manner as may be specified by the Commission, by notice given to the licensed corporation, whether orally or in writing, and where any of the conditions are so amended—

(*a*) such conditions shall have effect subject to the amendment accordingly; and

(*b*) where the conditions are amended by notice in writing, this subsection shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(*b*).

(5) Where any conditions are imposed pursuant to subsection (3)(*b*), or amended under subsection (4), by notice given to a licensed corporation otherwise than in writing, the Commission shall as soon as reasonably practicable give the licensed corporation a further notice in writing to confirm the conditions imposed or the conditions as amended (as the case may be), subject to such amendment (if any) in respect of the conditions as it may specify in the notice, and where any conditions are so confirmed subject to any amendment—

(*a*) the conditions shall have effect subject to the amendment accordingly; and

(*b*) subsection (4) shall apply, with necessary modifications, to the conditions as so amended as if they had been imposed pursuant to subsection (3)(*b*).

(6) Notwithstanding anything in this section, the Commission shall not impose any conditions pursuant to subsection (3)(*b*), or amend any conditions under subsection (4), by notice given to a licensed corporation otherwise than in writing if the licensed corporation has on the occasion of being heard pursuant to subsection (10) in respect of the imposition or amendment (as the case may be) made a request to the Commission that the conditions shall only be so imposed, or amended, by notice given to it in writing.

(7) The suspension of a licence under subsection (3)(*a*) takes effect at the time when notice is served in respect of it pursuant to that subsection or at the time specified in the notice, whichever is the later.

(8) The imposition of any conditions pursuant to subsection (3)(*b*), or the amendment of any conditions under or pursuant to subsection (4) or (5), takes effect at the time when notice is given in respect of it pursuant to such subsection or at the time specified in the notice, whichever is the later.

(9) Where a licence of a licensed corporation is suspended under subsection (3)(*a*), sections 200(1), 201(2) and (5), 202 and 203 shall apply, with necessary modifications, in relation to the suspension as if it were a suspension under section 194 or 195.

(10) Notwithstanding anything in this section—

(*a*) the Commission or any person authorized by the Commission under subsection (12) shall not exercise any power under subsection (2) in respect of a licensed corporation;

(*b*) the Commission shall not exercise any power under subsection (3), (4), (5), (7) or (8) in respect of a licensed corporation,

unless the Commission or the person (as the case may be) has given the licensed corporation a reasonable opportunity of being heard.

(11) A licensed corporation which contravenes a condition imposed pursuant to subsection (3)(*b*), or as amended under or pursuant to subsection (4) or (5), commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $100,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(12) For the purposes of subsection (2), the Commission may authorize any person in writing to exercise any of the powers referred to in that subsection.

Division 3—Client assets

148. Client securities and collateral held by intermediaries and their associated entities

(1) The Commission may make rules requiring intermediaries and their associated entities to treat and deal with client securities and collateral of the intermediaries, and to ensure that client securities and collateral of the intermediaries that are received or held by any other person on behalf of the intermediaries or the associated entities (as the case may be) are treated and dealt with, in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(*a*) require client securities and collateral of intermediaries to be held, and accounted for, in the specified manner;

(*b*) provide that the client securities and collateral shall not be deposited, transferred, lent, pledged, repledged or otherwise dealt with except in the specified manner;

(*c*) specify the circumstances in which the client securities and collateral may, notwithstanding that they are subject to a lawful claim or lien, be dealt with by intermediaries or their associated entities;

(*d*) provide for the approval, subject to such conditions as the Commission considers appropriate, of companies or overseas companies as being suitable for the safe custody of the client securities and collateral;

(*e*) require intermediaries and their associated entities to ensure, or to take reasonable steps to ensure, that persons who receive or hold the client securities and collateral on behalf of the intermediaries or the associated entities (as the case may be) comply with specified requirements;

(*f*) require the maintenance of records in relation to the client securities and collateral (including records of performance of reconciliations in respect of movements of the client securities and collateral into and out of accounts of intermediaries or their associated entities) in the specified manner;

(*g*) require the submission to the Commission, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;

(*h*) require specified matters, and the circumstances relevant thereto, to be notified to the clients of intermediaries or the Commission, or both;

(*i*) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(*j*) provide for any other matter relating to the client securities and collateral.

(3) Except as provided in the rules made under this section, client securities and collateral of an intermediary are not liable to be taken in execution against the intermediary or an associated entity of the intermediary under the order or process of a court.

(4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $1,000,000 and a term of imprisonment of 7 years;

(*b*) on summary conviction a fine of $500,000 and a term of imprisonment of 1 year.

(6) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(*i*) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(7) Notwithstanding anything in this section—

(*a*) the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to client securities and collateral received or held by them in the course of the businesses which constitute any regulated activities for which they are registered;

(*b*) the power of the Commission to make rules under this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to client securities and collateral received or held by them in the course of their businesses of receiving or holding client securities and collateral of intermediaries of which they are associated entities.

(8) Notwithstanding anything in subsection (3), that subsection—

(*a*) applies to client securities and collateral received or held by a registered institution only if the client securities and collateral were received or held by the registered institution in the course of the business which constitutes any regulated activity for which the registered institution is registered;

(*b*) applies to client securities and collateral received or held by an associated entity that is an authorized financial institution only if the client securities and collateral were received or held by the associated entity in the course of its business of receiving or holding client securities and collateral of the intermediary of which the associated entity is an associated entity.

149. Client money held by licensed corporations and their associated entities

(1) The Commission may make rules requiring licensed corporations and their associated entities to treat and deal with client money of the licensed corporations in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(*a*) require client money of licensed corporations or any part thereof to be paid into segregated accounts established for client money and designated as trust accounts or client accounts;

(*b*) specify when and how the client money or any part thereof is to be paid into such accounts and require it to be dealt with, and accounted for, in the specified manner;

(*c*) specify the amount or proportion of the client money that is not to be paid into such accounts, and the deductions that may be made before the client money is paid into such accounts;

(*d*) specify the circumstances in which the client money may be paid out of such accounts, including the circumstances in which the client money that is the subject of a lawful claim or lien may be paid out of such accounts;

(*e*) require interest accruing from the holding of the client money in such accounts to be dealt with and paid in the specified manner;

(*f*) specify the persons in Hong Kong with whom such accounts are to be established and maintained;

(*g*) provide for authorization by the Commission as a condition for payment out of such accounts in specified circumstances;

(*h*) require the maintenance of records in relation to such accounts (including records of performance of reconciliations of payments of the client money into and out of such accounts) in the specified manner;

(*i*) require the submission to the Commission, upon request or at specified intervals, of specified information, records and documents for the purpose of enabling the Commission to ascertain readily whether the rules are being complied with;

(*j*) require specified matters, and the circumstances relevant thereto, to be notified to the clients of licensed corporations or the Commission, or both;

(*k*) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(*l*) provide for any other matter relating to the client money.

(3) Except as provided in the rules made under this section, client money of a licensed corporation is not liable to be taken in execution against the licensed corporation or an associated entity of the licensed corporation under the order or process of a court.

(4) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(5) Rules made under this section may provide that a licensed corporation, or an associated entity of a licensed corporation, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $1,000,000 and a term of imprisonment of 7 years;

(*b*) on summary conviction a fine of $500,000 and a term of imprisonment of 1 year.

(6) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(*k*) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(7) Notwithstanding anything in this section, no rules made under this section shall apply to associated entities that are authorized financial institutions.

(8) Notwithstanding anything in subsection (3), that subsection does not prevent client money of a licensed corporation that is received or held by an associated entity that is an authorized financial institution from being taken in execution against the associated entity.

150. Claims and liens not affected

Nothing in sections 148 and 149 and any rules made under any of those sections shall be construed as taking away or affecting a lawful claim or lien which any person has in respect of client assets of an intermediary (whether received or held by the intermediary or an associated entity of the intermediary), but the existence of any such claim or lien does not relieve the intermediary or an associated entity of the intermediary of the duty to comply with the requirements of those rules that apply to the intermediary or the associated entity (as the case may be).

Division 4—Records

151. Keeping of accounts and records by intermediaries and their associated entities

(1) The Commission may make rules to provide for—

(*a*) the keeping by intermediaries of such accounts and records as are specified in the rules;

(*b*) the keeping by associated entities of intermediaries of such accounts and records in respect of client assets of the intermediaries that they receive or hold as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(*a*) require intermediaries and their associated entities to keep the specified accounts and records for specified purposes;

(*b*) provide for the manner in which the accounts and records are to be kept;

(*c*) provide for the period for which, and the location at which, the accounts and records are to be kept before they may be destroyed;

(*d*) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(*e*) provide for any other matter relating to accounts and records to be kept, whether by intermediaries or their associated entities.

(3) An entry in the accounts or records of an intermediary or an associated entity of an intermediary shall, in the absence of evidence to the contrary, be deemed to have been made by or with the authority of the intermediary or the associated entity (as the case may be).

(4) A person who, with intent to defraud—

(*a*) enters, records or stores, or causes to be entered, recorded or stored, in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, any matter which he knows to be false or misleading in a material particular;

(*b*) deletes, destroys, removes or falsifies, or causes to be deleted, destroyed, removed or falsified, any matter that has been entered, recorded or stored in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section; or

(*c*) fails to enter, record or store in any accounts or records kept in compliance with, or in purported compliance with, rules made under this section, as soon as reasonably practicable, any matter that should be so entered, recorded or stored,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

(5) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(6) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $1,000,000 and a term of imprisonment of 7 years;

(*b*) on summary conviction a fine of $500,000 and a term of imprisonment of 1 year.

(7) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(*d*) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(8) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to accounts and records relating to the businesses which constitute any regulated activities for which they are registered.

152. Provision of contract notes, receipts, statements of account and notifications by intermediaries and their associated entities

(1) The Commission may make rules to provide for—

(*a*) the preparation by intermediaries of such contract notes, receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries;

(*b*) the preparation by associated entities of intermediaries, in respect of client assets of the intermediaries that they receive or hold, of such receipts, statements of account and notifications as are specified in the rules, and the provision thereof to clients of the intermediaries.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(*a*) require intermediaries, in relation to all transactions they enter into, over any specified period of time, with or on behalf of a client of the intermediaries in the conduct of any of the businesses which constitute any regulated activities for which they are licensed or registered, to prepare and provide to the client a contract note and, where applicable, a statement of account in the specified manner and circumstances;

(*b*) require intermediaries and their associated entities, in relation to every client of the intermediaries to whom the intermediaries have provided financial accommodation, to prepare and provide to the client a statement of account in the specified manner and circumstances;

(*c*) require intermediaries and their associated entities, in relation to every receipt of client assets from or for the account of a client of the intermediaries, to prepare and provide to the client a receipt in the specified manner and circumstances;

(*d*) require intermediaries and their associated entities, in relation to every notification which relates to client assets received or held by the intermediaries or the associated entities (as the case may be) on behalf of a client of the intermediaries, and which is received from any person other than the client (including any notification concerning any entitlement relating to client assets), to prepare and provide to the client a notification in the specified manner and circumstances;

(*e*) provide for the time when contract notes, receipts, statements of account and notifications are to be provided and the period for which, and the location at which, copies thereof are to be kept before they may be destroyed;

(*f*) require a person who becomes aware that he does not comply with any specified provision of the rules that applies to him to notify the Commission of that fact and of any further specified information, within the specified time;

(*g*) provide for any other matter relating to contract notes, receipts, statements of account and notifications to be prepared and provided to clients of intermediaries, whether by the intermediaries or their associated entities.

(3) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(4) Rules made under this section may provide that an intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $1,000,000 and a term of imprisonment of 7 years;

(*b*) on summary conviction a fine of $500,000 and a term of imprisonment of 1 year.

(5) A person is not excused from complying with a requirement in any rules made pursuant to subsection (2)(*f*) to give notification to the Commission only on the ground that to do so might tend to incriminate the person.

(6) Notwithstanding anything in this section, the power of the Commission to make rules under this section in respect of intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to contract notes, receipts, statements of account and notifications relating to the businesses which constitute any regulated activities for which they are registered.

Division 5—Audit

153. Auditor to be appointed by licensed corporations and associated entities of intermediaries

(1) A licensed corporation shall appoint an auditor to perform the functions required of an auditor of the corporation under or pursuant to the provisions of this or any other Ordinance.

(2) An associated entity of an intermediary shall appoint an auditor to perform the functions required of an auditor of the associated entity under or pursuant to the provisions of this or any other Ordinance.

(3) A licensed corporation, and an associated entity of an intermediary, shall, within 7 business days after its appointment of an auditor under subsection (1) or (2) (as the case may be), notify the Commission by notice in writing of the name and address of the auditor.

(4) A person—

(*a*) is not eligible for appointment as an auditor under subsection (1) or (2)—

(i) if he is an officer or employee of the licensed corporation or the associated entity the accounts of which are to be audited, or is in the employment of such an officer or employee; or

(ii) if he belongs to a class of persons prescribed by rules made under section 397 for the purposes of this subsection;

(*b*) is, subject to paragraph (*a*), eligible for appointment as an auditor under subsection (1) or (2), notwithstanding that he is, apart from that appointment, already an auditor appointed by the licensed corporation or the associated entity the accounts of which are to be audited, whether for the purposes of the Companies Ordinance (Cap. 32) or otherwise.

(5) A licensed corporation, or an associated entity of an intermediary, which fails to appoint an auditor in accordance with subsection (1) or (2) within one month after—

(*a*) it becomes licensed or becomes such an associated entity (as the case may be); or

(*b*) the auditor first appointed under subsection (1) or (2) after it becomes licensed or becomes such an associated entity, or any auditor further appointed under subsection (1) or (2), ceases to be an auditor of the licensed corporation or of the associated entity (as the case may be),

commits an offence and is liable—

(i) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(6) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 5.

(7) Nothing in this section prejudices the operation of any other requirements relating to the appointment of an auditor, whether under the Companies Ordinance (Cap. 32) or otherwise.

(8) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

154. Notification of proposed change of auditors by licensed corporations and associated entities of intermediaries

(1) A licensed corporation, and an associated entity of an intermediary, shall within one business day after—

(*a*) it gives notice to its members of a motion, to be moved at its general meeting—

(i) to remove an auditor appointed by it under section 153 before the expiration of his term of office; or

(ii) to replace with another auditor, or not to reappoint, an auditor appointed by it under section 153 at the expiration of his term of office; or

(*b*) an auditor appointed by it under section 153 ceases to be its auditor before the expiration of his term of office, otherwise than in consequence of a motion referred to in paragraph (*a*),

notify the Commission by notice in writing of that fact.

(2) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(3) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

155. Notification of end of financial year by licensed corporations and associated entities of intermediaries, etc.

(1) A licensed corporation, and an associated entity of an intermediary, shall—

(*a*) in the case of the licensed corporation, within one month after it becomes licensed; or

(*b*) in the case of the associated entity, within one month after it becomes such an associated entity,

notify the Commission by notice in writing of the date on which its financial year ends.

(2) A licensed corporation, and an associated entity of an intermediary, shall not—

(*a*) except with the approval in writing of the Commission under subsection (3)(*a*), alter the date notified to the Commission under subsection (1) as the date on which its financial year ends;

(*b*) except with the approval in writing of the Commission under subsection (3)(*b*), adopt any period which exceeds 12 months as its financial year.

(3) On an application in writing by a licensed corporation or an associated entity of an intermediary, the Commission may, subject to such conditions as it considers appropriate, grant approval in writing in respect of—

(*a*) an alteration of the date notified to the Commission under subsection (1) as the date on which its financial year ends;

(*b*) the adoption of any period which exceeds 12 months as its financial year.

(4) A licensed corporation, or an associated entity of an intermediary, which contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (3), commits an offence and is liable on conviction to a fine at level 5.

(5) Nothing in this section prejudices the operation of section 122 of the Companies Ordinance (Cap. 32).

(6) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

156. Audited accounts, etc. to be submitted by licensed corporations and associated entities of intermediaries

(1) Subject to subsections (3) and (4), a licensed corporation, and an associated entity of an intermediary, shall—

(*a*) prepare such financial statements and other documents, for such periods, as are prescribed by rules made under section 397 for the purposes of this section; and

(*b*) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the end of the financial year to which they relate.

(2) Subject to subsections (3) and (4), a licensed corporation that ceases, in such circumstances as are prescribed by rules made under section 397 for the purposes of this section, carrying on all of the regulated activities for which it is licensed, and an associated entity of an intermediary that ceases to be such an associated entity, shall—

(*a*) prepare such financial statements and other documents, which shall be made up to (and including) the date of the cessation, as are prescribed by the rules; and

(*b*) submit the financial statements and other documents, together with an auditor's report, to the Commission not later than 4 months after the date of the cessation.

(3) Without limiting the generality of subsection (1) or (2), the requirements under such subsection relating to the financial statements and other documents, and the auditor's report, referred to in such subsection include the requirements that—

(*a*) the financial statements and other documents are to relate to such matters and contain such particulars as are prescribed by rules made under section 397 for the purposes of this section;

(*b*) the auditor's report is to contain such particulars, including such statement of opinion, as are prescribed by the rules;

(*c*) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with such principles or bases as are prescribed by the rules; and

(*d*) without limiting the generality of section 129B of the Companies Ordinance (Cap. 32), the financial statements and other documents are to be signed by such person as is prescribed by the rules.

(4) On an application in writing by the licensed corporation or the associated entity by which any financial statements and other documents, and any auditor's report, are required under subsection (1) or (2) to be submitted, the Commission may, where it is satisfied that there are special reasons for so doing, extend the period within which the financial statements and other documents, and the auditor's report, are required to be submitted, for such period and subject to such conditions as the Commission considers appropriate, and upon the Commission granting the extension, subsection (1) or (2) (as the case may be) shall apply subject to the extension accordingly.

(5) A licensed corporation, or an associated entity of an intermediary, which, without reasonable excuse, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(*b*) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(6) A licensed corporation, or an associated entity of an intermediary, which, with intent to defraud, contravenes subsection (1) or (2), or a condition imposed pursuant to subsection (4), commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(*b*) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

(7) In this section, a reference to an associated entity of an intermediary shall be construed as a reference to such associated entity other than one that is an authorized financial institution.

157. Auditors of licensed corporations or associated entities of intermediaries to lodge report with Commission, etc. in certain cases

(1) If a person—

(*a*) in the course of performing his functions as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary or, where an associated entity of an intermediary is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity, becomes aware of a reportable matter; or

(*b*) in the course of performing his functions as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, proposes to include any qualification or adverse statement in any report prepared by him on the financial statements or other documents of the licensed corporation or the associated entity (as the case may be) which are required to be submitted to the Commission under section 156,

he shall—

(i) in the case of paragraph (*a*), as soon as reasonably practicable after he becomes aware of the reportable matter, lodge with—

(A) in the case of an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, the Commission; or

(B) in the case of an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, the Commission and the Monetary Authority,

a written report on the reportable matter;

(ii) in the case of paragraph (*b*), as soon as reasonably practicable after he first proposes the inclusion of the qualification or adverse statement, lodge with the Commission a written report on the qualification or adverse statement.

(2) If a person appointed as an auditor under section 153 by a licensed corporation or an associated entity of an intermediary—

(*a*) resigns as an auditor of the licensed corporation or the associated entity (as the case may be) before the expiration of his term of office as such auditor;

(*b*) does not seek reappointment as an auditor of the licensed corporation or the associated entity (as the case may be) at the expiration of his term of office as such auditor; or

(*c*) otherwise ceases to be an auditor of the licensed corporation or the associated entity (as the case may be),

he shall within one business day thereafter notify the Commission by notice in writing of that fact, and in the notice state the reasons therefor, and give particulars of any connected circumstances which he considers should be brought to the attention of the Commission or, where no such circumstances exist, make a statement to that effect.

(3) In this section—

"prescribed requirement" (訂明規定) means such of the requirements under any of the rules made under section 148, 149, 151 or 152 as are prescribed by rules made under section 397 for the purposes of this definition;

"reportable matter" (須報告事項), in relation to a person acting as an auditor within the meaning of subsection (1)(*a*), means a matter that, in the opinion of the person—

(*a*) in the case of a licensed corporation—

(i) constitutes on the part of the licensed corporation or any of its associated entities a failure to comply with any prescribed requirement;

(ii) adversely affects to a material extent the financial position of the licensed corporation or any of its associated entities; or

(iii) constitutes on the part of the licensed corporation a failure to comply with section 146 or with all or any of the requirements of the financial resources rules that apply to it; or

(*b*) in the case of an associated entity of an intermediary—

(i) constitutes on the part of the associated entity a failure to comply with any prescribed requirement; or

(ii) where the associated entity is not an authorized financial institution, adversely affects to a material extent the financial position of the associated entity.

158. Immunity in respect of communication with Commission, etc. by auditors of licensed corporations or associated entities of intermediaries

(1) Without prejudice to sections 380 and 381, no duty which a person may be subject to as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary or, where an associated entity of an intermediary is an authorized financial institution, as an auditor appointed for the purposes of the Banking Ordinance (Cap. 155) by the associated entity shall be regarded as contravened by reason of his communicating in good faith to the Commission or the Monetary Authority, whether or not in response to a request made by the Commission or the Monetary Authority (as the case may be), any information or opinion on a matter which—

(*a*) he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and

(*b*) is relevant to any function of the Commission or the Monetary Authority (as the case may be).

(2) In addition to applying to a person who is an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, subsection (1) also applies to—

(*a*) a person whose appointment as an auditor appointed under section 153 by a licensed corporation or an associated entity of an intermediary, or appointed for the purposes of the Banking Ordinance (Cap. 155) by an associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (*a*) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased;

(*b*) an auditor appointed, whether or not under section 153 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (*a*) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor); and

(*c*) a person whose appointment as an auditor, whether or not under section 153 or for the purposes of the Banking Ordinance (Cap. 155), by a former licensed corporation or by a former associated entity of an intermediary, has ceased, in which case a reference to a matter in that subsection shall be construed on the basis that paragraph (*a*) of that subsection requires the matter to be one which he becomes aware of in his capacity as such auditor (whether or not in the course of performing his functions as such auditor) before the appointment has ceased.

(3) In this section—

"former associated entity of an intermediary" (中介人的前有聯繫實體) means a corporation which was formerly an associated entity of an intermediary;

"former licensed corporation" (前持牌法團) means a corporation which was formerly a licensed corporation.

159. Power of Commission to appoint auditors for licensed corporations and their associated entities

(1) Subject to subsection (3), where—

(*a*) a licensed corporation has failed to satisfy the Commission in accordance with section 147 that it complies with all of the requirements of the financial resources rules that apply to it;

(*b*) the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to comply with any prescribed requirement;

(*c*) the Commission has reasonable cause to believe that a licensed corporation or any of its associated entities has failed to submit any financial statements or other documents in accordance with section 156; or

(*d*) the Commission has received a written report lodged by a person under section 157 in relation to a licensed corporation or any of its associated entities,

the Commission may appoint an auditor to examine and audit, either generally or in respect of any particular matter, the accounts and records of the licensed corporation and any of its associated entities (including records of transactions entered into by the licensed corporation with any other person and of client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)), and, without prejudice to section 161, to report to the Commission on such matters as the Commission may direct.

(2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit, examine any client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be).

(3) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.

(4) Subject to subsection (5), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be), by notice in writing direct the licensed corporation or the associated entity (as the case may be) to pay a specified amount, being the whole or a part of the costs and expenses of the examination and audit, within the specified time and in the specified manner.

(5) The Commission shall not give a direction under subsection (4) unless it has given the licensed corporation or the associated entity to which the direction is to be given a reasonable opportunity of being heard.

(6) Where a licensed corporation or an associated entity of a licensed corporation fails to comply with a direction of the Commission under subsection (4), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

(7) In this section, "prescribed requirement" (訂明規定) means such of the requirements under any of the rules made under section 148, 149, 151 or 152 as are prescribed by rules made under section 397 for the purposes of this definition.

160. Power of Commission to appoint auditors for licensed corporations and their associated entities on application

(1) Subject to subsections (3) to (6), on an application in writing by a person who alleges that a licensed corporation or any of its associated entities—

(*a*) has failed to account to the person as a client of the licensed corporation for any client assets held on behalf of the person by the licensed corporation or the associated entity (as the case may be); or

(*b*) has failed to act in accordance with instructions given by the person as a client of the licensed corporation to the licensed corporation or the associated entity (as the case may be), and has failed—

(i) to account to the person for any profit that may have been secured or increased by the person had the instructions been followed; or

(ii) to compensate the person for any loss that may have been avoided or reduced by the person had the instructions been followed,

the Commission may appoint an auditor to examine and audit, either generally or in respect of any particular matter, the accounts and records of the licensed corporation and any of its associated entities (including records of transactions entered into by the licensed corporation with any other person and of client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)), and, without prejudice to section 161, to report to the Commission on such matters as the Commission may direct.

(2) Where an auditor is appointed under subsection (1) to examine and audit the accounts and records of a licensed corporation and any of its associated entities, the auditor may, for the purpose of carrying out the examination and audit, examine any client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be).

(3) A person making an application pursuant to subsection (1) shall state in the application—

(*a*) the particulars of the circumstances in which any licensed corporation or any associated entity of a licensed corporation is alleged to have failed to account for any client assets, or to act in accordance with instructions given to the licensed corporation or the associated entity and to account for any profit or compensate for any loss (as the case may be);

(*b*) the particulars of any client assets concerned;

(*c*) the particulars of the transactions in respect of which the alleged failure has occurred; and

(*d*) any other particulars the Commission may require,

and shall verify all statements in the application by statutory declaration, which may be taken by any person authorized by the Commission in that behalf.

(4) The Commission shall not appoint an auditor under subsection (1) unless it is satisfied that—

(*a*) the person making the application pursuant to that subsection has a good reason for making the application; and

(*b*) it is in the interest of—

(i) the licensed corporation and the associated entity the accounts and records of which are to be examined and audited by the auditor;

(ii) the person making the application; or

(iii) the investing public or the public,

that the auditor be appointed.

(5) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority in respect of the appointment and of the scope of the examination and audit to be carried out by the auditor.

(6) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of a licensed corporation or an associated entity of a licensed corporation unless the Commission has given the licensed corporation or the associated entity (as the case may be) a reasonable opportunity of being heard.

(7) For the purposes of the law of defamation, every statement in an application made pursuant to subsection (1) shall, if made in good faith and without malice, be privileged.

(8) Subject to subsection (9), where an auditor appointed under subsection (1) has examined and audited the accounts and records of a licensed corporation or an associated entity of a licensed corporation, the Commission may, where it is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the licensed corporation or the associated entity (as the case may be) and of the person making the application pursuant to subsection (1) in respect of the appointment, by notice in writing direct the licensed corporation or the associated entity (as the case may be) or the person making the application to pay a specified amount, being—

(*a*) in the case of the licensed corporation or the associated entity (as the case may be), the whole or a part of the costs and expenses of the examination and audit; or

(*b*) in the case of the person making the application, the whole or a part of the costs and expenses of the examination and audit to the extent that they have been reasonably incurred for the purpose of ascertaining matters to which the application relates,

within the specified time and in the specified manner.

(9) The Commission shall not give a direction under subsection (8) unless it has given the licensed corporation, the associated entity or the person to which or to whom the direction is to be given a reasonable opportunity of being heard.

(10) Where a licensed corporation, an associated entity of a licensed corporation or a person making an application pursuant to subsection (1) fails to comply with a direction of the Commission under subsection (8), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

161. Auditors appointed under section 159 or 160 to report to Commission

(1) An auditor appointed under section 159 or 160 shall make such interim reports to the Commission as it may require and shall, on the conclusion of the examination and audit which he is appointed to carry out, make a final report to the Commission.

(2) A report referred to in subsection (1) shall be made within such time and in such manner as the Commission may direct.

(3) The Commission may, if it considers appropriate, forward a copy of any report made to it under subsection (1) to the licensed corporation or the associated entity the accounts and records of which are the subject of the examination and audit referred to in the report.

162. Powers of auditors appointed under section 159 or 160

(1) An auditor appointed under section 159 or 160 to examine and audit the accounts and records of any licensed corporation and any of its associated entities, for the purpose of carrying out the examination and audit, may, in addition to any other action that the auditor may reasonably take for the purpose—

(*a*) examine on oath or otherwise—

(i) any officer, employee and agent of the licensed corporation or the associated entity (as the case may be); and

(ii) any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155),

in respect of any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be) and, for that purpose, administer oaths accordingly;

(*b*) require any officer, employee and agent of the licensed corporation or the associated entity (as the case may be) to—

(i) produce any accounts and records concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records so produced;

(*c*) require any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155) to—

(i) produce any accounts and records held by him concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records so produced;

(*d*) require a recognized exchange company or recognized clearing house to—

(i) produce any accounts and records kept by it, or information in its possession, concerning any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be); and

(ii) explain the contents of the accounts and records, and the information, so produced;

(*e*) require any person receiving or holding client assets of the licensed corporation on behalf of the licensed corporation or the associated entity (as the case may be) to—

(i) produce any accounts and records kept by the person, or information in his possession, concerning any matter relating to the client assets; and

(ii) explain the contents of the accounts and records, and the information, so produced;

(*f*) employ any person he considers necessary to assist him in carrying out the examination and audit which he is appointed to carry out; and

(*g*) for the purpose of carrying out the examination and audit which he is appointed to carry out, authorize in writing any person employed by him to do any act or thing referred to in this subsection (except to examine a person on oath under paragraph (*a*) or to exercise any power conferred by this paragraph).

(2) If an auditor appointed under section 159 or 160, or a person authorized under subsection (1)(*g*), reasonably considers it necessary for the purpose of carrying out the examination and audit of the accounts and records of a licensed corporation and any of its associated entities which the auditor is appointed to carry out, the powers referred to in subsection (1)—

(*a*) are exercisable in relation to any other business carried on by the licensed corporation in conjunction with any regulated activity for which it is licensed and to any business of any of its associated entities, in which case any reference to "any matter relating to the business of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(*a*) to (*g*) shall be construed on the basis that it refers to any matter relating to such other business carried on by the licensed corporation or to such business of any of its associated entities; and

(*b*) are exercisable in relation to a related corporation of the licensed corporation or any of its associated entities, in which case—

(i) any reference to "any officer, employee and agent of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(*a*) to (*g*) shall be construed on the basis that it refers to any officer, employee and agent of the related corporation;

(ii) any reference to "any auditor appointed by the licensed corporation or the associated entity (as the case may be) under section 153 or, where the associated entity is an authorized financial institution, for the purposes of the Banking Ordinance (Cap. 155)" in subsection (1)(*a*) to (*g*) shall be construed on the basis that it refers to any auditor appointed by the related corporation, whether under this Ordinance or otherwise;

(iii) any reference to "any matter relating to the business of the licensed corporation or the associated entity (as the case may be) or to the client assets of the licensed corporation received or held by the licensed corporation or the associated entity (as the case may be)" in subsection (1)(*a*) to (*g*) shall be construed on the basis that it refers, apart from the matter originally referred to, also to any matter relating to the business of the related corporation; and

(iv) any reference to "any person receiving or holding client assets of the licensed corporation on behalf of the licensed corporation or the associated entity (as the case may be)" in subsection (1)(*a*) to (*g*) shall be construed on the basis that it refers to any person receiving or holding client assets of the licensed corporation on behalf of the related corporation.

(3) A person who, without reasonable excuse, fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(*g*)) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(*b*) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(4) A person who—

(*a*) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(*g*)), produces any accounts or records or gives an answer which is false or misleading in a material particular; and

(*b*) knows that, or is reckless as to whether, the accounts or records or the answer is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) A person who, with intent to defraud—

(*a*) fails to comply with any requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(*g*)); or

(*b*) in purported compliance with a requirement imposed on him (including the requirement to answer any question put to him) under this section (whether by an auditor appointed under section 159 or 160 or a person authorized under subsection (1)(*g*)), produces any accounts or records or gives an answer which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

163. Offence to destroy, conceal, or alter accounts, records or documents, etc.

(1) A person commits an offence if he, with intent to prevent, delay or obstruct the carrying out of any examination and audit which an auditor appointed under this Part is required to carry out—

(*a*) deletes, destroys, mutilates, falsifies, conceals, alters or otherwise makes unavailable any accounts, records or documents related to such examination and audit, or aids or abets or conspires with another person to do so;

(*b*) disposes or procures the disposal, in any manner and by any means, of any property related to such examination and audit, or aids or abets or conspires with another person to do so; or

(*c*) leaves, or attempts to leave, Hong Kong.

(2) A person who commits an offence under subsection (1) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(*b*) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

(3) If, in proceedings for an offence under subsection (1), it is proved that the accused person deleted, destroyed, mutilated, falsified, concealed or altered any accounts, records or documents related to any examination and audit which an auditor appointed under this Part is required to carry out, or aided or abetted or conspired with another person to do so, he shall, in the absence of evidence to the contrary, be presumed to have done so with intent to prevent, delay or obstruct the carrying out of such examination and audit.

Division 6—Miscellaneous

164. Restriction on receiving or holding of client assets

(1) No person shall receive or hold in Hong Kong client assets of an intermediary unless the person is—

(*a*) the intermediary;

(*b*) an associated entity of the intermediary; or

(*c*) an excluded person.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) In this section, "excluded person" (豁除人士) means—

(*a*) any authorized financial institution;

(*b*) in the case of client collateral of any intermediary, any other intermediary or person with which or whom it is deposited, or to which or whom it is provided, in the circumstances referred to in paragraph (*a*)(A) or (B) or (*b*)(A) or (B) (as the case may be) of the definition of "securities collateral" or "other collateral" (as the case may be) in section 1 of Part 1 of Schedule 1;

(*c*) any company or overseas company that is approved under rules made pursuant to section 148(2)(*d*) as being suitable for the safe custody of client securities and collateral of intermediaries; or

(*d*) any person in Hong Kong that is specified under rules made pursuant to section 149(2)(*f*) as that with whom segregated accounts established for client money of licensed corporations and designated as trust accounts or client accounts are to be established and maintained.

165. Associated entities

(1) An associated entity of an intermediary shall within 7 business days after—

(*a*) it becomes such an associated entity; or

(*b*) it ceases to be such an associated entity,

notify the Commission by notice in writing of that fact and such other particulars as are prescribed by rules made under section 397 for the purposes of this section.

(2) Where there is any change in the particulars required to be provided by an associated entity of an intermediary under subsection (1), the associated entity shall within 7 business days thereafter notify the Commission by notice in writing of that fact and provide in the notice particulars of the change.

(3) Where an associated entity of an intermediary, other than an authorized financial institution, receives or holds client assets of the intermediary, the associated entity shall not, unless authorized in writing by the Commission, conduct any business other than that of receiving or holding client assets, whether on behalf of the intermediary or otherwise.

(4) An associated entity of an intermediary which, without reasonable excuse, contravenes subsection (1), (2) or (3) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) An associated entity of an intermediary which, with intent to defraud, contravenes subsection (1), (2) or (3) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(*b*) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

(6) An associated entity of an intermediary which becomes aware that it does not comply with subsection (1), (2) or (3) shall within one business day thereafter notify the Commission by notice in writing of that fact and of the surrounding circumstances.

(7) An associated entity of an intermediary which contravenes subsection (6) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) An associated entity of an intermediary is not excused from complying with subsection (6) only on the ground that to do so might tend to incriminate it.

(9) Notwithstanding anything in this section, the power of the Commission to make rules for the purposes of this section in respect of associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to particulars relating to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

166. Use of incriminating evidence in proceedings

Notwithstanding any other provisions of this Ordinance, where a person—

(*a*) is required under section 146(3) to notify the Commission of any matter;

(*b*) is required under section 165(6) to notify the Commission of any matter; or

(*c*) is required by rules made pursuant to section 148(2)(*i*), 149(2)(*k*), 151(2)(*d*) or 152(2)(*f*) to notify the Commission of any matter,

and the notification might tend to incriminate the person, then the notification shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which—

(i) he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the notification;

(ii) in the case of paragraph (*a*), he is charged with an offence under section 146(15) in respect of the notification;

(iii) in the case of paragraph (*b*), he is charged with an offence under section 165(7) in respect of the notification; or

(iv) in the case of paragraph (*c*), he is charged with an offence under any rules made under section 148(4) or (5), 149(4) or (5), 151(5) or (6), 152(3) or (4) (as the case may be) in respect of a contravention taking place by reason of a failure to comply with the requirement described in paragraph (*c*) relating to the notification.

PART VII

BUSINESS CONDUCT, ETC. OF INTERMEDIARIES

Division 1—Interpretation

167. Interpretation of Part VII

In this Part, unless the context otherwise requires—

"client contract" (客戶合約) means any contract or arrangement between an intermediary and another person, which contains terms on which the intermediary is to provide services the provision of which constitutes a regulated activity;

"representative" (代表)—

(*a*) in relation to a licensed corporation, means an individual—

(i) who is licensed as a licensed representative for a regulated activity; and

(ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or

(*b*) in relation to a registered institution, means an individual—

(i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity; and

(ii) who carries on that regulated activity for the registered institution.

Division 2—Business conduct

168. Business conduct of intermediaries and their representatives

(1) The Commission may make rules requiring intermediaries and their representatives to comply with such practices and standards, relating to the conduct of the intermediaries or the representatives (as the case may be) in carrying on the regulated activities for which the intermediaries are licensed or registered, as are specified in the rules.

(2) Without limiting the generality of subsection (1) and without prejudice to section 398(7) and (8), the Commission may in the rules referred to in subsection (1)—

(*a*) prohibit the use of misleading or deceptive advertisements by or on behalf of intermediaries, and impose conditions for the use of advertisements by or on behalf of intermediaries;

(*b*) require specified terms and conditions to be included in client contracts and provide that the terms and conditions are, unless the Commission in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the client contracts in which they are included, whether or not a different intention appears from the provisions of such client contracts;

(*c*) require an intermediary to provide to its client, upon entering into a client contract with the client, and thereafter from time to time upon request by the client, specified information concerning the business of the intermediary, and the identity and status of any person acting on behalf of the intermediary and with whom the client may have contact;

(*d*) require an intermediary, and any representative of an intermediary, to take specified steps to ascertain, in relation to each of the clients of the intermediary, specified matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the intermediary;

(*e*) require an intermediary, and any representative of an intermediary, to take specified steps before providing information or advice concerning financial products to any client of the intermediary;

(*f*) require an intermediary, and any representative of an intermediary, when making any recommendation concerning any financial product to any client of the intermediary, to disclose to the client in the specified manner any interest the intermediary or the representative (as the case may be) may have in the financial product;

(*g*) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of financial risks in relation to any financial product the intermediary or the representative (as the case may be) recommends to the client;

(*h*) require an intermediary, and any representative of an intermediary, to take specified steps to ensure that disclosure is made to any client of the intermediary of any commission or advantage the intermediary or the representative (as the case may be) receives or is to receive from any third party in connection with any financial product the intermediary or the representative (as the case may be) recommends to the client;

(*i*) require an intermediary, and any representative of an intermediary, not to effect a transaction on behalf of any client of the intermediary in specified circumstances;

(*j*) prohibit the use by an intermediary, or any representative of an intermediary, of information relating to the affairs of a client of the intermediary, except in specified circumstances and under specified conditions;

(*k*) require an intermediary, and any representative of an intermediary, to take specified steps in cases of conflict arising between any of their interests and those of a client of the intermediary;

(*l*) prohibit the receipt by an intermediary of any property or services from another intermediary in consideration of directing business to that other intermediary, except in specified circumstances and under specified conditions;

(*m*) prohibit the dealing by any representative of an intermediary for his own account in securities or futures contracts, except in specified circumstances and under specified conditions;

(*n*) require an intermediary, and any representative of an intermediary, to take specified steps to introduce and implement procedures to discourage and identify any money laundering activities;

(*o*) provide for any other matter relating to the practices and standards relating to conduct in carrying on the regulated activities for which intermediaries are licensed or registered.

(3) Notwithstanding anything in this section, the Commission shall not exercise any of its powers under this section to make rules to specify any terms and conditions for the purposes of any requirement referred to in subsection (2)(*b*) unless it is satisfied that the specification of the terms and conditions is for the better furtherance of any of its regulatory objectives or the better performance of any of its functions.

(4) Rules made under this section may provide that an intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes any specified provision of the rules that applies to it or him commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

169. Codes for business conduct of intermediaries and their representatives

(1) Without prejudice to the power of the Commission to make rules under section 168, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or registered.

(2) Without limiting the generality of subsection (1), any code of conduct referred to in that subsection may, in giving guidance referred to in that subsection, refer to obligations to observe—

(*a*) any other codes or requirements issued or imposed otherwise than by the Commission;

(*b*) continuing obligations, including any such obligations—

(i) in the case of an intermediary, to provide for the continuous training of its representatives; or

(ii) in the case of a representative of an intermediary, to undergo continuous training;

(*c*) practices and standards concerning any of the matters described in section 168(2).

(3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section in a manner consistent with the power to publish the code of conduct under this section, and—

(*a*) the other provisions of this section apply, with necessary modifications, to such amendments to the code as they apply to the code; and

(*b*) any reference in this or any other Ordinance to the code (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code as so amended.

(4) A failure on the part of an intermediary, or a representative of an intermediary, to comply with the provisions set out in any code of conduct published under this section that apply to it or him shall not by itself render it or him liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any provision of this Ordinance—

(*a*) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;

(*b*) in the case of a representative of an intermediary that is a licensed corporation, whether he is a fit and proper person to be or to remain licensed as a representative; or

(*c*) in the case of a representative of an intermediary that is a registered institution, whether he is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity,

and in any proceedings under this Ordinance before any court the code shall be admissible in evidence, and if any provision set out in the code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(5) Any code of conduct published under this section—

(*a*) may be of general or special application and, without limiting the generality of the foregoing, may be made so as to apply, or so as not to apply—

(i) to a specified extent in relation to any specified person or to members of a specified class of persons;

(ii) in specified circumstances;

(*b*) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) Any code of conduct published under this section is not subsidiary legislation.

Division 3—Restriction on short selling, etc.

170. Short selling restricted

(1) Subject to subsections (2) and (3), a person shall not sell securities at or through a recognized stock market unless at the time he sells them—

(*a*) he has or, where he is selling as an agent, his principal has; or

(*b*) he believes and has reasonable grounds to believe that he has or, where he is selling as an agent, that his principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser of them.

(2) For the purposes of subsection (1)—

(*a*) a person shall be regarded as selling securities if he—

(i) purports to sell the securities;

(ii) offers to sell the securities;

(iii) holds himself out as being entitled to sell the securities; or

(iv) instructs any representative of an intermediary that carries on Type 1 regulated activity for the intermediary, to sell the securities;

(*b*) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be regarded as having at that time a presently exercisable and unconditional right to vest the securities in a purchaser of them;

(*c*) a right of a person to vest securities in a purchaser of them shall not be regarded as not unconditional by reason only of the fact that the securities are charged or pledged in favour of some other person to secure the repayment of money.

(3) Subsection (1) does not apply to—

(*a*) a person who acts in good faith, believing and having reasonable grounds to believe that he has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1);

(*b*) a person who, as a representative of an intermediary that carries on Type 1 regulated activity for the intermediary, acts in good faith on behalf of some other person, believing and having reasonable grounds to believe that such other person has a right, title, or interest to or in the securities which he sells within the meaning of subsection (1) on behalf of such other person;

(*c*) a sale of securities by an exchange participant acting as a principal, when he acts in the course of his business of dealing in odd lots of securities, in accordance with the rules of the recognized exchange company which operates a stock market, being a sale effected solely for the purpose of—

(i) accepting an offer to purchase an odd lot of securities; or

(ii) disposing of an odd lot of securities, by means of the sale of one board lot of those securities;

(*d*) a sale of securities effected pursuant to a transaction in an options contract traded on a recognized stock market;

(*e*) a sale of securities falling within a class of transactions prescribed by rules made under section 397 for the purposes of this paragraph.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

171. Requirements to confirm short selling order

(1) A person, where he is selling as a principal, shall not convey a short selling order at or through a recognized stock market unless he provides to his agent an assurance, in the form of a document, that—

(*a*) he has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and

(*b*) where the short selling order is such order by virtue of paragraph (*a*)(i) or (v) of the definition of "short selling order" in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.

(2) A person to which subsection (1) applies shall provide to his agent such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(3) An exchange participant, where he is selling as a principal, shall not convey a short selling order which is such order by virtue of paragraph (*a*)(i) or (v) of the definition of "short selling order" in section 1 of Part 1 of Schedule 1 at or through a recognized stock market unless he has received an assurance, in the form of a document, from the counterparty or the other person (as the case may be) referred to in such paragraph that the counterparty or the other person (as the case may be) has the securities to which the order relates available to lend or deliver to him.

(4) An exchange participant to which subsection (3) applies shall collect from the counterparty or the other person referred to in that subsection such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(5) A person, where he is selling as an agent, shall not convey or accept an order to sell securities which is a short selling order at or through a recognized stock market unless he has received from his principal, or the other person for whose benefit or on whose behalf the order is made, an assurance, in the form of a document, that—

(*a*) his principal or that other person (as the case may be) has a presently exercisable and unconditional right to vest the securities to which the order relates in the purchaser of them; and

(*b*) where the short selling order is such order by virtue of paragraph (*a*)(i) or (v) of the definition of "short selling order" in section 1 of Part 1 of Schedule 1, the counterparty or the other person (as the case may be) referred to in such paragraph has the securities to which the order relates available to lend or deliver to him.

(6) A person to which subsection (5) applies shall collect from his principal, or the other person referred to in that subsection, such information (if any), in the form of a document and within such time, as is prescribed by rules made under section 397 for the purposes of this subsection.

(7) For the purposes of subsections (1), (3) and (5), a person who conveys or accepts an order on behalf of his clients or beneficiaries shall be regarded as selling as a principal if—

(*a*) he has full discretion to sell the securities to which the order relates; and

(*b*) his conveyance or acceptance is not in accordance with any instruction from his clients or beneficiaries.

(8) An agent or exchange participant who receives or collects an assurance or information by virtue of or under subsection (1), (2), (3), (4), (5) or (6) shall—

(*a*) subject to paragraph (*b*), retain the document in which it is contained for not less than one year from the date on which it is received; and

(*b*) upon request made at any time within that year by the Commission, give the Commission access to the document, and produce to the Commission, within the time and at the place specified by the Commission, the document.

(9) An assurance or information referred to in subsection (1), (2), (3), (4), (5) or (6) shall in any proceedings under this Ordinance before any court be admissible as prima facie evidence of—

(*a*) in the case of an assurance, the matters specified in subsection (1), (3) or (5) (as the case may be) as that to which the assurance relates; or

(*b*) in the case of information, the matters (if any) specified in the rules referred to in subsection (2), (4) or (6) (as the case may be) as that to which the information relates.

(10) Subject to subsection (11), a person who contravenes subsection (1), (3) or (5) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(11) It is a defence to a charge for an offence under subsection (10) for the person charged to prove that when he conveyed or, in the case of a contravention of subsection (5), conveyed or accepted the order concerned, he—

(*a*) believed and had reasonable grounds to believe that the order was not a short selling order; or

(*b*) did not know that the order was a short selling order.

(12) A person who, without reasonable excuse, contravenes subsection (2), (4), (6) or (8) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

172. Requirements to disclose short sales

(1) An exchange participant or exchange participant's representative who knows or is informed that an order to sell securities is a short selling order shall—

(*a*) when passing the order to any other person with a view that the other person shall input the order into the trading system of a recognized stock market, inform that other person that the order is a short selling order; and

(*b*) when inputting the order into the trading system of a recognized stock market, indicate such matters as may be required, under the rules of the recognized exchange company by which the recognized stock market is operated, to show that the order is a short selling order.

(2) Subject to subsection (3), a person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(3) A person shall not be regarded as committing an offence under subsection (2) if he contravenes subsection (1) by reason only of his inadvertence, carelessness or negligence.

(4) In this section, "exchange participant's representative" (交易所參與者代表) means a licensed representative accredited to a licensed corporation that is an exchange participant of a recognized exchange company which operates a recognized stock market.

Division 4—Other requirements

173. Requirements for options trading

(1) The Commission may make rules—

(*a*) prohibiting Type 1 intermediaries from—

(i) transacting in Hong Kong;

(ii) holding themselves out in Hong Kong as being prepared to transact,

except as provided in the rules, any dealing whereby directly or indirectly they confer on any person an option to sell to or purchase from them, or any other person on their behalf, any listed securities;

(*b*) prohibiting Type 2 intermediaries from—

(i) transacting in Hong Kong;

(ii) holding themselves out in Hong Kong as being prepared to transact,

except as provided in the rules, any dealing whereby directly or indirectly they confer on any person an option to sell to or purchase from them, or any other person on their behalf, any futures contracts traded on a recognized futures market.

(2) Rules made under this section may provide that a Type 1 intermediary, or a Type 2 intermediary, which, without reasonable excuse, contravenes any specified provision of the rules that applies to it commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $200,000 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(3) In this section—

"Type 1 intermediary" (第 1 類中介人) means an intermediary licensed or registered for Type 1 regulated activity;

"Type 2 intermediary" (第 2 類中介人) means an intermediary licensed or registered for Type 2 regulated activity.

174. Certain agreements not to be made during unsolicited calls

(1) Subject to subsections (2) and (3), an intermediary, or a representative of an intermediary, shall not, as principal or agent, during or as a consequence of an unsolicited call made, whether in Hong Kong or elsewhere, by it or him—

(*a*) make or offer to make with another person—

(i) an agreement for that other person to sell or purchase, or with a view to having that other person sell or purchase, any securities, futures contract or leveraged foreign exchange contract;

(ii) an agreement to provide, or with a view to providing, to that other person securities margin financing; or

(iii) an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to that other person a profit, income or other returns—

(A) from any securities, futures contract or leveraged foreign exchange contract; or

(B) calculated by reference to changes in the value of any securities, futures contract or leveraged foreign exchange contract; or

(*b*) induce or attempt to induce another person to enter into an agreement referred to in paragraph (*a*),

whether or not in making the unsolicited call it or he does any other act or thing.

(2) An intermediary, or a representative of an intermediary, shall not be regarded as contravening subsection (1) by reason only that it or he—

(*a*) makes a call on another person who is a solicitor or professional accountant acting in his professional capacity, or is a licensed person, registered institution, money lender or professional investor, or its or his existing client; and

(*b*) whether as principal or agent, makes or offers to make with that other person an agreement referred to in subsection (1)(*a*), or induces or attempts to induce that other person to enter into such an agreement.

(3) This section does not apply to—

(*a*) agreements relating to securities, futures contracts or leveraged foreign exchange contracts or to securities margin financing which are of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(*b*) calls made by a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(*c*) calls made on a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(*d*) calls which are of a class prescribed by rules made under section 397 for the purposes of this paragraph.

(4) Without limiting the generality of the powers of the Commission to make rules for the purposes of subsection (3)(*d*), the Commission may in the rules prescribe that calls made by an authorized financial institution in compliance with such requirements under any guidelines published under section 7(3) of the Banking Ordinance (Cap. 155) that apply to it shall be within a class of calls to which this section does not apply.

(5) An intermediary, or a representative of an intermediary, that contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

(6) Where a person on whom an unsolicited call is made enters into an agreement with another person in consequence of a contravention of subsection (1), the person on whom the unsolicited call is so made may, subject to the rights of a subsequent purchaser in good faith for value, rescind the agreement, by giving notice in writing to that effect to that other person, within 28 days after the day on which the agreement is entered into or 7 days after the day on which he becomes aware of the contravention, whichever is the earlier.

(7) In this section—

"call" (造訪) means a visit in person, or a communication by any means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium;

"existing client" (原有客戶), in relation to an intermediary or a representative of an intermediary, means a person—

(*a*) who has entered into a client contract with the intermediary at any time during the period of 3 years immediately preceding the day on which the call is made, and remains a party to the client contract when the call is made; or

(*b*) for whom the intermediary has provided a service, the provision of which constitutes a regulated activity, at any time during the period of 3 years immediately preceding the day on which the call is made;

"futures contract" (期貨合約) means—

(*a*) a futures contract as defined in section 1 of Part 1 of Schedule 1;

(*b*) a futures contract, or a contract represented as being a futures contract, in respect of an item, whether or not capable of being delivered, which is prescribed by rules made under section 397 for the purposes of this definition;

"money lender" (放債人) has the meaning assigned to it by section 2(1) of the Money Lenders Ordinance (Cap. 163);

"unsolicited call" (未獲邀約的造訪) means any call made otherwise than at the express invitation of the person called upon, and for the purposes of this definition, the provision by a person of his contact details, including an address, telephone or facsimile number, or electronic mail address, does not by itself constitute an express invitation to call that person.

175. Requirements for offers by intermediaries or representatives for Type 1, Type 4 or Type 6 regulated activity

(1) Subject to subsection (5), a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative shall not communicate an offer to acquire or dispose of any securities of, or issued by, a body unless—

(*a*) the offer—

(i) is contained in a written document in an official language; or

(ii) if communicated otherwise than in the form of a written document satisfying the requirement of subparagraph (i), is reduced to a written document in an official language and delivered to the person or persons to whom it was made not later than 24 hours after the communication;

(*b*) the offer—

(i) contains a description of the securities sufficient to enable them to be identified;

(ii) specifies the terms of the offer, including where appropriate the amount of consideration proposed to be paid for the securities to be acquired pursuant to the offer;

(iii) where a dividend has been declared or recommended in respect of the securities, or it is anticipated that a dividend may be so declared or recommended before the transfer of the securities, states whether the securities are to be transferred with or without the dividend;

(iv) specifies—

(A) whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which the person so accepting the offer will become liable to pay in respect of the transaction under the Stamp Duty Ordinance (Cap. 117); and

(B) if the offeror will not so pay the stamp duty, the rate of the stamp duty that the person so accepting the offer will become liable to pay in respect of the transaction under that Ordinance;

(v) specifies whether, in the event of a person accepting the offer, any fees will be payable by that person to—

(A) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be); or

(B) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary;

(vi) if contained in a written document referred to in paragraph (*a*)(i)—

(A) specifies the name and address of the offeror and, where any person is making the offer on behalf of the offeror, the name and address of that person;

(B) bears a date which is not more than 3 days before the date on which the offer is communicated;

(C) where the offer is for the acquisition of securities, satisfies the requirements of Part 1 of Schedule 7;

(D) where the offer is for the disposal of securities, satisfies the requirements of Part 2 of Schedule 7; and

(E) where a report of an expert in connection with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent; and

(vii) if communicated in the manner described in paragraph (*a*)(ii), where there is a report of an expert in connection with the offer, specifies the place at which the report is available for inspection, and contains a statement to the effect that the expert has consented to the contents of the report, and has not, before the communication of the offer, withdrawn that consent; and

(*c*) where the offer is contained in a written document referred to in paragraph (*a*)(i) or is reduced to a written document referred to in paragraph (*a*)(ii) but the written document is in only one official language, the written document includes a translation, in the other official language, of all the particulars required in respect of the offer under paragraph (*b*), except where the Commission has previously agreed that the requirements of this paragraph may be dispensed with in any particular case.

(2) Where an offer contained in a written document referred to in subsection (1)(*a*)(i) is to contain a statement referred to in subsection (1)(*b*)(vi)(E) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with the inclusion of the statement in the form and context in which it is included in the written document.

(3) Where an offer communicated in the manner described in subsection (1)(*a*)(ii) is to contain a statement referred to in subsection (1)(*b*)(vii) regarding the consent of an expert, the offer shall not be communicated unless the expert has given, and has not before the communication of the offer withdrawn, his consent to the offer being communicated with a reference to the statement in the form and context in which it is referred to.

(4) Any Type 1 intermediary or representative, Type 4 intermediary or representative or Type 6 intermediary or representative who communicates an offer to acquire or dispose of any securities without having complied with subsections (1), (2) and (3) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of $20,000 for every day during which the offence continues.

(5) This section does not apply to—

(*a*) an offer regulated by, and made in accordance with, the requirements of—

(i) the rules made under section 23 or 36 governing the listing of securities;

(ii) the code published under section 399(2)(*a*); or

(iii) Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;

(*b*) an offer communicated to persons who already hold securities of, or issued by, a body, for those persons to acquire securities of, or issued by, the body;

(*c*) an offer communicated by a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative if the offer is made to a person with whom, or on whose behalf—

(i) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being an intermediary, the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be); or

(ii) where the Type 1 intermediary or representative, the Type 4 intermediary or representative or the Type 6 intermediary or representative (as the case may be) is regarded as such by virtue of being a representative of an intermediary, the intermediary,

has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the date of the offer;

(*d*) an offer made to—

(i) a professional investor;

(ii) a solicitor or professional accountant acting in his professional capacity; or

(iii) any other person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(*e*) an offer communicated by an exchange participant in the ordinary course of trading on a recognized stock market;

(*f*) an offer communicated by a person who is of a class prescribed by rules made under section 397 for the purposes of this paragraph;

(*g*) an offer which is of a class prescribed by rules made under section 397 for the purposes of this paragraph.

(6) Where—

(*a*) a person has accepted an offer to acquire or dispose of any securities of, or issued by, a body which is an offer to which this section applies; and

(*b*) the offer has been communicated without subsections (1), (2) and (3) having been complied with in a material particular,

that person may, subject to the rights of a subsequent purchaser of the securities in good faith for value, rescind the acceptance, by giving notice in writing to that effect to the offeror, within 28 days after the date of acceptance or 7 days after the day on which he becomes aware of the matter described in paragraph (*b*), whichever is the earlier.

(7) For the purposes of this section—

(*a*) where a Type 1 intermediary or representative, a Type 4 intermediary or representative or a Type 6 intermediary or representative communicates an invitation to a person to acquire or dispose of any securities of, or issued by, a body, the invitation shall be deemed to be an offer, and a reference in this section to acceptance shall be construed accordingly;

(*b*) an offer to acquire or dispose of a right to acquire or dispose of securities or an interest in securities shall be deemed to be an offer to acquire or dispose of securities, and a reference in this section to a person who holds securities includes a person who holds a right to acquire securities or an interest in securities;

(*c*) an offer to acquire or dispose of securities in consideration or part consideration for other securities shall be deemed to be both an offer to acquire and an offer to dispose of securities.

(8) In this section, a reference to securities of a body shall, unless the context otherwise requires, be construed as a reference to securities (having the meaning under section 1 of Part 1 of Schedule 1) which are—

(*a*) issued, made available or granted by the body; or

(*b*) proposed to be issued, made available or granted by the body.

(9) In this section—

"body" (團體) means a corporation, a multilateral agency, or a government or municipal government authority;

"expert" (專家) includes an engineer, valuer, professional accountant, solicitor, and any other person whose profession gives authority to a statement made by him;

"Type 1 intermediary or representative" (第 1 類中介人或代表) means—

(*a*) an intermediary licensed or registered for Type 1 regulated activity; or

(*b*) its representative that carries on Type 1 regulated activity for it;

"Type 4 intermediary or representative" (第 4 類中介人或代表) means—

(*a*) an intermediary licensed or registered for Type 4 regulated activity; or

(*b*) its representative that carries on Type 4 regulated activity for it;

"Type 6 intermediary or representative" (第 6 類中介人或代表) means—

(*a*) an intermediary licensed or registered for Type 6 regulated activity; or

(*b*) its representative that carries on Type 6 regulated activity for it;

"written document" (書面文件) means any document or similar material, or any other medium (whether effected as such mechanically, electronically, magnetically, optically, manually or by any other means), by which words are represented in a visible form.

176. Certain representations prohibited

(1) Subject to subsection (2), an intermediary, or a representative of an intermediary, shall not represent, or permit any other person to represent, in any manner and whether expressly or by implication, that its or his abilities or qualifications have been endorsed or warranted by the Government or the Commission.

(2) A statement to the effect that a person is licensed or registered under this Ordinance does not by itself constitute a contravention of subsection (1).

(3) An intermediary, or a representative of an intermediary, that, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

Division 5—Miscellaneous

177. Amendment of Schedule 7

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 7.

PART VIII

SUPERVISION AND INVESTIGATIONS

Division 1—Interpretation

178. Interpretation of Part VIII

In this Part, unless the context otherwise requires—

"audit working papers" (審計工作材料) means—

(*a*) any record or document prepared by or on behalf of an auditor; and

(*b*) any record or document obtained and retained by or on behalf of an auditor,

for or in connection with the performance of any of his functions relating to the conduct of any audit of the accounts of a corporation;

"investigator" (調查員) means a person directed or appointed to investigate any matter under section 182(1);

"person under investigation" (受調查人) means a person in relation to whom any investigator is directed or appointed to investigate any matter under section 182(1).

Division 2—Powers to require information, etc.

179. Power to require production of records and documents concerning listed corporations, etc.

(1) Where, in relation to a corporation which is or was listed—

(*a*) it appears to the Commission that there are circumstances suggesting that at any relevant time the business of the corporation has been conducted—

(i) with intent to defraud its creditors, or the creditors of any other person;

(ii) for any fraudulent or unlawful purpose; or

(iii) in a manner oppressive to its members or any part of its members;

(*b*) it appears to the Commission that there are circumstances suggesting that the corporation was formed for any fraudulent or unlawful purpose;

(*c*) it appears to the Commission that there are circumstances suggesting that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;

(*d*) it appears to the Commission that there are circumstances suggesting that at any relevant time persons involved in the management of the affairs of the corporation have engaged, in relation to such management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

(*e*) it appears to the Commission that there are circumstances suggesting that at any relevant time members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect; or

(*f*) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186 relates to the corporation and is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) as being suggested by the circumstances referred to in such paragraph,

an authorized person may, subject to subsections (5) to (10), give a direction to—

(i) the corporation;

(ii) a corporation that is, or was at the material time, a related corporation of the corporation;

(iii) an authorized financial institution, other than the corporation or a corporation described in paragraph (ii);

(iv) an auditor, other than the corporation or a corporation described in paragraph (ii);

(v) any other person,

requiring the production, within the time and at the place specified in the direction, of any record and document specified in the direction.

(2) A power under this section to require the production of any record or document by any person includes the power—

(*a*) if the record or document is produced—

(i) to make copies or otherwise record details of the record or document; and

(ii) to require—

(A) the person;

(B) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,

to provide or make any explanation or statement in respect of the record or document (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it); or

(*b*) if the record or document is not produced, to require—

(i) the person;

(ii) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,

to state where it is.

(3) An authorized person may in writing require the person providing or making an explanation or statement under this section to verify within a reasonable period specified in the requirement the explanation or statement by statutory declaration, which may be taken by the authorized person.

(4) If a person does not provide or make an explanation or statement in accordance with a requirement under this section for the reason that the explanation or statement was not within his knowledge or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(5) An authorized person shall not give any direction under subsection (1)(i) or (ii) to require the production of any record or document unless the authorized person has reasonable cause to believe that the record or document relates to the affairs of the corporation to which the direction is to be given or a corporation of which such corporation is, or was at the material time, a related corporation.

(6) An authorized person shall not give any direction to an authorized financial institution under subsection (1)(iii) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

(*a*) the authorized financial institution is in possession of any record or document relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(*b*) the record or document required to be produced under the direction—

(i) relates to the affairs of such corporation or to a transaction with such corporation; and

(ii) is relevant to the consideration of whether there has been the occurrence of—

(A) where subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(*f*) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186.

(7) An authorized person shall not give any direction to an auditor under subsection (1)(iv) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

(*a*) the auditor is in possession of any record or document, which is in the nature of audit working papers, relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(*b*) the record or document required to be produced under the direction—

(i) relates to the affairs of such corporation; and

(ii) is relevant to the consideration of whether there has been the occurrence of—

(A) where subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(*f*) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186.

(8) An authorized person shall not give any direction to a person under subsection (1)(v) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that—

(*a*) the person has dealt or has had dealings, directly or indirectly, with, or is otherwise in possession of any record or document relating to the affairs of, a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and

(*b*) the record or document required to be produced under the direction—

(i) relates to the affairs of such corporation or to a transaction with such corporation;

(ii) is relevant to the consideration of whether there has been the occurrence of—

(A) where subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or

(B) where subsection (1)(*f*) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186; and

(iii) cannot be obtained by giving a direction to any other person under subsection (1)(i), (ii), (iii) or (iv).

(9) The power of an authorized person to give any direction under subsection (1) (other than subsection (1)(iii)) to any corporation which is an authorized financial institution may be exercised only in respect of—

(*a*) subsection (1)(*e*); or

(*b*) subsection (1)(*f*), if, and only if, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 is, in the opinion of the Commission, of a nature similar to the matter described in subsection (1)(*e*) as being suggested by the circumstances referred to in that subsection (1)(*e*).

(10) Before an authorized person gives any direction under subsection (1) (other than subsection (1)(iii)) to any corporation—

(*a*) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or

(*b*) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority.

(11) The Commission may authorize in writing any person as an authorized person for the purposes of this section.

(12) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, before exercising any power under this section, shall produce a copy of the authorization to the person in respect of whom the power is exercised for inspection.

(13) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(*b*) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(14) A person who—

(*a*) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; and

(*b*) knows that, or is reckless as to whether, the record or document or the explanation or statement is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(15) A person who—

(*a*) with intent to defraud—

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; or

(*b*) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or provide or make an explanation or statement which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(16) A person is not excused from complying with a requirement imposed on the person by an authorized person under this section only on the ground that to do so might tend to incriminate the person.

(17) In this section—

"authorized person" (獲授權人) means a person authorized under subsection (11);

"controller" (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

"material time" (關鍵時間) means—

(*a*) where subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*) applies, the time at which the matter described in such subsection as being suggested by the circumstances referred to in such subsection appears to the Commission as occurring; or

(*b*) where subsection (1)(*f*) applies, the time at which the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 appears to the Commission as occurring;

"relevant time" (有關時間)—

(*a*) in relation to a corporation which is listed, means any time since the formation of the corporation; or

(*b*) in relation to a corporation which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed.

180. Supervision of intermediaries and their associated entities

(1) Subject to subsections (9) and (10), an authorized person may at any reasonable time, for the purpose of ascertaining whether an intermediary or an associated entity of an intermediary is complying or has complied with, or is likely to be able to comply with, the requirement specified in subsection (2)—

(*a*) enter—

(i) in the case of an intermediary—

(A) where it is a licensed corporation, its premises as approved by the Commission under section 130(1); or

(B) where it is a registered institution, the premises of the registered institution; or

(ii) in the case of an associated entity of an intermediary, the premises of the associated entity;

(*b*) inspect, and make copies or otherwise record details of, any record or document relating to—

(i) the business conducted by the intermediary or the associated entity (as the case may be);

(ii) any transaction carried out by a related corporation of the intermediary or the associated entity (as the case may be); or

(iii) any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be); and

(*c*) make inquiries of—

(i) the intermediary or the associated entity (as the case may be);

(ii) a related corporation of the intermediary or the associated entity (as the case may be);

(iii) subject to subsection (7), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in paragraph (*b*),

concerning any record or document referred to in paragraph (*b*), or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be).

(2) The requirement specified for the purposes of subsection (1) is the requirement not to contravene—

(*a*) any provision of this Ordinance;

(*b*) any notice or requirement given or made under or pursuant to any of the relevant provisions;

(*c*) any of the terms and conditions of any licence or registration under this Ordinance;

(*d*) any other condition imposed under or pursuant to any provision of this Ordinance.

(3) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(*b*) may require—

(*a*) the intermediary or the associated entity (as the case may be);

(*b*) a related corporation of the intermediary or the associated entity (as the case may be);

(*c*) subject to subsection (8), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in subsection (1)(*b*),

to—

(i) give the authorized person access to any record or document referred to in subsection (1)(*b*), and produce, within the time and at the place specified by him, the record or document; and

(ii) answer any question regarding the record or document.

(4) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(*c*) may require the intermediary or the associated entity, the related corporation or the other person (as the case may be) referred to in subsection (1)(*c*), to—

(*a*) give the authorized person access to any record or document referred to in subsection (1)(*b*), and produce, within the time and at the place specified by him, the record or document; and

(*b*) answer any question raised for the purposes of subsection (1)(*c*).

(5) An authorized person may in writing require the person giving an answer under this section to verify within a reasonable period specified in the requirement the answer by statutory declaration, which may be taken by the authorized person.

(6) If a person does not give an answer in accordance with a requirement under this section for the reason that the answer was not within his knowledge, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(7) An authorized person shall not exercise any of his powers under subsection (1)(*c*)(iii) unless he has reasonable cause to believe that the information sought cannot be obtained by the exercise of any of the powers under subsection (1)(*c*)(i) or (ii).

(8) An authorized person shall not exercise any of his powers under subsection (3)(*c*) unless he has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of any of the powers under subsection (3)(*a*) or (*b*).

(9) This section shall not be construed as requiring an authorized financial institution, not being the intermediary or the associated entity in question as referred to in subsection (1) or a related corporation of the intermediary or the associated entity (as the case may be), to disclose any information or produce any record or document relating to the affairs of a customer unless the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.

(10) Before an authorized person exercises any power under this section (other than subsection (1)(*c*)(iii) or (3)(*c*)) in respect of a corporation—

(*a*) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or

(*b*) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the authorized person shall consult the Insurance Authority.

(11) The relevant authority may authorize in writing any person as an authorized person for the purposes of this section.

(12) The relevant authority shall furnish an authorized person authorized by it with a copy of his authorization, and the authorized person, when exercising any power under this section, shall as soon as reasonably practicable produce a copy of the authorization for inspection.

(13) Where a copy of any record or document is supplied or made for the purpose of complying with a requirement imposed under this section and a facility of a person other than the relevant authority is used to make the copy, the relevant authority shall reimburse the expenses which, in the opinion of the relevant authority, have been reasonably incurred by the person in making the copy.

(14) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(*b*) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(15) A person who—

(*a*) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; and

(*b*) knows that, or is reckless as to whether, the record or document or the answer is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(16) A person who—

(*a*) with intent to defraud—

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; or

(*b*) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or give an answer which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(17) In this section—

"authorized person" (獲授權人) means a person authorized under subsection (11);

"controller" (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

"relevant authority" (有關當局) means—

(*a*) where—

(i) the intermediary in question as referred to in subsection (1) is a registered institution; or

(ii) the associated entity in question as referred to in that subsection is the associated entity of a registered institution,

the Monetary Authority; or

(*b*) in any other case, the Commission.

181. Information relating to transactions

(1) An authorized person may, for the purpose of enabling or assisting the Commission to perform a function under any of the relevant provisions, require—

(*a*) a person registered as the holder of securities in a register of members kept under the Companies Ordinance (Cap. 32);

(*b*) a person whom the authorized person has reasonable cause to believe holds any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;

(*c*) a person whom the authorized person has reasonable cause to believe has acquired or disposed of any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme, whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;

(*d*) a licensed person or registered institution through whom or which the authorized person has reasonable cause to believe any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme has been acquired, disposed of, dealt with, traded or arranged,

to furnish to him any of the information specified in subsection (2) within the time and in the form specified by him.

(2) The information specified for the purposes of subsection (1) is—

(*a*) the particulars (including, in so far as applicable, the name and aliases, address, telephone and facsimile numbers, electronic mail address, occupation and particulars of any document of identity (including, if not an individual, any document evidencing incorporation or registration)) that are reasonably capable of establishing the identity of the person on whose behalf, or by, from, to or through whom, the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme in question is held, or has been acquired, disposed of, dealt with, traded or arranged (as the case may be);

(*b*) the particulars (including the quantity) of and, in the case of acquisition or disposal, the consideration (if any) for the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme; and

(*c*) the instructions (if any) given to or by the person referred to in paragraph (*a*), or any officer, employee or agent of such person, in relation to the holding, acquisition, disposal, dealing, trading, arrangement of or in respect of the securities, futures contract, leveraged foreign exchange contract, or the interest in securities, futures contract, leveraged foreign exchange contract or collective investment scheme.

(3) An authorized person may in writing require the person furnishing any information under this section to verify within a reasonable period specified in the requirement the information by statutory declaration, which may be taken by the authorized person.

(4) If a person does not furnish any information in accordance with a requirement under this section for the reason that the information was not within his knowledge or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(5) The Commission may authorize in writing any person as an authorized person for the purposes of this section.

(6) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person, when exercising any power under this section, shall upon request by the person in respect of whom the power is exercised produce a copy of the authorization for inspection.

(7) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(*b*) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(8) A person who—

(*a*) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; and

(*b*) knows that, or is reckless as to whether, the information is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(9) A person who—

(*a*) with intent to defraud—

(i) fails to comply with a requirement imposed on him by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which is false or misleading in a material particular; or

(*b*) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to comply with a requirement imposed on it by an authorized person under this section; or

(ii) in purported compliance with a requirement imposed on it by an authorized person under this section, furnish to the authorized person information which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) In this section—

"authorized person" (獲授權人) means a person authorized under subsection (5);

"interest" (權益) includes an interest of any nature, whether legal, equitable, proprietary or otherwise.

Division 3—Powers of investigations

182. Investigations

(1) Where—

(*a*) the Commission has reasonable cause to believe that an offence under any of the relevant provisions may have been committed;

(*b*) the Commission has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with—

(i) dealing in any securities or futures contract or trading in any leveraged foreign exchange contract;

(ii) the management of investment in any securities, futures contract or leveraged foreign exchange contract;

(iii) offering or making any leveraged foreign exchange contract or collective investment scheme;

(iv) giving advice in relation to the allotment of securities, or the acquisition or disposal of, or investment in, any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme; or

(v) any transaction involving securities margin financing;

(*c*) the Commission has reasonable cause to believe that market misconduct may have taken place;

(*d*) the Commission has reasonable cause to believe that the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (*b*)(i) to (v) is not in the interest of the investing public or in the public interest;

(*e*) the Commission—

(i) for the purpose of considering whether to exercise any power under section 194 or 196, has reason to inquire whether any person is or was at any time guilty of misconduct, or is not a fit and proper person, as described in section 194(1) or (2) or 196(1) or (2); or

(ii) for the purpose of assisting the Monetary Authority to consider whether to exercise any power under section 58A or 71C of the Banking Ordinance (Cap. 155), has reason to inquire whether any person—

(A) is or was at any time guilty of misconduct, or is not or has ceased to be a fit and proper person, as described in section 58A(1) of that Ordinance; or

(B) is or was at any time guilty of misconduct, or should cease to be regarded as a fit and proper person, as described in section 71C(4) of that Ordinance;

(*f*) the Commission has reason to inquire whether any of the conditions imposed in respect of an authorization under section 104 or 105 are being complied with; or

(*g*) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186 is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*) as that which the Commission has reasonable cause to believe or has reason to inquire (as the case may be),

the Commission may in writing direct one or more of its employees or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate any of the matters referred to in paragraphs (*a*) to (*g*).

(2) The costs and expenses incurred by an investigator, other than an employee of the Commission, are to be paid out of moneys provided by the Legislative Council.

(3) The Commission shall furnish an investigator with a copy of his direction or appointment (as the case may be), and the investigator, before first imposing any requirement on a person under section 183(1), (2) or (3), shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.

(4) Before the Commission directs any of its employees, or appoints any person—

(*a*) to investigate any matter under subsection (1)(*e*)(i), to the extent that the investigation is for the purpose of considering whether to exercise any power under section 196; or

(*b*) to investigate any matter under subsection (1)(*e*)(ii),

the Commission shall consult the Monetary Authority.

183. Conduct of investigations

(1) The person under investigation or a person whom the investigator has reasonable cause to believe has in his possession any record or document which contains, or which is likely to contain, information relevant to an investigation under section 182, or whom the investigator has reasonable cause to believe otherwise has such information in his possession, shall—

(*a*) produce to the investigator, within the time and at the place the investigator reasonably requires in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation and which is in his possession;

(*b*) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (*a*);

(*c*) attend before the investigator at the time and place the investigator reasonably requires in writing, and answer any question relating to the matters under investigation that the investigator may raise with him; and

(*d*) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.

(2) An investigator may in writing require the person giving or making an explanation, particulars, answer or statement under this section to verify within a reasonable period specified in the requirement the explanation, particulars, answer or statement by statutory declaration, which may be taken by the investigator.

(3) If a person does not give or make an explanation, particulars, answer or statement in accordance with a requirement under this section for the reason that the explanation, particulars, answer or statement was not within his knowledge or in his possession, an investigator may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the investigator, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.

(4) Neither section 182 nor this section shall be construed as requiring an authorized financial institution to disclose any information or produce any record or document relating to the affairs of a customer to the investigator unless—

(*a*) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and

(*b*) the Commission is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.

(5) The investigator may, and if so directed by the Commission shall, make interim reports on his investigation to the Commission, and on the conclusion of his investigation shall make a final report on his investigation to the Commission.

(6) The Commission may, with the consent of the Secretary for Justice, cause a report under this section to be published.

184. Offences in relation to investigations

(1) A person who, without reasonable excuse—

(*a*) fails to produce any record or document required to be produced under section 183(1)(*a*);

(*b*) fails to give an explanation or further particulars required under section 183(1)(*b*);

(*c*) fails to attend before the investigator as required under section 183(1)(*c*);

(*d*) fails to answer a question raised by the investigator under section 183(1)(*c*);

(*e*) fails to comply with section 183(1)(*d*); or

(*f*) fails to comply with a requirement under section 183(2) or (3),

commits an offence and is liable—

(i) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or

(ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(2) A person—

(*a*) who—

(i) in purportedly complying with a requirement imposed by the investigator under section 183(1)(*a*), produces any record or document which is false or misleading in a material particular;

(ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(*b*), gives any explanation or further particulars which are false or misleading in a material particular;

(iii) in purportedly answering any question raised by the investigator under section 183(1)(*c*), says anything which is false or misleading in a material particular; or

(iv) in purportedly responding to any written question raised by the investigator under section 183(1)(*d*), states anything which is false or misleading in a material particular; and

(*b*) who knows that, or is reckless as to whether, the record or document, the explanation or further particulars, the thing or the statement (as the case may be) is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) A person who—

(*a*) with intent to defraud—

(i) fails to do anything as described in subsection (1)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*);

(ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(*a*), produces any record or document which is false or misleading in a material particular;

(iii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(*b*), gives any explanation or further particulars which are false or misleading in a material particular;

(iv) in purportedly answering any question raised by the investigator under section 183(1)(*c*), says anything which is false or misleading in a material particular; or

(v) in purportedly responding to any written question raised by the investigator under section 183(1)(*d*), states anything which is false or misleading in a material particular; or

(*b*) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to—

(i) fail to do anything as described in subsection (1)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*);

(ii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(*a*), produce any record or document which is false or misleading in a material particular;

(iii) in purportedly complying with a requirement imposed by the investigator under section 183(1)(*b*), give any explanation or further particulars which are false or misleading in a material particular;

(iv) in purportedly answering any question raised by the investigator under section 183(1)(*c*), say anything which is false or misleading in a material particular; or

(v) in purportedly responding to any written question raised by the investigator under section 183(1)(*d*), state anything which is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) A person is not excused from complying with a requirement imposed on the person by an investigator under section 183 only on the ground that to do so might tend to incriminate the person.

(5) Where any person is convicted by a court on a prosecution instituted as a result of an investigation under section 182, the court may order him to pay to the Commission the whole or a part of the costs and expenses of the investigation and the Commission may recover the whole or the part (as the case may be) of the costs and expenses as a civil debt due to it.

(6) Where the Commission receives an amount under an order made under subsection (5) in respect of any of the costs and expenses of an investigation, and all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received under the order to the extent that it has already been paid out of moneys provided by the Legislative Council.

Division 4—Miscellaneous

185. Application to Court of First Instance relating to non-compliance with requirements under section 179, 180, 181 or 183

(1) If a person fails to do anything upon being required to do so by an authorized person under section 179, 180 or 181, or to do anything upon being required to do so by an investigator under section 183(1), (2) or (3), the authorized person or the investigator (as the case may be) may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—

(*a*) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and

(*b*) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(2) An originating summons under subsection (1) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).

(3) Notwithstanding anything in this section and any other provisions of this Ordinance—

(*a*) no proceedings may be instituted against any person for the purposes of subsection (1)(*b*) in respect of any conduct if—

(i) criminal proceedings have previously been instituted against the person under section 179, 180, 181 or 184 in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(*b*) no criminal proceedings may be instituted against any person under section 179, 180, 181 or 184 in respect of any conduct if—

(i) proceedings have previously been instituted against the person for the purposes of subsection (1)(*b*) in respect of the same conduct; and

(ii) (A) those proceedings remain pending; or

(B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person for the purposes of such subsection in respect of the same conduct.

186. Assistance to regulators outside Hong Kong

(1) Where the Commission receives, from an authority or regulatory organization outside Hong Kong which in the opinion of the Commission satisfies the requirements referred to in subsection (5)(*a*) and (*b*), a request for assistance to investigate whether a person specified by the authority or regulatory organization has contravened or is contravening legal or regulatory requirements which—

(*a*) the authority or regulatory organization enforces or administers; and

(*b*) relate to such transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions as are regulated by the authority or regulatory organization,

the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 179, 181, 182 and 183.

(2) Where the Commission receives, from a companies inspector outside Hong Kong who in the opinion of the Commission satisfies the requirements referred to in subsection (5)(*a*) and (*b*), a request for assistance to investigate whether a person specified by the companies inspector has contravened or is contravening legal or regulatory requirements which relate to transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions, the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 179, 181, 182 and 183.

(3) The condition referred to in subsections (1) and (2) is that—

(*a*) it is desirable or expedient that the assistance requested under subsection (1) or (2) (as the case may be) should be provided in the interest of the investing public or in the public interest; or

(*b*) the assistance will enable or assist the recipient of the assistance to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the assistance should be provided.

(4) In deciding whether the condition specified in subsection (3) is satisfied in a particular case, the Commission shall take into account—

(*a*) where the recipient of the assistance is an authority or regulatory organization referred to in subsection (1), whether the authority or regulatory organization will—

(i) pay to the Commission any of the costs and expenses incurred in providing the assistance; and

(ii) be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or

(*b*) where the recipient of the assistance is a companies inspector referred to in subsection (2), whether—

(i) the companies inspector will pay to the Commission any of the costs and expenses incurred in providing the assistance; and

(ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be provided in response to a comparable request for assistance from Hong Kong.

(5) Where the Commission is satisfied, for the purposes of subsection (1) or (2), that an authority, regulatory organization or companies inspector outside Hong Kong—

(*a*) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and

(*b*) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(6) If a person is required—

(*a*) to provide or make an explanation or statement as required by an authorized person within the meaning of section 179 exercising pursuant to subsection (1) or (2) a power under section 179; or

(*b*) to give an explanation or further particulars as required by, or to give an answer to any question as raised by, an investigator exercising pursuant to subsection (1) or (2) a power under section 183,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate him and he so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then, without limiting the provisions of section 187, the authorized person or investigator (as the case may be) shall not provide evidence of the requirement and the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) to an authority, regulatory organization or companies inspector outside Hong Kong for use in criminal proceedings against him in the jurisdiction of the authority, regulatory organization or companies inspector (as the case may be).

(7) Where the Commission receives from an authority, regulatory organization or companies inspector outside Hong Kong an amount paid in respect of any of the costs and expenses incurred in providing assistance under this section, and all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received to the extent that it has already been paid out of moneys provided by the Legislative Council.

(8) Any matter published under subsection (5) is not subsidiary legislation.

(9) In this section, "companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place.

187. Use of incriminating evidence in proceedings

(1) Where—

(*a*) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section; or

(*b*) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183,

the authorized person or the investigator (as the case may be) shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be).

(2) Notwithstanding any other provisions of this Ordinance, where—

(*a*) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section; or

(*b*) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate the person and the person so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then the requirement as well as the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 179(13), (14) or (15) or 184, or under section 219(2)(*a*), 253(2)(*a*) or 254(6)(*a*) or (*b*), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation or statement, the explanation or further particulars, or the answer (as the case may be).

188. Lien claimed on records or documents

Where the person in possession of any record or document required to be produced under this Part claims a lien on the record or document—

(*a*) the requirement to produce the record or document shall not be affected by the lien;

(*b*) no fees shall be payable for or in respect of the production; and

(*c*) the production shall be without prejudice to the lien.

189. Production of information in information systems, etc.

Where any information or matter contained in any record or document required to be produced under this Part is recorded otherwise than in a legible form, any power conferred by this Part to require the production of the record or document includes the power to require the production of a reproduction of the recording of the information or matter or of the relevant part of it—

(*a*) where the recording enables the information or matter to be reproduced in a legible form, in a legible form; and

(*b*) where the information or matter is recorded in an information system, in a form which enables the information or matter to be reproduced in a legible form.

190. Inspection of records or documents seized, etc.

Where an authorized person within the meaning of section 179, 180 or 181 or an investigator has taken possession of any record or document under this Part, the authorized person or the investigator (as the case may be) shall, subject to any reasonable conditions he imposes as to security or otherwise, permit a person who would be entitled to inspect the record or document had he not taken possession of it under this Part, to inspect it and to make copies or otherwise record details of it at all reasonable times.

191. Magistrate's warrants

(1) If a magistrate is satisfied on information on oath laid by—

(*a*) an employee of the Commission or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section; or

(*b*) an authorized person within the meaning of section 179 or 180, or an investigator,

that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document which may be required to be produced under this Part, the magistrate may issue a warrant authorizing a person specified in the warrant, a police officer, and such other persons as may be necessary to assist in the execution of the warrant to—

(i) enter the premises so specified, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and

(ii) search for, seize and remove any record or document which the person specified in the warrant or police officer has reasonable cause to believe may be required to be produced under this Part.

(2) A person specified in, or a police officer or any other person authorized by, a warrant issued under subsection (1) may—

(*a*) require any person on the premises specified in the warrant whom he has reasonable cause to believe to be employed in connection with a business which is, or which has been, conducted on the premises to produce for examination any record or document which is in the possession of the person and which he has reasonable cause to believe may be required to be produced under this Part;

(*b*) prohibit any person found on the premises specified in the warrant from—

(i) removing from the premises any record or document required to be produced under paragraph (*a*);

(ii) erasing, adding to or otherwise altering an entry or other particulars contained in, or otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document;

(*c*) take, in relation to any record or document required to be produced under paragraph (*a*), any other step which may appear necessary for preserving it and preventing interference with it.

(3) Any record or document removed under this section may be retained for any period not exceeding 6 months beginning on the day of its removal or, where the record or document is or may be required for criminal proceedings or for any proceedings under this Ordinance, for such longer period as may be necessary for the purposes of those proceedings.

(4) Where a person removes any record or document under this section, he shall as soon as reasonably practicable thereafter give a receipt for it, and he may permit any person who would be entitled to inspect it but for the removal to inspect the record or document and to make copies or otherwise record details of it at all reasonable times.

(5) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property which has by virtue of this section come into the possession of the Commission or, where the exercise of powers under section 180 is concerned, of the relevant authority within the meaning of that section, as it applies to property which has come into the possession of the police.

(6) A person commits an offence if he—

(*a*) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (2); or

(*b*) obstructs a person exercising a power conferred by subsection (2).

(7) A person who commits an offence under subsection (6) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

192. Destruction of documents, etc.

(1) A person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document required to be produced under this Part, with intent to conceal, from the person by whom the requirement to produce was imposed, facts or matters capable of being disclosed by the record or document.

(2) A person who commits an offence under subsection (1) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

PART IX

DISCIPLINE, ETC.

Division 1—Interpretation

193. Interpretation of Part IX

(1) In this Part, unless the context otherwise requires—

"misconduct" (失當行為) means—

(*a*) a contravention of any of the relevant provisions;

(*b*) a contravention of any of the terms and conditions of any licence or registration under this Ordinance;

(*c*) a contravention of any other condition imposed under or pursuant to any provision of this Ordinance, or of any condition attached or amended under section 71C(2)(*b*) or (9) or 71E(3) of the Banking Ordinance (Cap. 155); or

(*d*) an act or omission relating to the carrying on of any regulated activity for which a person is licensed or registered which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest,

and "guilty of misconduct" (犯失當行為) shall be construed accordingly; "register of companies" (公司登記冊) means the register within the meaning of section 291 of the Companies Ordinance (Cap. 32) or a register of oversea companies kept under section 333 of that Ordinance.

(2) In this Part, where an intermediary is, or was at any time, guilty of misconduct within the meaning of paragraph (*a*), (*b*), (*c*) or (*d*) of the definition of "misconduct" in subsection (1) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of—

(*a*) in the case of a licensed corporation, another person as—

(i) a responsible officer of the licensed corporation; or

(ii) a person involved in the management of the business of the licensed corporation; or

(*b*) in the case of a registered institution, another person as—

(i) an executive officer of the registered institution; or

(ii) a person involved in the management of the business constituting any regulated activity for which the registered institution is or was (as the case may be) registered,

the conduct shall also be regarded as misconduct on the part of that other person, and "guilty of misconduct" shall also be construed accordingly.

(3) For the purposes of paragraph (*d*) of the definition of "misconduct" in subsection (1), the Commission shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless it has had regard to such of the provisions set out in any code of conduct published under section 169 or any code or guideline published under section 399 as are in force at the time of occurrence of, and applicable in relation to, the act or omission.

Division 2—Discipline, etc.

194. Disciplinary action in respect of licensed persons, etc.

(1) Subject to section 198, where—

(*a*) a regulated person is, or was at any time, guilty of misconduct; or

(*b*) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case—

(i) where the regulated person is a licensed person—

(A) revoke his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed; or

(B) suspend his licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify;

(ii) where the regulated person is a responsible officer of a licensed corporation—

(A) revoke the approval granted under section 126(1) in respect of him as such a responsible officer; or

(B) suspend such approval for such period or until the occurrence of such event as the Commission may specify;

(iii) publicly or privately reprimand the regulated person;

(iv) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify—

(A) applying to be licensed or registered;

(B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;

(C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);

(D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.

(2) Subject to sections 198 and 199, where—

(*a*) a regulated person is, or was at any time, guilty of misconduct; or

(*b*) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of—

(i) $10,000,000; or

(ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(*b*) or (2)(*b*), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(7) In this section—

"regulated person" (受規管人士) means a person who is or at the relevant time was any of the following types of person—

(*a*) a licensed person;

(*b*) a responsible officer of a licensed corporation; or

(*c*) a person involved in the management of the business of a licensed corporation;

"relevant time" (有關時間), in relation to a person, means—

(*a*) where subsection (1)(*a*) or (2)(*a*) applies, the time when the person is, or was, guilty of misconduct; or

(*b*) where subsection (1)(*b*) or (2)(*b*) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.

195. Other circumstances for disciplinary actions in respect of licensed persons, etc.

(1) Subject to section 198, the Commission may revoke a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed, or suspend a licensed person's licence, whether in relation to all or any, or any part of all or any, of the regulated activities for which he is licensed for such period or until the occurrence of such event as the Commission may specify, if—

(*a*) where the licensed person is an individual—

(i) the licensed person enters into a voluntary arrangement with creditors, or has a bankruptcy order made against him, under the Bankruptcy Ordinance (Cap. 6);

(ii) the licensed person fails to satisfy a levy of execution;

(iii) the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or

(iv) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(*b*) where the licensed person is a corporation—

(i) a receiver or manager of the property or business of the licensed person is appointed;

(ii) the licensed person fails to satisfy a levy of execution;

(iii) the licensed person enters into a compromise or scheme of arrangement with its creditors;

(iv) the licensed person goes into liquidation or is ordered to be wound up;

(v) the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(vi) any of the directors of the licensed person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed; or

(vii) any of the directors of the licensed person is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the licensed person to remain licensed;

(*c*) the licensed person does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or

(*d*) the licensed person requests the Commission to so revoke or suspend the licence.

(2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a licensed person's licence in relation to Type 7 regulated activity or any part thereof if—

(*a*) the Commission has required under section 118(1)(*c*) that the licensed person should apply for an authorization under section 95(2) for that regulated activity; and

(*b*) (i) the licensed person has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that he proposes not to make an application for the authorization under section 95(2); or

(ii) the licensed person has made an application for the authorization under section 95(2), but the application is not granted.

(3) A licence shall be deemed to be revoked if—

(*a*) where the licensed person is an individual, the licensed person dies; or

(*b*) where the licensed person is a corporation, the licensed person is wound up, struck off the register of companies or is otherwise dissolved.

(4) Subject to subsection (5), a licence shall be deemed to be suspended if—

(*a*) the licensed person fails to make full payment of any annual fee payable by him under section 138, or any additional sum payable by him under that section as a result of any default in making full payment of any annual fee payable by him under

that section, within 3 months after the due date for payment of the annual fee under that section; or

(*b*) the licensed person fails to submit an annual return required to be submitted by him under section 138 within 3 months after the due date for submission of the annual return under that section,

and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the licence should no longer be suspended and informs the licensed person to that effect by notice in writing.

(5) A licence shall not be regarded as suspended under subsection (4) unless and until—

(*a*) in the case of a suspension under subsection (4)(*a*) by reference to any failure to make full payment of any annual fee or additional sum, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section; or

(*b*) in the case of a suspension under subsection (4)(*b*) by reference to any failure to submit an annual return, the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the licensed person of the requirement to submit the annual return, and of the consequence of the failure to comply with the requirement under this section.

(6) Where a licence is suspended under subsection (4) and the event described in subsection (4)(*a*) or (*b*) (as the case may be) has not been remedied within 30 days after the day on which the suspension becomes effective under subsection (4), or such further period as the Commission may specify by notice in writing to the licensed person, the licence shall be deemed to be revoked.

(7) Subject to section 198, where a person who is a responsible officer of a licensed corporation is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the person to remain such a responsible officer, the Commission may—

(*a*) revoke the approval granted under section 126(1) in respect of the person as such a responsible officer; or

(*b*) suspend such approval for such period or until the occurrence of such event as the Commission may specify.

196. Disciplinary action in respect of registered institutions, etc.

(1) Subject to section 198, where—

(*a*) a regulated person is, or was at any time, guilty of misconduct; or

(*b*) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case—

(i) where the regulated person is a registered institution—

(A) revoke its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered; or

(B) suspend its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify;

(ii) publicly or privately reprimand the regulated person;

(iii) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify—

(A) applying to be licensed or registered;

(B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;

(C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap. 155);

(D) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution in respect of a regulated activity.

(2) Subject to sections 198 and 199, where—

(*a*) a regulated person is, or was at any time, guilty of misconduct; or

(*b*) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of—

(i) $10,000,000; or

(ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(*b*) or (2)(*b*), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(7) Without prejudice to the exercise by the Monetary Authority of any powers under the Banking Ordinance (Cap. 155), the Commission may make such recommendations to the Monetary Authority in respect of the exercise by the Monetary Authority of any of his powers under sections 58A(1) and 71C(4) of that Ordinance as the Commission considers appropriate.

(8) In this section—

"regulated person" (受規管人士) means a person who is or at the relevant time was any of the following types of person—

(*a*) a registered institution;

(*b*) an executive officer of a registered institution;

(*c*) a person involved in the management of the business constituting any regulated activity for which a registered institution is or was (as the case may be) registered; or

(*d*) an individual whose name is or was (as the case may be) entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity;

"relevant time" (有關時間), in relation to a person, means—

(*a*) where subsection (1)(*a*) or (2)(*a*) applies, the time when the person is, or was, guilty of misconduct; or

(*b*) where subsection (1)(*b*) or (2)(*b*) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.

197. Other circumstances for disciplinary action in respect of registered institutions, etc.

(1) Subject to section 198, the Commission may revoke a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered, or suspend a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify—

(*a*) if—

(i) a receiver or manager of the property or business of the registered institution is appointed;

(ii) the registered institution fails to satisfy a levy of execution;

(iii) the registered institution enters into a compromise or scheme of arrangement with its creditors;

(iv) the registered institution goes into liquidation or is ordered to be wound up;

(v) the registered institution is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the registered institution to remain registered;

(*b*) if the registered institution does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or

(*c*) if the registered institution requests the Commission to so revoke or suspend the registration.

(2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a registered institution's registration in relation to Type 7 regulated activity or any part thereof if—

(*a*) the Commission has required under section 119(8)(*b*) that the registered institution should apply for an authorization under section 95(2) for that regulated activity; and

(*b*) (i) the registered institution has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that it proposes not to make an application for the authorization under section 95(2); or

(ii) the registered institution has made an application for the authorization under section 95(2), but the application is not granted.

(3) The registration of a registered institution shall be deemed to be revoked if—

(*a*) the registered institution ceases to be an authorized financial institution; or

(*b*) the registered institution is wound up, struck off the register of companies or is otherwise dissolved.

(4) Subject to subsection (5), the registration of a registered institution shall be deemed to be suspended if the registered institution fails to make full payment of any annual fee payable by it under section 138, or any additional sum payable by it under that section as a result of any default in making full payment of any annual fee payable by it under that section, within 3 months after the due date for payment of the annual fee under that section, and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the registration should no longer be suspended and informs the registered institution to that effect by notice in writing.

(5) Any registration shall not be regarded as suspended under subsection (4) by reference to any failure to make full payment of any annual fee or additional sum, unless and until the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the registered institution of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section.

(6) Where any registration is suspended under subsection (4) and the failure to make full payment of the annual fee or additional sum described in that subsection has not been remedied within 30 days after the day on which the suspension becomes effective under that subsection, or such further period as the Commission may specify by notice in writing to the registered institution, the registration shall be deemed to be revoked.

Division 3—Miscellaneous

198. Procedural requirements in respect of exercise of powers under Part IX

(1) The Commission shall not exercise any power under section 194(1) or (2), 195(1)(*a*), (*b*) or (*c*), (2) or (7), 196(1) or (2) or 197(1)(*a*) or (*b*) or (2) without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard.

(2) The Commission shall not exercise any power under section 196(1) or (2) or 197(1) or (2) unless it has first consulted the Monetary Authority.

(3) Where the Commission decides to exercise any power under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission shall inform the person in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include—

(*a*) a statement of the reasons for which the decision is made;

(*b*) the time at which the decision is to take effect;

(*c*) in so far as applicable, the duration and terms of any revocation, suspension or prohibition to be imposed under the decision;

(*d*) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and

(*e*) in so far as applicable, the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect as a specified decision under section 232) within which it is required to be paid.

199. Guidelines for performance of functions under section 194(2) or 196(2)

(1) The Commission shall not perform any of its functions under section 194(2) or 196(2) unless—

(*a*) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the manner in which it proposes to perform such functions; and

(*b*) in performing such functions, it has had regard to the guidelines so published.

(2) Without prejudice to the inclusion of any other factors that the Commission may consider relevant, guidelines published under subsection (1) shall include the following as factors that the Commission shall take into account in performing any of its functions under section 194(2) or 196(2)—

(*a*) whether the conduct of the regulated person in question was intentional, reckless or negligent;

(*b*) whether the conduct damaged the integrity of the securities and futures market;

(*c*) whether the conduct caused loss to, or imposed costs on, any other person; and

(*d*) whether the conduct resulted in a benefit to the regulated person or any other person.

(3) Guidelines published under subsection (1) are not subsidiary legislation.

200. Effect of suspension under Part IX

(1) If a licence of a person is suspended under section 194 or 195 in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—

(*a*) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be licensed for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and

(*b*) without limiting the generality of paragraph (*a*), continue to be required to comply with such provisions of this Ordinance relating to a licensed person as would apply to the person were the licence not so suspended.

(2) If an approval of a person as a responsible officer of a licensed corporation is suspended under section 194 or 195, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—

(*a*) continue to be regarded for the purposes of the provisions of this Ordinance, but not sections 118 and 125, to be such a responsible officer; and

(*b*) without limiting the generality of paragraph (*a*), continue to be required to comply with such provisions of this Ordinance relating to a responsible officer as would apply to the person were the approval not so suspended.

(3) If any registration of a person is suspended under section 196 or 197 in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, then, without prejudice to any provision of this Ordinance which has application in relation to the suspension, the person shall, during the period of the suspension—

(*a*) continue to be regarded for the purposes of the provisions of this Ordinance, but not section 114, to be registered for the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the suspension relates; and

(*b*) without limiting the generality of paragraph (*a*), continue to be required to comply with such provisions of this Ordinance relating to a registered institution as would apply to the person were the registration not so suspended.

(4) A licence of a person may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the licence is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is licensed, under any provision of this Ordinance.

(5) An approval of a person as a responsible officer of a licensed corporation may be revoked under section 194 or 195 notwithstanding that, at the time of revocation, the approval is suspended under any provision of this Ordinance.

(6) Any registration of a person may be revoked under section 196 or 197 notwithstanding that, at the time of revocation, the registration is suspended, whether in relation to all or any, or any part of all or any, of the regulated activities for which the person is registered, under any provision of this Ordinance.

201. General provisions relating to exercise of powers under Part IX

(1) In reaching a decision under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.

(2) The revocation or suspension of any licence or registration under this Part does not operate so as to—

(*a*) avoid or affect an agreement, transaction or arrangement entered into by the licensed person or registered institution (as the case may be) whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension;

(*b*) affect a right, obligation or liability arising under the agreement, transaction or arrangement.

(3) Where at any time the Commission is contemplating exercising any power in respect of a person under section 194(1) or (2), 195(1)(*a*), (*b*) or (*c*), (2) or (7), 196(1) or (2) or 197(1)(*a*) or (*b*) or (2), it may, where it considers it appropriate to do so in the interest of the investing public or in the public interest, by agreement with the person—

(*a*) exercise any power the Commission may exercise in respect of the person under this Part (whether or not the same as the power the exercise of which has been contemplated); and

(*b*) take such additional action as it considers appropriate in the circumstances of the case.

(4) Where the Commission exercises any power or takes any additional action in respect of a person under subsection (3)—

(*a*) it shall comply with section 198(2) and (3), as if section 198(2) and (3), in addition to applying to the exercise of power under the sections specified therein, also applies with necessary modifications to the taking of any additional action under subsection (3); and

(*b*) subject to the agreement of the person, it is not obliged to comply with section 198(1).

(5) Nothing in this Part affects the power of the Court of First Instance to make any order or exercise any other power under or pursuant to section 211, 212, 213 or 214.

202. Requirement to transfer records upon revocation or suspension of licence or registration

(1) Where any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing require the person to whom the licence or registration (as the case may be) was granted to transfer to, or to the order of, his client such records relating to client assets or to the affairs of the client held at any time for the client, in such manner, as the Commission may reasonably specify in the notice.

(2) A person who, without reasonable excuse, fails to comply with a requirement imposed on him under subsection (1) commits an offence and is liable on conviction to a fine of $200,000 and to imprisonment for 2 years.

(3) In this section, "client" (客戶), in relation to a person referred to in subsection (1), means any person who, at any time when the first-mentioned person was an intermediary, was a client of the first-mentioned person under the definition of "client" in section 1 of Part 1 of Schedule 1.

203. Permission to carry on business operations upon revocation or suspension of licence or registration

(1) Where any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing permit the person to whom the licence or registration (as the case may be) was granted to—

(*a*) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or

(*b*) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the person or, in the case of a licensed representative, of the licensed corporation to which the person is accredited, during the period of suspension,

subject to such conditions as the Commission may specify in the notice.

(2) Notwithstanding section 200(1), where the Commission has granted a permission to a person under subsection (1), the person shall not, by reason of its carrying on business operations in accordance with the permission, be regarded as having contravened section 114.

(3) Any permission granted under subsection (1), and the imposition of conditions pursuant to that subsection, take effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

PART X

POWERS OF INTERVENTION AND PROCEEDINGS

Division 1—Powers of intervention

204. Restriction of business

(1) Subject to section 207, the Commission may by notice in writing—

(*a*) prohibit a licensed corporation from—

(i) entering into transactions of a specified description or other than of a specified description, or entering into transactions in specified circumstances or other than in specified circumstances, or entering into transactions to a specified extent or other than to a specified extent;

(ii) soliciting business from persons of a specified description or from persons other than of a specified description;

(iii) carrying on business in a specified manner or other than in a specified manner;

(*b*) require a licensed corporation to carry on business in, and only in, a specified manner.

(2) A prohibition or requirement imposed on a licensed corporation under this section may relate to either or both of the following—

(*a*) transactions entered into in connection with the business which constitutes a regulated activity for which the licensed corporation is licensed;

(*b*) transactions entered into in connection with any other business which is carried on by the licensed corporation in connection with the business which constitutes a regulated activity for which it is licensed.

205. Restriction on dealing with property

(1) Subject to section 207, the Commission may by notice in writing—

(*a*) prohibit a licensed corporation—

(i) from—

(A) disposing of any relevant property;

(B) dealing with any relevant property in a specified manner or other than in a specified manner;

(ii) from assisting, counselling or procuring another person to—

(A) dispose of any relevant property;

(B) deal with any relevant property in a specified manner or other than in a specified manner;

(*b*) require a licensed corporation to deal with any relevant property in, and only in, a specified manner.

(2) In this section, "relevant property" (有關財產), in relation to a licensed corporation, means—

(*a*) any property held by the licensed corporation, acting within the capacity for which the licensed corporation is licensed, on behalf of any of the clients of the licensed corporation, or held by any other person on behalf or to the order of the licensed corporation acting within such capacity;

(*b*) any other property which the Commission reasonably believes to be owned or controlled by the licensed corporation.

206. Maintenance of property

(1) Subject to section 207, the Commission may by notice in writing require a licensed corporation to maintain property in Hong Kong and in any specified place outside Hong Kong such that—

(*a*) the property maintained is of the value and of the description that appear to the Commission to be desirable with a view to ensuring that the licensed corporation will be able to meet its liabilities in relation to the business which constitutes a regulated activity for which it is licensed; and

(*b*) the property is maintained in a manner that will enable the licensed corporation at any time freely to transfer or otherwise dispose of the property.

(2) The Commission may in any requirement imposed under this section direct that, for the purposes of the requirement, property of a specified description shall or shall not be taken into account.

207. Imposition of prohibition or requirement under section 204, 205 or 206

The Commission may impose a prohibition or requirement under section 204, 205 or 206 in respect of or with reference to any licensed corporation if it appears to the Commission that—

(*a*) any property of the licensed corporation or its clients, or any property connected with the business which constitutes a regulated activity for which it is licensed, might be dissipated, transferred or otherwise dealt with in a manner prejudicial to the interest of any of its clients or creditors;

(*b*) the licensed corporation is not a fit and proper person to remain licensed or is not a fit and proper person to carry on any regulated activity for which it is licensed (having regard, among other matters, to the matters specified in section 129);

(*c*) the licensed corporation has failed to comply with the requirement specified in section 180(2) or, in purported compliance with such requirement, has furnished the Commission with information which was at the time when it was furnished false or misleading in a material particular;

(*d*) the licence of the licensed corporation may be revoked or suspended on any of the grounds specified in section 194(1) or 195(1) or (2); or

(*e*) the imposition of the prohibition or requirement is desirable in the interest of the investing public or in the public interest.

208. Withdrawal, substitution or variation of prohibitions or requirements under section 204, 205 or 206

(1) Where a prohibition or requirement imposed under section 204, 205 or 206 is in force, the Commission may, where it considers appropriate to do so (whether of its own volition or upon the request of the person on whom the prohibition or requirement is imposed or any other person affected by the prohibition or requirement), by notice in writing given to the person on whom the prohibition or requirement is imposed—

(*a*) withdraw the prohibition or requirement; or

(*b*) substitute another prohibition or requirement for, or vary, the prohibition or requirement.

(2) A prohibition or requirement imposed under section 204, 205 or 206, or a prohibition or requirement substituting for another prohibition or requirement under subsection (1)(*b*), or a prohibition or requirement as varied under subsection (1)(*b*), shall, unless it provides otherwise, remain in force in accordance with the terms thereof until it is—

(*a*) withdrawn; or

(*b*) substituted by another prohibition or requirement, or varied,

by the Commission under this section.

(3) The provisions of this section apply, with necessary modifications, to a prohibition or requirement substituting for another prohibition or requirement under subsection (1)(*b*), or a prohibition or requirement as varied under subsection (1)(*b*), as they apply to a prohibition or requirement imposed under section 204, 205 or 206, and the provisions of this Division shall be construed accordingly.

209. General provisions relating to sections 204, 205, 206 and 208

(1) Where the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement, the imposition, withdrawal, substitution or variation (as the case may be) of the prohibition or requirement takes effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

(2) Where the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement, the notice given in respect thereof shall be accompanied by a statement specifying the reasons for the imposition, withdrawal, substitution or variation (as the case may be) of the prohibition or requirement.

(3) Where any request is made by any person to the Commission pursuant to section 208(1) for the withdrawal, substitution or variation of a prohibition or requirement, the Commission shall serve on the person—

(*a*) where it withdraws, substitutes or varies the prohibition or requirement in accordance with the request, a copy of the notice given in respect thereof and of the statement accompanying it in accordance with subsection (2); or

(*b*) where it refuses to withdraw, substitute or vary the prohibition or requirement notwithstanding the request, a notice of its refusal, together with a statement specifying the reasons for the refusal.

(4) Where—

(*a*) the Commission imposes under section 204, 205 or 206, or withdraws, substitutes or varies under section 208, a prohibition or requirement; and

(*b*) the reasons for the imposition, withdrawal, substitution or variation (as the case may be) as specified in the statement accompanying the notice given in respect thereof in accordance with subsection (2) relate specifically to matters which—

(i) refer to any person who is identified in the statement but who is not the person on whom the prohibition or requirement was imposed; and

(ii) are, in the opinion of the Commission, prejudicial to the person in any respect,

the Commission shall, as soon as reasonably practicable after the imposition, withdrawal, substitution or variation (as the case may be), take all reasonable steps to serve on the person a copy of the notice given in respect of the imposition, withdrawal, substitution or variation (as the case may be) and of the statement accompanying it in accordance with subsection (2).

(5) Nothing in subsections (3) and (4) requires a copy of any notice given in respect of the imposition, withdrawal, substitution or variation of a prohibition or requirement, or of a statement accompanying it in accordance with subsection (2), to be served on any person if the notice or statement or a copy of the notice or statement (as the case may be) has been served on the person under any other provision of this Part.

(6) The Commission shall publish in the Gazette, and may publish by such additional means as it may consider appropriate, a notice regarding the imposition under section 204, 205 or 206, or the withdrawal, substitution or variation under section 208, of a prohibition or requirement.

(7) A notice published under subsection (6) may, if the Commission considers appropriate, include a statement specifying the reasons for the imposition, withdrawal, substitution or variation (as the case may be) to which the notice relates.

(8) The Commission shall—

(*a*) before imposing under section 204, 205 or 206, or withdrawing, substituting or varying under section 208, a prohibition or requirement in respect of or with reference to a corporation that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed imposition, withdrawal, substitution or variation (as the case may be) by notice in writing; and

(*b*) where before the imposition, withdrawal, substitution or variation of a prohibition or requirement it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed imposition, withdrawal, substitution or variation (as the case may be) by notice in writing, forthwith after the imposition, withdrawal, substitution or variation (as the case may be) inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

(9) Sections 204, 205, 206 and 208, and the imposition, withdrawal, substitution or variation of a prohibition or requirement under section 204, 205, 206 or 208, do not operate so as to render an agreement unenforceable by a party to the agreement if he proves that in entering into the agreement he acted in good faith and was unaware of any notice given, served or published, whether under section 204, 205, 206 or 208 or under this section, in respect of or regarding the imposition, withdrawal, substitution or variation (as the case may be).

(10) Where by reason of the application of section 204, 205, 206 or 208 or of the giving, service or publication of any notice, whether under section 204, 205, 206 or 208 or under this section, a person rescinds an agreement, he shall restore to any other party to the agreement any money or other benefit received or obtained by him under the agreement from that party.

(11) A notice published under subsection (6) is not subsidiary legislation.

210. Cases of revocation or suspension of licensed corporations' licences

(1) Notwithstanding any other provisions of this Ordinance, but without limiting the generality of section 200(1) (whether having application with or without reference to section 146(11) or 147(9)), the revocation or suspension of the licence of a licensed corporation under any provision of this Ordinance does not affect—

(*a*) the validity of—

(i) a prohibition or requirement imposed under section 204, 205 or 206 in respect of or with reference to the corporation;

(ii) a prohibition or requirement substituting for another prohibition or requirement under section 208(1)(*b*); or

(iii) a prohibition or requirement as varied under section 208(1)(*b*),

where the imposition, substitution or variation (as the case may be) takes effect at any time before the revocation or suspension (as the case may be) takes effect;

(*b*) without limiting the generality of paragraph (*a*), any power exercisable by the Commission under section 208 in respect of any prohibition or requirement provided for in that paragraph, at the time when, or at any time after, the revocation or suspension (as the case may be) takes effect,

and references in this Division to a licensed corporation shall be construed accordingly.

(2) Notwithstanding section 200(1) (whether having application with or without reference to section 146(11) or 147(9)), where—

(*a*) the licence of a corporation is revoked or suspended under any provision of this Ordinance; and

(*b*) the Commission has imposed under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to, or substituted or varied under section 208 a prohibition or requirement imposed in respect of or with reference to, the corporation, whether before or after the revocation or suspension,

the corporation shall not, by reason of its compliance with the prohibition or requirement in force in respect of it under the circumstances described in paragraph (*b*), be regarded as having contravened section 114.

(3) For the avoidance of doubt, where the Commission has decided to revoke or suspend the licence of a licensed corporation under any provision of this Ordinance, the Commission may, at any time before the revocation or suspension (as the case may be) takes effect—

(*a*) impose under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to; or

(*b*) withdraw, substitute or vary under section 208 a prohibition or requirement imposed in respect of or with reference to,

the licensed corporation.

(4) For the avoidance of doubt, nothing in this section affects the power of the Commission to—

(*a*) impose under section 204, 205 or 206 a prohibition or requirement in respect of or with reference to; or

(*b*) withdraw, substitute or vary under section 208 a prohibition or requirement imposed in respect of or with reference to,

a licensed corporation the licence of which has been suspended under any provision of this Ordinance.

211. Application to Court of First Instance relating to non-compliance with prohibitions or requirements under section 204, 205, 206 or 208

(1) If a person fails to comply with a prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 204, 205, 206 and 208, the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and—

(*a*) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the prohibition or requirement (as the case may be), order the person to comply with the prohibition or requirement (as the case may be) within the period specified by the Court; and

(*b*) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(2) If there is a reasonable likelihood that a person will fail to comply with a prohibition or requirement in force in respect of him as a result of the exercise of any of the powers under sections 204, 205, 206 and 208, the Commission may, by originating summons or originating motion, apply to the Court of First Instance for an order that the person, and any other person who the Court is satisfied is able to procure the person to comply with the prohibition or requirement (as the case may be), to take such action or refrain from taking such action as the Court directs.

(3) An originating summons under this section shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).

Division 2—Other powers and proceedings

212. Winding-up orders and bankruptcy orders

(1) If—

(*a*) a corporation, other than an authorized financial institution, is of a class of corporations which the Court of First Instance has jurisdiction to wind up under the Companies Ordinance (Cap. 32); and

(*b*) it appears to the Commission that it is desirable in the public interest that the corporation should be wound up,

the Commission may present a petition for the corporation to be wound up under that Ordinance on the ground that it is just and equitable that the corporation should be so wound up, and that Ordinance shall apply to such petition as it applies in relation to a petition presented under that Ordinance.

(2) If—

(*a*) grounds exist for the presentation of a petition for a bankruptcy order against a licensed representative by his creditor in accordance with the Bankruptcy Ordinance (Cap. 6); and

(*b*) it appears to the Commission that it is desirable in the public interest to present a petition for a bankruptcy order against the licensed representative in accordance with that Ordinance,

the Commission may present a petition for a bankruptcy order against the licensed representative in accordance with that Ordinance, and that Ordinance shall apply to such petition as it applies in relation to a petition presented by a creditor.

(3) The Commission shall—

(*a*) before presenting a petition under subsection (1) against a corporation that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing; and

(*b*) where before the presentation of the petition it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing, forthwith after the presentation of the petition inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

213. Injunctions and other orders

(1) Where—

(*a*) a person has—

(i) contravened—

(A) any of the relevant provisions;

(B) any notice or requirement given or made under or pursuant to any of the relevant provisions;

(C) any of the terms and conditions of any licence or registration under this Ordinance; or

(D) any other condition imposed under or pursuant to any provision of this Ordinance;

(ii) aided, abetted, or otherwise assisted, counselled or procured a person to commit any such contravention;

(iii) induced, whether by threats, promises or otherwise, a person to commit any such contravention;

(iv) directly or indirectly been in any way knowingly involved in, or a party to, any such contravention; or

(v) attempted, or conspired with others, to commit any such contravention; or

(*b*) it appears, whether or not during the course or as a result of the exercise of any power under Part VIII, to the Commission that any of the matters referred to in paragraph (*a*)(i) to (v) has occurred, is occurring or may occur,

the Court of First Instance, on the application of the Commission, may, subject to subsection (4), make one or more of the orders specified in subsection (2).

(2) The orders specified for the purposes of subsection (1) are—

(*a*) an order restraining or prohibiting the occurrence or the continued occurrence of any of the matters referred to in subsection (1)(*a*)(i) to (v);

(*b*) where a person has been, or it appears that a person has been, is or may become, involved in any of the matters referred to in subsection (1)(*a*)(i) to (v), whether knowingly or otherwise, an order requiring the person to take such steps as the Court of First Instance may direct, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into;

(*c*) an order restraining or prohibiting a person from acquiring, disposing of, or otherwise dealing in, any property specified in the order;

(*d*) an order appointing a person to administer the property of another person;

(*e*) an order declaring a contract relating to any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme to be void or voidable to the extent specified in the order;

(*f*) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing any act specified in the order;

(*g*) any ancillary order which the Court of First Instance considers necessary in consequence of the making of any of the orders referred to in paragraphs (*a*) to (*f*).

(3) The Commission shall—

(*a*) before making an application pursuant to subsection (1) for an order affecting any person that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed application by notice in writing; and

(*b*) where before the making of the application it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed application by notice in writing, forthwith after the making of the application inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

(4) The Court of First Instance shall, before making an order under subsection (1), satisfy itself, so far as it can reasonably do so, that it is desirable that the order be made, and that the order will not unfairly prejudice any person.

(5) The Court of First Instance may, before making an order under subsection (1), direct that a notice of the application made in respect thereof be given to the persons it considers appropriate, or be published in the manner it considers appropriate, or both.

(6) Where the Court of First Instance considers it desirable to do so, it may grant such interim order as it considers appropriate pending the determination of an application made pursuant to subsection (1).

(7) An order may be made under subsection (1) whether or not it appears to the Court of First Instance that—

(*a*) the person against whom the order is made intends to engage again, or to continue to engage, in any of the matters referred to in subsection (1)(*a*)(i) to (v);

(*b*) the person against whom the order is made has previously engaged in any of such matters;

(*c*) there is an imminent danger of damage to any person in the event of the order not being made.

(8) Where the Court of First Instance has power to make an order against a person under subsection (1), it may, in addition to or in substitution for such order, make an order requiring the person to pay damages to any other person.

(9) The Court of First Instance may reverse, vary or discharge an order made or granted by it under subsection (1) or (6) or suspend the operation of the order.

(10) A notice published under subsection (5) is not subsidiary legislation.

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 members of the corporation or by the corporation (and, in the case of a purchase by the corporation, for the reduction accordingly of the corporation's capital), or otherwise.

(3) The Commission shall not make an application under this section unless it has first consulted—

(*a*) the Financial Secretary; and

(*b*) where the corporation in question is an authorized financial institution or a corporation which, to the knowledge of the Commission, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the Monetary Authority.

(4) Where the Court of First Instance makes an order under subsection (2)(*d*), the order shall be filed by the Court with the Registrar of Companies, as soon as reasonably practicable after it is made.

(5) Where an order under this section makes an alteration in or addition to the constitution of a company, notwithstanding any other provisions of the Companies Ordinance (Cap. 32) but subject to the provisions of the order, the company shall not have the power, without the leave of the Court of First Instance, to make any further alteration in or addition to the constitution inconsistent with the order.

(6) Where any alteration in or addition to the constitution of a company is made by an order under this section, the alteration or addition (as the case may be) has the same effect as if duly made by a resolution of the company, and the Companies Ordinance (Cap. 32) applies to the constitution as altered or added to accordingly.

(7) An office copy of an order of the Court of First Instance altering or adding to, or of the leave of the Court to alter or add to, the constitution of a company shall, within 14 days after the order is made or the leave is given, be delivered by the company to the Registrar of Companies for registration.

(8) A company which contravenes subsection (7) commits an offence and is liable on conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of $300 for every day during which the offence continues.

(9) In this section—

"controller" (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap. 155);

"relevant time" (有關時間)—

(*a*) in relation to a corporation which is listed, means any time since the formation of the corporation; or

(*b*) in relation to a corporation which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed.

PART XI

SECURITIES AND FUTURES APPEALS TRIBUNAL

Division 1—Interpretation

215. Interpretation of Part XI

In this Part, unless the context otherwise requires—

"application for review" (覆核申請) means an application made under section 217(1);

"judge" (法官) means—

(*a*) a judge or a deputy judge of the Court of First Instance;

(*b*) a former Justice of Appeal of the Court of Appeal;

(*c*) a former judge or a former deputy judge of the Court of First Instance;

"parties" (各方), in relation to a review, means—

(*a*) the relevant authority making the specified decision in question; and

(*b*) the person making the application for review in question;

"relevant authority" (有關當局)—

(*a*) in relation to a specified decision within the meaning of paragraph (*a*) of the definition of "specified decision" in this section, means the Commission;

(*b*) in relation to a specified decision within the meaning of paragraph (*b*) of the definition of "specified decision" in this section, means the Monetary Authority; or

(*c*) in relation to a specified decision within the meaning of paragraph (*c*) of the definition of "specified decision" in this section, means the Commission or the recognized investor compensation company by which the decision is made (as the case may be);

"review" (覆核) means a review of a specified decision by the Tribunal under section 218(1);

"specified decision" (指明決定) means—

(*a*) a decision of the Commission which—

(i) is made under or pursuant to any of the provisions set out in column 2 of Division 1 of Part 2 of Schedule 8; and

(ii) is within the description set out, opposite such provisions, in column 3 of Division 1 of Part 2 of Schedule 8;

(*b*) a decision of the Monetary Authority which—

(i) is made under or pursuant to any of the provisions set out in column 2 of Division 2 of Part 2 of Schedule 8; and

(ii) is within the description set out, opposite such provisions, in column 3 of Division 2 of Part 2 of Schedule 8; or

(*c*) a decision of the Commission or a recognized investor compensation company which—

(i) is made under or pursuant to any of the provisions set out in column 2 of Division 3 of Part 2 of Schedule 8; and

(ii) is within the description set out, opposite such provisions, in column 3 of Division 3 of Part 2 of Schedule 8;

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

Division 2—Securities and Futures Appeals Tribunal

216. Securities and Futures Appeals Tribunal

(1) There is established a Tribunal to be known as the Securities and Futures Appeals Tribunal which shall have jurisdiction to review specified decisions, and to hear and determine any question or issue arising out of or in connection with any review, in accordance with this Part and Schedule 8.

(2) Except as otherwise provided in this Part or in Schedule 8, the Tribunal—

(*a*) shall consist of a chairman and 2 other members; and

(*b*) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the 2 other members of the Tribunal shall not be public officers.

(4) Part 1 of Schedule 8 shall have effect in relation to the appointment of members of the Tribunal, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

(5) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any reviews, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal.

(6) With the exception of the chairman of the Tribunal who is a judge within the meaning of paragraph (*a*) of the definition of "judge" in section 215, a member of the Tribunal may be paid, as a fee for his services, such amount as the Financial Secretary considers appropriate, and that amount shall be a charge on the general revenue.

(7) Where a person who is a judge within the meaning of paragraph (*a*) of the definition of "judge" in section 215 is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects—

(*a*) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;

(*b*) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;

(*c*) the terms and conditions to which the person is subject as a holder of that office.

217. Applications for review of specified decisions

(1) Subject to subsections (2) and (3), a person aggrieved by a specified decision of the relevant authority made in respect of him may, by notice in writing given to the Tribunal, apply to the Tribunal for a review of the decision.

(2) A notice given to the Tribunal under subsection (1) shall set out the grounds for the application to which the notice relates.

(3) An application for review of a specified decision of the relevant authority shall be made within 21 days after—

(*a*) subject to paragraph (*b*)—

(i) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(ii) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made;

(*b*) where the decision is a specified decision which is described in column 2 of Division 1 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, a notice in respect of the decision has been given to the person in respect of whom it is made.

(4) Notwithstanding subsection (3), the Tribunal, upon application in writing by any person, may, subject to subsection (5), by order extend the time within which an application for review of a specified decision of the relevant authority shall be made under subsection (3), whereupon the time within which such an application shall be made under subsection (3) shall be extended accordingly.

(5) The Tribunal shall not grant an extension under subsection (4) unless—

(*a*) the person who has applied for the grant of the extension pursuant to that subsection and the relevant authority have been given a reasonable opportunity of being heard; and

(*b*) it is satisfied that there is a good cause for granting the extension.

(6) Where the Tribunal receives a notice under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the relevant authority.

218. Proceedings before Tribunal

(1) After an application for review has been made, the Tribunal shall review the specified decision to which the application relates.

(2) Following the review of a specified decision under subsection (1), the Tribunal may—

(*a*) confirm, vary or set aside the decision, and, where the decision is set aside, substitute for the decision any other decision which the Tribunal considers appropriate;

(*b*) remit the matter in question to the relevant authority with the directions it considers appropriate, which may include a direction to the relevant authority to make a decision afresh in respect of any matter specified by the Tribunal.

(3) Where the Tribunal varies, or substitutes any decision for, a specified decision under subsection (2)(*a*), the decision as varied or the decision substituting for the specified decision (as the case may be) may be any decision (whether more or less onerous) that the relevant authority had power to make in respect of the person making the application for review in question, whether or not under the same provision as that under which the specified decision has been made.

(4) Without limiting the generality of subsections (2)(*a*) and (3) but subject to subsection (6)—

(*a*) where the specified decision in question is a specified decision described in column 2 of Division 2 of Part 3 of Schedule 8, the decision that the Tribunal may substitute under subsection (2)(*a*) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(*a*) for the specified decision) any decision that the Monetary Authority had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division; and

(*b*) where the specified decision in question is a specified decision described in column 2 of Division 3 of Part 3 of Schedule 8, the decision that the Tribunal may substitute under subsection (2)(*a*) for the specified decision may also include (whether or not in addition to the decision that the Tribunal may, apart from this subsection, substitute under subsection (2)(*a*) for the specified decision) any decision that the Commission had power to make in respect of the person making the application for review in question under or pursuant to any of the provisions set out, opposite such description of the specified decision, in column 3 of that Division.

(5) Notwithstanding anything in this section, the Tribunal shall not determine a review without first giving the parties to the review a reasonable opportunity of being heard.

(6) Without limiting the generality of subsection (5), the Tribunal shall not exercise any power pursuant to subsection (4)(*a*) or (*b*) without first giving a reasonable opportunity of being heard to—

(*a*) in the case of subsection (4)(*a*), the Monetary Authority; or

(*b*) in the case of subsection (4)(*b*), the Commission.

(7) Subject to section 221(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

219. Powers of Tribunal

(1) Subject to the provisions of Part 1 of Schedule 8 and any rules made by the Chief Justice under section 233, the Tribunal, for the purposes of a review, may, on its own motion or on the application of any of the parties to the review—

(*a*) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

(*b*) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting and to give evidence and produce any article, record or document in his possession relating to the subject matter of the review;

(*c*) administer oaths;

(*d*) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the review;

(*e*) order a witness to provide evidence in a truthful manner for the purposes of the review by affidavit;

(*f*) order a person not to publish or otherwise disclose any material the Tribunal receives;

(*g*) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, which is held in private;

(*h*) determine the manner in which any material referred to in paragraph (*a*) is received;

(*i*) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;

(*j*) determine the procedure to be followed in the review;

(*k*) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the carrying out of its functions.

(2) A person commits an offence if he, without reasonable excuse—

(*a*) fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);

(*b*) disrupts or otherwise misbehaves during any sitting of the Tribunal;

(*c*) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;

(*d*) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of a review;

(*e*) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or

(*f*) threatens, insults or causes any loss to be suffered by any member of the Tribunal at any time on account of the performance of his functions in that capacity.

(3) A person who commits an offence under subsection (2) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

220. Use of incriminating evidence required by Tribunal

Notwithstanding any other provisions of this Ordinance, where the Tribunal—

(*a*) requires a person to give evidence under section 219(1)(*b*);

(*b*) requires a person to answer any question under section 219(1)(*d*);

(*c*) orders a person to provide evidence under section 219(1)(*e*); or

(*d*) otherwise orders or requires a person to provide any information under section 219(1)(*k*),

and the evidence, answer or information (as the case may be) might tend to incriminate the person, then the requirement or order as well as the evidence, the question and answer, or the information (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 219(2)(*a*), 253(2)(*a*) or 254(6)(*a*) or (*b*), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the evidence, answer or information (as the case may be).

221. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, commits any conduct falling within the description of section 219(2)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section and any other provisions of this Ordinance—

(*a*) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if—

(i) criminal proceedings have previously been instituted against the person under section 219(2) in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(*b*) no criminal proceedings may be instituted against any person under section 219(2) in respect of any conduct if—

(i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and

(ii) (A) proceedings arising from the exercise of such power remain pending; or

(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

222. Privileged information

Nothing in this Part and Schedule 8 requires an authorized financial institution, acting as the banker or financial adviser of a person who makes an application for review, to disclose information as to the affairs of any of its customers other than that person.

223. Costs

(1) The Tribunal may, in relation to a review, by order award to—

(*a*) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the review;

(*b*) any party to the review,

such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the party (as the case may be) in relation to the review and the application for review in question.

(2) Any costs awarded under subsection (1) shall be paid by and recoverable as a civil debt from—

(*a*) where the costs are awarded to any person under subsection (1)(*a*), such of the parties to the review in question as the Tribunal considers appropriate; or

(*b*) where the costs are awarded to any party to the review under subsection (1)(*b*), the other party to the review.

(3) Subject to any rules made by the Chief Justice under section 233, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

224. Notification of Tribunal determinations

(1) The Tribunal shall, as soon as reasonably practicable after the conclusion of a review, deliver—

(*a*) its determination in respect of the review, and the reasons for making the determination; and

(*b*) any order made under section 223 in relation to the review, and the reasons for making the order.

(2) Where any sitting of the Tribunal relating to a review, or any part thereof, is held in private, the Tribunal may by order prohibit the publication or disclosure of any determination or order, or any reasons for any determination or order, referred to in subsection (1)(*a*) or (*b*), or any part thereof.

(3) A person commits an offence if he, without reasonable excuse, fails to comply with an order of the Tribunal made pursuant to subsection (2) and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

225. Form and proof of orders of Tribunal

(1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

226. Orders of Tribunal may be registered in Court of First Instance

The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 233, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

227. Applications for stay of execution of specified decisions

(1) Subject to subsections (2) and (3), the making of an application for review does not by itself operate as a stay of execution of the specified decision to which the application relates.

(2) A person who has made an application for review or an application pursuant to section 217(4) may, at any time before the review or the application (as the case may be) is determined by the Tribunal, apply to the Tribunal for a stay of execution of the specified decision to which the application relates.

(3) On an application made under subsection (2), the Tribunal shall as soon as reasonably practicable conduct a hearing to determine the application, and may, where it considers appropriate, by order grant a stay of execution of the specified decision to which the application relates, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

228. Applications for stay of execution of decisions of Tribunal

A party to a review may, at any time after the determination of the review, apply to the Tribunal for a stay of execution of a decision of the Tribunal relating to the review, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

Division 3—Appeals

229. Appeal to Court of Appeal

(1) A party to a review who is dissatisfied with a decision of the Tribunal relating to the review may appeal to the Court of Appeal against the decision on a point of law.

(2) In an appeal under subsection (1), the Court of Appeal may—

(*a*) allow the appeal;

(*b*) dismiss the appeal;

(*c*) vary or set aside the decision in question, and, where the decision is set aside, substitute for the decision any other decision it considers appropriate;

(*d*) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the review in question afresh for the purpose of determining any question specified by the Court of Appeal.

(3) Where the Court of Appeal varies, or substitutes any other decision for, a decision under subsection (2)(*c*), the decision as varied or the other decision substituting for the decision (as the case may be) may be any decision (whether more or less onerous) that the Tribunal had power to make in respect of the review in question, whether or not under the same provision as that under which the decision has been made.

(4) In an appeal under subsection (1), the Court of Appeal may make such order as to costs as it considers appropriate.

230. No stay of execution on appeal

Without prejudice to section 228, the lodging of an appeal under section 229 does not by itself operate as a stay of execution of a decision of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

231. No other right of appeal

Subject to section 229 and section 50 of the High Court Ordinance (Cap. 4), any decision of the Tribunal shall be final and shall not be subject to appeal.

Division 4—Miscellaneous

232. Time when specified decisions to take effect

(1) Notwithstanding subsections (2) and (3) and any other provisions of this or any other Ordinance, no specified decision, other than a specified decision which is described in column 2 of Division 4 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, takes effect at any time before—

(*a*) where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement; or

(*b*) where there is no such requirement, a notice in writing in respect of the decision has been served on the person in respect of whom it is made.

(2) A specified decision, other than a specified decision which is described in column 2 of Division 5 of Part 3 of Schedule 8 and to which the provision set out, opposite such description of the specified decision, in column 3 of that Division applies, takes effect—

(*a*) where, prior to the expiration of the period of 21 days specified in section 217(3), the person in respect of whom the decision is made notifies the relevant authority that he will not make an application for review of the decision, at the time when he so notifies the relevant authority;

(*b*) subject to paragraph (*a*), where the person does not make an application for review of the decision within the period of 21 days specified in section 217(3), at the time when the period so specified expires; or

(*c*) where the person makes an application for review of the decision within the period of 21 days specified in section 217(3)—

(i) where the decision is confirmed by the Tribunal, at the time when the decision is so confirmed;

(ii) where the decision is varied, or substituted by another decision, by the Tribunal, at the time when the decision is so varied or substituted, subject however to the terms of the variation or substitution; or

(iii) where the application is withdrawn, at the time when it is so withdrawn.

(3) Notwithstanding subsection (2) and any other provisions of this or any other Ordinance, but subject to subsection (1), the relevant authority may, where it considers appropriate in the interest of the investing public or in the public interest to do so, specify in the notice served in respect of a specified decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

(4) Nothing in this section affects the power of the Tribunal to grant a stay of execution of a specified decision under section 227.

233. Rules by Chief Justice

The Chief Justice may make rules—

(*a*) providing for the award of costs under section 223 and the taxation of those costs;

(*b*) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 226;

(*c*) regulating the procedure for the hearing of appeals under section 229;

(*d*) requiring the payment of the fees specified in the rules for any matter relating to applications for review;

(*e*) providing for matters of procedure or other matters relating to applications for review or reviews, which are not provided for in this Part or in Part 1 of Schedule 8;

(*f*) providing for the issue or service of any document (however described) for the purposes of this Part or Part 1 of Schedule 8;

(*g*) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

234. Amendment of Parts 2 and 3 of Schedule 8

The Chief Executive in Council may, by order published in the Gazette, amend Parts 2 and 3 of Schedule 8.

PART XII

INVESTOR COMPENSATION

235. Interpretation of Part XII

In this Part, unless the context otherwise requires—

"compensation" (賠償) means compensation payable out of the compensation fund under rules made under section 244;

"default" (違責) means a default prescribed by rules made under section 244;

"Futures Exchange Compensation Fund" (期交所賠償基金) means the compensation fund established under Part VIII of the repealed Commodities Trading Ordinance;

"Unified Exchange Compensation Fund" (聯交所賠償基金) means the compensation fund established under Part X of the repealed Securities Ordinance.

236. Establishment of compensation fund

(1) The Commission shall establish and maintain a compensation fund, to be known as the Investor Compensation Fund in English and "投資者賠償基金" in Chinese, for the purpose of providing, in accordance with rules made under section 244, a measure of compensation to clients of a specified person who sustain a loss by reason of a default committed by the specified person or any of his associated persons in connection with specified securities or futures contracts.

(2) In this section—

"associated person" (相聯者), in relation to a specified person, means—

(*a*) a person employed or otherwise engaged by the specified person;

(*b*) a person ("first-mentioned person") who may under section 164 receive or hold client assets of the specified person, or an employee of the first-mentioned person; or

(*c*) such other persons as may be prescribed by rules made under section 244;

"specified person" (指明人士) means—

(*a*) an intermediary licensed or registered for Type 1 or Type 2 regulated activity;

(*b*) an intermediary licensed for Type 8 regulated activity; or

(*c*) such other person as may be prescribed by rules made under section 244;

"specified securities or futures contracts" (指明證券或期貨合約) means any securities or futures contracts listed or traded or to be listed or traded on—

(*a*) a recognized stock market or recognized futures market; or

(*b*) such other markets as may be prescribed by rules made under section 244.

237. Money constituting the compensation fund

(1) The compensation fund shall consist of—

(*a*) all amounts paid to the Commission or a recognized investor compensation company in accordance with rules made under this Part;

(*b*) all amounts paid by the Commission into the compensation fund under subsection (2)(*b*);

(*c*) all amounts paid into the compensation fund under sections 74(2) or (9)(*b*), 75(2) or (9)(*b*) and 76(11) of Schedule 10;

(*d*) all assets (whether in cash or otherwise) recovered by the Commission or a recognized investor compensation company in exercise of a right of action conferred by section 243 or 87;

(*e*) all amounts borrowed under subsection (2)(*a*);

(*f*) any return or profit received on an investment made under section 241;

(*g*) all other amounts lawfully paid into the compensation fund.

(2) With the consent in writing of the Financial Secretary, the Commission may—

(*a*) for the purpose of the compensation fund, borrow from any authorized financial institution on such terms and at such rates of interest as it considers acceptable and charge any investments acquired under section 241 by way of security for any such loan;

(*b*) pay into the compensation fund from its reserves such amount of money as it considers appropriate.

238. Management of compensation fund

(1) Subject to this Part, the Commission shall be responsible for the management and administration of the compensation fund, including the determination of a claim for compensation.

(2) The Commission may realize any of the non-cash assets of the compensation fund at such times as it considers appropriate and the proceeds of realization shall become part of the compensation fund.

239. Money to be kept in account

The Commission shall open at one or more authorized financial institutions one or more accounts and shall, pending their application in accordance with this Part, pay into or transfer to such account or accounts all amounts forming part of the compensation fund.

240. Accounts of compensation fund

(1) The Commission shall keep proper accounts of the compensation fund.

(2) The Commission may, if it considers it necessary to do so—

(*a*) maintain separate accounts in respect of the amounts that are respectively paid into the compensation fund under sections 74, 75 and 76 of Schedule 10;

(*b*) maintain separate accounts in respect of the compensation fund—

(i) for different—

(A) recognized exchange companies;

(B) markets operated by recognized exchange companies;

(C) persons providing automated trading services; or

(D) classes of investors; or

(ii) for the better and more effectual management or administration of the fund;

(*c*) maintain sub-accounts in respect of the separate accounts referred to in paragraph (*a*) or (*b*) in such manner as it considers appropriate.

(3) The Commission shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare—

(*a*) a financial statement made up to (and including) the last day of that year, in respect of the accounts of the compensation fund; and

(*b*) in the case where separate accounts are maintained under subsection (2)(*a*) or (*b*) or sub-accounts are maintained under subsection (2)(*c*)—

(i) a consolidated financial statement made up to (and including) the last day of that year, in respect of the separate accounts or sub-accounts (as the case may be); and

(ii) a separate financial statement made up to (and including) the last day of that year, in respect of each separate account or sub-account (as the case may be).

(4) A financial statement prepared under subsection (3) shall be signed by the chairman and at least one non-executive director of the Commission.

(5) The Commission shall appoint an auditor to audit the compensation fund.

(6) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each financial statement prepared under subsection (3) and shall submit the report to the Commission.

(7) An auditor's report prepared under subsection (6) shall contain a statement made by the auditor as to whether in his opinion the financial statement gives a true and fair view of the matters to which the statement relates.

(8) The auditor appointed under this section may call for and inspect such books and records of the Commission or any recognized investor compensation company as he may require in order to perform his functions under this section.

(9) Not later than 4 months after the end of each financial year the Commission shall cause—

(*a*) a copy of—

(i) each audited financial statement in respect of that financial year; and

(ii) the auditor's report on each such financial statement,

to be sent to the Financial Secretary; and

(*b*) a copy of each such audited financial statement to be published in the Gazette.

(10) The Financial Secretary shall cause to be laid on the table of the Legislative Council any financial statement and report sent to him under subsection (9)(*a*).

(11) In this section, "financial statement" (財務報表) means a statement which contains all of the following documents—

(*a*) a revenue and expenditure account;

(*b*) a balance sheet; and

(*c*) a cash flow statement.

241. Investment of moneys

(1) The Commission may invest any money which forms part of the compensation fund and is not immediately required for any other purposes provided for by this Part—

(*a*) on fixed deposit with an authorized financial institution; or

(*b*) in securities in which trustees are authorized by law to invest trust funds.

(2) Any return or profit on an investment of moneys by the Commission under subsection (1) shall be added to the compensation fund.

(3) A fixed deposit receipt and other document evidencing the investment of moneys under subsection (1) may be kept in the office of the Commission or deposited for safe keeping with an authorized financial institution.

242. Payments out of the compensation fund

(1) Subject to this Part, there shall from time to time be paid out of the compensation fund as required and in such order as the Commission may determine one or more of the following amounts—

(*a*) all legal and other expenses incurred—

(i) in investigating or defending claims for compensation made under rules made under this Part;

(ii) in relation to the compensation fund;

(iii) in the exercise by the Commission of the rights, powers, and authorities vested in it by this Part or rules made under this Part in relation to the compensation fund;

(iv) in the performance by a recognized investor compensation company of a function transferred to it under section 80 or provided for under rules made under this Part;

(*b*) the expenses incurred in the management or administration of the compensation fund;

(*c*) the expenses incurred in obtaining insurance, surety, guarantee or other security, or in making any financial arrangement, in respect of claims for compensation made under rules made under this Part;

(*d*) interest on any sum borrowed under section 237(2)(*a*);

(*e*) the amounts of claims for compensation, costs of and incidental to the making and proving of such claims and interest on compensation, as allowed under rules made under this Part;

(*f*) all other money payable out of the compensation fund in accordance with rules made under this Part.

(2) Where the Commission considers that the amount at credit in either the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund is insufficient to enable—

(*a*) the payment of the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be); and

(*b*) the repayment of the amounts deposited in cash with the Commission under section 104 of the repealed Securities Ordinance or section 82 of the repealed Commodities Trading Ordinance (as the case may be),

then the Commission shall, subject to subsection (3), pay into the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be) out of the compensation fund such amount as it considers appropriate.

(3) The aggregate amounts paid under subsection (2) to the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund shall not exceed the respective aggregate amounts paid into the compensation fund under section 74(2) or 75(2) of Schedule 10 (as the case may be).

243. Subrogation of the Commission to rights, etc. of claimant on payment from compensation fund

(1) Where the Commission makes any payment out of the compensation fund in respect of any claim for compensation made under rules made under this Part—

(*a*) the Commission shall be subrogated, to the extent which that payment bears to the loss sustained (without taking into account any compensation paid or payable out of the compensation fund for the loss) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss; and

(*b*) the respective rights of the claimant and the Commission in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss—

(i) any sum out of the assets of the person concerned who is in default; or

(ii) any property held on trust by that person for the claimant,

shall rank equally.

(2) All assets (whether in cash or otherwise) recovered by the Commission under subsection (1) shall become part of the compensation fund.

244. Rules by Chief Executive in Council and Commission

(1) The Chief Executive in Council may make rules for the following matters—

(*a*) the means of funding the compensation fund;

(*b*) the maximum amount of compensation that may be paid to a person making a claim for compensation;

(*c*) the maintenance of sub-accounts under section 240(2)(*c*), payments to be made from such sub-accounts and the apportionment between different sub-accounts of expenses incurred in relation to the compensation fund and of interest earned on the fund;

(*d*) providing for the better carrying out of the objects and purposes of this Part.

(2) Without prejudice to section 398(7) and (8), the Commission may, subject to subsection (3), make rules which are not inconsistent with rules made by the Chief Executive in Council under subsection (1), for the following matters—

(*a*) the circumstances in which a person is entitled to claim compensation, including any matter referred to in section 235 or 236(2) which may be prescribed by rules made under this section;

(*b*) the manner in which the claim for compensation is to be made;

(*c*) the payment of costs of and incidental to the making and proving of a claim for compensation;

(*d*) the payment of interest on the amount of compensation;

(*e*) the information or documents to be supplied to the Commission for the purpose of enabling the Commission to determine the application;

(*f*) the persons or classes of persons who are not entitled to make a claim for compensation;

(*g*) the circumstances and manner in which the Commission may call for claims for compensation;

(*h*) the determination and payment of and the procedures for dealing with a claim for compensation;

(*i*) enabling the Commission—

(i) to submit a claim for compensation as a proof of debt in any winding-up or bankruptcy proceedings;

(ii) to pay compensation in the form of securities and to purchase securities for that purpose; and

(iii) to require the assignment of a claimant's rights of action as a pre-condition for the payment of compensation;

(*j*) the functions of a recognized investor compensation company in relation to the management or administration of the compensation fund;

(*k*) the formulation of proper accounting and auditing systems with respect to the management or administration of the compensation fund for which a recognized investor compensation company may be responsible upon a transfer of a function to it under section 80;

(*l*) arrangements that are to be made when a recognized investor compensation company is wound up;

(*m*) the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement as may be necessary or appropriate for the better carrying out of the objects and purposes of this Part;

(*n*) providing for the better carrying out of the objects and purposes of this Part.

(3) The Commission shall consult the Financial Secretary before making rules under subsection (2) for the matters specified in paragraphs (*a*) and (*f*) of that subsection.

(4) In making any rules under subsection (1)(*a*), the Chief Executive in Council shall ensure that the funds of the compensation fund shall, so far as reasonably practicable, be borne by participants or any particular class of participants in the securities and futures market.

PART XIII

MARKET MISCONDUCT TRIBUNAL

Division 1—Interpretation

245. Interpretation of Part XIII

(1) In this Part, unless the context otherwise requires—

"associate" (有聯繫者), in relation to a person, means—

(*a*) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;

(*b*) any corporation of which the person is a director;

(*c*) any employee or partner of the person;

(*d*) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;

(*e*) without limiting the circumstances in which paragraphs (*a*) to (*d*) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement—

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

"controller" (控制人), in relation to a corporation, means any person—

(*a*) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act; or

(*b*) who, either alone or with any of his associates, is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary;

"insider dealing" (內幕交易) means insider dealing within the meaning of section 270;

"judge" (法官) means—

(*a*) a judge or a deputy judge of the Court of First Instance;

(*b*) a former Justice of Appeal of the Court of Appeal;

(*c*) a former judge or a former deputy judge of the Court of First Instance;

"market misconduct" (市場失當行為) means—

(*a*) insider dealing;

(*b*) false trading within the meaning of section 274;

(*c*) price rigging within the meaning of section 275;

(*d*) disclosure of information about prohibited transactions within the meaning of section 276;

(*e*) disclosure of false or misleading information inducing transactions within the meaning of section 277; or

(*f*) stock market manipulation within the meaning of section 278,

and includes attempting to engage in, or assisting, counselling or procuring another person to engage in, any of the conduct referred to in paragraphs (*a*) to (*f*);

"Presenting Officer" (提控官), in relation to any proceedings instituted under section 252, means the person appointed under section 251(4) to conduct the proceedings;

"relevant overseas market" (有關境外市場)—

(*a*) in relation to securities, means a stock market outside Hong Kong; or

(*b*) in relation to futures contracts, means a futures market outside Hong Kong;

"relevant recognized market" (有關認可市場)—

(*a*) in relation to securities, means a recognized stock market; or

(*b*) in relation to futures contracts, means a recognized futures market;

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

(2) In this subsection and sections 246 to 249 and Division 4, unless the context otherwise requires—

"derivatives" (衍生工具), in relation to listed securities, means—

(*a*) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;

(*b*) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—

(i) the listed securities; or

(ii) any rights, options or interests referred to in paragraph (*a*);

(*c*) rights, options or interests (whether described as units or otherwise) in, or in respect of—

(i) any rights, options or interests referred to in paragraph (*a*); or

(ii) any contracts referred to in paragraph (*b*);

(*d*) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (*a*), (*b*) or (*c*), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—

(i) the listed securities; or

(ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of who issued or made them;

"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

"listed corporation" (上市法團) means a corporation which has issued securities that are, at the time of any insider dealing in relation to the corporation, listed;

"listed securities" (上市證券) means—

(*a*) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are listed;

(*b*) securities which, at the time of any insider dealing in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;

(*c*) securities which, at the time of any insider dealing in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

"relevant information" (有關消息), in relation to a corporation, means specific information about—

(*a*) the corporation;

(*b*) a shareholder or officer of the corporation; or

(*c*) the listed securities of the corporation or their derivatives,

which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities;

"securities" (證券) means—

(*a*) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(*b*) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(*c*) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(*d*) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(*e*) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 392 as being regarded as securities in accordance with the terms of the notice.

(3) For the purposes of the definition of "controller" in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"), then the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.

(4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

246. Interest in securities (insider dealing)

For the purposes of sections 245(2) and 247 to 249 and Division 4, a reference to an interest in securities shall be construed as including an interest of any kind whatsoever in the securities, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

247. Connected with a corporation (insider dealing)

(1) For the purposes of Division 4, a person shall be regarded as connected with a corporation if, being an individual—

(*a*) he is a director or employee of the corporation or a related corporation of the corporation;

(*b*) he is a substantial shareholder of the corporation or a related corporation of the corporation;

(*c*) he occupies a position which may reasonably be expected to give him access to relevant information in relation to the corporation by reason of—

(i) a professional or business relationship existing between—

(A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and

(B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or

(ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;

(*d*) he has access to relevant information in relation to the corporation and—

(i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (*a*), (*b*) or (*c*); and

(ii) the relevant information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or

(*e*) he was, at any time within the 6 months preceding any insider dealing in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (*a*), (*b*), (*c*) or (*d*).

(2) For the purposes of Division 4, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).

(3) In subsection (1), notwithstanding any other provisions of this Ordinance, "substantial shareholder" (大股東), in relation to a corporation, means a person who has an interest in the relevant share capital of the corporation, the nominal value of which is equal to or more than 5% of the nominal value of the relevant share capital of the corporation.

248. Connected with a corporation—possession of relevant information obtained in privileged capacity (insider dealing)

(1) For the purposes of Division 4, where a public officer or a specified person in that capacity receives relevant information in relation to a corporation, he shall be regarded as a person connected with the corporation.

(2) In subsection (1), a reference to a specified person means a person who is—

(*a*) a member of the Executive Council;

(*b*) a member of the Legislative Council;

(*c*) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;

(*d*) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;

(*e*) an exchange participant;

(*f*) an officer or employee of an exchange participant;

(*g*) an officer or employee of a body corporate incorporated by an Ordinance; or

(*h*) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),

whether, in the case of paragraph (*a*), (*b*), (*c*), (*d*), (*f*), (*g*) or (*h*), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.

(3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(*h*).

249. Dealing in listed securities or their derivatives (insider dealing)

For the purposes of section 245(2) and Division 4, a person shall be regarded as dealing in listed securities or their derivatives if, whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives.

250. Interest in securities and beneficial ownership, etc. (market misconduct other than insider dealing)

(1) For the purposes of Division 5, a person shall be regarded as having an interest in securities if he has authority, whether formal or informal and whether express or implied, to dispose of or to exercise control over the disposal of the securities or, in the case of options in respect of the securities, to exercise the options.

(2) It is immaterial that the authority of a person referred to in subsection (1)—

(*a*) is, or is capable of being made, subject to restraint or restriction; or

(*b*) is exercisable jointly with another person.

(3) A person shall be regarded as having the authority referred to in subsection (1) where a corporation has the authority referred to in that subsection and—

(*a*) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions or instructions of the person in relation to the securities in question; or

(*b*) the person, or an associate of the person, is a controller of the corporation.

(4) Where a person—

(*a*) has entered into a contract to purchase securities;

(*b*) has a right to have securities transferred to him or to his order whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(*c*) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,

the person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be regarded as having the authority referred to in subsection (1).

(5) Where securities are subject to a trust, and a person who is not a trustee in those securities has an interest in those securities by virtue of subsection (4)(*b*), the interest of a trustee in those securities shall be disregarded for the purpose of determining whether the person has an interest in securities for the purposes of Division 5.

(6) The Commission may make rules to prescribe that an interest, being an interest of a person or of the persons included in a class of persons, shall be disregarded for the purpose of determining whether the person or the persons has or have an interest in securities for the purposes of Division 5.

(7) For the purposes of Division 5, a sale or purchase of securities does not involve a change in their beneficial ownership if a person who had an interest in the securities before the sale or purchase, or an associate of the person, has an interest in the securities after the sale or purchase.

Division 2—Market Misconduct Tribunal

251. Market Misconduct Tribunal

(1) There is established a Tribunal to be known as the Market Misconduct Tribunal which shall have jurisdiction to hear and determine in accordance with this Part and Schedule 9 any question or issue arising out of or in connection with the proceedings instituted under section 252.

(2) Except as otherwise provided in this Part or in Schedule 9, the Tribunal—

(*a*) shall consist of a chairman and 2 other members; and

(*b*) shall be presided over by the chairman who shall sit with the 2 other members.

(3) The chairman of the Tribunal shall be a judge and the 2 other members of the Tribunal shall not be public officers.

(4) The Secretary for Justice shall, in respect of any proceedings instituted under section 252, appoint a person as the Presenting Officer to conduct the proceedings, and may appoint one or more persons to assist the Presenting Officer.

(5) A Presenting Officer shall be a legal officer, counsel or solicitor.

(6) Schedule 9 shall have effect in relation to the appointment of members of the Tribunal, the appointment and the role of Presenting Officers and of persons appointed to assist Presenting Officers, and to the proceedings and sittings of, and procedural and other matters concerning, the Tribunal.

(7) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any proceedings instituted under section 252, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal.

(8) There may be paid to—

(*a*) a member of the Tribunal (other than the chairman of the Tribunal who is a judge within the meaning of paragraph (*a*) of the definition of "judge" in section 245(1));

(*b*) a Presenting Officer (other than a Presenting Officer who is a legal officer);

(*c*) any person appointed to assist a Presenting Officer (other than any such person who is a legal officer or a public officer),

such amount, as a fee for his services, as the Financial Secretary considers appropriate, and that amount shall be a charge on the general revenue.

(9) Where a person who is a judge within the meaning of paragraph (*a*) of the definition of "judge" in section 245(1) is appointed as the chairman of the Tribunal, neither the appointment nor the service or removal of the person as the chairman affects—

(*a*) the tenure of office of, and the exercise of powers by, the person as a judge within the meaning of that paragraph;

(*b*) the person's rank, title, status, precedence, salary or other rights or privileges as a holder of that office;

(*c*) the terms and conditions to which the person is subject as a holder of that office.

252. Market misconduct proceedings

(1) If it appears to the Financial Secretary, whether or not following any report by the Commission under subsection (8) or any notification by the Secretary for Justice under subsection (9), that market misconduct has or may have taken place, he may institute proceedings before the Tribunal concerning the matter.

(2) The Financial Secretary shall institute proceedings before the Tribunal by giving the Tribunal a notice in writing which shall contain a statement specifying such matters as are prescribed in Schedule 9.

(3) Without limiting the generality of section 251(1), the object of the proceedings instituted under subsection (1) is for the Tribunal to determine—

(*a*) whether any market misconduct has taken place;

(*b*) the identity of any person who has engaged in the market misconduct; and

(*c*) the amount of any profit gained or loss avoided as a result of the market misconduct.

(4) Subject to subsections (5) and (6), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection (3)(*b*) if—

(*a*) he has perpetrated any conduct which constitutes the market misconduct;

(*b*) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct—

(i) the Tribunal identifies another person which is a corporation as having engaged in market misconduct pursuant to subsection (3)(*b*); and

(ii) the market misconduct occurred with his consent or connivance as an officer of the corporation; or

(*c*) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct—

(i) the Tribunal identifies any other person as having engaged in market misconduct pursuant to subsection (3)(*b*); and

(ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.

(5) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(*b*) if it is provided under any provision of this Part that the person shall not by reason of that market misconduct be regarded as having engaged in market misconduct.

(6) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(*b*) without first giving the person a reasonable opportunity of being heard.

(7) Subject to section 261(3), the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.

(8) The Commission may report to the Financial Secretary the occurrence of any event which the Commission reasonably believes or suspects constitutes market misconduct.

(9) The Secretary for Justice may notify the Financial Secretary of the occurrence of any event which the Secretary for Justice reasonably believes or suspects constitutes market misconduct.

(10) Nothing in subsection (1) prevents the Financial Secretary from referring any matter to the Secretary for Justice, if it appears to the Financial Secretary, whether or not following any report by the Commission under subsection (8) or any notification by the Secretary for Justice under subsection (9), that an offence under Part XIV has or may have been committed.

253. Powers of Tribunal

(1) Subject to the provisions of Schedule 9 and any rules made by the Chief Justice under section 269, the Tribunal, for the purposes of any proceedings instituted under section 252, may, on its own motion or on the application of any party before it—

(*a*) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

(*b*) by notice in writing signed by the chairman of the Tribunal require a person to attend before it at any sitting and to give evidence and produce any article, record or document in his possession relating to the subject matter of the proceedings;

(*c*) administer oaths;

(*d*) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purposes of the proceedings;

(*e*) order a witness to provide evidence in a truthful manner for the purposes of the proceedings by affidavit;

(*f*) order a person not to publish or otherwise disclose any material the Tribunal receives;

(*g*) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, which is held in private;

(*h*) determine the manner in which any material referred to in paragraph (*a*) is received;

(*i*) stay any of the proceedings on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;

(*j*) determine the procedure to be followed in the proceedings;

(*k*) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the proceedings or the carrying out of its functions.

(2) A person commits an offence if he, without reasonable excuse—

(*a*) fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);

(*b*) disrupts or otherwise misbehaves during any sitting of the Tribunal;

(*c*) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;

(*d*) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purposes of any proceedings instituted under section 252;

(*e*) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or

(*f*) threatens, insults or causes any loss to be suffered by any member of the Tribunal, any Presenting Officer or any person assisting a Presenting Officer at any time on account of the performance of his functions in that capacity.

(3) A person who commits an offence under subsection (2) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

254. Further powers of Tribunal concerning evidence

(1) For the purposes of any proceedings instituted under section 252, the Tribunal may, on its own motion or on the application of the Presenting Officer appointed for the proceedings, authorize the Commission in writing to exercise any of the powers specified in subsection (2) and to provide the Tribunal with any of the records, documents and information obtained as a result of the exercise of the powers.

(2) The powers specified for the purposes of subsection (1) are the powers—

(*a*) to inspect any record or document of any person where the Tribunal has reasonable grounds to believe or suspect that the record or document may contain information relevant to the proceedings;

(*b*) to make copies or otherwise record details of any record or document referred to in paragraph (*a*) and, subject to subsection (3), to take possession of the record or document for the period (not exceeding 2 days) necessary to do so;

(*c*) to require any person to give, within a specified time, any explanation or particulars in respect of any record or document referred to in paragraph (*a*) (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it);

(*d*) to require any person to give, within a specified time, information as to whether or not there is on any premises any record or document which may contain information relevant to the proceedings, and particulars as to the premises or the record or document;

(*e*) to require that any information, explanation or particulars given pursuant to this section be verified by statutory declaration and to take the declaration;

(*f*) to take a statement from a person whom the Tribunal has reasonable grounds to believe or suspect is able to provide information which is relevant for the purposes of the proceedings.

(3) The Commission shall, subject to any reasonable conditions it imposes as to security or otherwise, permit a person who would be entitled to inspect any record or document had the Commission not taken possession of it under subsection (2)(*b*), to inspect it and to make copies or otherwise record details of it at all reasonable times.

(4) A person shall produce a record or document in his possession to the Commission if the Commission seeks to inspect it, or exercise any other powers in respect of it, under this section.

(5) A person who is required under this section to give or provide any information, explanation or particulars shall comply with the requirement so far as it lies within his power to do so and shall, if requested, verify the information, explanation or particulars (as the case may be) by statutory declaration.

(6) A person commits an offence if—

(*a*) he, without reasonable excuse, contravenes subsection (4) or (5);

(*b*) he—

(i) in purported compliance with subsection (4) or (5), makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;

(*c*) he obstructs the Commission in the exercise of any of its powers under this section; or

(*d*) he, with intent to conceal, from the Tribunal, facts or matters capable of being disclosed by any record or document which is relevant to any proceedings instituted under section 252, destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, such record or document.

(7) A person who commits an offence under subsection (6) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) A person is not excused from complying with subsection (4) or (5) only on the ground that to do so might tend to incriminate him.

255. Use of evidence received for purposes of market misconduct proceedings

(1) Notwithstanding any other provisions of this Ordinance, evidence given by any person at or for the purposes of any proceedings instituted under section 252 (including any material, record or document received by the Tribunal from the person or produced to the Tribunal by the person under section 253, and any record or document or information given, provided, produced or disclosed to the Tribunal by the person under section 254) shall be admissible in evidence for all the purposes of this Part (including any proceedings (civil or criminal) instituted under or pursuant to this Part) but, subject to subsection (2), shall not be admissible in evidence against that person for any other purposes in any proceedings (civil or criminal) in a court of law brought by or against him.

(2) The evidence given by any person at or for the purposes of any proceedings instituted under section 252 as referred to in subsection (1) shall be admissible in evidence against that person—

(*a*) in civil proceedings instituted under or pursuant to Part XI;

(*b*) in proceedings instituted under section 305;

(*c*) in civil proceedings in a court of law arising out of the giving of evidence at or for the purposes of the proceedings instituted under section 252;

(*d*) in criminal proceedings where the person is charged with an offence under section 219(2)(*a*), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of answers given by that person to questions put to him at or for the purposes of the proceedings instituted under section 252.

256. Privileged information

Nothing in this Part and Schedule 9 requires an authorized financial institution, acting as the banker or financial adviser of a person whose conduct is the subject, whether wholly or in part, of any proceedings instituted under section 252, to disclose information as to the affairs of any of its customers other than that person.

257. Orders, etc. of Tribunal

(1) Subject to subsection (3), the Tribunal may at the conclusion of any proceedings instituted under section 252 make one or more of the following orders in respect of a person identified as having engaged in market misconduct pursuant to section 252(3)(*b*)—

(*a*) an order that the person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;

(*b*) an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;

(*c*) an order that the person shall not again perpetrate any conduct which constitutes such market misconduct as is specified in the order (whether the same as the market misconduct in question or not);

(*d*) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question;

(*e*) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government, whether in relation or incidental to the proceedings or in relation or incidental to any investigation of his conduct or affairs carried out for the purposes of the proceedings;

(*f*) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to any investigation of his conduct or affairs carried out before the matter was referred to the Tribunal by the Financial Secretary or in relation or incidental to the proceedings;

(*g*) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.

(2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—

(*a*) previously resulted in the person being convicted of an offence in Hong Kong;

(*b*) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 252(3)(*b*); or

(*c*) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.

(4) Where the Tribunal makes an order under subsection (1)(*a*), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.

(5) The Tribunal may, in relation to any person, specify any market misconduct in an order under subsection (1)(*c*), whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

(6) Where the Tribunal makes an order under subsection (1)(*e*) or (*f*) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the taxation of the costs.

(7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(9) Where the Tribunal makes an order under subsection (1)(*b*), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.

(10) A person commits an offence if he fails to comply with an order made under subsection (1)(*a*), (*b*) or (*c*) and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

258. Further orders in respect of officers of corporation

(1) Subject to subsection (3), where a corporation has been identified as having engaged in market misconduct pursuant to section 252(3)(*b*) and the market misconduct is directly or indirectly attributable to a breach by any person as an officer of the corporation of the duty imposed on him by section 279, the Tribunal may make one or more of the orders referred to in section 257(1)(*a*) to (*g*) in respect of the person even if the person has not been identified as having engaged in market misconduct pursuant to section 252(3)(*b*).

(2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—

(*a*) previously resulted in the person being convicted of an offence in Hong Kong;

(*b*) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 252(3)(*b*); or

(*c*) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.

(4) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(*a*), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Where the Tribunal, in relation to any person, makes under subsection (1) an order referred to in section 257(1)(*c*), the Tribunal may specify any market misconduct in the order, whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.

(6) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(*e*) or (*f*) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the taxation of the costs.

(7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(9) Where the Tribunal makes under subsection (1) an order referred to in section 257(1)(*b*), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.

(10) Where an order referred to in section 257(1)(*a*), (*b*) or (*c*) is made in respect of a person under subsection (1), the person commits an offence if he fails to comply with the order and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

259. Interest on moneys payable under order referred to in section 257(1)(*d*)

Where the Tribunal makes an order referred to in section 257(1)(*d*), whether under section 257(1) or 258(1), requiring the payment of money by a person, the Tribunal may also order that the payment shall carry compound interest calculated—

(*a*) from the date of occurrence of the market misconduct in question; and

(*b*) at the rate from time to time applicable to judgment debts under section 49 of the High Court Ordinance (Cap. 4) and with such rests and in such manner as the Tribunal considers appropriate.

260. Costs

(1) Subject to subsection (4), at the conclusion of any proceedings instituted under section 252 or as soon as reasonably practicable after the conclusion of the proceedings, the Tribunal may by order award to—

(*a*) any person whose attendance, whether as a witness or otherwise, has been necessary or required for the purposes of the proceedings;

(*b*) any person whose conduct is the subject, whether wholly or in part, of the proceedings,

such sum as it considers appropriate in respect of the costs reasonably incurred by the person in relation to the proceedings.

(2) Any costs awarded under this section are a charge on the general revenue.

(3) Subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under this section.

(4) Subsection (1)(*a*) and (*b*) does not apply to—

(*a*) a person who has by virtue of section 252(4)(*a*), (*b*) or (*c*) been identified as having engaged in market misconduct pursuant to section 252(3)(*b*);

(*b*) a person whose conduct the Tribunal considers has caused, whether wholly or in part, the Tribunal to investigate or consider his conduct during the course of the proceedings in question;

(*c*) a person whom the Tribunal considers has by his conduct caused, whether wholly or in part, the institution of the proceedings.

261. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal shall have the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who—

(*a*) without reasonable excuse, commits any conduct falling within the description of section 253(2)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*);

(*b*) commits any conduct falling within the description of section 254(6)(*a*), (*b*), (*c*) or (*d*); or

(*c*) fails to comply with an order of the Tribunal referred to in section 257(10) or 258(10).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section and any other provisions of this Ordinance—

(*a*) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if—

(i) criminal proceedings have previously been instituted against the person under section 253(2), 254(6), 257(10) or 258(10) in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under such section in respect of the same conduct;

(*b*) no criminal proceedings may be instituted against any person under section 253(2), 254(6), 257(10) or 258(10) in respect of any conduct if—

(i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and

(ii) (A) proceedings arising from the exercise of such power remain pending; or

(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

262. Report of Tribunal

(1) The Tribunal shall, after the conduct of any proceedings instituted under section 252, prepare a written report in respect of the proceedings, which shall contain—

(*a*) any of its determinations made pursuant to section 252(3) and any order made under section 257 or 258, and the reasons for making such determinations and order; and

(*b*) any order made under section 259 or 260, and the reasons for making such order.

(2) The Tribunal shall issue the report prepared under subsection (1)—

(*a*) first, by giving a copy of the report to the Financial Secretary; and

(*b*) then, except where the Tribunal sat in private for the whole or any part of its proceedings, by—

(i) publishing the report so that copies of the report are available to the public;

(ii) giving a copy of the report, so far as reasonably practicable, to any person whose conduct was directly in question in the proceedings;

(iii) giving a copy of the report to the Secretary for Justice;

(iv) giving a copy of the report to the Commission; and

(v) where the Tribunal considers appropriate, giving a copy of the report to any body which may take disciplinary action against the person identified as having engaged in market misconduct pursuant to section 252(3)(*b*), as one of its members.

(3) Where the Tribunal sat in private for the whole or any part of its proceedings, the Financial Secretary may, where he is of the opinion that it is in the public interest to do so, cause the whole or any part of the report to be made available to the public or to a particular person or body in the manner he directs.

(4) A person is not liable to civil or criminal proceedings for publishing a true and accurate account or a fair and accurate summary of a report of the Tribunal issued or made available under subsection (2)(*b*) or (3).

263. Form and proof of orders of Tribunal

(1) An order made by the Tribunal shall be recorded in writing and signed by the chairman of the Tribunal.

(2) A document purporting to be an order of the Tribunal and to be signed by the chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as an order of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the order was in fact the chairman.

264. Orders of Tribunal may be registered in Court of First Instance

(1) The Court of First Instance may, on notice in writing given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 269, register an order of the Tribunal in the Court of First Instance and the order shall, on registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

(2) Where an order is made under section 257(1)(*a*), or an order referred to in section 257(1)(*a*) is made under section 258(1), the order shall be filed by the Tribunal with the Registrar of Companies, as soon as reasonably practicable after it is made.

265. Applications for stay of execution of orders of Tribunal under section 257, 258, 259 or 260

Any person in respect of whom an order has been made under section 257, 258, 259 or 260 may apply to the Tribunal for a stay of execution of the order, whereupon the Tribunal may, where it considers appropriate, by order grant the stay, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Tribunal considers appropriate.

Division 3—Appeals, etc.

266. Appeal to Court of Appeal

(1) Where the Tribunal has made any finding or determination for the purposes of any proceedings instituted under section 252, and the Secretary for Justice, or a person identified as having engaged in market misconduct pursuant to section 252(3)(*b*), is dissatisfied with the finding or determination, the Secretary for Justice or the person (as the case may be) may, after the Tribunal has made orders (if any) under section 257, 258, 259 or 260 for the purposes of the proceedings, appeal to the Court of Appeal against the finding or determination—

(*a*) on a point of law; or

(*b*) with the leave of the Court of Appeal, on a question of fact.

(2) A person in respect of whom an order has been made under section 257, 258, 259, 260 or 265 may appeal to the Court of Appeal against the order.

267. Powers of Court of Appeal on appeal

(1) In an appeal under section 266(1), the Court of Appeal may—

(*a*) allow the appeal;

(*b*) dismiss the appeal;

(*c*) vary or set aside the finding or determination, and, where the finding or determination is set aside, substitute for the finding or determination any other finding or determination it considers appropriate;

(*d*) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the proceedings in question afresh for the purpose of determining any question specified by the Court of Appeal.

(2) In an appeal under section 266(2), the Court of Appeal may—

(*a*) confirm, vary or set aside the order appealed against; and

(*b*) where the order is set aside, substitute for the order any other order it considers appropriate.

(3) Where the Court of Appeal varies, or substitutes any other finding, determination or order for, a finding, determination or order under subsection (1)(*c*) or (2)(*a*) or (*b*), the finding, determination or order as varied or the other finding, determination or order substituting for the finding, determination or order (as the case may be) may be—

(*a*) in the case of subsection (1)(*c*), any finding or determination (whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or

(*b*) in the case of subsection (2)(*a*) or (*b*), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant,

whether or not under the same provision as that under which the finding, determination or order has been made.

(4) Where on appeal the Court of Appeal remits any matter to the Tribunal under section 267(1)(*d*), unless the Court of Appeal otherwise directs, members of the Tribunal disposing of the matter may be the same as, or different from, those of the Tribunal from which the appeal lies.

(5) In an appeal under section 266, the Court of Appeal may make such order as to costs as it considers appropriate.

268. No stay of execution on appeal

Without prejudice to section 265, neither the lodging of an appeal nor the filing of an application for leave to appeal under section 266 by itself operates as a stay of execution of a finding or determination or an order (as the case may be) of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

269. Rules by Chief Justice

The Chief Justice may make rules—

(*a*) providing for the taxation of costs required to be paid under an order referred to in section 257(1)(*e*) or (*f*), whether made under section 257(1) or 258(1), and for the award of costs under section 260 and the taxation of those costs;

(*b*) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 264;

(*c*) regulating the procedure for—

(i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 266;

(ii) the hearing of appeals under that section;

(*d*) requiring the payment of the fees specified in the rules for any matter relating to the proceedings instituted under section 252;

(*e*) providing for matters of procedure or other matters relating to the proceedings instituted under section 252, which are not provided for in this Part or in Schedule 9;

(*f*) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 9;

(*g*) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

Division 4—Insider dealing

270. Insider dealing

(1) Insider dealing in relation to a listed corporation takes place—

(*a*) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation—

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(ii) counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them;

(*b*) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation—

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or

(ii) counsels or procures another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over;

(*c*) when a person connected with the corporation and knowing that any information is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;

(*d*) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;

(*e*) when a person who has information which he knows is relevant information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation—

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(ii) counsels or procures another person to deal in such listed securities or derivatives; or

(*f*) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over

offer for the corporation, information to that effect which he knows is relevant information in relation to the corporation—

(i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(ii) counsels or procures another person to deal in such listed securities or derivatives.

(2) Insider dealing in relation to a listed corporation also takes place when a person who knowingly has relevant information in relation to the corporation in any of the circumstances described in subsection (1)—

(*a*) counsels or procures another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or

(*b*) discloses the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

271. Insider dealing—certain persons not to be regarded as having engaged in market misconduct

(1) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be)—

(*a*) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

(*b*) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or

(*c*) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) A corporation shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives if it establishes that—

(*a*) although one or more of its directors or employees had the relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the relevant information up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);

(*b*) arrangements then existed to secure that—

(i) the relevant information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and

(ii) none of its directors or employees who had the relevant information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be); and

(*c*) the relevant information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the relevant information in fact so gave the advice to any person who took the decision.

(3) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information if he establishes that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using relevant information.

(4) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(*a*) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;

(*b*) he did not select or advise on the selection of such listed securities or derivatives; and

(*c*) he—

(i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or

(ii) did not know that the person for whom he acted as agent had the relevant information in question.

(5) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(*a*) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and

(*b*) (i) where the insider dealing took place through his dealing in listed securities or derivatives—

(A) he and the other party to the dealing in question entered into the dealing directly with each other; and

(B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the relevant information in question; or

(ii) where the insider dealing took place through his counselling or procuring another person to deal in listed securities or derivatives—

(A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and

(B) at the time when he counselled or procured the other party to enter into the dealing, the other party knew, or ought reasonably to have known, of the relevant information in question.

(6) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that—

(*a*) he entered into the dealing in question, otherwise than as a person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and

(*b*) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question.

(7) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(*a*) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and

(*b*) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

(8) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(*a*) he acted—

(i) in connection with any dealing in listed securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and

(ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and

(*b*) the relevant information in question was market information arising directly out of his involvement in the dealing or the series of dealings.

(9) A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that the dealing in question is a market contract.

(10) For the purposes of subsection (8), "market information" (市場消息) means information consisting of one or more of the following facts—

(*a*) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;

(*b*) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;

(*c*) the quantity of listed securities or derivatives of listed securities in which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;

(*d*) the price (or range of prices) at which listed securities or derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;

(*e*) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities.

272. Insider dealing—certain trustees and personal representatives not to be regarded as having engaged in market misconduct

A person who is a trustee or personal representative shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives if he establishes that—

(*a*) he acted on advice obtained in good faith from another person;

(*b*) that other person appeared to him to be an appropriate person from whom to seek the advice; and

(*c*) it did not appear to him that, had that other person dealt in the listed securities or derivatives in question, an insider dealing would take place.

273. Insider dealing—certain persons exercising right to subscribe for or acquire securities or derivatives not to be regarded as having engaged in market misconduct

A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in listed securities or derivatives if he establishes that—

(*a*) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and

(*b*) the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

Division 5—Other market misconduct

274. False trading

(1) False trading takes place when, in Hong Kong or elsewhere, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(*a*) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or

(*b*) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(2) False trading takes place when, in Hong Kong, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(*a*) of active trading in securities or futures contracts traded on a relevant overseas market; or

(*b*) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.

(3) False trading takes place when, in Hong Kong or elsewhere, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(4) False trading takes place when, in Hong Kong, a person takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant overseas market.

(5) Without limiting the general nature of the conduct which constitutes false trading under subsection (1) or (2), where a person—

(*a*) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;

(*b*) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to purchase the same or substantially the same number of them; or

(*c*) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them,

then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections (1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded; or

(ii) where the securities are traded on a relevant overseas market, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded.

(6) A person shall not be regarded as having engaged in market misconduct by reason of false trading taking place through the commission of an act referred to in subsection (5)(*a*), (*b*) or (*c*) if he establishes that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be).

(7) In subsection (5), "off-market transaction" (場外交易) means a transaction which—

(*a*) in the case of securities traded on a relevant recognized market, is not required to be recorded on the relevant recognized market, or to be notified, under the rules of the person by whom the relevant recognized market is operated, to such person;

(*b*) in the case of securities traded by means of authorized automated trading services, is not required to be recorded by means of authorized automated trading services, or to be notified, under the rules of the person by whom the authorized automated trading services are operated, to such person; or

(*c*) in the case of securities traded on a relevant overseas market, is not required to be recorded on the relevant overseas market, or to be notified, under the rules of the person by whom the relevant overseas market is operated, to such person.

(8) In this section—

(*a*) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(*b*) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (*a*), be construed as a reference to making the offer or the invitation (as the case may be).

275. Price rigging

(1) Price rigging takes place when, in Hong Kong or elsewhere, a person—

(*a*) enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant recognized market or by means of authorized automated trading services; or

(*b*) enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.

(2) Price rigging takes place when, in Hong Kong, a person—

(*a*) enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant overseas market; or

(*b*) enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant overseas market.

(3) For the purposes of subsections (1)(*b*) and (2)(*b*), the fact that a transaction is, or at any time was, intended to have effect according to its terms is not conclusive in determining whether the transaction is, or was, not fictitious or artificial.

(4) A person shall not be regarded as having engaged in market misconduct by reason of price rigging taking place through any transaction of sale or purchase of securities referred to in subsection (1)(*a*) or (2)(*a*) if he establishes that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.

(5) In this section—

(*a*) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(*b*) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (*a*), be construed as a reference to making the offer or the invitation (as the case may be).

276. Disclosure of information about prohibited transactions

(1) Disclosure of information about prohibited transactions takes place when a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services will be maintained, increased,

reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his—

(*a*) has entered into or carried out, directly or indirectly, the prohibited transaction; or

(*b*) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.

(2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of information about prohibited transactions on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit referred to in subsection (1)(*b*), if he establishes that—

(*a*) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or

(*b*) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(3) In this section—

(*a*) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4 of Part XIV; and

(*b*) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

277. Disclosure of false or misleading information inducing transactions

(1) Disclosure of false or misleading information inducing transactions takes place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of, information that is likely—

(*a*) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

(*b*) to induce the sale or purchase in Hong Kong of securities by another person; or

(*c*) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,

if—

(i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(ii) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the issue or reproduction of the information and he establishes that—

(*a*) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(*c*) for the purposes of the issue or reproduction—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information; and

(*d*) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(3) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the re-transmission of the information and he establishes that—

(*a*) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(*c*) for the purposes of the re-transmission—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(*d*) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and

(*e*) at the time of the re-transmission—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(4) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions if the disclosure has taken place by reason only of the live broadcast of the information and he establishes that—

(*a*) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(*c*) for the purposes of the broadcast—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(*d*) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(*e*) at the time of the broadcast—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(5) In this section, "issue" (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(*a*) by any visit in person;
(*b*) in a newspaper, magazine, journal or other publication;
(*c*) by the display of posters or notices;
(*d*) by means of circulars, brochures, pamphlets or handbills;
(*e*) by an exhibition of photographs or cinematograph films;
(*f*) by way of sound or television broadcasting;
(*g*) by any information system or other electronic device; or
(*h*) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued.

278. Stock market manipulation

(1) Stock market manipulation takes place when, in Hong Kong or elsewhere—

(*a*) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;
(*b*) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or
(*c*) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant recognized market or

by means of authorized automated trading services, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(2) Stock market manipulation takes place when, in Hong Kong—

(*a*) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;

(*b*) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

(*c*) a person enters into or carries out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(3) In this section—

(*a*) a reference to a transaction includes an offer and an invitation (however expressed); and

(*b*) a reference to entering into or carrying out a transaction shall, in the case of an offer or an invitation referred to in paragraph (*a*), be construed as a reference to making the offer or the invitation (as the case may be).

Division 6—Miscellaneous

279. Duty of officers of corporations

Every officer of a corporation shall take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the corporation from acting in a way which would result in the corporation perpetrating any conduct which constitutes market misconduct.

280. Transactions relating to market misconduct not void or voidable

A transaction is not void or voidable by reason only that any market misconduct has taken place in relation to or as a result of it.

281. Civil liability for market misconduct

(1) Subject to subsection (2), a person who has committed a relevant act in relation to market misconduct shall, whether or not he also incurs any other liability (whether under this Part or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the market misconduct, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the market misconduct.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) For the purposes of this section, a person shall, subject to subsection (4), be regarded as having committed a relevant act in relation to market misconduct if—

(*a*) he has perpetrated any conduct which constitutes market misconduct;

(*b*) (i) another person which is a corporation has committed a relevant act in relation to market misconduct under paragraph (*a*); and

(ii) the market misconduct occurred with his consent or connivance as an officer of the corporation; or

(*c*) (i) any other person has committed a relevant act in relation to market misconduct under paragraph (*a*); and

(ii) he assisted or connived with that other person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.

(4) For the purposes of this section, where it is provided under any provision of this Part that a person shall not by reason of any market misconduct be regarded as having engaged in market misconduct, the person shall not, in relation to that market misconduct, be regarded as having committed a relevant act in relation to market misconduct.

(5) A person may bring an action under subsection (1) even though the person against whom the action is brought—

(*a*) is not a person whose conduct has been the subject, whether wholly or in part, of any proceedings instituted under section 252 in respect of the market misconduct from which the pecuniary loss of the person bringing the action is alleged to result; or

(*b*) has not been identified by the Tribunal pursuant to section 252(3)(*b*) as having engaged in the market misconduct.

(6) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(7) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)—

(*a*) the fact that there is a determination by the Tribunal pursuant to section 252(3)(*a*) that market misconduct has taken place;

(*b*) the fact that there is a determination by the Tribunal pursuant to section 252(3)(*b*) identifying a person (whether or not a party to the action) as having engaged in market misconduct,

shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action—

(i) in the case of a determination referred to in paragraph (*a*), that the market misconduct has taken place; or

(ii) in the case of a determination referred to in paragraph (*b*), that the person has engaged in market misconduct.

(8) In an action brought under subsection (1), where the fact that there is a determination referred to in subsection (7)(*a*) or (*b*) is admissible in evidence under subsection (7)—

(*a*) then—

(i) in the case of a determination referred to in subsection (7)(*a*), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or

(ii) in the case of a determination referred to in subsection (7)(*b*), the person that is the subject of the determination shall, unless the contrary is proved, be taken to have engaged in market misconduct; and

(*b*) without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based, the contents of a report of the Tribunal containing the determination and published under section 262(2)(*b*)(i), or the contents of a copy of a report of the Tribunal containing the determination and made available under subsection (9), shall also be admissible in evidence for such purpose.

(9) Where in an action brought under subsection (1)—

(*a*) the fact that there is a determination referred to in subsection (7)(*a*) or (*b*) is admissible in evidence under subsection (7); and

(*b*) a report of the Tribunal containing the determination has not been published under section 262(2)(*b*)(i),

the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (8)(*b*), whereupon—

(i) the Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (8)(*b*); and

(ii) the contents of the report shall be admissible for the purpose specified in subsection (8)(*b*).

(10) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

(11) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

282. Conduct not to constitute market misconduct

(1) Notwithstanding anything in this Part, a person shall not be regarded as having engaged in market misconduct by reason of any market misconduct under this Part if he establishes that the conduct in question is, according to the rules made under subsection (2), not to be regarded as constituting market misconduct.

(2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute market misconduct under this Part shall not be regarded as constituting market misconduct.

(3) Notwithstanding anything in this Part, where—

(*a*) it is alleged that a person has engaged in market misconduct under section 274, 275 or 278 by reason of any conduct; and

(*b*) it is so alleged on the basis that the conduct was carried out not in respect of securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a relevant overseas market,

the person shall not be regarded as having engaged in the market misconduct unless it is proved that in any place in which such relevant overseas market is situated the conduct would have been unlawful had it been carried out there.

283. No further proceedings after Part XIV criminal proceedings

Notwithstanding anything in this Part, no proceedings may be instituted against any person under section 252 in respect of any conduct if—

(*a*) criminal proceedings have previously been instituted against the person under Part XIV in respect of the same conduct; and

(*b*) (i) those criminal proceedings remain pending; or

(ii) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under Part XIV in respect of the same conduct.

284. Market misconduct regarded as contravention of provisions of this Part

Where a person is by reference to any conduct identified in a determination made pursuant to section 252(3)(*b*) as having engaged in market misconduct, the person shall be regarded as having, by reason of the conduct, contravened the provisions of this Part, and any reference in this Ordinance to contravention of a provision of this Ordinance (however expressed) shall have application accordingly.

PART XIV

OFFENCES RELATING TO DEALINGS IN SECURITIES AND FUTURES CONTRACTS, ETC.

Division 1—Interpretation

285. Interpretation of Part XIV

(1) In this Part, unless the context otherwise requires—

"associate" (有聯繫者), in relation to a person, means—

(*a*) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;

(*b*) any corporation of which the person is a director;

(*c*) any employee or partner of the person;

(*d*) where the person is a corporation, each of its directors and its related corporations and each director or employee of any of its related corporations;

(*e*) without limiting the circumstances in which paragraphs (*a*) to (*d*) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement—

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

"controller" (控制人), in relation to a corporation, means any person—

(*a*) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act; or

(*b*) who, either alone or with any of his associates, is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary;

"relevant overseas market" (有關境外市場)—

(*a*) in relation to securities, means a stock market outside Hong Kong; or

(*b*) in relation to futures contracts, means a futures market outside Hong Kong;

"relevant recognized market" (有關認可市場)—

(*a*) in relation to securities, means a recognized stock market; or

(*b*) in relation to futures contracts, means a recognized futures market.

(2) In this subsection and sections 286 to 289 and Division 2, unless the context otherwise requires—

"derivatives" (衍生工具), in relation to listed securities, means—

(*a*) rights, options or interests (whether described as units or otherwise) in, or in respect of, the listed securities;

(*b*) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—

(i) the listed securities; or

(ii) any rights, options or interests referred to in paragraph (*a*);

(*c*) rights, options or interests (whether described as units or otherwise) in, or in respect of—

(i) any rights, options or interests referred to in paragraph (*a*); or

(ii) any contracts referred to in paragraph (*b*);

(*d*) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (*a*), (*b*) or (*c*), including certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—

(i) the listed securities; or

(ii) the rights, options or interests or the contracts,

whether or not the derivatives are listed and regardless of who issued or made them;

"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

"listed corporation" (上市法團) means a corporation which has issued securities that are, at the time of the relevant contravention in relation to the corporation, listed;

"listed securities" (上市證券) means—

(*a*) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are listed;

(*b*) securities which, at the time of the relevant contravention in relation to a corporation, have been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently listed;

(*c*) securities which, at the time of the relevant contravention in relation to a corporation, have not been issued by the corporation and are not listed, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so issued and listed;

"relevant contravention" (違例事件) means a contravention of any of the provisions of Division 2;

"relevant information" (有關消息), in relation to a corporation, means specific information about—

(*a*) the corporation;

(*b*) a shareholder or officer of the corporation; or

(*c*) the listed securities of the corporation or their derivatives,

which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities;

"securities" (證券) means—

(*a*) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(*b*) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(*c*) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(*d*) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(*e*) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 392 as being regarded as securities in accordance with the terms of the notice.

(3) For the purposes of the definition of "controller" in subsection (1), where a person is entitled to exercise or control the exercise of more than 33% of the voting power at general meetings of a corporation and the corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"), then

the effective voting power at general meetings of the other corporation shall be regarded as exercisable by the person.

(4) For the purposes of this Part, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

286. Interest in securities (insider dealing offence)

For the purposes of sections 285(2) and 287 to 289 and Division 2, a reference to an interest in securities shall be construed as including an interest of any kind whatsoever in the securities, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

287. Connected with a corporation (insider dealing offence)

(1) For the purposes of Division 2, a person shall be regarded as connected with a corporation if, being an individual—

(*a*) he is a director or employee of the corporation or a related corporation of the corporation;

(*b*) he is a substantial shareholder of the corporation or a related corporation of the corporation;

(*c*) he occupies a position which may reasonably be expected to give him access to relevant information in relation to the corporation by reason of—

(i) a professional or business relationship existing between—

(A) himself, or his employer, or a corporation of which he is a director, or a firm of which he is a partner; and

(B) the corporation, a related corporation of the corporation, or an officer or substantial shareholder of either corporation; or

(ii) his being a director, employee or partner of a substantial shareholder of the corporation or a related corporation of the corporation;

(*d*) he has access to relevant information in relation to the corporation and—

(i) he has such access by reason of his being in such a position that he would be regarded as connected with another corporation by virtue of paragraph (*a*), (*b*) or (*c*); and

(ii) the relevant information relates to a transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives, or to the fact that the transaction is no longer contemplated; or

(*e*) he was, at any time within the 6 months preceding the relevant contravention in relation to the corporation, a person who would be regarded as connected with the corporation by virtue of paragraph (*a*), (*b*), (*c*) or (*d*).

(2) For the purposes of Division 2, a corporation shall be regarded as a person connected with another corporation so long as any of its directors or employees is a person who would be regarded as connected with that other corporation by virtue of subsection (1).

(3) In subsection (1), notwithstanding any other provisions of this Ordinance, "substantial shareholder" (大股東), in relation to a corporation, means a person who has an interest in the relevant share capital of the corporation, the nominal value of which is equal to or more than 5% of the nominal value of the relevant share capital of the corporation.

288. Connected with a corporation—possession of relevant information obtained in privileged capacity (insider dealing offence)

(1) For the purposes of Division 2, where a public officer or a specified person in that capacity receives relevant information in relation to a corporation, he shall be regarded as a person connected with the corporation.

(2) In subsection (1), a reference to a specified person means a person who is—

(*a*) a member of the Executive Council;

(*b*) a member of the Legislative Council;

(*c*) a member of a board, commission, committee or other body appointed by or on behalf of the Chief Executive or the Chief Executive in Council under an Ordinance;

(*d*) an officer or employee of a recognized exchange company, a recognized clearing house or a recognized exchange controller;

(*e*) an exchange participant;

(*f*) an officer or employee of an exchange participant;

(*g*) an officer or employee of a body corporate incorporated by an Ordinance; or

(*h*) an officer or employee of a body corporate specified by the Financial Secretary under subsection (3),

whether, in the case of paragraph (*a*), (*b*), (*c*), (*d*), (*f*), (*g*) or (*h*), the person is such a member, officer or employee (as the case may be) on a temporary or permanent basis, and whether he is paid or unpaid.

(3) The Financial Secretary may, by notice published in the Gazette, specify any body corporate for the purposes of subsection (2)(*h*).

289. Dealing in listed securities or their derivatives (insider dealing offence)

For the purposes of section 285(2) and Division 2, a person shall be regarded as dealing in listed securities or their derivatives if, whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives.

290. Interest in securities and beneficial ownership, etc. (market misconduct offences other than insider dealing offence)

(1) For the purposes of Division 3, a person shall be regarded as having an interest in securities if he has authority, whether formal or informal and whether express or implied, to dispose of or to exercise control over the disposal of the securities or, in the case of options in respect of the securities, to exercise the options.

(2) It is immaterial that the authority of a person referred to in subsection (1)—

(*a*) is, or is capable of being made, subject to restraint or restriction; or

(*b*) is exercisable jointly with another person.

(3) A person shall be regarded as having the authority referred to in subsection (1) where a corporation has the authority referred to in that subsection and—

(*a*) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions or instructions of the person in relation to the securities in question; or

(*b*) the person, or an associate of the person, is a controller of the corporation.

(4) Where a person—

(*a*) has entered into a contract to purchase securities;

(*b*) has a right to have securities transferred to him or to his order whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(*c*) has the right to acquire securities, or an interest in securities, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not,

the person shall, to the extent to which he could do so on completing the contract, enforcing the right or exercising the option, be regarded as having the authority referred to in subsection (1).

(5) Where securities are subject to a trust, and a person who is not a trustee in those securities has an interest in those securities by virtue of subsection (4)(*b*), the interest of a trustee in those securities shall be disregarded for the purpose of determining whether the person has an interest in securities for the purposes of Division 3.

(6) The Commission may make rules to prescribe that an interest, being an interest of a person or of the persons included in a class of persons, shall be disregarded for the purpose of determining whether the person or the persons has or have an interest in securities for the purposes of Division 3.

(7) For the purposes of Division 3, a sale or purchase of securities does not involve a change in their beneficial ownership if a person who had an interest in the securities before the sale or purchase, or an associate of the person, has an interest in the securities after the sale or purchase.

Division 2—Insider dealing offence

291. Offence of insider dealing

(1) A person connected with a listed corporation and having information which he knows is relevant information in relation to the corporation shall not—

(*a*) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(*b*) counsel or procure another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them.

(2) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation shall not—

(*a*) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or

(*b*) counsel or procure another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over.

(3) A person connected with a listed corporation and knowing that any information is relevant information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.

(4) A person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for a listed corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation shall not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.

(5) A person who has information which he knows is relevant information in relation to a listed corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation shall not—

(*a*) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(*b*) counsel or procure another person to deal in such listed securities or derivatives.

(6) A person who has received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for a listed corporation, information to that effect which he knows is relevant information in relation to the corporation shall not—

(*a*) deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or

(*b*) counsel or procure another person to deal in such listed securities or derivatives.

(7) A person who knowingly has relevant information in relation to a listed corporation in any of the circumstances described in subsection (1), (2), (3), (4), (5) or (6) shall not—

(*a*) counsel or procure another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or

(*b*) disclose the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

(8) Subject to sections 292, 293 and 294, a person who contravenes subsection (1), (2), (3), (4), (5), (6) or (7) commits an offence.

292. Insider dealing offence—general defences

(1) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be)—

(*a*) for the sole purpose of acquiring shares required for his being qualified as a director or intending director of a corporation;

(*b*) in the performance in good faith of an underwriting agreement for the listed securities or derivatives in question; or

(*c*) in the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) Where a corporation is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through its dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the corporation to prove that—

(*a*) although one or more of its directors or employees had the relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question, each person who took the decision for it to deal in or counsel or procure the other person to deal in such listed securities or derivatives (as the case may be) did not have the relevant information up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be);

(*b*) arrangements then existed to secure that—

(i) the relevant information was, up to (and including) the time when it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be), not communicated to any person who took the decision; and

(ii) none of its directors or employees who had the relevant information gave advice concerning the decision to any person who took the decision at any time before it dealt in or counselled or procured the other person to deal in such listed securities or derivatives (as the case may be); and

(*c*) the relevant information was in fact not so communicated to any person who took the decision and none of its directors or employees who had the relevant information in fact so gave the advice to any person who took the decision.

(3) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives or his disclosure of information, it is a defence to the charge for the person to prove that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question or disclosed the information in question (as the case may be) did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using relevant information.

(4) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(*a*) he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question (as the case may be) as agent;

(*b*) he did not select or advise on the selection of such listed securities or derivatives; and

(*c*) he—

(i) did not know that the person for whom he acted as agent was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives; or

(ii) did not know that the person for whom he acted as agent had the relevant information in question.

(5) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(*a*) at the time when he dealt in or counselled or procured the other person to deal in the listed securities or derivatives in question, the dealing in question was not required to be recorded on a recognized stock market or to be notified to a recognized exchange company under its rules; and

(*b*) (i) where the contravention took place through his dealing in listed securities or derivatives—

(A) he and the other party to the dealing in question entered into the dealing directly with each other; and

(B) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, of the relevant information in question; or

(ii) where the contravention took place through his counselling or procuring another person to deal in listed securities or derivatives—

(A) he counselled or procured the other party to the dealing in question to enter into the dealing directly with him; and

(B) at the time when he counselled or procured the other party to enter into the dealing, the other party knew, or ought reasonably to have known, of the relevant information in question.

(6) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(*a*) he entered into the dealing in question, otherwise than as a person who has counselled or procured the other party to the dealing to deal in listed securities or their derivatives; and

(*b*) at the time when he entered into the dealing, the other party to the dealing knew, or ought reasonably to have known, that he was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, the listed securities or derivatives in question.

(7) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(*a*) the other person did not counsel or procure the other party to the dealing in question to deal in listed securities or their derivatives; and

(*b*) at the time when he counselled or procured the other person to deal in the listed securities or derivatives in question, the other party to the dealing in question knew, or ought reasonably to have known, that the other person was a person connected with the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

(8) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(*a*) he acted—

(i) in connection with any dealing in listed securities or their derivatives (whether by himself or another person) which was under consideration or was the subject of negotiation, or in the course of a series of such dealings; and

(ii) with a view to facilitating the accomplishment of the dealing or the series of dealings; and

(*b*) the relevant information in question was market information arising directly out of his involvement in the dealing or the series of dealings.

(9) Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that the dealing in question is a market contract.

(10) For the purposes of subsection (8), "market information" (市場消息) means information consisting of one or more of the following facts—

(*a*) that there has been or is to be any dealing in listed securities or derivatives of listed securities of a particular kind, or that any such dealing is under consideration or is the subject of negotiation;

(*b*) that there has not been or is not to be any dealing in listed securities or derivatives of listed securities of a particular kind;

(*c*) the quantity of listed securities or derivatives of listed securities in which there is or is to be any dealing, or in which any dealing is under consideration or is the subject of negotiation;

(*d*) the price (or range of prices) at which listed securities or derivatives of listed securities have been or are to be dealt in, or the price (or range of prices) at which listed securities or derivatives of listed securities in which any dealing is under consideration or is the subject of negotiation may be dealt in;

(*e*) the identity of the persons involved or likely to be involved in any capacity in any dealing in listed securities or derivatives of listed securities.

293. Insider dealing offence—defences for certain trustees and personal representatives

Where a person who is a trustee or personal representative is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in or counselling or procuring another person to deal in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(*a*) he acted on advice obtained in good faith from another person;

(*b*) that other person appeared to him to be an appropriate person from whom to seek the advice; and

(*c*) it did not appear to him that, had that other person dealt in the listed securities or derivatives in question, a contravention of section 291 would take place.

294. Insider dealing offence—defences for certain persons exercising right to subscribe for or acquire securities or derivatives

Where a person is charged with an offence under section 291(8) in respect of a contravention of section 291 taking place through his dealing in listed securities or derivatives, it is a defence to the charge for the person to prove that—

(*a*) he dealt in the listed securities or derivatives in question by way of his exercise of a right to subscribe for or otherwise acquire such listed securities or derivatives; and

(*b*) the right was granted to him or was derived from securities or their derivatives that were held by him before he became aware of any relevant information in relation to the corporation the listed securities of which were, or the derivatives of the listed securities of which were, such listed securities or derivatives.

Division 3—Other market misconduct offences

295. Offence of false trading

(1) A person shall not, in Hong Kong or elsewhere, do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(*a*) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or

(*b*) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(2) A person shall not, in Hong Kong, do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(*a*) of active trading in securities or futures contracts traded on a relevant overseas market; or

(*b*) with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.

(3) A person shall not, in Hong Kong or elsewhere, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.

(4) A person shall not, in Hong Kong, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention that, or being reckless as to whether, it or they has or have, or is or are likely to have, the effect of creating an artificial price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in securities or futures contracts traded on a relevant overseas market.

(5) Without limiting the generality of subsection (1) or (2), where a person—

(*a*) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;

(*b*) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to purchase the same or substantially the same number of them; or

(*c*) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of them,

then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections (1) and (2), be regarded as doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance—

(i) where the securities are traded on a relevant recognized market or by means of authorized automated trading services, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded; or

(ii) where the securities are traded on a relevant overseas market, of active trading in securities so traded or with respect to the market for, or the price for dealings in, securities so traded.

(6) Subject to subsection (7), a person who contravenes subsection (1), (2), (3) or (4) commits an offence.

(7) Where a person is charged with an offence under subsection (6) in respect of a contravention of subsection (1) or (2) taking place through the commission of an act referred to in subsection (5)(*a*), (*b*) or (*c*), it is a defence to the charge for the person to prove that the purpose for which he committed the act was not, or, where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false or misleading appearance of active trading in securities, or with respect to the market for, or the price for dealings in, securities, referred to in subsection (1) or (2) (as the case may be).

(8) In subsection (5), "off-market transaction" (場外交易) means a transaction which—

(*a*) in the case of securities traded on a relevant recognized market, is not required to be recorded on the relevant recognized market, or to be notified, under the rules of the person by whom the relevant recognized market is operated, to such person;

(*b*) in the case of securities traded by means of authorized automated trading services, is not required to be recorded by means of authorized automated trading services, or to be notified, under the rules of the person by whom the authorized automated trading services are operated, to such person; or

(*c*) in the case of securities traded on a relevant overseas market, is not required to be recorded on the relevant overseas market, or to be notified, under the rules of the person by whom the relevant overseas market is operated, to such person.

(9) In this section—

(*a*) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(*b*) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (*a*), be construed as a reference to making the offer or the invitation (as the case may be).

296. Offence of price rigging

(1) A person shall not, in Hong Kong or elsewhere—

(*a*) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant recognized market or by means of authorized automated trading services; or

(*b*) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorized automated trading services.

(2) A person shall not, in Hong Kong—

(*a*) enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant overseas market; or

(*b*) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant overseas market.

(3) For the purposes of subsections (1)(*b*) and (2)(*b*), the fact that a transaction is, or at any time was, intended to have effect according to its terms is not conclusive in determining whether the transaction is, or was, not fictitious or artificial.

(4) Subject to subsection (5), a person who contravenes subsection (1) or (2) commits an offence.

(5) Where a person is charged with an offence under subsection (4) in respect of a contravention of subsection (1)(*a*) or (2)(*a*) taking place through any transaction of sale or purchase of securities, it is a defence to the charge for the person to prove that the purpose for which the securities were sold or purchased was not, or, where there was more than one purpose, the purposes for which the securities were sold or purchased did not include, the purpose of creating a false or misleading appearance with respect to the price of securities.

(6) In this section—

(*a*) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or purchase securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or purchase securities; and

(*b*) a reference to entering into or carrying out a transaction of sale or purchase shall, in the case of an offer or an invitation referred to in paragraph (*a*), be construed as a reference to making the offer or the invitation (as the case may be).

297. Offence of disclosure of information about prohibited transactions

(1) A person shall not disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by

means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his—

(*a*) has entered into or carried out, directly or indirectly, the prohibited transaction; or

(*b*) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information.

(2) Subject to subsection (3), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit referred to in subsection (1)(*b*), it is a defence to the charge for the person to prove that—

(*a*) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was not from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person; or

(*b*) the benefit which he or the associate of his (as the case may be) received, or expected to receive, was from a person who has entered into or carried out, directly or indirectly, the prohibited transaction in question, or an associate of such person, but up to (and including) the time of the disclosure, circulation or dissemination of the information he has acted in good faith.

(4) In this section—

(*a*) a reference to a prohibited transaction means any conduct or transaction which constitutes market misconduct or a contravention of any of the provisions of Divisions 2 to 4; and

(*b*) a reference to any person having entered into or carried out the prohibited transaction shall be construed accordingly.

298. Offence of disclosure of false or misleading information inducing transactions

(1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely—

(*a*) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

(*b*) to induce the sale or purchase in Hong Kong of securities by another person; or

(*c*) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,

if—

(i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(ii) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—

(*a*) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(*c*) for the purposes of the issue or reproduction—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information; and

(*d*) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that—

(*a*) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system

(wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(*c*) for the purposes of the re-transmission—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(*d*) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and

(*e*) at the time of the re-transmission—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—

(*a*) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(*c*) for the purposes of the broadcast—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(*d*) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(*e*) at the time of the broadcast—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(6) In this section, "issue" (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(*a*) by any visit in person;
(*b*) in a newspaper, magazine, journal or other publication;
(*c*) by the display of posters or notices;
(*d*) by means of circulars, brochures, pamphlets or handbills;
(*e*) by an exhibition of photographs or cinematograph films;
(*f*) by way of sound or television broadcasting;
(*g*) by any information system or other electronic device; or
(*h*) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued.

299. Offence of stock market manipulation

(1) A person shall not, in Hong Kong or elsewhere—

(*a*) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;

(*b*) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

(*c*) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant recognized market or by means of authorized automated trading services, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(2) A person shall not, in Hong Kong—

(*a*) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation;

(*b*) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction reduce, or are likely to reduce, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, or to refrain from purchasing, securities of the corporation or of a related corporation of the corporation; or

(*c*) enter into or carry out, directly or indirectly, 2 or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a relevant overseas market, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities of the corporation or of a related corporation of the corporation.

(3) A person who contravenes subsection (1) or (2) commits an offence.

(4) In this section—

(*a*) a reference to a transaction includes an offer and an invitation (however expressed); and

(*b*) a reference to entering into or carrying out a transaction shall, in the case of an offer or an invitation referred to in paragraph (*a*), be construed as a reference to making the offer or the invitation (as the case may be).

Division 4—Other offences

300. Offence involving fraudulent or deceptive devices, etc. in transactions in securities, futures contracts or leveraged foreign exchange trading

(1) A person shall not, directly or indirectly, in a transaction involving securities, futures contracts or leveraged foreign exchange trading—

(*a*) employ any device, scheme or artifice with intent to defraud or deceive; or

(*b*) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception.

(2) A person who contravenes subsection (1) commits an offence.

(3) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

301. Offence of disclosure of false or misleading information inducing others to enter into leveraged foreign exchange contracts

(1) A person shall not, in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely to induce another person to enter into a leveraged foreign exchange contract in Hong Kong, if—

(*a*) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(*b*) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

(2) Subject to subsections (3) to (5), a person who contravenes subsection (1) commits an offence.

(3) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the issue or reproduction of information, it is a defence to the charge for the person to prove that—

(*a*) the issue or reproduction of the information took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(*c*) for the purposes of the issue or reproduction—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information; and

(*d*) at the time of the issue or reproduction, he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(4) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the re-transmission of information, it is a defence to the charge for the person to prove that—

(*a*) the re-transmission of the information took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(*c*) for the purposes of the re-transmission—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(*d*) the re-transmission of the information was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the information, and neither took responsibility for it nor endorsed its accuracy; and

(*e*) at the time of the re-transmission—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place by reason only of the live broadcast of information, it is a defence to the charge for the person to prove that—

(*a*) the broadcast of the information took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(*b*) the contents of the information were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(*c*) for the purposes of the broadcast—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the information;

(*d*) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(*e*) at the time of the broadcast—

(i) he did not know that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact; or

(ii) he knew that the information was false or misleading as to a material fact or was false or misleading through the omission of a material fact, but—

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the information was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(6) In this section, "issue" (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(*a*) by any visit in person;

(*b*) in a newspaper, magazine, journal or other publication;

(*c*) by the display of posters or notices;

(*d*) by means of circulars, brochures, pamphlets or handbills;

(*e*) by an exhibition of photographs or cinematograph films;

(*f*) by way of sound or television broadcasting;

(*g*) by any information system or other electronic device; or

(*h*) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued.

302. Offence of falsely representing dealings in futures contracts on behalf of others, etc.

(1) A person shall not represent to another person that he has on behalf of the other person dealt in, or facilitated or arranged for any dealing in, a futures contract traded on a recognized futures market or by means of authorized automated trading services, if—

(*a*) in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract; and

(*b*) he knows that, or is reckless as to whether, in fact he has not so dealt in, or facilitated or arranged for the dealing in, the futures contract.

(2) A person shall not represent to another person that he has dealt in, or facilitated or arranged for any dealing in, a contract or other instrument substantially resembling a futures contract on behalf of the other person in accordance with the rules of a futures market outside Hong Kong, if—

(*a*) in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument; and

(*b*) he knows that, or is reckless as to whether, in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Division 5—Miscellaneous

303. Penalties

(1) A person who commits an offence under this Part is liable—

(*a*) on conviction on indictment to a fine of $10,000,000 and to imprisonment for 10 years; or

(*b*) on summary conviction to a fine of $1,000,000 and to imprisonment for 3 years.

(2) Where a person is convicted of an offence under this Part, the court before which the person is so convicted may, in addition to any penalty specified in subsection (1), make one or more of the following orders in respect of the person—

(*a*) an order that the person shall not, without the leave of the court, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;

(*b*) an order that the person shall not, without the leave of the court, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;

(*c*) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.

(3) When making any order in respect of a person under subsection (2), the court may take into account any conduct by the person which—

(*a*) previously resulted in the person being convicted of an offence in Hong Kong;

(*b*) previously resulted in the person being identified by the Market Misconduct Tribunal as having engaged in any market misconduct pursuant to section 252(3)(*b*); or

(*c*) at any time before the commencement of Part XIII resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(4) Where the court makes an order under subsection (2)(*a*), the court may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Where the court makes an order under subsection (2)(*a*), the order shall be filed by the court with the Registrar of Companies, as soon as reasonably practicable after it is made.

(6) Where the court makes an order under subsection (2)(*b*), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.

(7) A person commits an offence if he fails to comply with an order made under subsection (2)(*a*) or (*b*) and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

304. Transactions relating to contravention of Divisions 2 to 4 not void or voidable

A transaction is not void or voidable by reason only that a contravention of any of the provisions of Divisions 2 to 4 has taken place in relation to or as a result of it.

305. Civil liability for contravention of this Part

(1) Subject to subsections (2) and (3), a person who contravenes any of the provisions of Divisions 2 to 4 shall, whether or not he also incurs any other liability (whether under section 303 or otherwise), be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or dealing at a price affected by the contravention.

(2) No person shall be liable to pay compensation under subsection (1) unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(3) A defence under this Part to a charge for an offence in respect of a contravention of any of the provisions of Divisions 2 to 4 shall also be a defence in an action brought under subsection (1) in respect of the same contravention.

(4) A person may bring an action under subsection (1) in respect of a contravention of any of the provisions of Divisions 2 to 4 even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

(5) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(6) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1)—

(*a*) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(*a*) that market misconduct has taken place;

(*b*) the fact that there is a determination by the Market Misconduct Tribunal pursuant to section 252(3)(*b*) identifying a person (whether or not a party to the action) as having engaged in market misconduct,

shall, in so far the determination is still subsisting, be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the action—

(i) in the case of a determination referred to in paragraph (*a*), that the market misconduct has taken place; or

(ii) in the case of a determination referred to in paragraph (*b*), that the person has engaged in market misconduct.

(7) In an action brought under subsection (1), where the fact that there is a determination referred to in subsection (6)(*a*) or (*b*) is admissible in evidence under subsection (6)—

(*a*) then—

(i) in the case of a determination referred to in subsection (6)(*a*), the market misconduct that is the subject of the determination shall, unless the contrary is proved, be taken to have taken place; or

(ii) in the case of a determination referred to in subsection (6)(*b*), the person that is the subject of the determination shall, unless the contrary is proved, be taken to have engaged in market misconduct; and

(*b*) without prejudice to the reception of any other admissible evidence as evidence of the determination or for the purpose of identifying the facts on which the determination was based, the contents of a report of the Market Misconduct Tribunal containing the determination and published under section 262(2)(*b*)(i), or the contents of a copy of a report of the Market Misconduct Tribunal containing the determination and made available under subsection (8), shall also be admissible in evidence for such purpose.

(8) Where in an action brought under subsection (1)—

(*a*) the fact that there is a determination referred to in subsection (6)(*a*) or (*b*) is admissible in evidence under subsection (6); and

(*b*) a report of the Market Misconduct Tribunal containing the determination has not been published under section 262(2)(*b*)(i),

the court having jurisdiction to determine the action may, where it considers appropriate, require that a copy of the report be made available to the court to enable it to be used for the purposes of subsection (7)(*b*), whereupon—

(i) the Market Misconduct Tribunal shall cause a copy of the report to be made available to the court to enable it to be used for the purposes of subsection (7)(*b*); and

(ii) the contents of the report shall be admissible for the purpose specified in subsection (7)(*b*).

(9) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

(10) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

306. Conduct not to constitute offences

(1) Notwithstanding anything in this Part, where a person is charged with an offence under this Part (other than section 300 or 302) by reason of any conduct, it is a defence to the charge for the person to prove that the conduct is, according to the rules made under subsection (2), not to be regarded as constituting an offence.

(2) For the purposes of subsection (1), the Commission, after consultation with the Financial Secretary, may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which any conduct that would otherwise constitute an offence under this Part (other than section 300 or 302) shall not be regarded as constituting such an offence.

(3) Notwithstanding anything in this Part, where—

(*a*) a person is charged with an offence under section 295, 296 or 299 by reason of any conduct; and

(*b*) the person is charged on the basis that the conduct was carried out not in respect of securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a relevant overseas market,

the person shall not be convicted of the offence unless the prosecution proves that in any place in which such relevant overseas market is situated the conduct would have constituted a criminal offence had it been carried out there.

307. No further proceedings after Part XIII market misconduct proceedings

Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if—

(*a*) proceedings have previously been instituted against the person under section 252 in respect of the same conduct; and

(*b*) (i) those proceedings remain pending; or

(ii) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 252 in respect of the same conduct.

PART XV

DISCLOSURE OF INTERESTS

Division 1—Preliminary

308. Interpretation of Part XV

(1) In this Part, unless the context otherwise requires—

"associated corporation" (相聯法團), in relation to a listed corporation, means a corporation—

(*a*) which is a subsidiary or holding company of the listed corporation or a subsidiary of the listed corporation's holding company; or

(*b*) (not being a subsidiary of the listed corporation) in which the listed corporation has an interest in the shares of a class comprised in its share capital exceeding in nominal value one-fifth of the nominal value of the issued shares of that class;

"cash settled equity derivatives" (現金結算股本衍生工具) means equity derivatives other than physically settled equity derivatives;

"chief executive" (最高行政人員) means the person employed or otherwise engaged by a corporation who, either alone or together with one or more persons, is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation;

"contract multiplier" (合約乘數), in relation to a stock futures contract, means the number specified by the recognized exchange company operating the futures market on which the stock futures contract is traded to be the contract multiplier for that stock futures contract under the rules of the recognized exchange company;

"custodian" (保管人) means a corporation the principal business of which is to act as a custodian of securities or other property for another person, whether on trust or by contract;

"deliver" (交付), in relation to any shares or debentures, means deliver the shares or debentures either physically or by electronic means and, in the case of unissued shares, means deliver the shares after they are issued; and "take delivery" (提取) shall be construed accordingly;

"duty of disclosure" (披露責任)—

(*a*) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means the duty of disclosure arising under section 310 which has to be performed in accordance with section 324; or

(*b*) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means the duty of disclosure arising under section 341 which has to be performed in accordance with section 347;

"equity derivatives" (股本衍生工具) means any—

(*a*) rights, options or interests (whether described as units or otherwise) in, or in respect of, underlying shares;

(*b*) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of—

(i) underlying shares; or

(ii) any rights, options or interests referred to in paragraph (*a*);

(*c*) rights, options or interests (whether described as units or otherwise) in, or in respect of—

(i) any rights, options or interests referred to in paragraph (*a*); or

(ii) any contracts referred to in paragraph (*b*); or

(*d*) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (*a*), (*b*) or (*c*), including stock futures contracts, certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase—

(i) underlying shares; or

(ii) the rights, options or interests or the contracts,

whether or not—

(i) the rights, options or interests, the contracts or the instruments or documents are traded on a recognized stock market or a recognized futures market;

(ii) the rights, options or interests, the contracts or the instruments or documents are, where the underlying shares are shares in a listed corporation, issued or made available by the listed corporation; or

(iii) the obligations under the rights, options or interests, the contracts or the instruments or documents are settled by payment of cash or by delivery of the underlying shares or otherwise;

"Exchange Company" (交易所公司) means the Exchange Company within the meaning of the repealed Securities (Disclosure of Interests) Ordinance;

"founder" (成立人), in relation to a discretionary trust, means a person who—

(*a*) has directly or indirectly provided, or undertaken to provide, property for the purpose of the trust; or

(*b*) has entered into a reciprocal arrangement or understanding (whether having legal effect or not) with another person leading, directly or indirectly, to the creation of the trust, or has procured another person, directly or indirectly, to create the trust,

and whose consent is required as a condition (whether having legal effect or not) to the exercise by any trustee of his discretion in connection with the trust property, or in accordance with whose wishes (whether having legal effect or not) any trustee is accustomed, or would be expected, to act;

"Hong Kong register" (香港登記冊), in relation to a listed corporation, means the register of members, or a branch register, of the listed corporation that is kept in Hong Kong;

"inspector" (審查員) means an inspector appointed under section 356 or 357;

"issued equity share capital" (已發行權益股本), in relation to a listed corporation, means the listed corporation's issued share capital of a class the shares in which carry rights to vote in all circumstances at general meetings of the corporation;

"listed" (上市) means listed on a recognized stock market;

"listed corporation" (上市法團) means any corporation which has any of its securities listed;

"notifiable interest" (須具報權益) has the meaning assigned to it by section 311(3);

"notifiable percentage level" (須具報百分率水平) has the meaning assigned to it by section 315(1);

"off-exchange transaction" (場外交易) means any transaction, arrangement or occurrence of an event (other than an on-exchange transaction) under which a person becomes, or ceases to be, interested in shares;

"on-exchange transaction" (場內交易) means any transaction conducted on a recognized stock market or a recognized futures market under which a person becomes, or ceases to be, interested in shares;

"physically settled equity derivatives" (實物結算股本衍生工具) means equity derivatives that are, or are to be, settled by delivery of the underlying shares, including equity derivatives in respect of which the holder, writer or issuer of the equity derivatives may choose to settle by payment of cash or by delivery of the underlying shares;

"qualified lender" (合資格借出人) means a person who is—

(*a*) an authorized financial institution;

(*b*) an insurer authorized under the Insurance Companies Ordinance (Cap. 41);

(*c*) an exchange participant of a recognized exchange company;

(*d*) an intermediary licensed or registered for Type 1 or Type 8 regulated activity; or

(*e*) a corporation authorized under the law of any place outside Hong Kong recognized for the purposes of section 313(13), 317(6), 323(6) or (7) or 341(5) by the Commission to carry on business—

(i) as a bank;

(ii) as an insurance company; or

(iii) in an activity that is in the opinion of the Commission equivalent to any of the regulated activities carried on by an intermediary referred to in paragraph (*d*);

"register of directors' and chief executives' interests and short positions" (董事及最高行政人員權益及淡倉登記冊) means the register kept under section 352;

"register of interests in shares and short positions" (股份權益及淡倉登記冊) means the register kept under section 336 including, except where the context otherwise requires, that part of the register kept under section 337;

"regulations" (規例) means regulations made under section 376;

"relevant event" (有關事件)—

(*a*) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means—

(i) in a case under section 310(1)(*a*) or (*b*) or (4)(*a*) or (*b*), the event or change referred to in such section;

(ii) in a case under section 310(2)(*a*), the event in consequence of which the corporation becomes a listed corporation;

(iii) in a case under section 310(2)(*b*), the event in consequence of which the listed corporation's share capital of a particular class becomes relevant share capital;

(iv) in a case under section 310(2)(*c*) or (5), the commencement of this Part; or

(v) in a case under section 310(3) or (6), the taking effect of the regulation providing for the reduction referred to in such section; or

(*b*) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means—

(i) in a case under section 341(1)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*), the event referred to in such section;

(ii) in a case under section 341(2)(*a*), the event in consequence of which the corporation becomes a listed corporation;

(iii) in a case under section 341(2)(*b*), the commencement of this Part;

(iv) in a case under section 341(2)(*c*), the event in consequence of which the person becomes a director or chief executive of a listed corporation; or

(v) in a case under section 341(2)(*d*), the event in consequence of which the corporation becomes an associated corporation of a listed corporation;

"relevant exchange company" (有關交易所公司), in relation to a listed corporation, means the recognized exchange company operating the stock market on which the shares in the listed corporation are listed;

"relevant share capital" (有關股本), in relation to a listed corporation—

(*a*) means the listed corporation's issued share capital of a class the shares in which carry rights to vote in all circumstances at general meetings of the corporation; and

(*b*) includes unissued shares in the listed corporation's share capital of a class which, if issued, would carry rights to vote in all circumstances at general meetings of the corporation;

"relevant time" (有關時間) means the time of the occurrence of the relevant event;

"rights issue" (供股) means an offer or issue by a listed corporation of shares in the listed corporation (whether issued or unissued) to all persons holding issued shares in the listed corporation at a certain date (other than a person whose address is in a place where such offer or issue is not permitted under the law of that place) in proportion to the number of those issued shares held by them at that date, but does not include an offer or issue of shares in the listed corporation in lieu of all or part of a cash dividend;

"short position" (淡倉) means the position which a person has—

(*a*) where the person is the holder, writer or issuer of any equity derivatives, by virtue of which the person—

(i) has a right to require another person to take delivery of the underlying shares of the equity derivatives;

(ii) is under an obligation to deliver the underlying shares of the equity derivatives to another person, if called upon to do so;

(iii) has a right to receive from another person an amount if the price of the underlying shares of the equity derivatives declines; or

(iv) has a right to avoid or reduce a loss if the price of the underlying shares of the equity derivatives declines,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute; or

(*b*) where the person is the borrower of shares under a securities borrowing and lending agreement, by virtue of which the person is under an obligation to deliver shares to another person who has lent shares, if called upon to do so, before or on a certain date or within a certain period, whether or not the obligation to deliver shares is to be settled by payment of cash or by delivery of shares or otherwise;

"specified percentage level" (指明百分率水平) has the meaning assigned to it by section 315(2);

"stock futures contract" (股票期貨合約) means a contract which is of a class approved by the Commission as stock futures contracts for trading on a recognized futures market;

"target corporation" (目標法團), in relation to an agreement to which section 317 applies, means the particular listed corporation which is the target corporation for that agreement;

"underlying shares" (相關股份), in relation to any equity derivatives and subject to subsection (5), means—

(*a*) for the purposes of, and otherwise in relation to, Divisions 2 to 6—

(i) the shares comprised in the relevant share capital of the listed corporation concerned which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or

(ii) the shares comprised in the relevant share capital of the listed corporation concerned by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined; or

(*b*) for the purposes of, and otherwise in relation to, Divisions 7 to 10—

(i) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or

(ii) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined,

whether in any case those shares are issued or unissued.

(2) The temporary suspension of voting rights in respect of shares comprised in a class of the issued share capital of a listed corporation does not affect the application of this Part in relation to interests in those or any other shares comprised in that class.

(3) In section 317, and also in references elsewhere in this Part to an agreement to which that section applies, "agreement" (協議) includes any agreement or arrangement, and a reference in that section to provisions of an agreement—

(*a*) accordingly includes a reference to undertakings, expectations or understandings operative under any arrangement; and

(*b*) (without prejudice to paragraph (*a*)) also includes a reference to any provisions, whether express or implied and whether absolute or not.

(4) For the purposes of any provision of this Part which provides that an officer of a corporation who is in default is liable to a fine or penalty, the expression "every officer of it who is in default" (其每名違責的高級人員) means every officer of the corporation who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that provision.

(5) In the case of equity derivatives—

(*a*) where—

(i) no less than 5 listed corporations' shares will be required to be delivered on the exercise of rights or fulfilment of obligations under the equity derivatives; and

(ii) at the time of the issue of the equity derivatives, no more than—

(A) subject to sub-subparagraph (B), 30%; or

(B) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,

of the value of all the shares which, but for this subsection, would have been the underlying shares of the equity derivatives is represented by the shares in any one of those listed corporations; or

(*b*) where—

(i) the prices or values of no less than 5 listed corporations' shares play a part in the derivation or determination of the price or value of the equity derivatives; and

(ii) at the time of the issue of the equity derivatives, no more than—

(A) subject to sub-subparagraph (B), 30%; or

(B) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,

of the price or value of the equity derivatives is derived from or determined by the prices or values of the shares in any one of those listed corporations,

those equity derivatives are taken to have no underlying shares.

(6) In subsection (5), a reference to shares shall be construed as—

(*a*) for the purposes of, and otherwise in relation to, Divisions 2 to 6, a reference to shares comprised in the relevant share capital of the listed corporation concerned; or

(*b*) for the purposes of, and otherwise in relation to, Divisions 7 to 10, a reference to shares in the listed corporation concerned.

(7) In subsections (5) and (6), a reference to a listed corporation includes a reference to a corporation that is listed on a specified stock exchange.

309. Exemptions

(1) The Commission may, after consultation with the Financial Secretary, publish guidelines for the exemption of any person from all or any of the provisions of this Part.

(2) The Commission may, upon the application of a corporation, having regard to the guidelines published under subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant corporation, and any other person in relation to that corporation, from all or any of the provisions of this Part.

(3) The Commission may, upon the application of the holder, writer or issuer, or the prospective holder, writer or issuer, of any equity derivatives, having regard to the guidelines published under subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant, and any other person who is taken to have an interest or short position in the underlying shares of the equity derivatives by virtue of the holding, writing or issuing of the equity derivatives, from all or any of the provisions of this Part.

(4) The Commission may from time to time—

(*a*) suspend or withdraw an exemption granted under subsection (2) or (3) on the ground that the conditions subject to which the exemption was granted have not been complied with or on such other ground as the Commission considers appropriate; or

(*b*) amend any condition imposed under subsection (2) or (3).

(5) The Commission shall publish, by the use of an on-line medium, such particulars of the exemptions granted, suspended or withdrawn under this section as it considers appropriate.

(6) Guidelines published under subsection (1) are not subsidiary legislation.

Division 2—Disclosure of interests and short positions

310. Duty of disclosure: cases in which it may arise

(1) Where—

(*a*) a person acquires an interest in shares comprised in the relevant share capital of a listed corporation or ceases to be interested in shares so comprised (whether or not having or retaining an interest in other shares so comprised); or

(*b*) any change occurs affecting facts relevant to the application of section 313 to a person's existing interest (or part thereof) in shares comprised in a listed corporation's share capital of any description,

then in the circumstances specified in section 313(1), he comes under the duty of disclosure.

(2) Where a person is—

(*a*) interested in shares comprised in the relevant share capital of a corporation at the time when the corporation becomes a listed corporation;

(*b*) interested in shares comprised in a listed corporation's share capital of a particular class at the time when the listed corporation's share capital of that class becomes relevant share capital; or

(*c*) interested in shares comprised in the relevant share capital of a listed corporation at the commencement of this Part, if such interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 406,

then in the circumstances specified in section 313(2), he comes under the duty of disclosure.

(3) Where a person is interested in shares comprised in the relevant share capital of a listed corporation at the time when there is a reduction in the notifiable percentage level made by regulations, then in the circumstances specified in section 313(3), he comes under the duty of disclosure.

(4) Where—

(*a*) a person comes to have, or ceases to have, a short position in shares comprised in the relevant share capital of a listed corporation (whether or not having or retaining a short position in other shares so comprised); or

(*b*) any change occurs affecting facts relevant to the application of section 313 to a person's existing short position (or part thereof) in shares comprised in a listed corporation's share capital of any description,

then in the circumstances specified in section 313(4), he comes under the duty of disclosure.

(5) Where a person has a short position in shares comprised in the relevant share capital of a listed corporation at the commencement of this Part, then in the circumstances specified in section 313(5), he comes under the duty of disclosure.

(6) Where a person has a short position in shares comprised in the relevant share capital of a listed corporation at the time when there is a reduction in the specified percentage level made by regulations, then in the circumstances specified in section 313(6), he comes under the duty of disclosure.

(7) The existence of the duty of disclosure in a particular case depends (in part) on the circumstances obtaining before and after whatever is in that case the relevant time.

311. Interests to be disclosed

(1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 310 are those in shares comprised in the relevant share capital of the listed corporation concerned.

(2) In subsection (1), a reference to interests in shares comprised in the relevant share capital of the listed corporation concerned includes a reference to interests in shares so comprised, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of—

(*a*) the holding, writing or issuing by him of the equity derivatives;

(*b*) the exercise by, or against, him of rights under the equity derivatives; or

(*c*) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

(3) A person has a notifiable interest at any time when he is interested in shares comprised in the relevant share capital of the listed corporation concerned of an aggregate nominal value equal to or more than the nominal value of the percentage of the issued equity share capital which is the notifiable percentage level for the time being.

312. Short positions to be disclosed

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 310 are those in shares comprised in the relevant share capital of the listed corporation concerned.

313. Circumstances in which duty of disclosure arises

(1) The circumstances referred to in section 310(1) are those where—

(*a*) the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time;

(*b*) the person had a notifiable interest immediately before the relevant time, but does not have a notifiable interest immediately after the relevant time;

(*c*) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the percentage levels of his interest immediately before and immediately after the relevant time are not the same; or

(*d*) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the nature of his interest (or part thereof) immediately before and immediately after the relevant time is not the same.

(2) The circumstances referred to in section 310(2) are those where the person has a notifiable interest immediately after the relevant time.

(3) The circumstances referred to in section 310(3) are those where the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time.

(4) The circumstances referred to in section 310(4) are those where the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, and—

(*a*) the person—

(i) did not have a short position in shares comprised in the relevant share capital of the listed corporation concerned immediately before the relevant time; or

(ii) had a short position in shares so comprised immediately before the relevant time of a percentage level less than the specified percentage level,

but has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level;

(*b*) the person had a short position in shares so comprised immediately before the relevant time of a percentage level equal to or more than the specified percentage level, but does not have a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level; or

(*c*) the person had a short position in shares so comprised immediately before the relevant time of a percentage level equal to or more than the specified percentage level, and has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level, but the percentage levels of his short position immediately before and immediately after the relevant time are not the same.

(5) The circumstances referred to in section 310(5) are those where the person has a notifiable interest immediately after the relevant time, and has a short position in shares comprised in the relevant share capital of the listed corporation concerned immediately after the relevant time of a percentage level equal to or more than the specified percentage level.

(6) The circumstances referred to in section 310(6) are those where—

(*a*) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time; and

(*b*) the person had a short position in shares so comprised immediately before the relevant time of a percentage level less than the specified percentage level, but has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level.

(7) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(*c*) is not under such a duty where—

(*a*) the percentage level of his interest in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section 314(1), immediately after the relevant time is the same as or less than the percentage level of his interest in shares so comprised at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(*c*); and

(*b*) the difference between—

(i) the percentage figure of his interest in shares so comprised, calculated in accordance with subsection (14)(*a*), at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(*c*); and

(ii) the percentage figure of his interest in shares so comprised disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(*c*),

is less than 0.5%.

(8) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(*d*) is not under such a duty where the percentage level of his interest (excluding that part of his interest the nature of which has changed immediately after the relevant time) in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section 314(1) (by construing the reference in that section to

the aggregate nominal value of all the shares in which a person is interested as a reference to the aggregate nominal value of the shares the nature of the person's interest in which has not changed), immediately after the relevant time—

(*a*) is the same as the percentage level of his interest in shares so comprised at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(*a*), (*c*) or (*d*) (whichever is the latest); or

(*b*) is the same as or less than the percentage level of his interest in shares so comprised at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(*c*), and the difference between—

(i) the percentage figure of his interest in shares so comprised, calculated in accordance with subsection (14)(*a*) (by construing the reference in that subsection to section 314(1) in the manner aforementioned in this subsection), at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(*c*); and

(ii) the percentage figure of his interest in shares so comprised disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(*c*),

is less than 0.5%.

(9) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (4)(*c*) is not under such a duty where—

(*a*) the percentage level of his short position in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section 314(4), immediately after the relevant time is the same as or less than the percentage level of his short position in shares so comprised at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(*c*); and

(*b*) the difference between—

(i) the percentage figure of his short position in shares so comprised calculated in accordance with subsection (14)(*b*) at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(*c*); and

(ii) the percentage figure of his short position in shares so comprised disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(*c*),

is less than 0.5%.

(10) Subject to subsection (11), a qualified corporation which would otherwise come under a duty of disclosure in the circumstances specified in subsection (1) or (4) is not under such a duty if its holding company (or where its holding company is a qualified corporation of another holding company, that other holding company)—

(*a*) is, at the relevant time, taken under section 316(2)—

(i) to be interested in any shares in which the qualified corporation is interested; and

(ii) to have a short position in any shares in which the qualified corporation has a short position; and

(*b*) accordingly complies with the duty of disclosure.

(11) If a corporation ceases to be a qualified corporation of its holding company and in such circumstances the holding company is regarded as having ceased to be interested, or have a short position, in shares under section 316(6), the corporation is taken to have acquired that interest or come to have that short position (as the case may be).

(12) In subsections (10), (11) and (13), "qualified corporation" (合資格法團), in relation to a holding company, means a wholly owned subsidiary of the holding company (whether or not the holding company is itself a wholly owned subsidiary of another holding company).

(13) In subsection (1)(*d*), a reference to the nature of a person's interest as being not the same includes a reference to a change in the nature of—

(*a*) the person's title to shares comprised in the relevant share capital of the listed corporation concerned;

(*b*) any of the person's interest whether legal or equitable in shares so comprised;

(*c*) any of the person's interest in shares so comprised, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives; or

(*d*) any of the person's interest in shares so comprised in such other circumstances as are prescribed by rules made under section 377 for the purposes of this section,

but does not include a reference to a change in the nature of the person's interest in shares so comprised—

(i) on delivery of the shares to him, if his equitable interest in those shares is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 3 or 4;

(ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue;

(iii) on—

(A) the exercise of rights to subscribe for shares granted to him as part of a rights issue; or

(B) delivery of shares to him pursuant to a rights issue;

(iv) where another person, being a qualified lender, comes to have an interest in his shares by way of security; or

(v) where the person is a holding company, due to the acquisition of an interest in those shares by a qualified corporation of the person from another qualified corporation of the person.

(14) For the purposes of—

(*a*) subsections (7)(*b*) and (8)(*b*) and section 326(1)(*b*), "percentage figure" (百分率數字) means the percentage figure referred to in section 314(1) before rounding down, if applicable, to the next whole number; and

(*b*) subsection (9)(*b*) and section 326(1)(*c*), "percentage figure" (百分率數字) means the percentage figure referred to in section 314(4) before rounding down, if applicable, to the next whole number.

314. Percentage level in relation to notifiable interests and short positions

(1) Subject to subsections (2), (3) and (5), "percentage level" (百分率水平), in section 313(1)(*c*), (7) and (8), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the relevant share capital of the listed corporation concerned in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the nominal value of the issued equity share capital of that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.

(2) For the purposes of subsection (1) and section 311(3), where the listed corporation concerned grants to the person rights to subscribe for, or offers to the person, as part of a rights issue, shares comprised in its relevant share capital, the nominal value of the issued equity share capital of the listed corporation at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of—

(*a*) the nominal value of the issued equity share capital of the listed corporation immediately before the grant or offer (as the case may be); and

(*b*) the nominal value of the new shares to be issued upon the completion of the rights issue.

(3) In determining the aggregate nominal value of shares comprised in the relevant share capital of the listed corporation in which a person is interested for the purposes of subsection (1) and section 311(3), there shall be disregarded any short position which that person has in shares so comprised which, if included in the calculation of the aggregate nominal value of the shares so comprised in which the person is interested, would reduce the aggregate nominal value of those shares.

(4) Subject to subsection (5), "percentage level" (百分率水平), in sections 313(4), (5), (6) and (9), 325(3) and 326(1)(*j*), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the relevant share capital of the listed corporation concerned in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as a percentage of the nominal value of the issued equity share capital of that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.

(5) Where the listed corporation's share capital is divided into different classes of shares—

(*a*) a reference in this section and section 311(3) to the aggregate nominal value of shares comprised in the relevant share capital of the listed corporation in which the person is interested or has a short position shall be construed as a reference to the aggregate nominal value of the shares comprised in each of the classes taken separately; and

(*b*) a reference in this section to a percentage of the nominal value of the listed corporation's issued equity share capital shall be construed as a reference to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately.

(6) In subsection (2), "completion" (完成), in relation to a rights issue, means the issue of shares comprised in the relevant share capital of the listed corporation pursuant to the rights issue.

315. Notifiable percentage level and specified percentage level

(1) A reference to notifiable percentage level in this Part shall be construed as a reference to—

(*a*) subject to paragraph (*b*), 5%; or

(*b*) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,

and different percentages may be prescribed in relation to corporations of different classes or descriptions.

(2) A reference to specified percentage level in this Part shall be construed as a reference to—

(*a*) subject to paragraph (*b*), 1%; or

(*b*) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage.

316. Notification of family and corporate interests and short positions

(1) For the purposes of this Division and Divisions 3 and 4, a person is taken—

(*a*) to be interested in any shares in which his spouse, or any minor child (natural or adopted) of his, is interested; and

(*b*) to have a short position in any shares in which his spouse, or any minor child (natural or adopted) of his, has a short position.

(2) For the purposes of this Division and Divisions 3 and 4, a person is taken—

(*a*) to be interested in any shares in which a corporation is interested; and

(*b*) to have a short position in any shares in which a corporation has a short position,

if—

(i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or

(ii) subject to subsection (5), he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.

(3) Where—

(*a*) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and

(*b*) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"),

then, for the purposes of subsection (2)(ii), the effective voting power is taken as exercisable by that person.

(4) For the purposes of subsections (2) and (3), a person is entitled to exercise or control the exercise of voting power if—

(*a*) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(*b*) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(5) For the purposes of subsections (2) and (3), a person is not taken—

(*a*) to be interested in any shares in which a corporation is interested; or

(*b*) to have a short position in any shares in which a corporation has a short position,

if—

(i) that corporation is interested in those shares or has a short position in those shares (as the case may be) by reason only of its obligation or power to invest in, manage, deal in or hold interests in those shares on behalf of its customers in the ordinary course of its business as an investment manager, custodian or trustee;

(ii) to the extent that the corporation has any right or power to vote in respect of those shares arising from or by reason of its capacity as an investment manager, custodian or trustee, such right or power is exercisable by that corporation independently without any reference to the person or any related corporation of the person; and

(iii) when performing its functions as an investment manager, custodian or trustee, the power of that corporation to invest in, manage, deal in or hold interests in those shares is exercised by that corporation independently without any reference to the person or any related corporation of the person.

(6) A person who is taken to be interested, or have a short position, in shares under subsection (2) shall be regarded as having ceased to be interested, or have a short position, in the shares if subsection (2)(i) or (ii) no longer applies.

(7) In subsection (5)—

(*a*) "investment manager" (投資經理) means—

(i) an intermediary licensed or registered for Type 9 regulated activity; or

(ii) a corporation which is licensed, registered or exempt in a place outside Hong Kong recognized for the purposes of this section by the Commission for an activity which is equivalent to Type 9 regulated activity,

and is authorized to manage investments in securities for another person under a written agreement; and

(*b*) "trustee" (受託人) means a corporation the principal business of which is to hold property belonging to another person under the provisions of a trust deed.

317. Agreement to acquire interests in particular listed corporation

(1) This section applies in relation to an agreement between 2 or more persons which includes provisions for the acquisition by any one or more of them of interests in shares comprised in the relevant share capital of a particular listed corporation ("the target corporation"), if—

(*a*) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in shares comprised in the relevant share capital of the target corporation acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the shares comprised in the relevant share capital of the target corporation to which the agreement relates); or

(*b*) the agreement provides for the making of a loan, or the providing of security for a loan, by a controlling person or a director of the target corporation to any person on the understanding or with the knowledge that such loan (or part thereof) would be used or applied for the acquisition of an interest in shares comprised in the relevant share capital of the target corporation,

and an interest in shares comprised in the relevant share capital of the target corporation is in fact acquired by any of the parties in pursuance of such agreement.

(2) In subsection (1)(*a*), a reference to the use of interests in shares comprised in the relevant share capital of the target corporation shall be construed as a reference to the exercise of any rights, or of any control or influence, arising from those interests (including the right to enter into any agreement for the exercise, or for the control of the exercise, of any of those rights by another person).

(3) Once any interest in shares comprised in the relevant share capital of the target corporation has been acquired in pursuance of an agreement to which this section applies, this section continues to apply to the agreement irrespective of—

(*a*) whether or not any further acquisitions of interests in shares comprised in the relevant share capital of the target corporation take place in pursuance of the agreement;

(*b*) any change in the persons who are for the time being parties to it; and

(*c*) any variation of the agreement,

so long as the agreement continues to include provisions of any description referred to in subsection (1)(*a*) or (*b*).

(4) In subsection (3), a reference to the agreement includes a reference to any agreement having effect (whether directly or indirectly) in substitution for an earlier agreement.

(5) In subsection (1), a reference to an agreement, in so far as subsection (1)(*a*) applies, does not include—

(*a*) a reference to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; and

(*b*) a reference to an agreement to underwrite or sub-underwrite any offer of shares in a corporation, if the agreement is confined to that purpose and any matters incidental to it.

(6) In subsection (1), a reference to an agreement, in so far as subsection (1)(*b*) applies, does not include a reference to an agreement under which a controlling person or a director of the target corporation makes the loan in the ordinary course of his business as a qualified lender.

(7) For the purposes of this section, "controlling person" (控權人士), in relation to a corporation, means a person who, either alone or with any of his associates—

(*a*) is entitled to exercise or control the exercise of not less than—

(i) subject to subparagraph (ii), 30%; or

(ii) where any other percentage is prescribed by rules made under section 397 for the purposes of this subsection, such other percentage,

of the voting power at general meetings of the corporation;

(*b*) has the right to nominate any of the directors of the corporation; or

(*c*) has an interest in shares carrying the right to—

(i) veto any resolution; or

(ii) amend, modify, limit or add conditions to any resolution,

at general meetings of the corporation.

318. Interests of parties to agreement

(1) In the case of an agreement to which section 317 applies, each party to the agreement is taken (for the purposes of the duty of disclosure) to be interested in any shares comprised in the relevant share capital of the target corporation in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

(2) For the purposes of subsection (1) and sections 319 and 326(6)(*b*), an interest of a party to such an agreement in shares comprised in the relevant share capital of the target corporation is an interest apart from the agreement if he is interested in those shares otherwise than by the application of this section and section 317 in relation to the agreement.

(3) Accordingly, any such interest of the party to the agreement (apart from the agreement) includes, for the purposes of subsection (1) and section 319, any interest which he is taken to have under section 316 or by the application of this section and section 317 in relation to any other agreement with respect to shares comprised in the relevant share capital of the target corporation to which he is a party.

319. Duty of parties to agreement acting together to keep each other informed

(1) A person who is a party to an agreement to which section 317 applies is subject to the requirements of this section at any time when—

(*a*) the target corporation is a listed corporation, and he knows it to be so;

(*b*) the shares in the target corporation to which the agreement relates consist of or include shares comprised in the relevant share capital of the target corporation, and he knows that to be the case; and

(*c*) he knows the facts which make the agreement one to which section 317 applies.

(2) A person who is subject to the requirements of this section is under a duty to give notification to every other party to the agreement of the relevant particulars of his interest apart from the agreement (if any) in shares comprised in the relevant share capital of the target corporation—

(*a*) on his first becoming subject to the requirements of this section; and

(*b*) on each occurrence after that time and while he is still subject to those requirements of any event or change referred to in section 310(1), (2) or (3) (as it applies to his case otherwise than by reference to interests which he is taken to have under section 318 as applying to that agreement).

(3) The relevant particulars to be notified under subsection (2) are the number of shares (if any) comprised in the relevant share capital of the target corporation which the person giving the notification would be required to state as his interest if he were under the duty of disclosure with respect to that interest (apart from the agreement) immediately after the time when the duty to give notification under subsection (2) arose.

(4) A person who is a party to an agreement to which section 317 applies is under a duty to give notification to every other party to the agreement of his current address—

(*a*) on his first becoming subject to the requirements of this section; and

(*b*) on any change in his address occurring after that time and while he is still subject to those requirements.

(5) If a person is under a duty to give any notification required by this section to any other person, the notification shall be given within 3 business days after the day on which that duty arises.

320. Circumstances in which persons have interests in shares or short positions by attribution

(1) In sections 310 to 313—

(*a*) a reference to a person acquiring an interest in shares comprised in the relevant share capital of a listed corporation or ceasing to be interested in shares so comprised includes a reference to his becoming or ceasing to be interested in those shares by virtue of another person's interest;

(*b*) a reference to the nature of a person's interest in shares comprised in the relevant share capital of a listed corporation as being not the same includes a reference to a change in the nature of his interest in those shares by virtue of a change in the nature of another person's interest; and

(*c*) a reference to a person coming to have a short position in shares comprised in the relevant share capital of a listed corporation or ceasing to have a short position in shares so comprised includes a reference to his coming to have or ceasing to have a short position in those shares by virtue of another person's short position.

(2) Subsection (1) applies where—

(*a*) a person becomes or ceases to be interested in shares comprised in the relevant share capital of a listed corporation;

(*b*) the nature of a person's interest in shares so comprised changes; or

(*c*) a person comes to have or ceases to have a short position in shares so comprised,

under section 316 or 318 (as the case may be) whether—

(i) by virtue of the fact that the other person who is interested, or has a short position, in those shares becomes or ceases to be a person by reference to whose interests or short positions (if any) he is taken to have an interest or short position (as the case may be) under section 316 or 318;

(ii) in consequence of the fact that the other person has become or ceased to be interested in those shares, the nature of the other person's interest in those shares has changed, or the other person has come to have or ceased to have a short position in those shares (as the case may be);

(iii) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 317 applies to which the other person interested in those shares is for the time being a party; or

(iv) in consequence of the fact that an agreement to which both he and the other person are parties becomes or ceases to be one to which section 317 applies.

(3) Upon—

(*a*) a person becoming or ceasing to be interested in shares comprised in the relevant share capital of a listed corporation;

(*b*) a change in the nature of a person's interest in shares so comprised; or

(*c*) a person coming to have or ceasing to have a short position in shares so comprised,

(as the case may be) in the circumstances specified in subsection (2), the person shall be deemed to know that he has acquired an interest in those shares or has ceased to be interested in those shares, or that the nature of his interest in those shares has changed, or that he has come to have a short position in those shares or has ceased to have a short position in those shares (as the case may be), when he knows both—

(i) the relevant facts with respect to the other person's interest or short position (as the case may be) in those shares; and

(ii) the relevant facts by virtue of which he himself has become or ceased to be interested, or come to have or ceased to have a short position (as the case may be) in those shares under section 316 or 318.

(4) A person has the knowledge referred to in subsection (3)(i) if he knows (whether contemporaneously or not) either—

(*a*) of the fact that the other person is interested in those shares, or the nature of the other person's interest in those shares changes, or the other person has a short position in those shares (as the case may be) at any material time; or

(*b*) of the fact that the other person has become or ceased to be interested in those shares, or the nature of the other person's interest in those shares has changed, or the other person has come to have or ceased to have a short position in those shares (as the case may be) at any material time.

(5) A person shall be deemed to know of the fact that—

(*a*) the other person is interested in those shares or the nature of the other person's interest in those shares changes (as the case may be); or

(*b*) the other person has become or ceased to be interested in those shares or the nature of the other person's interest in those shares has changed (as the case may be),

if he has been notified under section 319 of facts which indicate that the other person is or has become or ceased to be interested in those shares or the nature of the other person's interest in those shares changes or has changed (as the case may be), whether on the other person's own account or by virtue of a third party's interest in them.

(6) In subsection (4), "material time" (關鍵時間) means any time at which the interests or short positions (as the case may be) of the person concerned which are taken to be his under section 316 or 318 fall or fell to be so taken.

321. Notification by agents

Where a person authorizes another person ("the agent")—

(*a*) to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a listed corporation; or

(*b*) to have or cease to have, on his behalf, short positions in shares so comprised,

he shall secure that the agent notifies him immediately of acquisitions or disposals of interests, or having or ceasing to have short positions, effected by the agent which will or may give rise to any duty of disclosure or any duty to give notification under any provision of this Division or Division 3 or 4 with respect to his interests or short positions in those shares.

Division 3—Interests and short positions to be notified or disregarded

322. Interests and short positions to be taken into account for the purpose of notification

(1) This section applies, subject to section 323, in determining for the purposes of Divisions 2, 4 and 5 whether a person has, or ceases to have, an interest or short position in shares comprised in the relevant share capital of a listed corporation that is notifiable.

(2) A reference to an interest in shares shall be construed as including a reference to an interest of any kind whatsoever in the shares, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

(3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.

(4) Where property is held on trust and an interest, or short position, in shares is comprised in that property—

(*a*) a beneficiary of the trust who apart from this section does not have an interest, or short position, in the shares is taken to have such an interest or short position (as the case may be); and

(*b*) in the case of a discretionary trust, the founder of the trust is taken to have an interest or short position (as the case may be) in the shares.

(5) A person is taken to have an interest in shares if—

(*a*) he enters into a contract for their purchase by him (whether for cash or other consideration); or

(*b*) he is entitled to—

(i) exercise any right conferred by the holding of the shares; or

(ii) control the exercise of any such right.

(6) For the purposes of subsection (5)(*b*), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares if—

(*a*) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(*b*) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(7) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust—

(*a*) he has a right to subscribe for the shares or call for delivery of the shares to himself or to his order; or

(*b*) he has a right to acquire an interest in the shares or is under an obligation to take delivery of the shares,

whether in any case the right or obligation is conditional or absolute.

(8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives—

(*a*) he has a right to require another person to deliver the underlying shares to him;

(*b*) he is under an obligation to take delivery of the underlying shares;

(*c*) he has a right to receive from another person an amount if the price of the underlying shares increases; or

(*d*) he has a right to avoid or reduce a loss if the price of the underlying shares increases,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.

(9) The number of shares in which a person is taken to be interested under subsection (8) is—

(*a*) the number of the underlying shares of the equity derivatives—

(i) which he has a right to require another person to deliver to him; or

(ii) of which he is under an obligation to take delivery;

(*b*) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or

(*c*) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

whether in any case the right or obligation is conditional or absolute, and the aggregate nominal value of the shares in which the person is taken to be interested shall be calculated accordingly.

(10) A person shall be regarded as having ceased to be interested in shares if—

(*a*) he delivers the shares to another person or to another person's order—

(i) in accordance with a contract under which he agreed to sell the shares to the other person;

(ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares; or

(iii) pursuant to a right to require the other person to take delivery of the shares;

(*b*) his right to subscribe for or call for delivery of the shares lapses or he assigns such a right to another person;

(*c*) his obligation to take delivery of the shares lapses or he assigns such an obligation to another person; or

(*d*) he receives from another person an amount, or avoids or reduces a loss, on assignment or settlement of any cash settled equity derivatives.

(11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(*d*) is—

(*a*) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(*b*) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

and the aggregate nominal value of the shares in which the person is regarded as having ceased to be interested under that subsection shall be calculated accordingly.

(12) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is—

(*a*) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;

(*b*) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(*c*) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

and the aggregate nominal value of the shares in which the person is regarded as so having a short position shall be calculated accordingly.

(13) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may be settled by payment of cash or by delivery of shares or otherwise, and the aggregate nominal value of the shares in which the person is regarded as so having a short position shall be calculated accordingly.

(14) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).

(15) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

323. Interests and short positions to be disregarded for the purpose of notification

(1) The following interests, and short positions, in shares comprised in the relevant share capital of a listed corporation shall be disregarded for the purposes of Divisions 2 to 4—

(*a*) where property is held on trust and an interest in shares is comprised in that property—
  (i) an interest in reversion or remainder;
  (ii) an interest of a bare trustee; and
  (iii) any discretionary interest;

(*b*) an exempt custodian interest;

(*c*) subject to subsection (4), an interest in shares comprised in the property under—
  (i) a collective investment scheme authorized under section 104;
  (ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or
  (iii) a qualified overseas scheme,
  of a holder, trustee or custodian of the scheme;

(*d*) an interest of a person subsisting by virtue of—
  (i) a charitable scheme made by order of any court of competent jurisdiction; or
  (ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration;

(*e*) an interest for the life of himself, or of another, of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the following conditions are satisfied—
  (i) the settlement is irrevocable; and
  (ii) the settlor has no interest in any income arising under, or property comprised in, the settlement;

(*f*) an exempt security interest;

(*g*) an interest in shares of a recognized clearing house;

(*h*) an interest in shares of the Registrar of the High Court held in his official capacity;

(*i*) an interest in shares of an intermediary licensed or registered for Type 1 regulated activity where—

(i) the interest is acquired by the intermediary as an agent only for the purposes of a transaction entered into in the ordinary course of his business as such an intermediary;

(ii) the principal in that transaction is a person other than a related corporation of the intermediary;

(iii) the interest is acquired from a person other than a related corporation of the intermediary; and

(iv) the intermediary has been interested in the shares for not more than 3 business days;

(*j*) such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by regulations for the purposes of this section; and

(*k*) subject to section 377, such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by rules made under section 377 for the purposes of this section.

(2) A person is not taken to be interested in shares under section 322(5)(*b*) by reason only that he—

(*a*) has been appointed as a proxy to vote at a specified meeting of the listed corporation or of any class of its members and at any adjournment of that meeting; or

(*b*) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or of any class of its members.

(3) For the purposes of subsection (1)(*b*), an interest in shares is an exempt custodian interest if—

(*a*) it is held by a corporation which carries on a business of holding securities in custody for another person, whether on trust or by contract; and

(*b*) the corporation has no authority to exercise discretion in dealing in the interest, or in exercising rights attached to the interest.

(4) An interest in shares of a holder, trustee or custodian of a scheme referred to in subsection (1)(*c*)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(*c*) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme.

(5) For the purposes of subsection (1)(*c*), "qualified overseas scheme" (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme which—

(*a*) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and

(*b*) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority,

but does not include—

(i) an arrangement operated by a person otherwise than by way of business;

(ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;

(iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and

(iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.

(6) An interest in shares is an exempt security interest for the purposes of subsection (1)(*f*) if it is held by a qualified lender by way of security only for the purposes of a transaction entered into in the ordinary course of his business as such a qualified lender.

(7) An interest in shares shall cease to be an exempt security interest for the purposes of subsection (1)(*f*), and the qualified lender holding the interest in the shares by way of security shall be taken to have acquired that interest for the purposes of Divisions 2 to 5, when—

(*a*) the qualified lender—

(i) becomes entitled to exercise voting rights in respect of the interest in the shares held as security as a result of, or following, a default by the person giving the interest in the shares as security; and

(ii) has—

(A) evidenced an intention to exercise the voting rights or control their exercise; or

(B) taken any step to exercise the voting rights or control their exercise; or

(*b*) the power of sale in respect of the interest in the shares held as security becomes exercisable, and the qualified lender or its agent offers the interest in the shares held as security, or any part of that interest, for sale.

(8) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that—

(*a*) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or

(*b*) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.

(9) A notice published pursuant to subsection (5)(*a*) or (iv) is not subsidiary legislation.

Division 4—Requirements for giving notification

324. Notification to be given

(1) Where a person comes under a duty of disclosure under section 310, he shall give notification to the listed corporation concerned and to the relevant exchange company of—

(*a*) the interests which he has, or ceases to have, in shares comprised in the relevant share capital of the listed corporation; and

(*b*) the short position (if any) which he has, or ceases to have, in shares so comprised.

(2) A notification required by this section shall be given to the listed corporation concerned and the relevant exchange company at the same time or (if it is not practicable to do so) one immediately after the other.

(3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—

(*a*) notwithstanding section 397(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and

(*b*) specify documents by which it is to be accompanied.

(4) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3).

(5) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.

(6) Subject to subsection (7), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure arises under section 310, the duty shall not be regarded as having been performed unless the notification—

(*a*) is in the form specified;

(*b*) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and

(*c*) is accompanied by such documents as are specified in the form.

(7) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(8) A notice published pursuant to subsection (3) is not subsidiary legislation.

325. Time of notification

(1) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(1) or (4)—

(*a*) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or

(*b*) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.

(2) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(2) or (3)—

(*a*) within 10 business days after the day on which the relevant event occurs; or

(*b*) in the case that at the time at which the relevant event occurs the person concerned is not aware that he has a notifiable interest, within 10 business days after the day on which he becomes aware that he has such an interest.

(3) A notification required by section 324 shall be given, where the duty of disclosure arises under section 310(5) or (6)—

(*a*) within 10 business days after the day on which the relevant event occurs; or

(*b*) in the case that at the time at which the relevant event occurs the person concerned is not aware that he has a short position of a percentage level equal to or more than the specified percentage level, within 10 business days after the day on which he becomes aware that he has such a short position.

326. Particulars to be contained in notification

(1) Where a duty of disclosure arises under section 310, a person shall, in performing the duty of disclosure, specify in the notification his name and 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 325(2)(*b*) or (3)(*b*), the date on which he became aware that he has the interest or short position (as the case may be) in the shares comprised in the relevant share capital of the listed corporation concerned;

(*b*) the total number and class of—

(i) shares comprised in the relevant share capital of the listed corporation concerned 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 so comprised in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the shares in each class;

(*c*) the total number and class of—

(i) shares comprised in the relevant share capital of the listed corporation concerned 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 so comprised 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;

(*d*) the circumstances in which he comes under the duty of disclosure;

(*e*) where the duty of disclosure arises under section 310(1) or (4), the total number and class of shares comprised in the relevant share capital of the listed corporation in which—

(i) he has acquired an interest, or ceased to have an interest, at the relevant time;

(ii) he has come to have, or ceased to have, a short position at the relevant time; or

(iii) the nature of his interest changes at the relevant time;

(*f*) where he acquires or disposes of the interest referred to in paragraph (*e*)(i)—

(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);

(*g*) the capacity in which the interest, or short position, in shares comprised in the relevant share capital of the listed corporation is held immediately after the relevant time and, if the interest or short position in the shares is held in more than one capacity, the number of shares held in each capacity;

(*h*) where the duty of disclosure arises in the circumstances in which the nature of his interest in shares comprised in the relevant share capital of the listed corporation is not the same immediately before and immediately after the relevant time, the nature of his interest immediately before and immediately after the relevant time;

(*i*) where he is taken to be interested or have a short position in shares comprised in the relevant share capital of the listed corporation under section 316(1), 316(2) or 322(14)—

(i) the number and class of the shares; and

(ii) the name and address of, and his relationship with, each of the other persons having an interest or 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;

(*j*) where—

(i) he no longer has a notifiable interest; or

(ii) he has a notifiable interest, but he no longer has a short position of a percentage level equal to or more than the specified percentage level,

the fact that he no longer has such an interest or short position; and

(*k*) 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*), (*c*), (*e*), (*h*) or (*i*) are the underlying shares of equity derivatives, the person shall also specify separately in the notification the total number of—

(*a*) 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; or

(ii) physically settled equity derivatives;

(*b*) 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; or

(ii) physically settled equity derivatives;

(*c*) 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; and

(*d*) shares which are the underlying shares of any of the equity derivatives referred to in paragraph (*b*) in which he is interested, or has a short position, immediately after the relevant time.

(3) In determining the number of shares in which a person is interested for the purposes of this section—

(*a*) there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of the shares in which the person is interested; and

(*b*) particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.

(4) Unless a corporation is—

(*a*) a listed corporation;

(*b*) a wholly owned subsidiary of a listed corporation;

(*c*) a corporation listed on a specified stock exchange; or

(*d*) a wholly owned subsidiary of a corporation listed on a specified stock exchange,

it shall, in performing a duty of disclosure arising under section 310, also specify in the notification the name and address of any person in accordance with whose directions or instructions it, or its directors, are accustomed or obliged to act.

(5) For the purposes of subsection (4), a person shall not be regarded as a person in accordance with whose directions or instructions a corporation or its directors are accustomed or obliged to act by reason only that the corporation or its directors act on advice given by him in a professional capacity.

(6) A notification given by a person who is for the time being a party to an agreement to which section 317 applies shall also—

(*a*) state that the person giving the notification is a party to such an agreement;

(*b*) include—

(i) the names and (so far as he is aware) the addresses of the other parties to the agreement, identifying them as such; and

(ii) the number and class of shares in which each of those other parties is interested (apart from the agreement);

(*c*) state whether or not any of the shares to which the notification relates are shares in which he is interested by the application of sections 317 and 318 and, if so, the total number and class of those shares;

(*d*) include a copy of any written agreement, contract, document or other instrument which records any terms or details of the agreement to which section 317 applies; and

(*e*) (where there is no written agreement, contract, document or other instrument of the type referred to in paragraph (*d*) or where the agreement is only partly recorded in writing) include a written memorandum recording the material terms of the agreement to which section 317 applies, which are not otherwise recorded in writing, including, but not limited to—

(i) any cash or other consideration involved; and

(ii) the identity of all persons between whom such cash or other consideration is passed or is intended to pass.

(7) A notification given by a person in consequence of his ceasing to be interested in any shares by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 317 applies shall also—

(*a*) state that he or that other person (as the case may be) has ceased to be a party to the agreement; and

(*b*) (in the latter case) include the name and (so far as he is aware) the address of that other person.

(8) Nothing in subsection (1) or (2) shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

327. Duty to publish and notify Monetary Authority of information given under Division 4

(1) Upon receipt of any information under any provision of this Division or any regulations made, or rules made by the Commission, for the purposes of this Division, the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a person under any provision of this Division, the listed corporation is under a duty to notify the Monetary Authority of that information.

(3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.

(4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

328. Offences for non-compliance with notification requirements

A person—

(*a*) who, without reasonable excuse, fails to perform, within the period specified in section 325(1)(*a*) or (*b*), (2)(*a*) or (*b*) or (3)(*a*) or (*b*) (as the case may be), a duty of disclosure arising under Division 2 in accordance with the provisions of this Part applicable to that duty;

(*b*) who—

(i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;

(*c*) who, without reasonable excuse, fails to perform, within the period specified in section 319(5), a duty to give another person a notification required by section 319 in accordance with the provisions of this Part applicable to that duty; or

(*d*) who, without reasonable excuse, fails to comply with section 321 to secure the giving of notification to him by the agent,

commits an offence and is liable—

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

Division 5—Listed corporation's powers to investigate ownership

329. Power of listed corporation to investigate ownership of interests in its shares, etc.

(1) A listed corporation may carry out an investigation in relation to—

(*a*) any interest in shares comprised in its relevant share capital;

(*b*) any short position in shares comprised in its relevant share capital; or

(*c*) where shares comprised in its relevant share capital are the underlying shares of any equity derivatives, any interest in those equity derivatives,

by requiring, by notification, a person whom the listed corporation knows or has reasonable cause to believe to be interested in those shares or equity derivatives or have a short position in those shares or, at any time during the 3 years immediately before the day on which the notification is given, to have been interested in those shares or equity derivatives or had a short position in those shares—

(i) to confirm that fact or to indicate whether or not it is the case (as the case may be); and

(ii) where he has, or has during that time had, an interest in those shares or equity derivatives or a short position in those shares, to give such further information as may be required in accordance with subsection (2).

(2) A notification under subsection (1) may require the person to whom it is addressed—

(*a*) to give particulars of—

(i) his own present interest in those shares or equity derivatives or his own present short position in those shares; or

(ii) his own past interest in those shares or equity derivatives or his own past short position in those shares (which he had at any time during the 3-year period referred to in subsection (1));

(*b*) where—

(i) his interest in those shares or equity derivatives is a present interest and any other person has an interest in those shares or equity derivatives; or

(ii) in any case, any other person had an interest in those shares or equity derivatives during that 3-year period at any time when he himself had an interest in those shares or equity derivatives,

to give (so far as he is aware) such particulars with respect to the other person's interest as may be required by the notification;

(*c*) where his interest in those shares or equity derivatives was a past interest, to give (so far as he is aware) particulars of the identity of the person who had that interest immediately upon his ceasing to have it;

(*d*) where—

(i) his short position in those shares is a present short position and any other person has an interest or short position in those shares; or

(ii) in any case, any other person had an interest or short position in those shares during that 3-year period at any time when he himself had a short position in those shares,

to give (so far as he is aware) such particulars with respect to the other person's interest or short position as may be required by the notification; or

(*e*) where his short position in those shares was a past short position, to give (so far as he is aware) particulars of the identity of the person who had that short position or had an interest in those shares immediately upon his ceasing to have that short position.

(3) The particulars referred to in subsection (2)(*a*), (*b*) and (*d*) include—

(*a*) particulars of the identity of persons interested in the shares or equity derivatives in question, or having a short position in the shares in question; and

(*b*) particulars of whether persons interested in the same shares are or were—

(i) parties to any agreement to which section 317 applies; or

(ii) parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(4) A notification under subsection (1) shall require any information given in response to the notification to be given within such reasonable time as may be specified in the notification.

(5) The Financial Secretary may by notice published in the Gazette exempt a person from the operation of this section.

(6) A notice published pursuant to subsection (5) is not subsidiary legislation.

(7) Sections 316 to 318 and 322 (with the omission of the reference in section 322 to section 323) apply—

(*a*) for the purposes of construing—

(i) references in this section to a person interested in shares and to an interest in shares respectively; and

(ii) references in this section to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 2 to 4; and

(*b*) for the purposes of this Division as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

(8) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a listed corporation which would on issue be comprised in the relevant share capital of that corporation as it applies in relation to a person who is or was interested in shares so comprised; and in this section, a reference to an interest in shares and to shares shall be construed accordingly in any such case as including a reference respectively to any such right and shares which would on issue be so comprised.

330. Duty to notify relevant exchange company, Commission and Monetary Authority of information given under section 329

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty to notify the relevant exchange company and the Commission of that information.

(2) Upon receipt of any information under subsection (1), the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(3) Whenever in pursuance of a requirement imposed by a listed corporation that is, or is the holding company of, an authorized financial institution on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to notify the Monetary Authority of that information.

(4) If a listed corporation is under a duty to give any notification required by subsection (1) or (3), the notification shall be given before the end of the business day after the day on which that duty arises.

(5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

331. Listed corporation to investigate ownership of interests in its shares, etc. on requisition by members

(1) A listed corporation may be required to exercise its powers under section 329 on the requisition of members of the corporation holding, at the date of the deposit of the requisition, shares comprised in the paid-up capital of the corporation carrying at that date the right of voting at general meetings of the corporation of an aggregate nominal value not less than the nominal value of one-tenth of that paid-up capital.

(2) The requisition must—

(*a*) state that the requisitionists are requiring the listed corporation to exercise its powers under section 329;

(*b*) specify the manner in which they require those powers to be exercised; and

(*c*) give reasonable grounds for requiring the listed corporation to exercise those powers in the manner specified,

and, subject to subsection (3), must be signed by the requisitionists and deposited at the listed corporation's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section, it is the duty of the listed corporation to exercise its powers under section 329 in the manner specified in the requisition.

(5) If default is made in complying with subsection (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable—

(*a*) on conviction on indictment to a fine at level 6; or

(*b*) on summary conviction to a fine at level 3.

(6) In this section and in sections 332 and 333, a reference to a corporation's registered office shall, where the corporation does not have a registered office in Hong Kong, be deemed to be a reference to the corporation's principal place of business in Hong Kong.

332. Listed corporation to report to members

(1) On the conclusion of an investigation carried out by a listed corporation in pursuance of a requisition under section 331, it is the duty of the corporation to cause a report of the information received in pursuance of that investigation to be prepared.

(2) The report prepared under subsection (1) shall be made available at the listed corporation's registered office within 10 business days after the conclusion of the investigation.

(3) Where—

(*a*) a listed corporation carries out an investigation in pursuance of a requisition under section 331; and

(*b*) the investigation is not concluded before the end of 3 months beginning with the day next following the date of the deposit of the requisition,

it is the duty of the listed corporation to cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during the respective period in pursuance of the investigation.

(4) Each report prepared under subsection (3) shall be—

(*a*) made available at the listed corporation's registered office within 10 business days after the end of the period to which it relates; and

(*b*) published by the listed corporation at such time, in such manner and for such period as may be specified by the Commission by notice published in the Gazette.

(5) A report prepared under this section shall not include any information with respect to a corporation entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32); but where any such information is omitted, that fact shall be stated in the report.

(6) The listed corporation shall, within 3 business days after making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.

(7) An investigation carried out by a listed corporation in pursuance of a requisition under section 331 shall be regarded for the purposes of this section as concluded when the listed corporation has made all such inquiries as are necessary or expedient for the purposes of the requisition and, in the case of each such inquiry, either a response has been received by the corporation or the time allowed for a response has expired.

(8) A report prepared under this section—

(*a*) shall be kept at the corporation's registered office from the day on which it is first made available there in accordance with subsection (2) or (4) until the expiry of 6 years beginning with the day next following that day; and

(*b*) shall be made available for inspection in accordance with section 335 so long as it is so kept.

(9) If default is made in complying with subsection (1), (2), (3), (4)(*a*) or (*b*), (6) or (8)(*a*), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable—

(*a*) on conviction on indictment to a fine at level 6; or

(*b*) on summary conviction to a fine at level 3.

(10) A notice published pursuant to subsection (4)(*b*) is not subsidiary legislation.

333. Duty to deliver report prepared under section 332 to relevant exchange company, Commission and Monetary Authority

(1) Whenever a report is prepared under section 332, the listed corporation is under a duty to deliver a copy of the report to the relevant exchange company and the Commission.

(2) Upon receipt of any report under subsection (1), the relevant exchange company shall forthwith publish such report in such manner and for such period as may be approved by the Commission.

(3) Whenever a report is prepared under section 332 by a listed corporation that is, or is the holding company of, an authorized financial institution, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to deliver a copy of the report to the Monetary Authority.

(4) The duty imposed on a listed corporation by subsection (1) or (3) shall be performed before the end of the business day after the day on which the report is first made available at the corporation's registered office.

(5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

334. Offences for failure to provide information required by listed corporation

(1) Subject to subsection (2), a person—

(*a*) who, without reasonable excuse, fails to comply with a notification under section 329; or

(*b*) who—

(i) in purported compliance with such a notification, makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(2) A person is not obliged to comply with a notification under section 329 if he is for the time being exempted by the Financial Secretary under section 329(5).

335. Inspection of reports

(1) Any report which is required by section 332(8)(*b*) to be made available for inspection in accordance with this section shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of $10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such report, or any part of it, on payment of $2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of any report required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of any report required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

Division 6—Keeping of register

336. Register of interests in shares and short positions

(1) Every listed corporation shall keep a register of interests in shares and short positions.

(2) Whenever a listed corporation receives information from a person given in performance of a duty imposed on him by any provision of Divisions 2 to 5, the listed corporation is under a duty to record in the register, against the person's name, the information received and the date of the entry.

(3) Without prejudice to subsection (2), where a listed corporation receives a notification which includes a statement that the person giving the notification, or any other person, has ceased to be a party to an agreement to which section 317 applies, the listed corporation is under a duty to record that information against the name of the person who has ceased to be a party to that agreement in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).

(4) A duty imposed by subsection (2) or (3) shall be performed within 3 business days after the day on which that duty arises.

(5) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or equity derivatives.

(6) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(7) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.

(8) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.

(9) Subject to section 283 of the Companies Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation.

(10) The register and any index—

(*a*) shall be kept—

(i) if the corporation's register of members is kept at its registered office, at the corporation's registered office;

(ii) if the corporation's register of members is not so kept, at the corporation's registered office or the place where the register of members is kept; or

(iii) if the corporation does not have a registered office in Hong Kong, at the corporation's principal place of business in Hong Kong; and

(*b*) shall, for the purposes of Divisions 2 to 5 and for the purposes of—

(i) enabling members of the public to ascertain—

(A) the identities and the particulars of persons who are or were the true owners of, or have or had any interest or short position in, shares comprised in the relevant share capital of the listed corporation;

(B) the nature and the particulars of the interest or short position; and

(C) the capacity in which a person holds or held the interest or short position; and

(ii) providing the investing public with information to enable them to make informed investment decisions,

be made available, subject to subsection (11), for inspection in accordance with section 340.

(11) Neither the register nor any index shall be made available for inspection in accordance with section 340 in so far as it contains information with respect to a corporation for the time being entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32).

(12) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of—

(*a*) the place where the register is kept; and

(*b*) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

(13) The duty imposed by subsection (12) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

(14) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(15) For the purposes of this section, a reference to books and papers in section 283 of the Companies Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section.

337. Registration of interests and short positions disclosed under section 329

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty to record, against the name of the person interested in those shares or having a short position in those shares (as the case may be), in a separate part of its register of interests in shares and short positions—

(*a*) the fact that the requirement was imposed and the date on which it was imposed; and

(*b*) any information received in pursuance of the requirement.

(2) Section 336(4) to (14) applies in relation to any part of the register kept in accordance with subsection (1) as it applies in relation to the remainder of the register.

338. Removal of entries from register

(1) A corporation may remove an entry against a person's name from its register of interests in shares and short positions if more than 6 years have expired since the date of the entry being made, and either—

(*a*) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 2 to 5 in shares comprised in the relevant share capital of the corporation; or

(*b*) it has been superseded by a later entry made under section 336 against the same person's name,

and, in a case under paragraph (*a*), the corporation may also remove that person's name from the register.

(2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 2 to 5 gives to a listed corporation the name and address of another person as being interested in shares comprised in the relevant share capital of the corporation or having a short position in shares so comprised, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so named and shall include in that notification—

(*a*) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of interests in shares and short positions; and

(*b*) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of interests in shares and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If a person who is identified in a corporation's register of interests in shares and short positions as being a party to an agreement to which section 317 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as referred to in subsection (2)(*a*)) ceases to be a party to that agreement, he may apply in writing to the corporation for the inclusion of that information in the register; and if the corporation is satisfied that he has ceased to be a party to that agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.

(5) If an application under subsection (3) or (4) is refused (in a case under subsection (4), otherwise than on the ground that the information has already been recorded), the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register or to include the information in question in the register (as the case may be); and the Court of First Instance may, if it considers appropriate, make such an order.

(6) Where a name or an entry is removed from a corporation's register of interests in shares and short positions in pursuance of subsection (1) or (3) or an order under subsection (5), the corporation shall within 10 business days after the date of that removal make any necessary alteration in any index.

(7) If default is made in complying with subsection (2) or (6), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

339. Otherwise, entries not to be removed from register

(1) Entries in a corporation's register of interests in shares and short positions shall not be removed except in accordance with section 338.

(2) If an entry is removed from a corporation's register of interests in shares and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

340. Inspection of register

(1) Any register of interests in shares and short positions shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of $10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of $2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of the register required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

Division 7—Disclosure of interests and short positions of directors and chief executives

341. Duty of disclosure by director and chief executive

(1) A director or chief executive of a listed corporation comes under a duty of disclosure on the occurrence, while he is a director or chief executive of the listed corporation, of any of the following events—

(*a*) any event in consequence of which he becomes, or ceases to be, interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation (whether or not having or retaining an interest in other shares in or debentures of that corporation);

(*b*) the entering into by him of a contract to sell any such shares or debentures;

(*c*) the assignment by him of a right granted to him by the listed corporation to subscribe for shares in or debentures of the listed corporation;

(*d*) the grant to him by another corporation, being an associated corporation of the listed corporation, of a right to subscribe for shares in or debentures of that associated corporation, the exercise of such a right granted to him and the assignment by him of such a right so granted;

(*e*) any event in consequence of which the nature of his interest (or part thereof) in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, which has previously been notified to the listed corporation and the relevant exchange company where the duty of disclosure arose under paragraph (*a*), (*b*), (*c*) or (*d*) or subsection (2), changes; and

(*f*) any event in consequence of which he comes to have or ceases to have a short position in shares in the listed corporation or any associated corporation of the listed corporation (whether or not having or retaining a short position in other shares in that corporation).

(2) A person who—

(*a*) is a director or chief executive of a corporation when the corporation becomes a listed corporation and at that time—

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;

(*b*) at the commencement of this Part is a director or chief executive of a listed corporation and at that time—

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, and that interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 406; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;

(*c*) becomes a director or chief executive of a listed corporation and at the time when he does so—

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation; or

(*d*) is a director or chief executive of a listed corporation when a corporation becomes an associated corporation of the listed corporation and at that time—

(i) is interested in shares in or debentures of the associated corporation; or

(ii) has a short position in shares in the associated corporation,

comes under a duty of disclosure.

(3) A person who would otherwise come under a duty of disclosure under subsection (2) is not under such a duty where the occurrence of the relevant event comes to his knowledge after he has ceased to be a director or chief executive.

(4) Nothing in this section operates so as to impose a duty with respect to shares in a corporation which is the wholly owned subsidiary of another corporation for the purposes of section 124 of the Companies Ordinance (Cap. 32).

(5) In subsection (1)(*e*), a reference to a change in the nature of the interest of a director or chief executive in shares or debentures includes a reference to a change in the nature of—

(*a*) his title to the shares or debentures;

(*b*) any of his interest whether legal or equitable in the shares or debentures; or

(*c*) any of his interest in the shares, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives,

but does not include a reference to a change in the nature of his interest in the shares or debentures—

(i) on delivery of the shares or debentures to him, if his equitable interest in those shares or debentures is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 8 or 9;

(ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue; or

(iii) where another person, being a qualified lender, comes to have an interest in his shares or debentures by way of security.

342. Interests to be disclosed by director and chief executive

(1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 341 are those in shares in and debentures of the listed corporation concerned or any associated corporation of the listed corporation (whether issued or unissued).

(2) In subsection (1), a reference to interests in shares in the listed corporation concerned or any associated corporation of the listed corporation includes a reference to interests in such shares, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of—

(*a*) the holding, writing or issuing by him of the equity derivatives;

(*b*) the exercise by, or against, him of rights under the equity derivatives; or

(*c*) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

343. Short positions to be disclosed by director and chief executive

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 341 are those in shares in the listed corporation concerned or any associated corporation of the listed corporation.

344. Notification of family and corporate interests and short positions by director and chief executive

(1) For the purposes of this Division and Divisions 8 and 9—

(*a*) a director or chief executive of a listed corporation is taken—

(i) to be interested in any shares or debentures in which his spouse (not being herself or himself a director or chief executive of the listed corporation) is interested; and

(ii) to have a short position in any shares in which his spouse (not being herself or himself a director or chief executive of the listed corporation) has a short position; and

(*b*) the same applies with respect to—

(i) an interest which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares or debentures; and

(ii) a short position which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares.

(2) For the purposes of this Division and Divisions 8 and 9—

(*a*) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the spouse of a director or chief executive of a listed corporation (not being herself or himself a director or chief executive of the listed corporation) shall be taken also to have been entered into, exercised or made by, or as having been made to (as the case may be) the director or chief executive; and

(*b*) the same applies with respect to a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation).

(3) For the purposes of this Division and Divisions 8 and 9, a person is taken—

(*a*) to be interested in any shares in or debentures of the listed corporation or any associated corporation of the listed corporation in which a corporation is interested; and

(*b*) to have a short position in any shares in the listed corporation or any associated corporation of the listed corporation in which a corporation has a short position,

if—

(i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.

(4) Where—

(*a*) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and

(*b*) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"),

then, for the purposes of subsection (3)(ii), the effective voting power is taken as exercisable by that person.

(5) For the purposes of subsections (3) and (4), a person is entitled to exercise or control the exercise of voting power if—

(*a*) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(*b*) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(6) A person who is taken to be interested in shares or debentures, or have a short position in shares, under subsection (3) shall be regarded as having ceased to be interested in the shares or debentures, or have a short position in the shares, if subsection (3)(i) or (ii) no longer applies.

Division 8—Interests and short positions to be notified by director and chief executive or disregarded

345. Interests and short positions to be taken into account for the purpose of notification by director and chief executive

(1) This section applies, subject to section 346, in determining for the purposes of Divisions 7 and 9 whether a person has, or ceases to have, an interest in shares in or debentures of, or short position in shares in, a listed corporation or any associated corporation of the listed corporation that is notifiable.

(2) A reference to an interest in shares or debentures shall be construed as including a reference to an interest of any kind whatsoever in the shares or debentures, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

(3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.

(4) Where property is held on trust and an interest in shares or debentures, or short position in shares, is comprised in that property—

(*a*) a beneficiary of the trust who apart from this section does not have an interest in the shares or debentures, or a short position in the shares, is taken to have such an interest or short position (as the case may be); and

(*b*) in the case of a discretionary trust, the founder of the trust is taken to have an interest in the shares or debentures or a short position in the shares (as the case may be).

(5) A person is taken to have an interest in shares or debentures if—

(*a*) he enters into a contract for their purchase by him (whether for cash or other consideration); or

(*b*) he is entitled to—

(i) exercise any right conferred by the holding of the shares or debentures; or

(ii) control the exercise of any such right.

(6) For the purposes of subsection (5)(*b*), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if—

(*a*) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(*b*) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(7) A person is taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust—

(*a*) he has a right to subscribe for the shares or debentures or call for delivery of the shares or debentures to himself or to his order; or

(*b*) he has a right to acquire an interest in the shares or debentures or is under an obligation to take delivery of the shares or debentures,

whether in any case the right or obligation is conditional or absolute.

(8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives—

(*a*) he has a right to require another person to deliver the underlying shares to him;

(*b*) he is under an obligation to take delivery of the underlying shares;

(*c*) he has a right to receive from another person an amount if the price of the underlying shares increases; or

(*d*) he has a right to avoid or reduce a loss if the price of the underlying shares increases,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.

(9) The number of shares in which a person is taken to be interested under subsection (8) is—

(*a*) the number of the underlying shares of the equity derivatives—

(i) which he has a right to require another person to deliver to him; or

(ii) of which he is under an obligation to take delivery;

(*b*) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or

(*c*) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

whether in any case the right or obligation is conditional or absolute.

(10) A person shall be regarded as having ceased to be interested in shares or debentures if—

(*a*) he delivers the shares or debentures to another person or to another person's order—

(i) in accordance with a contract under which he agreed to sell the shares or debentures to the other person;

(ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares or debentures; or

(iii) pursuant to a right to require the other person to take delivery of the shares or debentures;

(*b*) his right to subscribe for or call for delivery of the shares or debentures lapses or he assigns such a right to another person;

(*c*) his obligation to take delivery of the shares or debentures lapses or he assigns such an obligation to another person; or

(*d*) he receives from another person an amount, or avoids or reduces a loss, on assignment or settlement of any cash settled equity derivatives.

(11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(*d*) is—

(*a*) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(*b*) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

(12) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is—

(*a*) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;

(*b*) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or

(*c*) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

(13) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may be settled by payment of cash or by delivery of shares or otherwise.

(14) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).

(15) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

346. Interests and short positions to be disregarded for the purpose of notification by director and chief executive

(1) The following interests, and short positions, in shares in or debentures of a listed corporation or any associated corporation of the listed corporation shall be disregarded for the purposes of Divisions 7 to 9—

(*a*) so long as a person is entitled to receive income from trust property comprising shares or debentures during the lifetime of himself or another person, an interest in the shares or debentures in reversion or remainder;

(*b*) an interest of a person in shares or debentures if, and so long as, he holds the shares or debentures as a bare trustee;

(*c*) subject to subsection (3), an interest in shares or debentures comprised in the property under—

(i) a collective investment scheme authorized under section 104;

(ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or

(iii) a qualified overseas scheme,

of a holder, trustee or custodian of the scheme;

(*d*) an interest of a person subsisting by virtue of—

(i) a charitable scheme made by order of any court of competent jurisdiction; or

(ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration; and

(*e*) such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by regulations for the purposes of this section.

(2) A person is not taken to be interested in shares or debentures under section 345(5)(*b*) by reason only that he—

(*a*) has been appointed as a proxy to vote at a specified meeting of the listed corporation or associated corporation or of any class of its members and at any adjournment of that meeting; or

(*b*) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or associated corporation or of any class of its members.

(3) An interest in shares or debentures of a holder, trustee or custodian of a scheme referred to in subsection (1)(*c*)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(*c*) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme.

(4) For the purposes of subsection (1)(*c*), "qualified overseas scheme" (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme which—

(*a*) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and

(*b*) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority,

but does not include—

(i) an arrangement operated by a person otherwise than by way of business;

(ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;

(iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and

(iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.

(5) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that—

(*a*) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or

(*b*) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.

(6) A notice published pursuant to subsection (4)(*a*) or (iv) is not subsidiary legislation.

Division 9—Requirements for giving notification by director and chief executive

347. Notification to be given by director and chief executive

(1) Where a person comes under a duty of disclosure under section 341, he shall give notification to the listed corporation concerned and to the relevant exchange company of—

(*a*) the interests which he has, or ceases to have, in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; and

(*b*) the short position (if any) which he has, or ceases to have, in shares in the listed corporation or any associated corporation of the listed corporation.

(2) A notification required by this section shall be given to the listed corporation concerned and the relevant exchange company at the same time or (if it is not practicable to do so) one immediately after the other.

(3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—

(*a*) notwithstanding section 397(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and

(*b*) specify documents by which it is to be accompanied.

(4) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3).

(5) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.

(6) Subject to subsection (7), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure arises under section 341, the duty shall not be regarded as having been performed unless the notification—

(*a*) is in the form specified;

(*b*) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and

(*c*) is accompanied by such documents as are specified in the form.

(7) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(8) A notice published pursuant to subsection (3) is not subsidiary legislation.

348. Time of notification by director and chief executive

(1) A notification required by section 347 shall be given, where the duty of disclosure arises under section 341(1)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*)—

(*a*) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or

(*b*) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.

(2) A notification required by section 347 shall be given, where the duty of disclosure arises under section 341(2)—

(*a*) within 10 business days after the day on which the relevant event occurs; or

(*b*) in the case that at the time at which the relevant event occurs the person concerned is not aware—

(i) that he has an interest in shares in or debentures of the listed corporation concerned or any associated corporation of the listed corporation; or

(ii) that he has a short position in shares in the listed corporation or any associated corporation of the listed corporation,

within 10 business days after the day on which he becomes aware that he has such an interest or short position (as the case may be).

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 paragraph (*b*) in which he is interested, or has a short position, immediately after the relevant time;

(*e*) the period within which rights under each of the equity derivatives may be exercised ("exercise period"); and

(*f*) the expiry date of the exercise period.

(3) Where a duty of disclosure arises under section 341(1)—

(*a*) subsection (1)(*b*), (*c*) and (*d*) shall apply in relation to a person as if a reference to the listed corporation and any associated corporation of the listed corporation in that subsection was a reference to the corporation—

(i) in the shares in or debentures of which he has acquired an interest, or ceased to have an interest, at the relevant time;

(ii) in the shares in or debentures of which he has come to have, or ceased to have, a short position at the relevant time; or

(iii) the nature of his interest in the shares in or debentures of which changes at the relevant time;

(*b*) the particulars required to be specified under subsection (1)(*i*), (*j*) or (*k*) or (2) shall relate only to—

(i) the shares in which—

(A) he has (or is taken to have) acquired an interest, or ceased to have an interest, at the relevant time;

(B) he has (or is taken to have) come to have, or ceased to have, a short position at the relevant time; or

(C) the nature of his interest changes (or is taken to change) at the relevant time; and

(ii) the debentures in which—

(A) he has (or is taken to have) acquired an interest, or ceased to have an interest, at the relevant time; or

(B) the nature of his interest changes (or is taken to change) at the relevant time.

(4) Where a duty of disclosure arises under section 341(2)(*a*)(i), (*b*)(i), (*c*)(i) or (*d*)(i), a person shall, in performing the duty of disclosure, also specify in the notification—

(*a*) in respect of his interest in the shares which are the subject of the disclosure acquired—

(i) through an on-exchange transaction, the highest price and the average price paid per share for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or

(ii) through an off-exchange transaction, the nature of the consideration given, and the highest amount and the average amount of the consideration given per share, for the interest acquired within 4 months immediately before the day on which the relevant event occurred; and

(*b*) in respect of his interest in the debentures which are the subject of the disclosure acquired—

(i) through an on-exchange transaction, the highest price and the average price paid per unit for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or

(ii) through an off-exchange transaction, the nature of the consideration given, and the highest amount and the average amount of the consideration given per unit, for the interest acquired within 4 months immediately before the day on which the relevant event occurred.

(5) For the purposes of subsection (1)(*b*), "percentage figure" (百分率數字), subject to subsections (6) and (7), means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or the associated corporation of the listed corporation in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be).

(6) For the purposes of subsection (5), where the listed corporation concerned or the associated corporation of the listed corporation grants to the person rights to subscribe for, or offers to the person, its shares, as part of a rights issue, the number of the issued shares in the listed corporation or associated corporation (as the case may be) at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of—

(*a*) the number of the issued shares in the listed corporation or associated corporation (as the case may be) immediately before the grant or offer (as the case may be); and

(*b*) the number of the new shares to be issued upon the completion of the rights issue.

(7) For the purposes of subsection (5)—

(*a*) in determining the number of shares in which a person is interested, there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of shares in which the person is interested; and

(*b*) the particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.

(8) For the purposes of subsection (1)(*d*), "percentage figure" (百分率數字) means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or the associated corporation of the listed corporation in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be).

(9) Where the share capital of the listed corporation or the associated corporation of the listed corporation is divided into different classes of shares—

(*a*) a reference in this section to the number of shares in the listed corporation or associated corporation (as the case may be) in which the person is interested or has a short position shall be construed as a reference to the number of the shares in each of the classes taken separately; and

(*b*) a reference in this section to a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be) shall be construed as a reference to a percentage of the number of the issued shares in each of the classes taken separately.

(10) In subsection (6), "completion" (完成), in relation to a rights issue, means the issue of shares in the listed corporation or the associated corporation of the listed corporation pursuant to the rights issue.

(11) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 341 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of debentures or rights to subscribe for debentures, or the exercise or assignment of those rights so granted, the notification shall also specify—

(*a*) the—

(i) price paid or received—

(A) for the grant of those debentures or those rights; or

(B) on the exercise or assignment of those rights,

(or, in the case that no price is paid or received, that fact); or

(ii) consideration given or received—

(A) for the grant of those debentures or those rights; or

(B) on the exercise or assignment of those rights,

(or, in the case that no consideration is given or received, that fact),

(as the case may be);

(*b*) the period within which those rights may be exercised ("exercise period"); and

(*c*) the expiry date of the exercise period.

(12) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 341 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of equity derivatives or rights under any equity derivatives, or the exercise or assignment of those rights so granted, the notification shall also specify the—

(*a*) price paid or received—

(i) for the grant of those equity derivatives or those rights; or

(ii) on the exercise or assignment of those rights,

(or, in the case that no price is paid or received, that fact); or

(*b*) consideration given or received—

(i) for the grant of those equity derivatives or those rights; or

(ii) on the exercise or assignment of those rights,

(or, in the case that no consideration is given or received, that fact),

(as the case may be).

(13) Subject to subsection (12), nothing in this section shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

350. Duty to publish and notify Monetary Authority of information given under Division 9

(1) Upon receipt of any information under any provision of this Division or any regulations made, or rules made by the Commission, for the purposes of this Division, the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a director or chief executive under any provision of this Division, the listed corporation is under a duty to notify the Monetary Authority of that information.

(3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.

(4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

351. Offences for non-compliance with notification requirements by director and chief executive

A person—

(*a*) who, without reasonable excuse, fails to perform, within the period specified in section 348(1)(*a*) or (*b*) or (2)(*a*) or (*b*) (as the case may be), a duty of disclosure arising under Division 7 in accordance with the provisions of this Part applicable to that duty; or

(*b*) who—

(i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

Division 10—Keeping of register of directors' and chief executives' interests and short positions

352. Register of directors' and chief executives' interests and short positions

(1) Every listed corporation shall keep a register of directors' and chief executives' interests and short positions.

(2) Whenever a listed corporation receives information from a director or chief executive given in performance of a duty of disclosure imposed on him by any provision of Divisions 7 to 9, the listed corporation is under a duty to record in the register, against the director's name or the chief executive's name (as the case may be), the information received and the date of the entry.

(3) The listed corporation is also under a duty, whenever it grants to a director or chief executive a right to subscribe for shares in or debentures of the listed corporation, to record in the register against his name—

(*a*) the date on which the right is granted;

(*b*) the period during which, or the time at which, the right is exercisable;

(*c*) the consideration for the grant (or, if there is no consideration, that fact); and

(*d*) the description of the shares or debentures involved, the number of those shares or amount of those debentures, and the price to be paid for them (or the consideration, if otherwise than in money).

(4) Whenever the right referred to in subsection (3) is exercised by a director or chief executive, the listed corporation is under a duty to record in the register against his name—

(*a*) that fact (identifying the right);

(*b*) the number of shares or amount of debentures in respect of which it is exercised; and

(*c*) if—

(i) they were registered in his name, that fact; or

(ii) they were not registered in his name, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of 2 persons or more) with the number of the shares or amount of the debentures registered in the name of each of them.

(5) A duty imposed by subsection (2), (3) or (4) shall be performed within 3 business days after the day on which that duty arises.

(6) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or debentures or equity derivatives.

(7) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(8) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.

(9) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.

(10) Subject to section 283 of the Companies Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation.

(11) The register and any index—

(*a*) shall be kept at the place where the corporation's register of interests in shares and short positions is kept; and

(*b*) shall, for the purposes of Divisions 7 to 9 and for the purposes of—

(i) enabling members of the public to ascertain—

(A) the identities and the particulars of directors and chief executives (as well as their spouses and minor children) who have or had any interest or short position in shares in, or any interest in debentures of, the listed corporation or any associated corporation of the listed corporation;

(B) the nature and the particulars of the interest or short position; and

(C) the capacity in which a person holds or held the interest or short position; and

(ii) providing the investing public with information to enable them to make informed investment decisions,

be made available, subject to subsection (12), for inspection in accordance with section 355.

(12) Neither the register nor any index shall be made available for inspection in accordance with section 355 in so far as it contains information with respect to a corporation for the time being entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32).

(13) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of—

(*a*) the place where the register is kept; and

(*b*) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

(14) The duty imposed by subsection (13) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

(15) The register shall be produced at the commencement of the corporation's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(16) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(17) For the purposes of this section, a reference to books and papers in section 283 of the Companies Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section.

353. Removal of entries from register of directors' and chief executives' interests and short positions

(1) A corporation may remove an entry against a person's name from its register of directors' and chief executives' interests and short positions if more than 6 years have expired since the date of the entry being made, and either—

(*a*) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 7 to 9 in shares in or debentures of the corporation or any associated corporation of the corporation; or

(*b*) it has been superseded by a later entry made under section 352 against the same person's name,

and, in a case under paragraph (*a*), the corporation may also remove that person's name from the register.

(2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 7 to 9 gives to a listed corporation the name and address of another person as being interested in shares in or debentures of, or having a short position in shares in, the corporation or any associated corporation of the corporation, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so named and shall include in that notification—

(*a*) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of directors' and chief executives' interests and short positions; and

(*b*) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of directors' and chief executives' interests and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If an application under subsection (3) is refused, the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register; and the Court of First Instance may, if it considers appropriate, make such an order.

(5) Where a name or an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in pursuance of subsection (1) or (3) or an order under subsection (4), the corporation shall within 10 business days after the date of that removal make any necessary alteration in any index.

(6) If default is made in complying with subsection (2) or (5), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

354. Otherwise, entries not to be removed from register of directors' and chief executives' interests and short positions

(1) Entries in a corporation's register of directors' and chief executives' interests and short positions shall not be removed except in accordance with section 353.

(2) If an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

355. Inspection of register of directors' and chief executives' interests and short positions

(1) Any register of directors' and chief executives' interests and short positions shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of $10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of $2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of the register required under this section is refused or a copy so required is not sent within the period specified in subsection (2), the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the period specified in subsection (2) a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

Division 11—Power to investigate listed corporation's ownership

356. Power to investigate ownership of listed corporation

(1) If it appears to the Financial Secretary that there are reasonable grounds to conduct an investigation for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of a listed corporation or able to control or materially influence its policy, he may appoint one or more inspectors to investigate and report for such purposes—

(*a*) on the ownership of shares in or debentures of the listed corporation;

(*b*) on persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation;

(*c*) where the shares in the listed corporation are the underlying shares of any equity derivatives, on persons who have or had an interest in those equity derivatives; and

(*d*) otherwise with respect to the listed corporation.

(2) The Financial Secretary may, on appointing an inspector under this section, define the scope of the investigation (whether with respect to the matter or the period to which it is to extend or otherwise) and, in particular, may limit the investigation to matters connected with particular shares or debentures or equity derivatives.

(3) If application for an investigation under this section with respect to particular shares in or debentures of a listed corporation, or particular equity derivatives the underlying shares of which are shares in a listed corporation, is made to the Financial Secretary by members of the listed corporation, and the number of applicants or the number of shares held by them is not less than the number required for an application for the appointment of inspectors under section 142(1) of the Companies Ordinance (Cap. 32)—

(*a*) the Financial Secretary may appoint an inspector to conduct the investigation if he is satisfied that there are reasonable grounds for conducting the investigation; and

(*b*) the Financial Secretary shall not, on appointing an inspector, exclude from the scope of the investigation any matter which the application seeks to have included, except in so far as the Financial Secretary is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of his appointment, an inspector's powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

(5) Before appointing an inspector upon application under subsection (3), the Financial Secretary—

(*a*) shall give the applicants an estimate of the amount of the costs and expenses that may be incurred in connection with the investigation; and

(*b*) may require the applicants to give security in such amount as he may specify, which shall not be greater than the amount of the estimated costs and expenses, for payment of the costs and expenses of the investigation.

(6) Sections 316 to 318 and 322 (with the omission of the reference in section 322 to section 323) apply, in relation to any person who is subject to the requirements of Divisions 2 to 4—

(*a*) for the purposes of construing—

(i) references in this Division and Division 12 to a person interested in shares and to an interest in shares respectively; and

(ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 2 to 4; and

(*b*) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

(7) Sections 344 and 345 (with the omission of the reference in section 345 to section 346) apply, in relation to any person who is subject to the requirements of Divisions 7 to 9—

(*a*) for the purposes of construing—

(i) references in this Division and Division 12 to a person interested in shares or debentures and to an interest in shares or debentures respectively; and

(ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 7 to 9; and

(*b*) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

357. Investigation of contraventions of sections 341 to 349

(1) If it appears to the Financial Secretary that there are circumstances suggesting that contraventions of any provision of sections 341 to 349 may have occurred in relation to the shares in or debentures of a listed corporation or, where the shares in a listed corporation are the underlying shares of any equity derivatives, to those equity derivatives, he may appoint one or more inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of the investigations to him.

(2) The Financial Secretary may, on appointing an inspector under this section, limit the period to which the investigation is to extend or confine it to shares or debentures or equity derivatives of a particular class, or both.

358. Inspector's powers during investigation

(1) If an inspector considers it necessary for the purposes of his investigation to investigate also—

(*a*) the ownership of shares in or debentures of any other corporation which is or has been an associated corporation of the listed corporation concerned;

(*b*) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; and

(*c*) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

he shall have power to do so, and shall report on the ownership of those shares or debentures and persons who have or had an interest in those shares or debentures or equity derivatives or a short position in those shares, so far as he considers that the results of his investigation with respect to those shares or debentures or equity derivatives are relevant to the investigation of—

(i) the ownership of shares in or debentures of the listed corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation; or

(iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives.

(2) An inspector may at any time in the course of his investigation, without the necessity of making an interim report, inform the Financial Secretary of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

359. Production of records and evidence to inspectors

(1) When an inspector has been appointed under section 356 or 357, it is the duty of—

(*a*) all officers and agents of the listed corporation concerned; and

(*b*) all officers and agents of any other corporation, if—

(i) the ownership of shares in or debentures of the other corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or

(iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

are investigated under section 358,

to—

(i) produce to the inspector all records of or relating to the listed corporation or the other corporation (as the case may be) which are in their possession;

(ii) attend before the inspector when required to do so; and

(iii) otherwise give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) If an inspector considers that a person other than an officer or agent of the listed corporation or the other corporation is or may be in possession of information concerning the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation, he may require that person to—

(*a*) produce to him any records of or relating to the listed corporation or the other corporation (as the case may be) which are in that person's possession;

(*b*) attend before him; and

(*c*) otherwise give him all assistance in connection with the investigation which that person is reasonably able to give,

and it shall be the duty of that person to comply with the requirement.

(3) An inspector may—

(*a*) examine on oath the officers and agents of the listed corporation or the other corporation, and any such person referred to in subsection (2), with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation; and

(*b*) administer an oath accordingly.

(4) A person is not excused from answering a question put to him under this section by an inspector only on the ground that the answer might tend to incriminate the person, but if the answer might tend to incriminate him and he so claims before giving the answer, the question and answer shall not be admissible in evidence against him in criminal proceedings in a court of law other than those in which he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer.

(5) Where an inspector requires a person to answer a question put to him under this section, the inspector shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (4) on the admissibility in evidence of the requirement and of the question and answer.

(6) In this section and sections 360 and 361—

(*a*) a reference to officers or to agents includes a reference to past, as well as present, officers or agents (as the case may be); and

(*b*) "agents" (代理人), in relation to a corporation, includes its bankers and solicitors and persons employed or otherwise engaged by it as auditors, whether those persons are or are not officers of the corporation.

360. Delegation of powers by inspectors

(1) An inspector may, by instrument in writing, delegate to any person the powers conferred by section 359 to require the production of any records and to put questions to officers and agents otherwise than on oath, or either of those powers.

(2) Where 2 or more inspectors are appointed in respect of the same investigation, the power conferred by this section may be exercised by any of them.

361. Obstruction of inspectors

(1) When an inspector is appointed under section 356 or 357, this section applies in relation to—

(*a*) any officer or agent of the listed corporation concerned;

(*b*) any officer or agent of any other corporation, if—

(i) the ownership of shares in or debentures of the other corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or

(iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

are investigated under section 358; and

(*c*) any such person referred to in section 359(2).

(2) If that officer, agent or person (as the case may be) refuses to comply with an inspector's requirement to —

(*a*) produce to the inspector any records which it is his duty under section 359 to produce;

(*b*) attend before the inspector; or

(*c*) answer any question put to him by an inspector with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are the shares in the listed corporation or the other corporation,

the inspector may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the refusal.

(3) The Court of First Instance may then inquire into the case and—

(*a*) if the Court is satisfied that there is no reasonable excuse for the officer, agent or person (as the case may be) not to comply with the requirement under subsection (2), order the officer, agent or person (as the case may be) to comply with the requirement within the period specified by the Court; and

(*b*) if the Court is satisfied that the refusal was without reasonable excuse, punish the officer, agent or person (as the case may be), and any other person knowingly involved in the refusal, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(4) In this section, a reference to an inspector includes a reference to any person to whom the powers of an inspector are delegated under section 360.

362. Inspector's reports

(1) An inspector may, and if so directed by the Financial Secretary shall, make interim reports to the Financial Secretary, and on the conclusion of an investigation shall make a final report to the Financial Secretary.

(2) Any such report shall be made within such time and in such manner as the Financial Secretary may direct.

(3) The Financial Secretary may, if he considers appropriate—

(*a*) forward a copy of any report made by an inspector to the registered office or principal place of business in Hong Kong of the listed corporation or the other corporation (as the case may be) which is the subject of the report;

(*b*) on request and on payment of such fee as is prescribed by regulations for the purposes of this section, furnish a copy of any such report to—

(i) any member of the listed corporation or the other corporation (as the case may be) which is the subject of the report;

(ii) any person whose conduct is referred to in the report;

(iii) the auditors of the listed corporation or the other corporation (as the case may be);

(iv) the applicants for the investigation; or

(v) any other person whose financial interests appear to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the listed corporation or the other corporation (as the case may be) or otherwise; and

(*c*) cause any such report to be published.

363. Expenses of investigation of affairs of corporation

(1) The expenses of and incidental to an investigation by an inspector shall be defrayed in the first instance out of the general revenue, but the following persons shall, to the following extent, be liable to repay such expenses to the Government—

(*a*) any person who is convicted by a court on a prosecution instituted as a result of the investigation shall be liable to such extent (if any) as may be ordered by such court;

(*b*) the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;

(*c*) the director and the chief executive of the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;

(*d*) any person who has an interest or short position notifiable under any provision of Divisions 2 to 5 in shares comprised in the relevant share capital of the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct; and

(*e*) the applicants for the investigation, where the inspector was appointed under section 356(3), shall be liable to such extent (if any), subject to the limit of the estimate given under section 356(5), as the Financial Secretary may direct.

(2) An inspector appointed under section 356(3) may, if he considers appropriate, and shall if the Financial Secretary so directs, include in a report made by him a recommendation as to the directions (if any) he considers appropriate, in the light of his investigation, to be given under subsection (1)(*b*), (*c*), (*d*) or (*e*).

(3) A person to whom a direction is given under subsection (1)(*b*), (*c*), (*d*) or (*e*) may appeal against the direction to the Court of First Instance.

(4) Notwithstanding rule 3(3) of Order 55 of the Rules of the High Court (Cap. 4 sub. leg.), a direction under subsection (1)(*b*), (*c*), (*d*) or (*e*) shall not take effect, if an appeal against the direction is made under subsection (3), until the appeal is withdrawn, abandoned or determined.

(5) Any person liable under paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) of subsection (1) shall be entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities thereunder or, if an appeal is made, according to the amount of their respective liabilities as determined by the Court of First Instance.

364. Power to obtain information as to those interested in shares, etc.

(1) If it appears to the Financial Secretary that—

(*a*) there are reasonable grounds to investigate—

(i) the ownership of shares in or debentures of a listed corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, a listed corporation; and

(iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives; and

(*b*) it is unnecessary to appoint an inspector for the purpose,

the Financial Secretary may require any person whom he has reasonable cause to believe to have, or to be able to obtain, any information as to—

(i) the present and past interests in those shares or debentures or equity derivatives;

(ii) the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to those shares or debentures or equity derivatives;

(iii) the present and past short positions in those shares; or

(iv) the names and addresses of the persons having those short positions and of any persons who act or have acted on their behalf in relation to those short positions,

to give any such information to the Financial Secretary.

(2) For the purposes of subsection (1), a person shall be deemed to have an interest in shares or debentures if—

(*a*) he has any right—

(i) to acquire or dispose of the shares or debentures or any interest in them; or

(ii) to vote in respect of them;

(*b*) his consent is necessary for the exercise of any right referred to in paragraph (*a*) of any other person; or

(*c*) any other person having any right referred to in paragraph (*a*) can be required, or is accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.

(3) For the purposes of subsection (1), a person shall be deemed to have an interest in equity derivatives if—

(*a*) he has any right to acquire or dispose of the equity derivatives or any interest in them;

(*b*) his consent is necessary for the exercise of the right referred to in paragraph (*a*) of any other person; or

(*c*) any other person having the right referred to in paragraph (*a*) can be required, or is accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.

(4) A person—

(*a*) who, without reasonable excuse, fails to give information required of him under this section; or

(*b*) who—

(i) in giving such information makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable—

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

365. Privileged information

Nothing in sections 356 to 364 shall require disclosure to the Financial Secretary, or to an inspector appointed by him, by an authorized financial institution acting as a corporation's banker or financial adviser of information as to the affairs of any of its customers other than the corporation concerned.

Division 12—Orders imposing restrictions on shares, etc.

366. Power of Court of First Instance to impose restrictions on shares, etc. in case of failure to provide information required by listed corporation

(1) Where—

(*a*) a notification is given by a listed corporation under section 329 to a person who is or was interested in shares comprised in the relevant share capital of the corporation that are registered on the Hong Kong register; and

(*b*) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the shares in question be subject to the restrictions under this Division.

(2) Where—

(*a*) a notification is given by a listed corporation under section 329 to a person who is or was interested in equity derivatives; and

(*b*) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the equity derivatives in question be subject to the restrictions under this Division.

(3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in the applicant corporation's memorandum or articles enabling the listed corporation itself to impose similar restrictions on the shares or equity derivatives in question.

367. Power of Financial Secretary to impose restrictions on shares, etc. in case of conviction of offences for non-compliance of notification requirements

(1) Where a person is convicted of an offence under section 328 or 351, the Financial Secretary may by order direct that—

(*a*) the shares in relation to which the offence was committed that are registered on the Hong Kong register; or

(*b*) if the shares in relation to which the offence was committed are unissued shares, those unissued shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under this Division.

(2) Without prejudice to subsection (1), where a person is convicted of an offence under section 328 or 351 and the shares in relation to which the offence was committed are the underlying shares of any equity derivatives, the Financial Secretary may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.

(3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in a corporation's memorandum or articles enabling the corporation itself to impose similar restrictions on the shares or equity derivatives in question.

368. Power of Financial Secretary to impose restrictions on shares, etc. in connection with investigation

(1) If, in connection with an investigation under section 356, 357 or 358, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or unissued), he may by order direct that—

(*a*) the shares registered on the Hong Kong register; or

(*b*) the unissued shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under this Division.

(2) If, in connection with an investigation under section 356, 357 or 358, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any equity derivatives, he may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.

369. Consequence of order imposing restrictions

(1) So long as any shares are directed to be subject to the restrictions under this Division—

(*a*) any transfer of those shares;

(*b*) in the case of unissued shares—

(i) any transfer of the right to be issued with those shares; and

(ii) any issue of those shares;

(*c*) any cancellation of those shares or of the relevant certificates for those rights; and

(*d*) any removal of the registration of those shares to a register of members other than the Hong Kong register,

are void.

(2) Where shares are subject to the restrictions of subsection (1), any agreement to transfer—

(*a*) those shares; or

(*b*) in the case of unissued shares, the right to be issued with those shares,

is void (except an agreement to sell those shares on the making of an order under section 371(4)).

(3) So long as any equity derivatives are directed to be subject to the restrictions under this Division—

(*a*) any transfer or assignment of—

(i) those equity derivatives; or

(ii) any rights under those equity derivatives;

(*b*) the exercise of any rights under those equity derivatives; and

(*c*) any removal of the registration of those equity derivatives to a register of holders of equity derivatives other than a register maintained in Hong Kong,

are void.

(4) Where equity derivatives are subject to the restrictions of subsection (3), any agreement to—

(*a*) transfer or assign—

(i) those equity derivatives; or

(ii) any rights under those equity derivatives; or

(*b*) exercise any rights under those equity derivatives,

is void (except an agreement to sell those equity derivatives on the making of an order under section 371(4)).

370. Offences for attempted evasion of restrictions

(1) A person who—

(*a*) exercises or purports to exercise any right to dispose of—

(i) any shares or equity derivatives; or

(ii) any right to be issued with any shares or any right under any equity derivatives,

knowing that such shares or equity derivatives are for the time being subject to the restrictions under this Division; or

(*b*) having an interest in any shares or equity derivatives which, to his knowledge, are for the time being subject to the restrictions under this Division, or being entitled to any right to be issued with other shares or under other equity derivatives in right of them, enters into any agreement which is void under section 369(2) or (4),

commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(2) If—

(*a*) any shares in a corporation are registered as transferred;

(*b*) any shares in a corporation are issued;

(*c*) any shares in a corporation are cancelled; or

(*d*) the registration of any shares in a corporation is removed to a register of members other than the Hong Kong register,

in contravention of the restrictions under this Division, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(3) If—

(*a*) any equity derivatives, or any rights under any equity derivatives, are registered as transferred or assigned;

(*b*) any rights under any equity derivatives are registered as having been exercised; or

(*c*) the registration of any equity derivatives is removed to a register of holders of equity derivatives other than a register maintained in Hong Kong,

in contravention of the restrictions under this Division, the corporation maintaining such register and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

371. Relaxation and removal of restrictions

(1) Where shares or equity derivatives are by order made subject to the restrictions under this Division, application may be made to the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section 367 or 368) for an order directing that the shares or equity derivatives (as the case may be) shall cease to be so subject.

(2) If the order applying the restrictions was made—

(*a*) by the Court of First Instance under section 366 or subsection (14)(*a*), the application under subsection (1) may be made by any person aggrieved or by the corporation concerned; or

(*b*) by the Financial Secretary under section 367 or 368, the application under subsection (1) may be made by any person aggrieved.

(3) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application to the Court of First Instance under subsection (1).

(4) Subject to this section, an order of the Court of First Instance or the Financial Secretary directing that shares or equity derivatives (as the case may be) shall cease to be subject to the restrictions may be made only if—

(*a*) the Court of First Instance or the Financial Secretary (as the case may be) is satisfied that—

(i) all relevant facts about the interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be); and

(ii) no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or

(*b*) the shares or equity derivatives are to be sold and the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section 367 or 368) approves the sale.

(5) Where shares or equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that the shares or equity derivatives shall be sold, subject to the Court's approval as to the sale, and may further order that the shares or equity derivatives shall cease to be subject to the restrictions.

(6) An application to the Court of First Instance under subsection (5) may be made—

(*a*) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(*a*)); or

(*b*) by the corporation concerned.

(7) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (5).

(8) Where an order has been made under subsection (5), the Court of First Instance may on application make such further order relating to the sale of the shares or equity derivatives as it considers appropriate.

(9) An application to the Court of First Instance under subsection (8) may be made—

(*a*) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(*a*));

(*b*) by the corporation concerned;

(*c*) by the person appointed by, or in pursuance of, the order to effect the sale; or

(*d*) by any person interested in the shares or equity derivatives.

(10) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (8).

(11) Where equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that rights under the equity derivatives shall be exercised, subject to the Court's approval as to the manner in which, and the time at which, those rights are to be exercised, and may further order that the equity derivatives shall cease to be subject to the restrictions.

(12) An application to the Court of First Instance under subsection (11) may be made—

(*a*) by the Financial Secretary (unless the restrictions were imposed by court order under section 366 or subsection (14)(*a*));

(*b*) by the corporation concerned; or

(*c*) by any person interested in the equity derivatives.

(13) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (11).

(14) Where an order has been made under subsection (11), the Court of First Instance may further order, in the case of the exercise of a right under the equity derivatives to call for delivery of shares, or to require another person to take delivery of shares, that the shares due to be delivered on the exercise of the right shall, upon delivery, be—

(*a*) subject to the restrictions under this Division; or

(*b*) sold.

(15) In this section, "the corporation concerned" (有關法團)—

(*a*) in relation to shares in a corporation that are subject to the restrictions under this Division, means that corporation; or

(*b*) in relation to equity derivatives that are subject to the restrictions under this Division, where the underlying shares of those equity derivatives are shares in a corporation, means that corporation.

372. Further provisions on sale by court order of restricted shares, etc.

(1) Subject to subsection (2), where shares or equity derivatives are sold in pursuance of an order of the Court of First Instance, or with the approval of the Court of First Instance or the Financial Secretary, under section 371, the proceeds of the sale, less the costs of the sale, shall be paid into court.

(2) Where a right under equity derivatives is exercised in pursuance of an order of the Court of First Instance under section 371(11) and—

(*a*) an amount is received on settlement of the equity derivatives, the proceeds, less the costs incurred in exercising the right; or

(*b*) shares are sold in pursuance of an order of the Court of First Instance under section 371(14)(*b*), the proceeds of the sale, less the costs of the sale and the costs incurred in exercising the right,

shall be paid into court.

(3) Any person who had an interest in the shares or equity derivatives from which the proceeds, which have been paid into court under subsection (1) or (2), were derived may apply to the Court of First Instance for an order that the whole or a part of those proceeds be paid to him.

(4) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of an application under subsection (3).

(5) The Court of First Instance may on application under subsection (3)—

(*a*) if it is satisfied that—

(i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and no other person had an interest in the shares or equity derivatives at that time; and

(ii) all relevant facts about the applicant's interest in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be),

order the payment to the applicant, subject to subsection (6), of the whole of the proceeds, together with any interest thereon;

(*b*) if it is satisfied that—

(i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and another person also had an interest in the shares or equity derivatives at that time; and

(ii) all relevant facts about the applicant's interest in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be) by the applicant,

order the payment to the applicant, subject to subsection (6), of such part of the proceeds as is equal to the proportion which the value of the applicant's interest in the shares or equity derivatives bears to the total value of the shares or equity derivatives, together with any interest thereon; or

(*c*) make such other order as it considers appropriate.

(6) On making an order under subsection (5) or section 371(5), (8), (11) or (14)(*b*), the Court of First Instance may further order that the costs of the applicant, and the costs of the Financial Secretary (where appropriate), be paid out of the proceeds.

Division 13—Miscellaneous

373. Liability of members for offences by corporations

Where the affairs of a corporation are managed by its members, section 390(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporation.

374. Method of giving notification and delivering report

Notwithstanding section 400, any notification, requirement, report or other document (however described) to be, or required to be, given, delivered, issued or sent for the purposes of this Part shall be regarded as duly given, delivered, issued or sent if—

(*a*) in the case of a corporation, it is—

(i) delivered to any officer of the corporation by hand;

(ii) left at, or sent by post to, the registered office, or the last known principal place of business, of the corporation;

(iii) sent by facsimile transmission to the last known facsimile number of the corporation;

(iv) sent by electronic mail transmission to the last known electronic mail address of the corporation; or

(v) sent by such other method as is prescribed by rules made under section 397 for the purposes of this section;

(*b*) in the case of the relevant exchange company, it is—

(i) left at, or sent by post to, the registered office of the relevant exchange company;

(ii) sent by facsimile transmission to the facsimile number of the relevant exchange company;

(iii) sent by electronic mail transmission to the electronic mail address of the relevant exchange company; or

(iv) sent by such other method as is prescribed by rules made under section 397 for the purposes of this section;

(*c*) in the case of the Commission, it is—

(i) left at, or sent by post to, the registered office of the Commission;

(ii) sent by facsimile transmission to the facsimile number of the Commission;

(iii) sent by electronic mail transmission to the electronic mail address of the Commission; or

(iv) sent by such other method as is prescribed by rules made under section 397 for the purposes of this section;

(*d*) in the case of the Monetary Authority, it is—

(i) left at, or sent by post to, the registered office of the Monetary Authority;

(ii) sent by facsimile transmission to the facsimile number of the Monetary Authority;

(iii) sent by electronic mail transmission to the electronic mail address of the Monetary Authority; or

(iv) sent by such other method as is prescribed by rules made under section 397 for the purposes of this section; or

(*e*) in any other case, it is sent in the manner (as appropriate) specified in section 400.

375. Form of registers and indices

(1) Any register or index required by this Part to be kept by a corporation may be kept either by making entries in a bound book or by recording the matters in question in any other manner.

(2) For the purposes of subsection (1), the corporation may record the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.

(3) If any register or index required by this Part to be kept by a corporation is kept by the corporation by recording the matters in question otherwise than in a legible form, any duty imposed on the corporation by this Part to allow inspection of, or to furnish a copy of, the register or index or any part of it shall be deemed to be a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) If any such register or index is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(5) If default is made in complying with subsection (4), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of $200 for every day during which the offence continues.

376. Regulations by Chief Executive in Council

(1) The Chief Executive in Council may make regulations to—

(*a*) prescribe anything required or permitted by any provision of this Part to be prescribed by regulations;

(*b*) provide for exclusions from the requirement to give notification under any provision of this Part;

(*c*) provide for any other matters for the better carrying out of the objects and purposes of this Part.

(2) Without limiting the generality of the regulations which may be made under subsection (1), such regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or provisions of any subsidiary legislation).

377. Rules by Commission

The Commission may, after consultation with the Financial Secretary, make rules which are not inconsistent with regulations made by the Chief Executive in Council under section 376, to—

(*a*) prescribe interests and short positions in shares comprised in the relevant share capital of a listed corporation, that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement, to be disregarded for the purposes of section 323 subject to such conditions as may be specified in the rules;

(*b*) prescribe circumstances of change in the nature of interests for the purposes of section 313(13);

(*c*) provide for exclusions, subject to such conditions as may be specified in the rules, from the requirement to give notification under any provision of this Part in respect of interests, or short positions, in shares comprised in the relevant share capital of a listed corporation that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement.

PART XVI

MISCELLANEOUS

Division 1—Secrecy, conflict of interests, and immunity

378. Preservation of secrecy, etc.

(1) Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person—

(*a*) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;

(*b*) shall not communicate any such matter to any other person; and

(*c*) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.

(2) Nothing in subsection (1) applies to—

(*a*) the disclosure of information which has already been made available to the public;

(*b*) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the laws of Hong Kong, in Hong Kong;

(*c*) the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

(*d*) the disclosure of information by a person in connection with any judicial or other proceedings to which the person is a party;

(*e*) the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;

(*f*) the communication of any information or opinion to which section 381(1) applies (whether with or without reference to section 381(2))—

(i) to the Commission in the manner described in section 381(1);

(ii) where section 381(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 381(4).

(3) Notwithstanding subsection (1), the Commission may disclose information—

(*a*) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;

(*b*) to a person who is a liquidator appointed under the Companies Ordinance (Cap. 32);

(*c*) to the Market Misconduct Tribunal;

(*d*) to the Securities and Futures Appeals Tribunal;

(*e*) to the Monetary Authority, if—
  (i) the information relates to—
    (A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or
    (B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or
  (ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;

(*f*) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to—
  (i) the Chief Executive;
  (ii) the Financial Secretary;
  (iii) the Secretary for Justice;
  (iv) the Secretary for Financial Services;
  (v) the Insurance Authority;
  (vi) the Registrar of Companies;
  (vii) the Official Receiver;
  (viii) the Mandatory Provident Fund Schemes Authority;
  (ix) the Privacy Commissioner for Personal Data;
  (x) the Ombudsman;
  (xi) a public officer authorized by the Financial Secretary under subsection (12);
  (xii) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
  (xiii) a recognized exchange company;
  (xiv) a recognized clearing house;
  (xv) a recognized exchange controller;
  (xvi) a recognized investor compensation company;
  (xvii) a person authorized to provide authorized automated trading services under section 95(2);

(*g*) if in the opinion of the Commission the condition specified in subsection (5) is satisfied—
  (i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(*a*) and (*b*);
  (ii) to—
    (A) the Hong Kong Society of Accountants;
    (B) any other body prescribed by rules made under section 397 for the purposes of this subparagraph,

with a view to its taking of, or otherwise for the purposes of, any disciplinary action against any of its members;

(*h*) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to perform its functions under any of the relevant provisions;

(*i*) where the information is obtained by an investigator under section 183, to—

(i) the Financial Secretary;

(ii) the Secretary for Justice;

(iii) the Commissioner of Police;

(iv) the Commissioner of the Independent Commission Against Corruption;

(v) the Market Misconduct Tribunal;

(vi) the Securities and Futures Appeals Tribunal;

(*j*) for the purpose of, or otherwise in connection with, an audit required by section 16;

(*k*) with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, also with the consent of the person to whom the information relates.

(4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 159 or 160, and a person who is or was an employee or agent of such auditor, may disclose information obtained or received by him in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)—

(*a*) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);

(*b*) in the case of a person who is or was an employee or agent of an auditor, to the auditor.

(5) The condition referred to in subsection (3)(*e*), (*f*) and (*g*) is that—

(*a*) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(*e*), (*f*) or (*g*) (as the case may be) in the interest of the investing public or in the public interest; or

(*b*) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(6) Where the Commission is satisfied, for the purposes of subsection (3)(*g*)(i), that an authority, regulatory organization or companies inspector outside Hong Kong—

(*a*) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and

(*b*) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(7) Where information is disclosed pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(*a*), (3)(*a*), (*g*)(i) and (*k*) and (4)(*b*))—

(*a*) the person to whom that information is so disclosed; or

(*b*) any other person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (*a*),

shall not disclose the information, or any part thereof, to any other person, unless—

(i) the Commission consents to the disclosure;

(ii) the information or the part thereof (as the case may be) has already been made available to the public;

(iii) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

(iv) the disclosure is in connection with any judicial or other proceedings to which the person or the other person referred to in paragraph (*a*) or (*b*) (as the case may be) is a party; or

(v) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(*b*)—

(*a*) the auditor; or

(*b*) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor,

shall not disclose the information, or any part thereof, to any other person, unless—

(i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(*a*);

(ii) the Commission consents to the disclosure;

(iii) the information or the part thereof (as the case may be) has already been made available to the public;

(iv) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

(v) the disclosure is in connection with any judicial or other proceedings to which the auditor or the other person referred to in paragraph (*a*) or (*b*) (as the case may be) is a party; or

(vi) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(9) The Commission, in disclosing any information in any of the circumstances described in subsection (3) or in granting any consent pursuant to subsection (7)(i) or (8)(ii), may impose such conditions as it considers appropriate.

(10) A person who contravenes subsection (1) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(11) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of the disclosure—

(*a*) in the case of a contravention of subsection (7), he—

(i) knew or ought reasonably to have known that the information was previously disclosed to him or any other person (as the case may be) pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(*a*), (3)(*a*), (*g*)(i) and (*k*) and (4)(*b*)); and

(ii) had no reasonable grounds to believe that subsection (7)(i), (ii), (iii), (iv) or (v) applies to the disclosure of the information by him; or

(*b*) in the case of a contravention of subsection (8), he—

(i) knew or ought reasonably to have known that the information was previously disclosed to him or an auditor (as the case may be) in the circumstances described in subsection (4)(*b*); and

(ii) had no reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applies to the disclosure of the information by him,

he commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(*f*)(xi).

(13) Any matter published under subsection (6) is not subsidiary legislation.

(14) For the avoidance of doubt, it is hereby declared that subsection (1) does not preclude the disclosure of information under a reprimand under section 194(1)(iii) or 196(1)(ii).

(15) In this section—

"companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place;

"specified person" (指明人士) means—

(*a*) the Commission;

(*b*) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or

(*c*) any person who is or was—

(i) a person appointed under any of the relevant provisions;

(ii) a person performing any function under or carrying into effect any of the relevant provisions; or

(iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

379. Avoidance of conflict of interests

(1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme—

(*a*) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of this Ordinance; or

(*b*) which transaction he knows is otherwise being considered by the Commission.

(2) Subsection (1) does not apply to any transaction which a holder of securities effects or causes to be effected by reference to any of his rights as such holder—

(*a*) to exchange the securities or convert them to another form of securities;

(*b*) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the Companies Ordinance (Cap. 32);

(*c*) to subscribe for other securities or dispose of a right to subscribe for other securities;

(*d*) to charge or pledge the securities to secure the repayment of money;

(*e*) to realize the securities for the purpose of repaying money secured under paragraph (*d*); or

(*f*) to realize the securities in the course of performing a duty imposed by law.

(3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to—

(*a*) any securities, futures contract, leveraged foreign exchange contract, regulated investment agreement, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or regulated investment agreement—

(i) in which he has an interest;

(ii) in which a corporation, in the shares of which he has an interest, has an interest; or

(iii) which—

(A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest; or

(B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or

(*b*) a person—

(i) by whom he is or was employed;

(ii) of whom he is or was a client;

(iii) who is or was his associate; or

(iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

380. Immunity

(1) A person shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of any act done or any omission made by reason only of—

(*a*) his performance or purported performance in good faith of any function (including that under each of the paragraphs of section 5(1)) under any of the relevant provisions; or

(*b*) his furtherance or purported furtherance in good faith of any regulatory objective, or performance or purported performance in good faith of any function, pursuant to or consequent upon any written direction given by the Chief Executive under section 11.

(2) Nothing in subsection (1) applies to a person appointed as an auditor under section 153.

(3) A person who complies with a requirement made under any provision of this Ordinance shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, to any person by reason only of that compliance.

(4) Subject to subsection (5), nothing in this Ordinance affects any claims, rights or entitlements which would, apart from this Ordinance, arise on the ground of legal professional privilege.

(5) Nothing in subsection (4) affects any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

381. Immunity in respect of communication with Commission by auditors of listed corporations, etc.

(1) Without prejudice to section 380, a person who is or was an auditor of a corporation which is listed, or of any associated corporation of the corporation, shall not incur any civil liability, whether arising in contract, tort,

defamation, equity or otherwise, by reason only of his communicating in good faith to the Commission any information or opinion on a matter of which he becomes or became aware in his capacity as such auditor, being a matter which in his opinion suggests—

(*a*) that at any time since the formation of the corporation the business of the corporation has been conducted—

(i) with intent to defraud its creditors, or the creditors of any other person;

(ii) for any fraudulent or unlawful purpose; or

(iii) in a manner oppressive to its members or any part of its members;

(*b*) that the corporation was formed for any fraudulent or unlawful purpose;

(*c*) that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;

(*d*) that at any time since the formation of the corporation persons involved in the management of the affairs of the corporation have engaged, in relation to such management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members; or

(*e*) that at any time since the formation of the corporation members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect.

(2) In addition to applying to a person who is or was an auditor of a corporation which is listed, or of any associated corporation of the corporation, subsection (1) also applies to—

(*a*) a person who is or was an auditor of a corporation which was formerly listed, or of any associated corporation of that corporation, in which case a reference to matter in that subsection shall be construed on the basis that—

(i) it includes any matter occurring at any time whether before or after the corporation first referred to in this paragraph ceased to remain listed;

(ii) the circumstances required to be suggested by the matter under paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) of that subsection relate, instead of to the corporation referred to in such paragraph, to the corporation first referred to in this paragraph; and

(iii) the circumstances required to be suggested by the matter under paragraph (*a*), (*d*) or (*e*) of that subsection occurred at any time since the formation of the corporation but before the corporation ceased to remain listed; and

(*b*) a person who is or was an auditor of a corporation which was formerly an associated corporation of a corporation which is listed, in which case a reference to matter in that subsection shall be construed on the basis that—

(i) it includes any matter occurring at any time whether before or after the corporation first referred to in this paragraph ceased to remain an associated corporation of the corporation which is listed; and

(ii) the circumstances required to be suggested by the matter under paragraph (*a*), (*b*), (*c*), (*d*) or (*e*) of that subsection relate, instead of to the corporation referred to in such paragraph, to the corporation of which the corporation first referred to in this paragraph was formerly an associated corporation.

(3) The application of subsection (1) to any person (whether with or without reference to subsection (2)) is not affected by the fact that the person has, before communicating in the manner described in subsection (1) any information or opinion to which subsection (1) applies (whether with or without reference to subsection (2)), previously communicated such information or opinion to any other person.

(4) Without prejudice to subsection (1), where a person communicates in the manner described in that subsection any information or opinion to which that subsection applies (whether with or without reference to subsection (2)), he shall at the same time communicate the information or opinion to—

(*a*) where the corporation of which he is or was an auditor is or was an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the Insurance Authority; or

(*b*) where the corporation of which he is or was an auditor is or was an authorized financial institution, the Monetary Authority.

(5) In this section—

"associated corporation" (相聯法團), in relation to a corporation, means—

(*a*) a subsidiary of that corporation;

(*b*) a corporation in which that corporation has an interest (whether held by that corporation directly or indirectly through any other corporation or corporations), which is properly accounted for by that corporation in its accounts using the method generally known as equity accounting; or

(*c*) a corporation a substantial shareholder of which is also a substantial shareholder of that corporation;

"auditor" (核數師), in relation to a corporation, means—

(*a*) a person appointed to be an auditor of the corporation for the purposes of any Ordinance, or otherwise for the purposes of auditing the accounts of the corporation (irrespective of whether such person is qualified for the appointment under the Professional Accountants Ordinance (Cap. 50) or is otherwise qualified for the appointment); or

(*b*) a person appointed to be an auditor of the corporation for the purposes of any enactment of a place outside Hong Kong which imposes on such person responsibilities comparable to those imposed on an auditor by the Companies Ordinance (Cap. 32).

Division 2—General provisions regarding proceedings and offences

382. Obstruction

(1) A person who, without reasonable excuse, obstructs any specified person in the performance of a function under or in carrying into effect any provision of this Ordinance commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(2) In this section, "specified person" (指明人士) means—

(*a*) the Commission;

(*b*) any member, employee, or consultant, agent or adviser, of the Commission; or

(*c*) any person appointed to investigate any matter under section 182(1).

383. False or misleading representations in applications to Commission

(1) A person commits an offence if—

(*a*) he, in support of any application made to the Commission under or pursuant to any provision of this Ordinance, whether for himself or for another person, makes a representation, whether in writing, orally or otherwise, that is false or misleading in a material particular; and

(*b*) he knows that, or is reckless as to whether, the representation is false or misleading in a material particular.

(2) A person who commits an offence under subsection (1) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) In this section, "representation" (陳述) means a representation or statement—

(*a*) of a matter of fact, either present or past;

(*b*) about a future event; or

(*c*) about an existing intention, opinion, belief, knowledge or other state of mind.

384. Provision of false or misleading information

(1) Subject to subsection (2), a person commits an offence if—

(*a*) he, in purported compliance with a requirement to provide information imposed by or under any of the relevant provisions, provides to a specified recipient any information which is false or misleading in a material particular; and

(*b*) he knows that, or is reckless as to whether, the information is false or misleading in a material particular.

(2) Subsection (1) does not apply to the provision of information which is false or misleading in a material particular if the provision of such information in purported compliance with a requirement imposed by or under any of the relevant provisions would, apart from subsection (1), also constitute an offence under any of the relevant provisions.

(3) Subject to subsection (4), a person commits an offence if—

(*a*) he, otherwise than in purported compliance with a requirement to provide information imposed by or under any of the relevant provisions but in connection with the performance by a specified recipient of a function under any of the relevant provisions, provides to the specified recipient any record or document which is false or misleading in a material particular; and

(*b*) he—

(i) knows that, or is reckless as to whether, the record or document is false or misleading in a material particular; and

(ii) has, in relation to the provision of the record or document, received prior written warning from the specified recipient to the effect that the provision of any record or document which is false or misleading in a material particular in the circumstances of the case would constitute an offence under this subsection.

(4) Subject to subsection (5), no person shall be convicted of an offence under subsection (3) unless the prosecution proves that—

(*a*) the specified recipient to which the record or document in question has been provided has reasonably relied on the record or document; or

(*b*) the person intended that the specified recipient would rely on the record or document.

(5) Nothing in subsection (4)(*a*) requires it to be proved that the specified recipient who has reasonably relied on any record or document—

(*a*) was misled;

(*b*) suffered any detriment; or

(*c*) incurred any loss,

as a result of such reliance.

(6) A person who commits an offence under subsection (1) is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(7) A person who commits an offence under subsection (3) is liable—

(*a*) on conviction on indictment to a fine of $500,000 and to imprisonment for 6 months; or

(*b*) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(8) In this section, "specified recipient" (指明收受者) means—

(*a*) the Commission;

(*b*) a recognized exchange company;

(*c*) a recognized clearing house; or

(*d*) a recognized exchange controller.

385. Power of Commission to intervene in proceedings

(1) Where—

(*a*) there are any judicial or other proceedings (other than criminal proceedings) which concern a matter provided for in any of the relevant provisions, or in which the Commission has an interest by virtue of its functions under any of the relevant provisions; and

(*b*) the Commission is satisfied that it is in the public interest for the Commission to intervene and be heard in the proceedings,

the Commission, after consultation with the Financial Secretary, may, by an application made in accordance with subsection (2) to the court hearing or otherwise having competent authority to hear the proceedings, apply to intervene and be heard in the proceedings.

(2) An application made for the purposes of subsection (1) shall be—

(*a*) made in writing; and

(*b*) supported by an affidavit showing that the conditions set out in subsection (1)(*a*) and (*b*) are satisfied.

(3) A copy of the application made for the purposes of subsection (1) shall be served on each of the parties to the proceedings to which the application relates as soon as reasonably practicable after the application is made.

(4) Subject to subsection (5), the court to which an application is made for the purposes of subsection (1) may by order—

(*a*) allow the application, subject to such terms as it considers just; or

(*b*) refuse the application.

(5) The court to which an application is made for the purposes of subsection (1) shall not make an order pursuant to subsection (4)(*a*) or (*b*) without first giving the Commission, and each of the parties to the proceedings to which the application relates, a reasonable opportunity of being heard.

(6) Where an application made for the purposes of subsection (1) is allowed under subsection (4)(*a*), the Commission, subject to the terms referred to in subsection (4)(*a*)—

(*a*) may intervene and be heard in the proceedings to which the application relates; and

(*b*) shall be regarded for all purposes as a party to the proceedings and shall have the rights, duties and liabilities of such a party.

(7) Nothing in this section prejudices Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg.).

(8) In this section, "court" (法院) includes a magistrate and a tribunal, other than the Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal.

386. Proceedings not to be stayed

(1) The existence of any judicial or other proceedings, or circumstances that disclose the commission of an offence, shall not by itself constitute justification for any other proceedings or action under this Ordinance being stayed or deferred.

(2) For the avoidance of doubt, nothing in subsection (1)—

(*a*) affects any other law requiring or providing for a stay of any proceedings or action under this Ordinance;

(*b*) prevents a court of competent jurisdiction from ordering that any proceedings or action under this Ordinance shall be stayed or deferred.

387. Standard of proof

Where it is necessary for the Commission to establish or to be satisfied, for the purposes of any of the relevant provisions (other than provisions relating to criminal proceedings or to an offence), that—

(*a*) a person has contravened—

(i) any provision of any Ordinance;

(ii) any notice or requirement given or made under or pursuant to any provision of any Ordinance;

(iii) any of the terms and conditions of any licence or registration under this Ordinance; or

(iv) any other condition imposed under or pursuant to any provision of this Ordinance;

(*b*) a person has been responsible for an unlawful act or omission;

(*c*) a person has assisted, counselled, procured or induced any other person to do anything which results in the occurrence of any of the matters referred to in paragraph (*a*) or (*b*);

(*d*) a person has been concerned in, or a party to, anything which results in the occurrence of any of the matters referred to in paragraph (*a*) or (*b*);

(*e*) a person has attempted, or conspired with any other person, to commit anything which results in the occurrence of any of the matters referred to in paragraph (*a*) or (*b*); or

(*f*) any of the matters referred to in paragraphs (*a*) to (*e*) might occur,

it is sufficient for the Commission to establish, or to be satisfied as to, the matter referred to in paragraph (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*) (as the case may be) on the standard of proof applicable to civil proceedings in a court of law.

388. Prosecution of certain offences by Commission

(1) An offence under any of the relevant provisions, and an offence of conspiracy to commit such an offence, may be prosecuted by the Commission in its own name but, where under this subsection the Commission prosecutes an offence, the offence shall be tried before a magistrate as an offence which is triable summarily.

(2) For, and only for, the purpose of the prosecution of an offence referred to in subsection (1), an employee of the Commission who apart from this subsection is not qualified to practise as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159) may appear and plead before a magistrate any case of which he has charge and shall, in relation to the prosecution, have all the other rights of a person qualified to practise as a barrister or to act as a solicitor under that Ordinance.

(3) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

389. Limitation on commencement of proceedings

(1) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), any information or complaint relating to an offence under this Ordinance, other than an indictable offence, may be tried if it is laid or made (as the case may be) at any time within 3 years after the commission of the offence.

(2) Nothing in section 388(1) affects or limits the meaning of indictable offence referred to in subsection (1).

390. Liability of officers of corporations for offences by corporations, and of partners for offences by other partners

(1) Where the commission of an offence under this Ordinance by a corporation is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any officer of the corporation, or any person who was purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where the commission of an offence under this Ordinance by a partner in a partnership is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any other partner of the partnership, that other partner, as well as the first-mentioned partner, is guilty of the offence and is liable to be proceeded against and punished accordingly.

391. Civil liability for false or misleading public communications concerning securities and futures contracts

(1) Subject to subsections (3) to (7), where—

(*a*) a person is responsible for a relevant communication being made or issued to the public, or to a group of persons comprising members of the public (including the shareholders of a listed corporation or the holders of listed securities);

(*b*) the relevant communication concerns securities or futures contracts, or may affect the price of securities or the price for dealings in futures contracts;

(*c*) the relevant communication is false or misleading in a material particular; and

(*d*) the person knows that, or is reckless or negligent as to whether, the relevant communication is false or misleading in a material particular,

that person shall, whether or not he also incurs any other liability, be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of his acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on the relevant communication.

(2) For the purposes of subsection (1), a person responsible for a relevant communication being made or issued includes—

(*a*) any person making or issuing it; and

(*b*) any person who in a material manner participated in, or approved, the making or issuing of it.

(3) No person shall be liable to pay compensation under subsection (1) to any other person in respect of a relevant communication unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

(4) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the issue or reproduction of a relevant communication if—

(*a*) the issue or reproduction of the relevant communication took place in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was issuing or reproducing materials provided by others;

(*b*) the contents of the relevant communication were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(*c*) for the purposes of the issue or reproduction—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the relevant communication; and

(*d*) at the time of the issue or reproduction, he did not know that the relevant communication was false or misleading in a material particular.

(5) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the re-transmission of a relevant communication if—

(*a*) the re-transmission of the relevant communication took place in the ordinary course of a business (whether or not carried on by him), the normal conduct of which involved the re-transmission of information to other persons within an information system or from one information system to another information system (wherever situated), whether directly or by facilitating the establishment of links between such other persons and third parties;

(*b*) the contents of the relevant communication were not, wholly or partly, devised—

(i) where the business was carried on by him, by himself or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, by himself;

(*c*) for the purposes of the re-transmission—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, he,

did not select, add to, modify or otherwise exercise control over the contents of the relevant communication;

(*d*) the re-transmission of the relevant communication was accompanied by a message to the effect, or was effected following acknowledgment by the persons to whom it was re-transmitted of their understanding, that—

(i) where the business was carried on by him, he or any officer, employee or agent of his; or

(ii) where the business was not carried on by him, the person who carried on the business or any officer, employee or agent of that person,

did not devise the contents of the relevant communication, and neither took responsibility for it nor endorsed its accuracy; and

(*e*) at the time of the re-transmission—

(i) he did not know that the relevant communication was false or misleading in a material particular; or

(ii) he knew that the relevant communication was false or misleading in a material particular, but—

(A) where the business was carried on by him, in the circumstances of the case he could not reasonably be expected to prevent the re-transmission; or

(B) where the business was not carried on by him, in the circumstances of the case he has taken all reasonable steps to bring the fact that the relevant communication was so false or misleading to the attention of a person in a position to take steps to cause the re-transmission to be prevented (even if the re-transmission in fact took place).

(6) No person shall be liable to pay compensation under subsection (1) to any other person by reason only of the live broadcast of a relevant communication if—

(*a*) the broadcast of the relevant communication took place in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);

(*b*) the contents of the relevant communication were not, wholly or partly, devised—

(i) where he was the broadcaster, by himself or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, by himself;

(*c*) for the purposes of the broadcast—

(i) where he was the broadcaster, he or any officer, employee or agent of his; or

(ii) where he was not the broadcaster, he,

did not select, add to, modify or otherwise exercise control over the contents of the relevant communication;

(*d*) in relation to the broadcast—

(i) where he was the broadcaster, he; or

(ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster,

acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster; and

(*e*) at the time of the broadcast—

(i) he did not know that the relevant communication was false or misleading in a material particular; or

(ii) he knew that the relevant communication was false or misleading in a material particular, but—

(A) where he was the broadcaster, in the circumstances of the case he could not reasonably be expected to prevent the broadcast; or

(B) where he was not the broadcaster, in the circumstances of the case he has taken all reasonable steps to bring the fact that the relevant communication was so false or misleading to the attention of a person in a position to take steps to cause the broadcast to be prevented (even if the broadcast in fact took place).

(7) Where an action is brought against a person under subsection (1) by reference to subsection (2)(*b*) in respect of a relevant communication, it is a defence for the person to prove—

(*a*) that he only participated in, or approved, the making or issuing of a part of the relevant communication and that the part was not false or misleading in a material particular; or

(*b*) where the action is brought on the basis that he participated in the making or issuing of the relevant communication, that at the time when it was made or issued, he opposed the making or issuing of it because it was false or misleading in a material particular.

(8) For the avoidance of doubt, where a court has jurisdiction to determine an action brought under subsection (1), it may, where it is, apart from this section, within its jurisdiction to entertain an application for an injunction, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(9) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance (Cap. 32) (whether with or without reference to section 342E of that Ordinance) or section 108 applies.

(10) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.

(11) In this section—

"issue" (發出), in relation to any material (including any relevant communication), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether—

(*a*) by any visit in person;

(*b*) in a newspaper, magazine, journal or other publication;

(*c*) by the display of posters or notices;

(*d*) by means of circulars, brochures, pamphlets or handbills;

(*e*) by an exhibition of photographs or cinematograph films;

(*f*) by way of sound or television broadcasting;

(*g*) by any information system or other electronic device; or

(*h*) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued;

"relevant communication" (有關通訊) means any communication, including any announcement, disclosure and statement, and any combination thereof.

Division 3—Power to make rules, and codes or guidelines, etc.

392. Financial Secretary to prescribe interests, etc. as securities and futures contracts

(1) For the purposes of this Ordinance, the Financial Secretary may by notice published in the Gazette prescribe, either generally or in a particular case, that—

(*a*) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, is to be regarded as securities or futures contracts;

(*b*) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, is not to be regarded as securities or futures contracts.

(2) Without limiting the generality of subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any interests, rights or property, or any class or description of interests, rights or property, referred to in the notice is to be regarded, or not to be regarded, as securities or futures contracts (as the case may be).

393. Financial Secretary to prescribe arrangements as collective investment schemes

(1) For the purposes of this Ordinance, the Financial Secretary may by notice published in the Gazette prescribe, either generally or in a particular case, that—

(*a*) any arrangements, or any class or description of arrangements, is to be regarded as collective investment schemes, where the arrangements—

(i) 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 any right, interest, title or benefit in any property for valuable consideration;

(B) to defer taking possession of the property; and

(C) to transfer or retransfer any right, interest, title or benefit in the property to a person who is a party to, or is referred to in, the arrangements; or

(ii) have the purpose or effect, or pretended purpose or effect, of enabling the participating persons, whether by acquiring any right, interest, title or benefit in any property or any part of the property or otherwise, to participate in or receive—

(A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

(B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property;

(*b*) any arrangements, or any class or description of arrangements, is not to be regarded as collective investment schemes.

(2) Without limiting the generality of subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any arrangements, or any class or description of arrangements, referred to in the notice is to be regarded, or not to be regarded, as collective investment schemes.

394. Orders by Chief Executive in Council for levies

(1) A levy (if any) at the rate specified by the Chief Executive in Council by order published in the Gazette shall be payable to the Commission by the person or persons so specified by the Chief Executive in Council for—

(*a*) every sale and purchase of any securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules;

(*b*) every sale and purchase of any futures contract traded on a recognized futures market; and

(*c*) every sale and purchase of any securities or futures contracts traded by means of authorized automated trading services.

(2) For the purposes of subsection (1), the Chief Executive in Council may—

(*a*) specify the rate or amount of the levy payable under that subsection for any sale and purchase—

(i) as a percentage of the consideration for the sale and purchase;

(ii) as a fixed amount;

(iii) as a nil rate, nil percentage or nil amount; or

(iv) as to be calculated in any other manner specified in the order;

(*b*) specify different rates for different classes of securities or futures contracts.

(3) Each recognized exchange company, and each person authorized to provide authorized automated trading services, shall collect, account for, and pay to the Commission, the levy (if any) payable under subsection (1).

(4) The Commission may recover the amount of any levy payable under this section as a civil debt due to it.

(5) The Chief Executive in Council may make rules for—

(*a*) the payment of levies under this section;

(*b*) the imposition of charges or penalties for late payment of such levies;

(*c*) the keeping, examination and audit of the accounts of recognized exchange companies, and of persons authorized to provide authorized automated trading services, relating to the collection and payment to the Commission of such levies.

(6) Nothing in subsection (1) requires the Chief Executive in Council to specify a rate or amount of levy in any particular sale and purchase to which that subsection applies or in any particular class of sales and purchases to which that subsection applies.

395. Rules by Chief Executive in Council for payment of fees

(1) The Chief Executive in Council may, after consultation with the Commission, make rules to—

(*a*) require and provide for the payment to the Commission of, and prescribe, fees—

(i) for an application to the Commission under or pursuant to any of the relevant provisions;

(ii) for anything done by the Commission or a committee established under section 8 in the performance of a function relating to takeovers and mergers or to share repurchases;

(iii) for anything done by the Commission or a committee established under section 8 or the Monetary Authority in the performance of a function under any of the relevant provisions (other than the function referred to in subparagraph (ii));

(iv) for any other matter with regard to which provision is made by or under any of the relevant provisions;

(*b*) provide for the payment to the Commission of, and prescribe, fees (however described) which this Ordinance provides are, or may be, prescribed, specified or provided for by rules made under this section.

(2) Without prejudice to subsection (3), fees prescribed by rules made under this section may be fixed at levels sufficient to recover expenditure incurred, or likely to be incurred, by the Commission or a committee established under section 8 or the Monetary Authority in providing the services or performing the functions to which the fees relate, but in fixing the level of the fees appropriations under section 14 shall not be taken into account.

(3) Fees prescribed by rules made under this section shall not be limited by reference to the amount of the administrative or other costs incurred, or likely to be incurred, by the Commission or a committee established under section 8 or the Monetary Authority in providing the services or performing the functions to which the fees relate.

(4) Rules made under this section may provide—

(*a*) that the amount of any fee shall be fixed by reference to a scale set out in the rules;

(*b*) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;

(*c*) that the payment of any fee shall be waived, either generally or in a particular case, whether or not it is otherwise specified as being payable under any provision of this Ordinance;

(*d*) for the payment of fees annually or at other intervals.

(5) The Commission may pay to the Monetary Authority such of the fees paid to it in accordance with the rules made under this section that in the opinion of the Commission represent the expenditure or costs incurred, or likely to be incurred, by the Monetary Authority in providing the services or performing the functions to which the fees relate.

(6) The Commission may recover the amount of any fees payable under the rules made under this section as a civil debt due to it.

(7) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).

396. Reduction of levy

(1) If during a financial year of the Commission—

(*a*) the reserves of the Commission, after deducting depreciation and all provisions, are more than twice its estimated operating expenses for the financial year; and

(*b*) the Commission has no outstanding borrowings,

the Commission shall consult the Financial Secretary with a view to recommending to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394.

(2) The Commission may, after consultation with the Financial Secretary under subsection (1), recommend to the Chief Executive in Council that the rate or amount of a levy be reduced under section 394.

397. Rules by Commission

(1) The Commission may make rules to—

(*a*) provide for applications for licence and registration, the issue of licences and certificates of registration, and incidental matters;

(*b*) require the display of licences and certificates of registration in the specified manner and circumstances and at specified places, and require that licences and certificates of registration are in specified circumstances, other than those specified in any provision of this Ordinance, to be returned to the Commission for any specified purpose;

(*c*) require intermediaries to carry on business in relation to a specified class of persons, and in the specified manner and circumstances;

(*d*) prescribe the qualifications, experience and training required of any persons employed or engaged by intermediaries, and provide for the obligations imposed on the persons and the intermediaries in relation to such requirements, the examinations that applicants for licence or registration are required to take, and the circumstances in which they may be exempted from such requirements;

(*e*) provide for the correction of errors in the register maintained by the Commission under section 136;

(*f*) provide for the admissibility in evidence in judicial or other proceedings of specified records, and extracts from specified records, kept by the Commission;

(*g*) require documents and information required to be lodged, filed, submitted or retained for the purposes of any provision of this Ordinance to be so lodged, filed, submitted or retained in the specified manner, whether by electronic or other means;

(*h*) require documents and information lodged, filed, submitted or retained for the purposes of any provision of this Ordinance in any specified manner to be completed, signed, executed and authenticated in the specified form and manner;

(*i*) specify whether, when and the circumstances in which records compiled in any specified form or manner, or documents or information completed, signed, executed or authenticated in any specified form or manner, are acceptable or required for the purposes of any provision of this Ordinance;

(*j*) require the payment of remuneration to any auditor appointed, and the costs of an audit carried out, under any provision of this Ordinance, and provide for matters relating to such remuneration and costs;

(*k*) require a person of a specified description, when selling securities at or through a recognized stock market where his right to vest the securities in the purchaser (or, where he is acting as agent, his principal's right to do so) is derived from an arrangement of a specified kind, to notify the exchange participant through whom the sale is being effected of the fact that the right to vest the securities in the purchaser is derived from such an arrangement, and require the person who, having sold such securities pursuant to such an arrangement, purchases securities at or through a recognized stock market in satisfaction, in whole or in part, of his obligations under the arrangement to notify the exchange participant through whom the purchase or purchases is or are being effected of that fact;

(*l*) require a lender under a securities borrowing and lending agreement to—

(i) keep specified records or documents in the specified form and manner; and

(ii) give copies of such records or documents to the Commission at its request in the specified form and manner and within the specified time;

(*m*) require intermediaries to make returns at specified times (whether at regular intervals or otherwise) to the Commission, and provide for the particulars, or the nature of particulars, to be contained therein, the person by whom, and the manner and circumstances in which they are to be made, and other matters related to such returns;

(*n*) require a form or return required to be submitted under any provision of this Ordinance to be received by the Commission by or within the specified time;

(*o*) prescribe, specify or provide for any matter which this Ordinance provides is, or may be, prescribed, specified or provided for by rules made under this section;

(*p*) provide for any other matters for the better carrying out of the objects and purposes of this Ordinance.

(2) In addition to the power to make rules under subsection (1), the Commission may, after consultation with the Financial Secretary, make such other rules as are necessary for the furtherance of any of its regulatory objectives and the performance of any of its functions.

(3) Notwithstanding anything in this section—

(*a*) the power of the Commission to make rules under this section in respect of any persons as intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;

(*b*) the power of the Commission to make rules under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

(4) For the avoidance of doubt, the powers of the Commission to make rules under this section are in addition to and not in derogation of any other power of the Commission to make rules under any provision of this or any other Ordinance.

398. General provisions for rules by Commission

(1) Notwithstanding any other provisions of this Ordinance but subject to subsection (3), where the Commission proposes to make rules under any provision of this Ordinance, it shall publish a draft of the proposed rules, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed rules by the public.

(2) Where the Commission makes any rules under any provision of this Ordinance after a draft is published under subsection (1) in relation to the rules, it shall—

(*a*) publish, in such manner as it considers appropriate, an account setting out in general terms—

(i) the representations made on the draft; and

(ii) the response of the Commission to the representations; and

(*b*) where the rules are made with modifications which in the opinion of the Commission result in the rules being significantly different from the draft, publish, in such manner as it considers appropriate, details of the difference.

(3) Subsections (1) and (2) do not apply if the Commission considers, in the circumstances of the case, that—

(*a*) it is inappropriate or unnecessary that such subsections should apply; or

(*b*) any delay involved in complying with such subsections would not be—

(i) in the interest of the investing public; or

(ii) in the public interest.

(4) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding rules it proposes to make under any provision of this Ordinance in so far as such rules apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.

(5) For the avoidance of doubt, nothing in subsections (1) to (4) affects any other requirements which, apart from such subsections, apply to the making of any rules under any provision of this Ordinance.

(6) Where rules are made by the Commission under any provision of this Ordinance and it has not been provided in this Ordinance that the rules may provide that a contravention of any specified provision of the rules constitutes an offence, the Chief Executive in Council may make regulations to provide that a person who contravenes any specified provision of the rules that applies to him commits an offence and is liable to a specified penalty not exceeding—

(*a*) on conviction on indictment a fine of $500,000 and a term of imprisonment of 2 years;

(*b*) on summary conviction a fine at level 6 and a term of imprisonment of 6 months.

(7) Except as otherwise provided in this Ordinance, rules made by the Commission under any provision of this Ordinance may provide that, subject to the terms and conditions specified in the rules, the provisions of this Ordinance specified in the rules—

(*a*) shall not have effect, or shall only have effect to a specified extent, in relation to any specified person or to members of a specified class of persons—

(i) who is or are or may be required to be licensed by reason only of his or their doing anything that is incidental to another business;

(ii) who does not or do not, on behalf of any other person, deal in securities or futures contracts or trade in interests in collective investment schemes or leveraged foreign exchange contracts; or

(iii) who is or are or may be required to be licensed by reason only of his or their entering into a specified class of transactions;

(*b*) shall not have effect in relation to any specified transaction or class of transactions entered into by any specified person or class of persons;

(*c*) shall, where they require any application, statement, notice or other document (however described) to be lodged or filed with or submitted to the Commission, be regarded as having been complied with if the application, statement, notice or other document (as the case may be) is lodged or filed with or submitted to any other specified person.

(8) Except as otherwise provided in this Ordinance, rules made by the Commission under any provision of this Ordinance—

(*a*) may be of general or special application and may be made so as to apply only in specified circumstances;

(*b*) may make different provisions for different circumstances and provide for different cases or classes of cases;

(*c*) may authorize any matter or thing to be determined, applied or regulated by any specified person;

(*d*) may provide for the exercise of discretion in specified cases;

(*e*) may, for the better and more effectual carrying into effect of any provision of this Ordinance or the rules, include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal legislation or the provisions of any subsidiary legislation).

399. Codes or guidelines by Commission

(1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, such codes and guidelines as it considers appropriate for providing guidance—

(*a*) for the furtherance of any of its regulatory objectives;

(*b*) in relation to any matter relating to any of the functions of the Commission under any of the relevant provisions;

(*c*) in relation to the operation of any provision of this Ordinance.

(2) Without limiting the generality of subsection (1), the Commission may publish under that subsection—

(*a*) a code to provide for matters concerning takeovers and mergers and matters incidental thereto;

(*b*) a code to provide for matters concerning share repurchases and matters incidental thereto.

(3) Notwithstanding anything in this section—

(*a*) the power of the Commission to publish codes or guidelines under this section in respect of any persons as intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to publish codes or guidelines in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;

(*b*) the power of the Commission to publish codes or guidelines under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to publish codes or guidelines in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

(4) For the avoidance of doubt, the power of the Commission to publish codes or guidelines under this section is in addition to and not in derogation of any other power of the Commission to publish codes or guidelines under any provision of this or any other Ordinance.

(5) The Commission may from time to time amend the whole or any part of any code or guideline published under this section in a manner consistent with the power to publish the code or guideline under this section, and—

(*a*) the other provisions of this section apply, with necessary modifications, to such amendments to the code or guideline as they apply to the code or guideline; and

(*b*) any reference in this or any other Ordinance to the code or guideline (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code or guideline as so amended.

(6) A failure on the part of any person to comply with the provisions set out in any code or guideline published under this section that apply to him shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under this Ordinance before any court the code or guideline shall be admissable in evidence, and if any provision set out in the code or guideline appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(7) Any code or guideline published under this section—

(*a*) may be of general or special application and may be made so as to apply only in specified circumstances;

(*b*) may make different provisions for different circumstances and provide for different cases or classes of cases.

(8) Any code or guideline published under this section is not subsidiary legislation.

(9) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding codes or guidelines it proposes to publish under this section or any other provision of this Ordinance, or amendments it proposes to make to codes or guidelines published under this section or any other provision of this Ordinance, in so far as such codes or guidelines or such amendments (as the case may be) apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.

Division 4—Miscellaneous

400. Service of notices, etc.

Subject to sections 111, 141 and 374 and any rules made under section 233 or 269, any written notice or direction or other document (however described) to be, or required to be, issued or served (however described) to or on any person, other than the Commission, for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served if—

(*a*) in the case of an individual, it is—
- (i) delivered to him by hand;
- (ii) left at, or sent by post to, his last known business or residential address;
- (iii) sent by facsimile transmission to his last known facsimile number; or
- (iv) sent by electronic mail transmission to his last known electronic mail address;

(*b*) in the case of a company, it is—
- (i) delivered to any officer of the company by hand;
- (ii) left at, or sent by post to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 32);
- (iii) sent by facsimile transmission to its last known facsimile number; or
- (iv) sent by electronic mail transmission to its last known electronic mail address;

(*c*) in the case of an overseas company, it is—
- (i) delivered by hand to, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the purposes of Part XI of the Companies Ordinance (Cap. 32) at his address delivered to the Registrar of Companies under that Ordinance;
- (ii) sent by facsimile transmission to the last known facsimile number of the person; or

(iii) sent by electronic mail transmission to the last known electronic mail address of the person;

(*d*) in the case of a partnership, it is—

(i) delivered to any partner of the partnership by hand;

(ii) left at, or sent by post to, the last known principal place of business of the partnership;

(iii) sent by facsimile transmission to the last known facsimile number of the partnership; or

(iv) sent by electronic mail transmission to the last known electronic mail address of the partnership; or

(*e*) in the case of a body corporate (other than a company or an overseas company or the Commission) or an unincorporated body (other than a partnership), or a tribunal, it is—

(i) delivered to any officer of the body or the tribunal (as the case may be) by hand;

(ii) left at, or sent by post to, the last known principal place of business of the body or the tribunal (as the case may be);

(iii) in the case of the body, sent by facsimile transmission to the last known facsimile number of the body; or

(iv) in the case of the body, sent by electronic mail transmission to the last known electronic mail address of the body.

401. Evidence regarding Commission's records or documents

A record or document purporting to be a record or document, or a copy of a record or document, signed, executed or issued by or on behalf of the Commission and purporting to be signed or initialled by any member of the Commission or any person performing any function under any of the relevant provisions shall in any proceedings be admissible as evidence of the facts stated in it, without proof of the signature or initials of the person purporting to sign or initial the record or document.

402. General requirements for documents lodged with Commission

(1) Except as otherwise provided in sections 324 and 347, the Commission may, by notice published in the Gazette, specify any form in respect of any application, statement, notice, return or other document (however described) required to be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form—

(*a*) include directions and instructions relating to the compilation of the application, statement, notice, return or other document (as the case may be);

(*b*) include directions and instructions relating to the inclusion of statutory declarations made in respect of the particulars in it; and

(*c*) specify documents by which it is to be accompanied.

(2) For the purposes of subsection (1), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (1).

(3) For the purposes of subsection (1), the Commission may specify that different forms are to be used in different circumstances.

(4) Subject to subsections (5) and (6), where—

(*a*) there is any requirement for any application, statement, notice, return or other document (however described) to be lodged, filed or submitted with or to the Commission for the purposes of any provision of this Ordinance; and

(*b*) the Commission has specified any form in respect of it under subsection (1),

the requirement shall not be regarded as having been complied with unless it—

(i) is in the form specified;

(ii) is compiled in accordance with such directions and instructions as are included in the form;

(iii) contains statutory declarations in accordance with such directions and instructions as are included in the form; and

(iv) is accompanied by such documents as are specified in the form.

(5) An application, statement, notice, return or other document shall not by reason of any deviation from a form specified in respect of it under subsection (1) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(6) Where the Commission is satisfied that a person has substantial practical difficulties in complying with any of the requirements referred to in subsection (4)(i), (ii), (iii) or (iv), it may in its discretion dispense with the requirements in the case of the person to such extent as it considers necessary.

(7) A notice published pursuant to subsection (1) is not subsidiary legislation.

403. General provisions for approvals by Commission

Where under any provision of this Ordinance, an act cannot be done, or an omission cannot be made, except with the approval, whether in writing or otherwise, of the Commission—

(*a*) without prejudice to any express provisions in this Ordinance relating to imposition of conditions, the approval may be given subject to such conditions (if any) as the Commission may specify in giving the approval (including conditions which provide that failure to comply with the conditions causes the approval to lapse); and

(*b*) for the purposes of any pecuniary, custodial or other sanction which may be imposed under any provision of this Ordinance in relation to any such act done or omission made without such approval, the approval shall have no effect to the extent that the act is done or the omission is made (as the case may be) otherwise than in accordance with any such conditions.

404. Exclusions of provisions of Gambling Ordinance

(1) Subject to subsection (2), the Gambling Ordinance (Cap. 148) shall not apply to any transaction or activity which is regulated by or under, or which is carried out in compliance with, this Ordinance.

(2) The Commission may make rules to prescribe any class of transactions or activities (being transactions or activities to which the Gambling Ordinance (Cap. 148) would apart from this section apply), whether by reference to the nature of the transactions or activities or all or any of the parties to or persons involved in the transactions or activities or otherwise, as a class of transactions or activities to which that Ordinance shall apply, whereupon that Ordinance shall have application accordingly.

405. Inland Revenue Ordinance not affected

Nothing in this Ordinance affects section 4 of the Inland Revenue Ordinance (Cap. 112).

PART XVII

REPEALS AND RELATED PROVISIONS

406. Repeals

(1) Each of the following shall be repealed from a day appointed by the Secretary for Financial Services by notice published in the Gazette—

(*a*) the Securities and Futures Commission Ordinance (Cap. 24);
(*b*) the Commodities Trading Ordinance (Cap. 250);
(*c*) the Securities Ordinance (Cap. 333);
(*d*) the Protection of Investors Ordinance (Cap. 335);
(*e*) the Stock Exchanges Unification Ordinance (Cap. 361);
(*f*) the Securities (Insider Dealing) Ordinance (Cap. 395);
(*g*) the Securities (Disclosure of Interests) Ordinance (Cap. 396);
(*h*) the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);
(*i*) the Leveraged Foreign Exchange Trading Ordinance (Cap. 451);
(*j*) the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555).

(2) Any repeal under this section is subject to—
(*a*) the other provisions of this Part; and
(*b*) Schedule 10.

(3) Without limiting the generality to section 12 of Part 1 of Schedule 1, a reference to any Ordinance in this section includes any subsidiary legislation made under such Ordinance.

407. Savings, transitional, consequential and related provisions, etc.

(1) Part 1 of Schedule 10 provides for the savings, transitional and supplemental arrangements that apply on, or relate to, the commencement of this Ordinance or any part thereof.

(2) Part 2 of Schedule 10 provides for the consequential and supplemental amendments that apply on, or relate to, the commencement of this Ordinance or any part thereof, and the enactments specified in column 2 of that Part are amended in the manner set out in column 3 of that Part.

408. Provisions of Part XVII, etc. not to derogate from section 23 of Interpretation and General Clauses Ordinance

Except as otherwise provided in this Part or Schedule 10, the provisions of this Part and of Schedule 10 are in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

409. Amendment of Schedule 10

The Chief Executive in Council may, be order published in the Gazette, amend Schedule 10.

SCHEDULE 1 [ss. 2, 19, 66, 164, 171, 174, 175, 202 & 406 & Sch. 9]

INTERPRETATION AND GENERAL PROVISIONS

PART 1

INTERPRETATION

1. **Interpretation of this Ordinance**

In this Ordinance, unless otherwise defined or excluded or the context otherwise requires—

"accredited" (隸屬) means accredited to a licensed corporation with the Commission's approval under section 122 of this Ordinance;

"Advisory Committee" (諮詢委員會) means the Advisory Committee referred to in section 7 of this Ordinance;

"articles" (章程細則), in relation to a company, means its articles as defined in section 2(1) of the Companies Ordinance (Cap. 32);

"associate" (有聯繫者), in relation to a person, means—

(*a*) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;

(*b*) any corporation of which the person is a director;

(*c*) any employee or partner of the person;

(*d*) the trustee of a trust of which the person, his spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object;

(*e*) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;

(*f*) another person accustomed or obliged to act in accordance with the directions or instructions of the person;

(*g*) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;

(*h*) a corporation which is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;

(*i*) a corporation at general meetings of which the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;

(*j*) a corporation of which the person controls the composition of the board of directors;

(*k*) where the person is a corporation—

(i) each of its directors and its related corporations and each director or employee of any of its related corporations; and

(ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation;

(*l*) without limiting the circumstances in which paragraphs (*a*) to (*k*) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement—

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

"associated entity" (有聯繫實體), in relation to an intermediary, means a company, or an overseas company complying with the provisions of Part XI of the Companies Ordinance (Cap. 32) relating to the registration of documents, which—

(*a*) is in a controlling entity relationship with the intermediary; and
(*b*) receives or holds in Hong Kong client assets of the intermediary;

"auditor" (核數師) means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50), or such other person as is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition;

"authorized automated trading services" (認可自動化交易服務) means automated trading services which a person is authorized to provide under section 95(2) of this Ordinance;

"authorized financial institution" (認可財務機構) means an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap. 155);

"automated trading services" (自動化交易服務) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

"bank" (銀行) means any institution carrying on business similar to—
(*a*) the banking business within the meaning of the Banking Ordinance (Cap. 155) as carried on by an authorized financial institution; or
(*b*) the business of taking deposits within the meaning of that Ordinance as carried on by an authorized financial institution,

whether it is an authorized financial institution or not, and "banker" (銀行) shall be construed accordingly;

"bank incorporated outside Hong Kong" (在香港以外地方成立為法團的銀行) means a bank incorporated outside Hong Kong that is not an authorized financial institution;

"banker's books" (銀行簿冊) includes—
(*a*) books of a banker;
(*b*) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession of a banker;
(*c*) securities in the possession of a banker, whether as a pledge or otherwise; and
(*d*) any material in which information is recorded (however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form) and which is used in the ordinary course of business of a bank;

"books" (簿冊) includes—
(*a*) accounts and any accounting information; and
(*b*) in the case of a banker, any banker's books,

however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

"broadcast" (廣播), in relation to any material (however described), includes having the information contained in the material broadcast;

"broadcaster" (廣播業者) means a person who lawfully—
(*a*) establishes and maintains a broadcasting service within the meaning of Part IIIA of the Telecommunications Ordinance (Cap. 106); or
(*b*) provides a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (Cap. 562);

"business day" (營業日) means a day other than—
(*a*) a public holiday; and
(*b*) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

"certificate of deposit" (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable (and, in the case of any such document which is a prescribed instrument by virtue of paragraph (*a*) of the definition of "prescribed instrument" in section 137B(1) of the Banking Ordinance (Cap. 155), such document includes any right or interest referred to in paragraph (*b*) of that definition in respect of such document);

"charge" (押記) includes any form of security, including a mortgage;

"clearing house" (結算所) 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;

"clearing participant" (結算所參與者) means 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;

"client" (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity, and—

(*a*) includes another intermediary that—

(i) deposits securities;

(ii) deposits money; or

(iii) deposits any property as collateral,

with the first-mentioned intermediary;

(*b*) in connection with a leveraged foreign exchange contract, does not include a recognized counterparty;

"client assets" (客戶資產) means—

(*a*) client securities and collateral; and

(*b*) client money;

"client collateral" (客戶抵押品) means—

(*a*) securities collateral; and

(*b*) other collateral;

"client money" (客戶款項)—

(*a*) in relation to a licensed corporation, means any money—

(i) received or held by or on behalf of the licensed corporation; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,

which is so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest, and includes any accretions thereto whether as capital or income; or

(*b*) in relation to a registered institution, means any money—

(i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,

which is so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest, and includes any accretions thereto whether as capital or income;

"client securities" (客戶證券)—

(*a*) in relation to a licensed corporation, means any securities (other than securities collateral)—

(i) received or held by or on behalf of the licensed corporation; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,

which are so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest; or

(*b*) in relation to a registered institution, means any securities (other than securities collateral)—

(i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,

which are so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest;

"client securities and collateral" (客戶證券及抵押品) means—

(*a*) client securities; and

(*b*) client collateral;

"collective investment scheme" (集體投資計劃) means—

(*a*) arrangements in respect of any property—

(i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;

(ii) under which—

(A) the property is managed as a whole by or on behalf of the person operating the arrangements;

(B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or

(C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and

(iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive—

(A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

(B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or

(*b*) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as being regarded as collective investment schemes in accordance with the terms of the notice,

but does not include—

(i) arrangements operated by a person otherwise than by way of business;

(ii) arrangements under which each of the participating persons is a corporation in the same group of companies as the person operating the arrangements;

(iii) arrangements under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;

(iv) franchise arrangements under which the franchisor or franchisee earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;

(v) arrangements under which money is taken by a solicitor from his client, or as a stakeholder, acting in his professional capacity in the ordinary course of his practice;

(vi) arrangements made for the purposes of any fund or scheme maintained by the Commission, or by a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company,

under any provision of this Ordinance for the purpose of providing compensation in the event of default by an exchange participant or a clearing participant;

(vii) arrangements made by any credit union in accordance with the objects thereof;

(viii) arrangements made for the purposes of any chit-fund permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262);

(ix) arrangements made for the purposes of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);

(x) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as not being regarded as collective investment schemes in accordance with the terms of the notice;

"Commission" (證監會) means the Securities and Futures Commission referred to in section 3(1) of this Ordinance;

"Commissioner of the Independent Commission Against Corruption" (廉政專員) means the Commissioner of the Independent Commission Against Corruption appointed under section 5 of the Independent Commission Against Corruption Ordinance (Cap. 204);

"company" (公司) means a company as defined in section 2(1) of the Companies Ordinance (Cap. 32);

"compensation fund" (賠償基金) means the Investor Compensation Fund established under section 236 of this Ordinance;

"conduct" (行為) includes any act or omission, and any series of acts or omissions;

"constitution" (章程), in relation to a corporation, including a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, means—

(*a*) where the corporation is a company, the memorandum and articles of the corporation; or

(*b*) in any other case, any other instrument providing for the constitution of the corporation;

"controlling entity" (控權實體), in relation to a corporation, means a person who, either alone or with any of his associates—

(*a*) is entitled to exercise or control the exercise of not less than—

(i) subject to subparagraph (ii), 20%; or

(ii) where any other percentage is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition, such other percentage,

of the voting power at general meetings of the corporation;

(*b*) has the right to nominate any of the directors of the corporation; or

(*c*) has an interest in shares carrying the right to—

(i) veto any resolution; or

(ii) amend, modify, limit or add conditions to any resolution,

at general meetings of the corporation;

"controlling entity relationship" (控權實體關係), in relation to a corporation, means its relationship with an intermediary by virtue of—

(*a*) the intermediary being a controlling entity of the corporation;

(*b*) the corporation being a controlling entity of the intermediary; or

(*c*) another person, who is a controlling entity of the corporation, being also a controlling entity of the intermediary;

"corporation" (法團) means a company or other body corporate incorporated either in Hong Kong or elsewhere, but does not include a company or other body corporate which is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as being exempted from the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as being exempted from any provision of this Ordinance;

"court" (法庭、法院) includes a magistrate and a tribunal;

"credit union" (儲蓄互助社) means a credit union registered under the Credit Unions Ordinance (Cap. 119);

"data material" (數據材料) means a document or other material used with or produced by any information system;

"dealing" (交易)—

(*a*) in relation to securities, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement—

(i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(ii) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(*b*) in relation to futures contracts, means, whether as principal or agent—

(i) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;

(ii) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or

(iii) inducing or attempting to induce another person to acquire or dispose of a futures contract;

"debenture" (債權證) includes debenture stocks, bonds, and other securities of a corporation, whether constituting a charge on the assets of the corporation or not;

"defalcation" (虧空) means misapplication, including misappropriation, of any property;

"director" (董事) includes a shadow director and any person occupying the position of director by whatever name called;

"document" (文件) includes any register and books, any tape recording and any form of input or output into or from an information system, and any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

"exchange participant" (交易所參與者) 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;

"executive director" (執行董事), in relation to the Commission, means the chairman of the Commission, or any other person who is appointed as an executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance;

"executive officer" (主管人員)—

(*a*) in relation to a licensed corporation, means a responsible officer of the licensed corporation;

(*b*) in relation to a registered institution, means a person who is an executive officer of the registered institution under the Banking Ordinance (Cap. 155); or

(*c*) in relation to an associated entity of an intermediary, means any director of the associated entity who is responsible for directly supervising the receiving or holding by the associated entity of client assets of the intermediary;

"fee" (費用) includes a charge;

"financial accommodation" (財務通融) means a loan or other arrangement under which a person is or is to be provided with credit, whether directly or through a third party, and in particular includes an overdraft, a discounted negotiable instrument, a guarantee, a forbearance from enforcing any debt that in substance is a loan, and also includes an agreement to secure the payment or repayment of any such accommodation;

"financial product" (金融產品) means—

(*a*) any securities;

(*b*) any futures contract;

(*c*) any collective investment scheme;

(*d*) any leveraged foreign exchange contract;

"financial resources rules" (財政資源規則) means rules made under section 145 of this Ordinance;

"financial year" (財政年度)—

(*a*) in relation to the Commission, means the financial year referred to in section 13(1) of this Ordinance; or

(*b*) in relation to an intermediary, or an associated entity of an intermediary, means—

(i) the financial year in respect of which notification is given to the Commission under section 155(1) of this Ordinance or, where an approval is granted under section 155(3)(*a*) of this Ordinance, the financial year in respect of which the approval is granted;

(ii) the financial year in respect of which notification is given to the Monetary Authority under section 59B(1) of the Banking Ordinance (Cap. 155) or, where an approval is granted under section 59B(3)(*a*) of that Ordinance, the financial year in respect of which the approval is granted; or

(iii) in any other case, a period of 12 consecutive months ending on 31 March in a calendar year;

"function" (職能) includes power and duty;

"futures contract" (期貨合約) means—

(*a*) a contract or an option on a contract made under the rules or conventions of a futures market;

(*b*) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as futures contracts in accordance with the terms of the notice,

but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as futures contracts in accordance with the terms of the notice;

"Futures Exchange Company" (期交所) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Futures Exchange Limited;

"futures market" (期貨市場) means a place at which facilities are provided for persons to negotiate or conclude sales and purchases of, or for bringing together on a regular basis sellers and purchasers of—

(*a*) contracts the effect of which is—

(i) that one party agrees to deliver to the other party at an agreed future time an agreed property, or an agreed quantity of a property, at an agreed price; or

(ii) that the parties will make an adjustment between them at an agreed future time according to whether at that time an agreed property is worth more or less or an index or other factor stands at a higher or lower level than a value or level agreed at the time of making of the contract; or

(*b*) options on contracts of the kind described in paragraph (*a*),

where—

(i) the contracts or options of the kind described in paragraph (*a*) or (*b*) are novated or guaranteed by a central counterparty under the rules or conventions of the market on which they are traded; or

(ii) the contractual obligations under the contracts or options of the kind described in paragraph (*a*) or (*b*) are normally discharged before the contractual expiry date under the rules or conventions of the market on which they are traded,

but does not include the office of a recognized clearing house;

"group of companies" (公司集團) means any 2 or more corporations one of which is the holding company of the other or others (as the case may be);

"hold" (持有), in relation to any property, includes—

(*a*) possession of the property;

(*b*) being registered or otherwise recorded, as having title to or being entitled to receive the property, in any register or other record (however compiled or stored) which is established or created for the purpose of identifying persons having title to or being entitled to receive any property; and

(*c*) in the case of a person carrying on business, the person being in a position to transfer the property to himself or otherwise receive the benefit of the property—

(i) where another person has a legal or equitable interest in the property;

(ii) where there is a connection between the property and the business which is carried on by the person; and

(iii) regardless of whether it would be lawful or unlawful for the person to transfer the property to himself or otherwise receive the benefit of the property,

but does not include, in the case of a cheque or other order made payable to any person, the possession of the cheque or other order during the course of dispatching or delivering it to that person or any other person on behalf of that person;

"holding company" (控股公司), in relation to a corporation, means any other corporation of which it is a subsidiary;
"incorporated" (成立、成立為法團) includes formed or established, by whatever means;
"information" (資訊、資料、消息) includes data, text, images, sound codes, computer programmes, software and databases, and any combination thereof;
"information system" (資訊系統) means an information system as defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);
"Insurance Authority" (保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);
"insurer" (保險人) means an insurer as defined in section 2(1) of the Insurance Companies Ordinance (Cap. 41);
"intermediary" (中介人) means a licensed corporation or a registered institution;
"judicial or other proceedings" (司法或其他法律程序) means any legal proceedings, whether in the nature of judicial proceedings or otherwise;
"legal officer" (律政人員) means a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
"leveraged foreign exchange contract" (槓桿式外匯交易合約) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;
"leveraged foreign exchange trading" (槓桿式外匯交易) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;
"licence" (牌、牌照) means a licence granted under section 116, 117, 120 or 121 of this Ordinance, and "licensed" (獲發牌、持牌) shall be construed accordingly;
"licensed corporation" (持牌法團) means a corporation which is granted a licence under section 116 or 117 of this Ordinance;
"licensed person" (持牌人) means a licensed corporation or a licensed representative;
"licensed representative" (持牌代表) means an individual who is granted a licence under section 120 or 121 of this Ordinance;
"liquidator" (清盤人) includes a provisional liquidator;
"listed" (上市) means listed on a recognized stock market, and for the purposes of this definition—
(*a*) a corporation shall be regarded as listed if any of its securities are listed;
(*b*) securities shall be regarded as listed when a recognized exchange company has, on the application of the corporation which issued them, or on the application of a holder of them, agreed to allow, subject to the requirements of this Ordinance, dealings in those securities to take place on a recognized stock market, and shall continue to be so regarded during a period of suspension of dealings in those securities on the recognized stock market;
"listing" (上市), in relation to securities, means the process by which the securities are listed;
"live broadcast" (直播), in relation to any material (however described), means having the material broadcast without its being recorded in advance;
"Mandatory Provident Fund Schemes Authority" (積金局) means the Mandatory Provident Fund Schemes Authority established under section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
"market contract" (市場合約) means a contract subject to the rules of a recognized clearing house entered into by the clearing house with a clearing participant pursuant to a novation which is both in accordance with those rules and for the purposes of the clearing and settlement of transactions in securities or futures contracts effected on a recognized stock market or a recognized futures market or subject to the rules of a recognized exchange company;
"market misconduct" (市場失當行為) has the meaning assigned to it by section 245(1) of this Ordinance;
"Market Misconduct Tribunal" (市場失當行為審裁處) means the Market Misconduct Tribunal established by section 251 of this Ordinance;
"member" (成員), in relation to the Commission, means any executive director (whether or not acting as the chairman or deputy chairman) or non-executive director of the Commission;
"memorandum" (章程大綱), in relation to a company, means its memorandum as defined in section 2(1) of the Companies Ordinance (Cap. 32);
"minor" (未成年), in relation to a person, means not having attained the age of 18 years;
"misfeasance" (不當行為) means the performance of an otherwise lawful act in a wrongful manner;

"Monetary Authority" (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

"money laundering activities" (洗錢活動) means activities intended to have the effect of making any property—

(*a*) which is the proceeds obtained from the commission of an offence under the laws of Hong Kong, or of any conduct which if occurred in Hong Kong would constitute an offence under the laws of Hong Kong; or

(*b*) which in whole or in part, directly or indirectly, represents such proceeds,

not to appear to be or so represent such proceeds;

"multilateral agency" (多邊機構) means a body specified in Part 4;

"non-executive director" (非執行董事), in relation to the Commission, means a person who is appointed as a non-executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance;

"number" (數目), in relation to shares which in the context can be construed to include stock, includes amount;

"officer" (高級人員)—

(*a*) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or

(*b*) in relation to an unincorporated body, means any member of the governing body of the unincorporated body;

"Official Receiver" (破產管理署署長) means the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6);

"Ombudsman" (申訴專員) means The Ombudsman referred to in section 3(1) of The Ombudsman Ordinance (Cap. 397);

"other collateral" (其他抵押品)—

(*a*) in relation to a licensed corporation, means any property (other than securities or money)—

(i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person,

which is so deposited or provided—

(A) as security for the provision by the licensed corporation of financial accommodation; or

(B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the property; or

(*b*) in relation to a registered institution, means any property (other than securities or money)—

(i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity,

which is so deposited or provided—

(A) as security for the provision by the registered institution of financial accommodation; or

(B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the property;

"overseas company" (海外公司) means an oversea company within the meaning of section 332 of the Companies Ordinance (Cap. 32);

"performance" (執行), in relation to a function, includes discharge and exercise;

"possession" (管有), in relation to any matter, includes custody, control and power of or over the matter;

"Privacy Commissioner for Personal Data" (私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486);

"professional accountant" (專業會計師) means a professional accountant as defined in section 2 of the Professional Accountants Ordinance (Cap. 50);

"professional investor" (專業投資者) means—

(*a*) any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, or any person authorized to provide automated trading services under section 95(2) of this Ordinance;

(*b*) any intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;

(*c*) any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;

(*d*) any insurer authorized under the Insurance Companies Ordinance (Cap. 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong;

(*e*) any scheme which—

(i) is a collective investment scheme authorized under section 104 of this Ordinance; or

(ii) is similarly constituted under the law of any place outside Hong Kong and, if it is regulated under the law of such place, is permitted to be operated under the law of such place,

or any person by whom any such scheme is operated;

(*f*) any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.), or any person who, in relation to any such registered scheme, is an approved trustee or service provider as defined in section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;

(*g*) any scheme which—

(i) is a registered scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or

(ii) is an offshore scheme as defined in section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is permitted to be operated under the law of such place,

or any person who, in relation to any such scheme, is an administrator as defined in section 2(1) of that Ordinance;

(*h*) any government (other than a municipal government authority), any institution which performs the functions of a central bank, or any multilateral agency;

(*i*) except for the purposes of Schedule 5 to this Ordinance, any corporation which is—

(i) a wholly owned subsidiary of—

(A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or

(B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;

(ii) a holding company which holds all the issued share capital of—

(A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or

(B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong; or

(iii) any other wholly owned subsidiary of a holding company referred to in subparagraph (ii); or

(*j*) any person of a class which is prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph as within the meaning of this definition for the purposes of the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as within the meaning of this definition for the purposes of any provision of this Ordinance;

"property" (財產) includes—

(*a*) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and

(*b*) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (*a*);

"prospectus" (招股章程) means any prospectus, notice, circular, brochure, advertisement, or other document—

(*a*) offering any shares or debentures of a corporation to the public for subscription or purchase for cash or other consideration; or

(*b*) calculated to invite offers by the public to subscribe for or purchase for cash or other consideration any shares or debentures of a corporation;

"public" (公眾、大眾) means the public of Hong Kong, and includes any class of that public;

"purchase" (買、購買), in relation to securities, includes subscribing for or acquiring the securities, in whatever form the consideration may be;

"qualifying credit rating" (合資格信貸評級) means—

(*a*) a credit rating specified in Part 5; or

(*b*) any credit rating which, in the opinion of the Commission, is equivalent to a credit rating specified in Part 5;

"recognized clearing house" (認可結算所) means a company recognized as a clearing house under section 37(1) of this Ordinance;

"recognized counterparty" (認可對手方) means—

(*a*) an authorized financial institution;

(*b*) in relation to a particular transaction conducted by a corporation licensed for Type 3 regulated activity, another corporation which is also so licensed; or

(*c*) an institution prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as a recognized counterparty;

"recognized exchange company" (認可交易所) means a company recognized as an exchange company under section 19(2) of this Ordinance;

"recognized exchange controller" (認可控制人) means a company recognized as an exchange controller under section 59(2) of this Ordinance;

"recognized futures market" (認可期貨市場) means a futures market operated by a recognized exchange company;

"recognized investor compensation company" (認可投資者賠償公司) means a company recognized as an investor compensation company under section 79(1) of this Ordinance;

"recognized stock market" (認可證券市場) means a stock market operated by a recognized exchange company;

"record" (紀錄) means any record of information (however compiled or stored) and includes—

(*a*) any books, deeds, contract or agreement, voucher, receipt or data material, or information which is recorded otherwise than in a legible form but is capable of being reproduced in a legible form; and

(*b*) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced, and any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;

"registered" (註冊) means registered under section 119 of this Ordinance, and "registration" (註冊) shall be construed accordingly;

"registered institution" (註冊機構) means an authorized financial institution which is registered under section 119 of this Ordinance;

"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32);

"regulated activity" (受規管活動) means any of the regulated activities specified in Part 1 of Schedule 5 to this Ordinance, and a reference to a type of regulated activity by number shall be construed as a reference to the type of regulated activity of that number as specified in that Part;

"regulated investment agreement" (受規管投資協議) means an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to any party to the agreement a profit, income or other returns calculated by reference to changes in the value of any property, but does not include an interest in a collective investment scheme;

"relevant provisions" (有關條文) means the provisions of—

(*a*) this Ordinance;

(*b*) Parts II and XII of the Companies Ordinance (Cap. 32), so far as those Parts relate, directly or indirectly, to the performance of functions relating to—

(i) prospectuses;

(ii) the purchase by a corporation of its own shares;

(iii) a corporation giving financial assistance for the acquisition of its own shares, whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance;

"relevant share capital" (有關股本) means the issued share capital of a corporation which is of a class carrying rights to vote in all circumstances at general meetings of the corporation;

"remuneration" (報酬) includes money, any consideration, financial accommodation or benefit, whether paid, provided or supplied directly or indirectly;

"repealed Commodities Trading Ordinance" (已廢除的《商品交易條例》) means the Commodities Trading Ordinance (Cap. 250) repealed under section 406 of this Ordinance;

"repealed Exchanges and Clearing Houses (Merger) Ordinance" (已廢除的《交易所及結算所 (合併) 條例》) means the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) repealed under section 406 of this Ordinance;

"repealed Leveraged Foreign Exchange Trading Ordinance" (已廢除的《槓桿式外匯買賣條例》) means the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) repealed under section 406 of this Ordinance;

"repealed Protection of Investors Ordinance" (已廢除的《保障投資者條例》) means the Protection of Investors Ordinance (Cap. 335) repealed under section 406 of this Ordinance;

"repealed Securities and Futures (Clearing Houses) Ordinance" (已廢除的《證券及期貨 (結算所) 條例》) means the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) repealed under section 406 of this Ordinance;

"repealed Securities and Futures Commission Ordinance" (已廢除的《證券及期貨事務監察委員會條例》) means the Securities and Futures Commission Ordinance (Cap. 24) repealed under section 406 of this Ordinance;

"repealed Securities (Disclosure of Interests) Ordinance" (已廢除的《證券 (披露權益) 條例》) means the Securities (Disclosure of Interests) Ordinance (Cap. 396) repealed under section 406 of this Ordinance;

"repealed Securities (Insider Dealing) Ordinance" (已廢除的《證券 (內幕交易) 條例》) means the Securities (Insider Dealing) Ordinance (Cap. 395) repealed under section 406 of this Ordinance;

"repealed Securities Ordinance" (已廢除的《證券條例》) means the Securities Ordinance (Cap. 333) repealed under section 406 of this Ordinance;

"repealed Stock Exchanges Unification Ordinance" (已廢除的《證券交易所合併條例》) means the Stock Exchanges Unification Ordinance (Cap. 361) repealed under section 406 of this Ordinance;

"responsible officer" (負責人員) means an individual who is approved by the Commission under section 126(1) of this Ordinance as a responsible officer of a licensed corporation;

"Risk Management Committee" (風險管理委員會), in relation to a recognized exchange controller, means the committee of that name established under section 65(1) of this Ordinance by the controller;

"rules" (規章)—

(*a*) in relation to a recognized exchange company, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing—

(i) its exchange participants;

(ii) the persons who may participate in any of the services it provides;

(iii) the setting and levying of fees;

(iv) the listing of securities;

(v) the trading of securities or futures contracts;

(vi) the provision of other services; or

(vii) generally, its management, operations or procedures,

and includes, in respect of sections 24 and 92 of this Ordinance, its constitution;

(*b*) in relation to a recognized clearing house, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing—
(i) its clearing participants;
(ii) the persons who may participate in any of the services it provides;
(iii) the setting and levying of fees;
(iv) the provision of clearing and settlement services, and the suspension or withdrawal of such services;
(v) the provision of other services; or
(vi) generally, its management, operations or procedures,
and includes, in respect of sections 41 and 92 of this Ordinance, its constitution;

(*c*) in relation to a recognized exchange controller, means—
(i) its constitution; or
(ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing the conduct or procedures of—
(A) the recognized exchange controller;
(B) the Risk Management Committee; or
(C) any person or body of persons declared in a notice under section 66(2) of this Ordinance to be a person or body of persons (as the case may be) to which this sub-subparagraph shall apply; or

(*d*) in relation to a recognized investor compensation company, means—
(i) its constitution; or
(ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing its management, operations or procedures, or its provision of services;

"securities" (證券) means—

(*a*) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;

(*b*) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(*c*) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;

(*d*) interests in any collective investment scheme;

(*e*) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;

(*f*) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as securities in accordance with the terms of the notice,

but does not include—

(i) shares or debentures of a company that is a private company within the meaning of section 29 of the Companies Ordinance (Cap. 32);

(ii) any interest in any collective investment scheme that is—
(A) a registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.);
(B) an occupational retirement scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or
(C) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap. 41);

(iii) any interest arising under a general partnership agreement or proposed general partnership agreement unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts (whether or not that person is, or is to become, a party to the agreement or proposed agreement);

(iv) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document;

(v) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) and any promissory note within the meaning of section 89 of that Ordinance;

(vi) any debenture that specifically provides that it is not negotiable or transferable;

(vii) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as securities in accordance with the terms of the notice;

"Securities and Futures Appeals Tribunal" (上訴審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of this Ordinance;

"securities and futures industry" (證券期貨業) means the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants;

"securities and futures market" (證券期貨市場) means any market, exchange, place or service which facilitates the bringing together on a regular basis persons who are parties to transactions related to financial products;

"securities borrowing and lending agreement" (證券借貸協議) means an agreement whereby a person borrows or lends securities pursuant to an arrangement where the borrower undertakes to return securities of the same description, or pay the equivalent value of the securities, to the lender, and includes a stock borrowing within the meaning of section 19(16) of the Stamp Duty Ordinance (Cap. 117);

"securities collateral" (證券抵押品)—

(*a*) in relation to a licensed corporation, means any securities—

(i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person,

which are so deposited or provided—

(A) as security for the provision by the licensed corporation of financial accommodation; or

(B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the securities; or

(*b*) in relation to a registered institution, means any securities—

(i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity,

which are so deposited or provided—

(A) as security for the provision by the registered institution of financial accommodation; or

(B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the securities;

"securities margin financing" (證券保證金融資) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

"served" (送達) includes given;

"shadow director" (幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

"share" (股份) means any share in the share capital of a corporation, and, except where a distinction between stock and shares is express or implied, includes stock;

"short selling order" (賣空指示)—

(*a*) subject to paragraph (*b*), means an order to sell securities in respect of which the seller, or the person for whose benefit or on whose behalf the order is made, has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having—

(i) under a securities borrowing and lending agreement—

(A) borrowed the securities; or

(B) obtained a confirmation from the counterparty to the agreement that the counterparty has the securities available to lend to him;

(ii) a title to other securities which are convertible into or exchangeable for the securities to which the order relates;

(iii) an option to acquire the securities to which the order relates;

(iv) rights or warrants to subscribe for and to receive the securities to which the order relates; or

(v) entered into with any other person an agreement or arrangement of a description prescribed by rules made under section 397 of this Ordinance for the purposes of this subparagraph;

(*b*) in relation to paragraph (*a*)(ii), (iii), (iv) or (v), does not include an order where the seller, or the person for whose benefit or on whose behalf the order is made, has, at the time of placing the order, issued unconditional instructions to obtain the securities to which the order relates;

"specified debt securities" (指明債務證券) means debenture stocks, loan stocks, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities and other securities or instruments acknowledging, evidencing or creating indebtedness—

(*a*) which are issued or guaranteed by the Government;

(*b*) which are issued by an issuer that has a qualifying credit rating for any of its debt instruments; or

(*c*) which are issued by any other issuer as may be approved by the Commission in writing in a particular case;

"specified futures exchange" (指明期貨交易所) means a futures exchange specified in Part 2;

"specified stock exchange" (指明證券交易所) means a stock exchange specified in Part 3;

"Stock Exchange Company" (聯交所) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name The Stock Exchange of Hong Kong Limited;

"stock market" (證券市場) means a place where persons regularly meet together to negotiate sales and purchases of securities (including prices), or a place at which facilities are provided for bringing together sellers and purchasers of securities; but does not include the office of—

(*a*) an exchange participant of a recognized exchange company which may operate a stock market; or

(*b*) a recognized clearing house;

"take-over offer" (收購要約), in relation to a corporation, means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of the shares to acquire the shares of the class or a specified proportion of them;

"title" (稱銜) includes name or description;

"trading right" (交易權), in relation to a recognized exchange company, means a right to be eligible to trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company and entered as such a right in a list, roll or register kept by that exchange company.

2. **References to subsidiary**

(1) For the purposes of this Ordinance, a corporation shall be regarded as a subsidiary of another corporation if—

(*a*) the other corporation—
(i) controls the composition of its board of directors;
(ii) controls more than half of its voting power at general meetings; or
(iii) holds more than half of its issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital); or

(*b*) it is a subsidiary of a corporation which is the other corporation's subsidiary.

(2) For the purposes of subsection (1), in determining whether a corporation is a subsidiary of another corporation—

(*a*) any shares held or power exercisable by the other corporation in a fiduciary capacity shall be regarded as not held or exercisable by it;

(*b*) subject to paragraphs (*c*) and (*d*), any shares held or power exercisable—
(i) by a nominee for the other corporation (except where the other corporation is concerned only in a fiduciary capacity); or
(ii) by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,
shall be regarded as held or exercisable by the other corporation;

(*c*) any shares held or power exercisable by a person under a debenture of the corporation or under a trust deed for securing the issue of the debenture shall be disregarded; and

(*d*) any shares held or power exercisable by, or by a nominee for, the other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (*c*), shall be regarded as not held or exercisable by the other corporation if the ordinary business of the other corporation or its subsidiary (as the case may be) includes the lending of money and the shares are held or power is exercisable by way of security only for a transaction entered into in the ordinary course of that business.

3. **References to related corporation**

For the purposes of this Ordinance—

(*a*) 2 or more corporations shall be regarded as related corporations of each other if one of them is—
(i) the holding company of the other;
(ii) a subsidiary of the other; or
(iii) a subsidiary of the holding company of the other;

(*b*) when an individual—
(i) controls the composition of the board of directors of one or more corporations;
(ii) controls more than half of the voting power at general meetings of one or more corporations; or
(iii) holds more than half of the issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital) of one or more corporations,
each of the corporations referred to in subparagraph (i), (ii) or (iii), and each of their subsidiaries, shall be regarded as related corporations of each other.

4. **References to controlling the composition of a corporation's board of directors**

(1) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by another corporation if the other corporation, by the exercise of some power exercisable by it, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

(2) For the purposes of subsection (1), a corporation shall be regarded as being able to appoint or remove a director of another corporation if—

(*a*) the appointment or removal cannot occur without the corporation exercising a power; or

(*b*) the appointment of a person as a director of the other corporation follows necessarily from his being a director or other officer of the corporation.

(3) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by an individual if the individual, by the exercise of some power exercisable by him, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

(4) For the purposes of subsection (3), an individual shall be regarded as being able to appoint or remove a director of a corporation if—

(*a*) the appointment or removal cannot occur without the individual exercising a power; or

(*b*) the appointment of a person as a director of the corporation follows necessarily from his being a director or other officer of another corporation and his appointment as a director or other officer of the other corporation cannot occur without the individual exercising a power.

5. **References to wholly owned subsidiary**

For the purposes of this Ordinance, a body corporate shall be regarded as the wholly owned subsidiary of another body corporate if it has no members except that other, that other's nominee, that other's wholly owned subsidiary (as construed in accordance with this section), such wholly owned subsidiary's nominee, or any combination thereof.

6. **References to substantial shareholder**

(1) For the purposes of this Ordinance, a person shall, in relation to a corporation, be regarded as a substantial shareholder of the corporation if he, either alone or with any of his associates—

(*a*) has an interest in shares in the corporation—

(i) the nominal value of which shares is equal to more than the nominal value of 10% of the issued share capital of the corporation; or

(ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation; or

(*b*) holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation.

(2) For the purposes of subsection (1), a person shall be regarded as being entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of a corporation indirectly if he, either alone or with any of his associates, has an interest in shares in a further corporation which entitles him, either alone or with any of his associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the further corporation which is itself entitled, either alone or with any of its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the first-mentioned corporation.

7. **References to securities of a corporation**

In this Ordinance, a reference to securities (however described) as those of a corporation shall, unless the context otherwise requires, be construed as a reference to securities (having the applicable meaning, whether under section 1 or otherwise) which are—

(*a*) issued, made available or granted by the corporation;
(*b*) proposed to be issued, made available or granted by the corporation; or
(*c*) proposed to be issued, made available or granted by the corporation when it is incorporated.

8. **References to interest of investing public**

In this Ordinance, a reference to the interest of the investing public does not include any interest the taking into consideration of which is or is likely to be contrary to the public interest.

9. **References to conditions**

In this Ordinance, unless the context otherwise requires, a reference to any condition imposed under or pursuant to any provision of this Ordinance shall, in any case where the condition has been amended (however described) under or pursuant to any provision of this Ordinance, be construed as a reference to the condition as so amended.

10. **References relating to regulated activity**

In this Ordinance—

(*a*) unless otherwise defined or excluded or the context otherwise requires, a person shall be regarded as carrying on a regulated activity if—
  (i) he carries on a business in a regulated activity; or
  (ii) he performs for or on behalf of or by arrangement with a person carrying on a business in a regulated activity, any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;
(*b*) a person shall be regarded as carrying on a regulated activity for an intermediary if he performs for or on behalf of or by arrangement with the intermediary any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;
(*c*) (i) a corporation licensed under section 116 or 117 of this Ordinance to carry on a regulated activity shall be regarded as being licensed for that regulated activity;
  (ii) an individual licensed under section 120 or 121 of this Ordinance to carry on a regulated activity for a licensed corporation shall be regarded as being licensed for that regulated activity.

11. **References to contravention, etc.**

In this Ordinance, unless the context otherwise requires—

(*a*) a reference to contravention shall—
  (i) be construed as including a reference to failure to comply; and
  (ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision;
(*b*) a reference to failure to comply shall—
  (i) be construed as including a reference to contravention; and
  (ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision.

12. **References to Ordinance**

For the avoidance of doubt, in this Ordinance, a reference to this or any other Ordinance, whether generally or specifically and whether by reference to the short title of the Ordinance or otherwise, shall, unless the context otherwise requires, be construed as including any subsidiary legislation made under this or that other Ordinance (as the case may be).

PART 2

Specified Futures Exchanges

1. Australian Stock Exchange
2. Bourse de Montréal Inc.
3. Chicago Board of Trade
4. Chicago Board Options Exchange
5. Chicago Mercantile Exchange Inc.
6. Commodity Exchange, Inc. (New York)
7. Eurex
8. Euronext Amsterdam
9. Hong Kong Futures Exchange Limited
10. Korea Stock Exchange
11. London International Financial Futures and Options Exchange
12. London Metal Exchange
13. Marché a Terme International de France
14. Marché des Options Négociables de Paris
15. New York Cotton Exchange, Inc.
16. New York Futures Exchange
17. New York Mercantile Exchange
18. New Zealand Futures and Options Exchange
19. Osaka Securities Exchange
20. Pacific Exchange
21. Philadelphia Stock Exchange
22. Singapore Exchange Derivatives Trading Limited
23. Stockholmsbörsen
24. Sydney Futures Exchange, Ltd.
25. Tokyo Grain Exchange
26. Tokyo International Financial Futures Exchange
27. Tokyo Stock Exchange
28. Winnipeg Commodities Exchange Inc.

PART 3

Specified Stock Exchanges

1. American Stock Exchange
2. Australian Stock Exchange
3. Bolsa de Madrid
4. Borsa Italiana S.p.A.
5. Bourse de Montréal Inc.
6. Copenhagen Stock Exchange
7. Deutsche Börse AG
8. Euronext Amsterdam
9. Euronext Brussels
10. Euronext Paris
11. Helsinki Exchanges
12. Japanese Association of Securities Dealers Automated Quotations
13. Korea Stock Exchange
14. Kuala Lumpur Stock Exchange
15. London Stock Exchange
16. Luxembourg Stock Exchange
17. Nagoya Stock Exchange
18. National Association of Securities Dealers Automated Quotations
19. New York Stock Exchange
20. New Zealand Stock Exchange
21. Osaka Securities Exchange
22. Oslo Børs
23. Philippine Stock Exchange Inc.
24. Singapore Exchange Securities Trading Limited
25. The Stock Exchange of Hong Kong Limited
26. Stock Exchange of Thailand
27. Stockholmsbörsen
28. SWX Swiss Exchange
29. Tokyo Stock Exchange
30. Toronto Stock Exchange
31. Wiener Börse AG

PART 4

Multilateral Agencies

1. The African Development Bank
2. The Asian Development Bank
3. The European Bank for Reconstruction and Development
4. The European Investment Bank
5. The Inter-American Development Bank
6. The International Bank for Reconstruction and Development (commonly known as the World Bank)
7. The International Finance Corporation (an affiliate of the World Bank)

PART 5

Qualifying Credit Rating

1. A Moody's Investors Service rating of—
   (*a*) A3 or above for long term debt; or
   (*b*) Prime-3 or above for short term debt.
2. A Standard & Poor's Corporation rating of—
   (*a*) A or above for long term debt; or
   (*b*) A-3 or above for short term debt.

SCHEDULE 2

[ss. 3, 7 & 10 & Schs. 1 & 10]

Securities and Futures Commission

PART 1

Constitution and Proceedings of Commission, etc.

Chairman and other members of Commission

1. The Commission shall consist of a chairman and such number of executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows—
   (*a*) the number of members of the Commission shall not be less than 8; and
   (*b*) the majority of the members of the Commission shall be non-executive directors of the Commission.

2. The chairman of the Commission shall, by virtue of holding that office, be regarded as an executive director of the Commission.

3. When the membership of the Commission ceases to comply with the requirements of section 1, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

Deputy chairman and vacancies in office of chairman or deputy chairman

4. The Chief Executive may appoint an executive director of the Commission to be the deputy chairman of the Commission.

5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.

6. Notwithstanding that a deputy chairman has been appointed under section 4, the chairman of the Commission may, where there is no designation under section 7, designate an executive director of the Commission to act as chairman of the Commission for any period during which both he and the deputy chairman are unable to act as chairman due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation.

7. If—

(*a*) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or

(*b*) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,

the Financial Secretary may designate an executive director of the Commission to act as chairman of the Commission for any period during which the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause.

8. A designation under section 7 ceases to have effect when—

(*a*) it is revoked by the Financial Secretary;

(*b*) where the designation is under section 7(*a*), an appointment is made under section 4; or

(*c*) where the designation is under section 7(*b*), the deputy chairman appointed under section 4 is able to act as chairman,

whichever is the earlier.

9. A deputy chairman or an executive director of the Commission who acts as chairman of the Commission under section 5 or in accordance with a designation under section 6 or 7 shall be deemed for all purposes to be the chairman of the Commission.

Office of members, etc.

10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman or otherwise) shall be determined by the Chief Executive.

11. A member of the Commission (whether as the chairman, deputy chairman or otherwise) may at any time resign his office by notice in writing to the Chief Executive.

12. A member of the Commission (whether as the chairman, deputy chairman or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine.

13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman or otherwise) whose removal appears to him to be desirable for the effective performance by the Commission of its functions.

Meetings

14. Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman or the deputy chairman, or any 2 other members, of the Commission.

15. At a meeting of the Commission—
(*a*) if the chairman of the Commission is present, he shall be the chairman of the meeting;
(*b*) if the chairman of the Commission is not present but the deputy chairman of the Commission is present, the deputy chairman shall be the chairman of the meeting; or
(*c*) if neither the chairman nor the deputy chairman of the Commission is present, the members of the Commission present shall choose one of their number to be the chairman of the meeting.

16. The quorum for a meeting of the Commission is not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission.

17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.

18. Each member of the Commission present at a meeting of the Commission has one vote.

19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.

20. The chairman of a meeting of the Commission shall not exercise a casting vote in respect of any question for decision at the meeting until after he has consulted the Financial Secretary on the question.

Written resolution

21. Where a resolution—
(*a*) is in writing; and
(*b*) is signed by such number of members of the Commission as—
(i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and
(ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,
the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.

22. For the purposes of section 21, a resolution to which that section applies may be—
(*a*) in the form of one document; or
(*b*) in the form of more than one document, each in the like form and signed by one or more members of the Commission.

23. Where a resolution is in the form of more than one document as described in section 22(*b*), the requirement under section 21(*b*) shall be regarded as having been satisfied if the documents together bear the signatures of such number of members of the Commission as is specified in section 21(*b*)(i) and (ii).

24. For the purposes of sections 21 to 23—
(*a*) a document shall be regarded as having been signed by a member of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the member; and
(*b*) a resolution to which section 21 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as a member of the Commission for the purposes of that section.

Seal, and regulation of administration, etc.

25. The Commission shall have a seal, the affixing of which shall be authenticated by the signature of the chairman or the deputy chairman of the Commission, or by the signature of such other member of the Commission as is authorized by it to act in that behalf.

26. The Commission shall organize and regulate its administration, procedure and business in such manner as it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

Advisory Committee

27. The Advisory Committee shall consist of—
(*a*) the chairman of the Commission;
(*b*) not more than 2 other executive directors of the Commission who shall be appointed by the Commission;
(*c*) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.

28. A meeting of the Advisory Committee may be convened by—
(*a*) the chairman of the Commission; or
(*b*) any 3 other members of the Advisory Committee.

29. At a meeting of the Advisory Committee—
(*a*) if the chairman of the Commission is present, he shall be the chairman of the meeting; or
(*b*) if the chairman of the Commission is not present, the members of the Advisory Committee present shall choose one of their number to be the chairman of the meeting.

30. Where a member of the Advisory Committee appointed under section 27(*b*) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.

31. A member of the Advisory Committee appointed under section 27(*b*) or (*c*) may at any time resign his office by notice in writing to—
(*a*) where he has been appointed under section 27(*b*), the Commission; or
(*b*) where he has been appointed under section 27(*c*), the Chief Executive.

32. The Chief Executive may by notice in writing remove from office any member of the Advisory Committee appointed under section 27(*c*).

PART 2

Non-Delegable Functions of Commission

1. Any function of the Commission to make subsidiary legislation under or pursuant to any Ordinance.

2. The following functions of the Commission—
(1) to borrow money, under section 5(4)(*d*) of this Ordinance;
(2) to publish or otherwise make available materials, under section 5(4)(*e*) of this Ordinance;
(3) to establish any committee, under section 8(1) of this Ordinance;
(4) to refer any matter to a committee, under section 8(2) of this Ordinance;
(5) to appoint a person to be a member or chairman of a committee, under section 8(3) of this Ordinance;
(6) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee, under section 8(5) of this Ordinance;
(7) to submit to the Chief Executive estimates, under section 13(2) of this Ordinance;
(8) to prepare any financial statements, under section 15(2) of this Ordinance;
(9) to prepare any report, under section 15(3) of this Ordinance;
(10) to appoint auditors, under section 16(1) of this Ordinance;

(11) to invest funds, under section 17 of this Ordinance;
(12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;
(13) to amend or revoke conditions, or impose new conditions, under section 19(3) of this Ordinance;
(14) to give a company a reasonable opportunity of being heard, under section 19(7) of this Ordinance;
(15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;
(16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;
(17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;
(18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;
(19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;
(20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;
(21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;
(22) to withdraw recognition of a recognized exchange company, under section 28(1)(*a*) of this Ordinance;
(23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(*b*) of this Ordinance;
(24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;
(25) to extend a direction, under section 29(3) of this Ordinance;
(26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;
(27) to amend or revoke conditions, or impose new conditions, under section 37(2) of this Ordinance;
(28) to give a company a reasonable opportunity of being heard, under section 37(5) of this Ordinance;
(29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;
(30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;
(31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;
(32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;
(33) to withdraw recognition of a recognized clearing house, under section 43(1)(*a*) of this Ordinance;
(34) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(*b*) of this Ordinance;
(35) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;
(36) to amend or revoke conditions, or impose new conditions, under section 59(3) of this Ordinance;
(37) to direct a person to take specified steps, under section 59(9)(*c*) of this Ordinance;
(38) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;
(39) to approve the increase or decrease of any interest a recognized exchange controller has in a recognized exchange company or recognized clearing house, pursuant to section 60(*a*) of this Ordinance;
(40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;

(41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;
(42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;
(43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;
(44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;
(45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;
(46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;
(47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;
(48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;
(49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;
(50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;
(51) to make statement in writing, pursuant to section 74(1) of this Ordinance;
(52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;
(53) to approve a fee, pursuant to section 76(1) of this Ordinance;
(54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;
(55) to amend or revoke conditions, or impose new conditions, under section 79(2) of this Ordinance;
(56) to give a company a reasonable opportunity of being heard, under section 79(5) of this Ordinance;
(57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;
(58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;
(59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;
(60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;
(61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;
(62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;
(63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;
(64) to serve a notice, under section 92(1) of this Ordinance;
(65) to extend the period during which a restriction notice is to remain in force, under section 92(7) of this Ordinance;
(66) to apply to the Court of First Instance, pursuant to section 92(9) of this Ordinance;
(67) to make a suspension order, under section 93(1) of this Ordinance;
(68) to extend the period during which a suspension order is to remain in force, under section 93(9) of this Ordinance;
(69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 182(1)(*a*) to (*g*) of this Ordinance, under section 182(1) of this Ordinance;
(70) to cause a report to be published, under section 183(6) of this Ordinance;
(71) to impose a prohibition or requirement, under section 204, 205 or 206 of this Ordinance;
(72) to withdraw, substitute or vary a prohibition or requirement, under section 208(1) of this Ordinance;
(73) to present a petition, under section 212 of this Ordinance;

(74) to apply to the Court of First Instance, pursuant to section 213(1) of this Ordinance;
(75) to apply to the Court of First Instance, under section 214(1) of this Ordinance;
(76) to specify the time at which a specified decision is to take effect, under section 232(3) of this Ordinance;
(77) to establish a compensation fund, under section 236 of this Ordinance;
(78) to borrow, or to charge any investments by way of security, under section 237(2)(*a*) of this Ordinance;
(79) to appoint an auditor, under section 240(5) of this Ordinance;
(80) to invest money, under section 241(1) of this Ordinance;
(81) to make report to the Financial Secretary, under section 252(8) of this Ordinance;
(82) to publish guidelines, under section 309(1) of this Ordinance;
(83) to make an application, pursuant to section 385(1) of this Ordinance;
(84) to consult the Financial Secretary, under section 396(1) of this Ordinance;
(85) to make recommendation to the Chief Executive in Council, under section 396(2) of this Ordinance;
(86) to appoint members of the Advisory Committee, under section 27(*b*) of Part 1;
(87) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;
(88) to apply to the Court of First Instance, pursuant to section 1(6)(*a*) of Part 6 of Schedule 3 to this Ordinance;
(89) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance.

SCHEDULE 3

[ss. 18, 40, 58, 59, 61, 62, 72 & 78 & Sch. 2]

EXCHANGE COMPANIES, CLEARING HOUSES AND EXCHANGE CONTROLLERS

PART 1

DEFINITIONS

1. In this Schedule, unless the context otherwise requires, "associated person" (相聯者), "controller" (控制人), "default rules" (違責處理規則), "indirect controller" (間接控制人), "market charge" (市場押記), "market collateral" (市場抵押品) and "shareholder controller" (股東控制人) have the meanings respectively assigned to them in section 18 of this Ordinance.

PART 2

SPECIFICATION OF PERSONS WHO ARE ASSOCIATED PERSONS

PART 3

Specification of Persons Who are not Associated Persons

1. A person ("first person") is not an associated person of another person ("second person") for the purposes of all the provisions of Division 4 of Part III of this Ordinance in so far as—

(*a*) the first person or the second person is a recognized clearing house (or its nominee) acting in its capacity as such;

(*b*) the first person is the chairman of a general meeting of a corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy by the second person where the appointment—

(i) is for that meeting only; and

(ii) does not involve any valuable consideration; or

(*c*) the first person and the second person are persons who have appointed the chairman of a general meeting of a corporation as a proxy to exercise voting rights in the corporation where each appointment—

(i) is for that meeting only; and

(ii) does not involve any valuable consideration.

2. A person is not an associated person of another person for the purposes of section 61 of this Ordinance by reason only of each person having appointed the same person as a proxy to exercise voting rights in a corporation at a general meeting of the corporation where each appointment—

(*a*) is for that meeting only; and

(*b*) does not involve any valuable consideration.

PART 4

Specification of Persons Who are not Indirect Controllers

1. A person is not an indirect controller for all the provisions of Division 4 of Part III of this Ordinance in so far as the person is a person in accordance with whose directions or instructions the directors of a corporation or of another corporation of which it is a subsidiary are accustomed or obliged to act by reason only that they act on advice given by the person in the person's professional capacity.

PART 5

Requirements for Default Rules of Recognized Clearing Houses

1. The rules of a recognized clearing house which provide for the taking of proceedings or other action if a clearing participant appears to be unable, or likely to become unable, to meet his obligations in respect of all unsettled or open market contracts to which he is a party, shall—

(*a*) enable the settlement, or closing-out by offset, of all of the contracts;

(*b*) for the purpose of paragraph (*a*), provide for there to be payable by or to the clearing participant a sum of money in relation to each contract if this is required after taking into account all the rights and liabilities of the clearing participant under or in respect of the contract concerned;

(*c*) enable all sums of money payable by or to the clearing participant as determined in accordance with paragraph (*b*) to be aggregated or set-off so as to produce a net sum (if any) payable by or to the clearing participant;

(*d*) if any net sum referred to in paragraph (*c*) is payable by the clearing participant, provide for that net sum to be set-off against all property of the clearing participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realization of such property) so as to produce a further net sum (if any) payable by or to the clearing participant;

(*e*) if any net sum referred to in paragraph (*c*) is payable to the clearing participant, provide that all property of the clearing participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral) (as the case may be); and

(*f*) provide for the certification by the clearing house of any net sum referred to in paragraph (*c*) payable to the clearing participant, or of any further net sum referred to in paragraph (*d*) payable by or to the clearing participant (as the case may be) or, if there is no such sum, the certification by the clearing house of that fact.

PART 6

Provisions Applicable Where there is Failure to Comply with Notice under Section 59(9)(*c*), 61(9)(*b*) or 72(1) of this Ordinance

1. **Restrictions on and sale of securities**

(1) The powers conferred by this section shall be exercisable where a person has failed to comply with a notice under section 59(9)(*c*), 61(9)(*b*) or 72(1) of this Ordinance.

(2) The Commission may, by notice in writing served on the person concerned, direct that any specified securities to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

(*a*) any transfer of those securities or, in the case of unissued securities, any transfer of the right to be issued with them, and any issue of such securities, shall be void;

(*b*) no voting rights shall be exercisable in respect of the securities;

(*c*) no further securities shall be issued in right of them or pursuant to any offer made to their holder;

(*d*) except in a liquidation, no payment shall be made of any sums due from the corporation concerned on the securities, whether in respect of capital or otherwise;

(*e*) that the holder of the securities shall cause them to be transferred to a nominee of the Commission specified in the notice and within the period specified in the notice.

(3) Where securities are subject to the restrictions under subsection (2)(*a*), any agreement to transfer them or, in the case of unissued securities, the right to be issued with them, shall be void.

(4) Where securities are subject to the restrictions under subsection (2)(*c*) or (*d*), any agreement to transfer any right to be issued with other securities in right of those securities, or to receive any payment on them (otherwise than in a liquidation), shall be void.

(5) Where securities are subject to any restrictions under subsection (2), any person affected by any of those restrictions may request the Commission to make an application referred to in subsection (6)(*a*) in respect of those securities and, where such a request is made, the Commission shall, not later than 30 days after that request has been made—

(*a*) comply with that request; or

(*b*) serve a notice in writing on that person stating that it does not propose to comply with that request.

(6) The Court of First Instance may—

(*a*) on the application of the Commission, order the sale of any specified securities to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions;

(*b*) on the application of a person who has made a request under subsection (5) where he has been served with a notice under paragraph (*b*) of that subsection in respect of that request, order the sale of any specified securities to which that request relates and that they shall cease to be subject to any restrictions under subsection (2).

(7) Where an order has been made under subsection (6), the Court of First Instance may, on the application of the Commission, make such further order relating to the sale or transfer of the securities as it considers appropriate.

(8) Where securities are sold pursuant to an order under this section, the proceeds of the sale, less the costs of the sale, shall, unless otherwise specified by the Court of First Instance, be paid into court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds be paid to him.

(9) This section shall apply—

(*a*) to all the securities of the corporation concerned by virtue of which the person concerned is a shareholder controller, or minority controller within the meaning of section 61 of this Ordinance, of the corporation which are held by him or any associated person of his and were not so held immediately before he became such a controller; and

(*b*) where the person concerned became a shareholder controller, or minority controller within the meaning of section 61 of this Ordinance, of the corporation concerned by virtue of the acquisition by him or any associated person of his of securities of another corporation, to all the securities of that corporation which are held by him or any associated person of his and were not so held immediately before he became such a controller.

(10) A copy of a notice served under subsection (2) on the person concerned shall be served on the corporation to whose securities it relates and, if it relates to securities held by any associated person of that person, on that associated person.

(11) The Chief Justice may make rules regulating the practice and procedure in connection with applications (including any class of applications) made under subsection (6).

(12) It is hereby declared that the operation of subsection (2)(*b*) or (*e*) shall not by itself cause any person to contravene section 59(1) or 61(1) of this Ordinance.

2. **Punishment for attempted evasion of restrictions**

(1) Any person who—

(*a*) exercises or purports to exercise any right to dispose of any securities, or of any right to be issued with any such securities, knowing that to do so contravenes any restrictions under section 1(2) to which the securities are subject;

(*b*) votes in respect of any such securities as a holder or as a proxy knowing that to do so contravenes any such restrictions;

(*c*) appoints a proxy in respect of any such securities knowing that to vote in respect of any such securities would contravene any such restrictions;

(*d*) being the holder of any such securities, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those securities whether as a holder or as a proxy;

(*e*) being the holder of any such securities, or being entitled to any right to be issued with other securities in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 1(3) or (4); or

(*f*) without reasonable excuse, fails to comply with a restriction under section 1(2)(*e*) to which any such securities are subject,

commits an offence and is liable—

(i) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(2) Where securities of a corporation are issued in contravention of restrictions under section 1(2) or payments are made by a corporation in contravention of such restrictions, every director and every manager of the corporation who knowingly and wilfully permits such an issue of securities or the making of such a payment (as the case may be) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

3. **Prohibition on certain person acting as indirect controllers**

(1) In this section, "prohibited person" (受禁制人士), in relation to a corporation, means any person who has failed to comply with a notice under section 59(9)(*c*) or 72(1) of this Ordinance in relation to the corporation in so far as the notice relates to a controller who is an indirect controller.

(2) Where a person is or may become a prohibited person in respect of a corporation, the Commission shall serve on the corporation a copy of the notice concerned under section 59(9)(*c*) or 72(1) of this Ordinance.

(3) No person who is a prohibited person in respect of a corporation shall act or continue to act (as the case may be) as an indirect controller of the corporation and, accordingly, as such a controller shall not give or shall cease to give (as the case may be) any directions or instructions to the directors of the corporation or of another corporation of which it is a subsidiary.

(4) Where any director of a corporation or of another corporation of which it is a subsidiary is given (whether directly or indirectly) any directions or instructions—

(*a*) by a person whom the director knows, or ought reasonably to know, is a prohibited person in respect of the first-mentioned corporation; and

(*b*) which are, or might reasonably be construed as being, prohibited from being so given by virtue of subsection (3),

the director shall forthwith notify the Commission of those directions or instructions and the circumstances in which they were so given.

(5) Any prohibited person who contravenes subsection (3) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(6) Any director who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable—

(*a*) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues; or

(*b*) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $10,000 for every day during which the offence continues.

(7) In this section, a reference to a continuing offence means an offence consisting of a person's continued default, refusal or other contravention of subsection (3) or (4), and notwithstanding that any period (however expressed) specified in that subsection for complying with it has expired.

PART 7

Specification of Persons Who are not Minority Controllers

1. A person is not a minority controller for the purposes of Division 4 of Part III of this Ordinance in so far as the person is—
   (*a*) a recognized clearing house (or its nominee) acting in its capacity as such; or
   (*b*) the chairman of a general meeting of a corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy where the appointment—
      (i) is for that meeting only; and
      (ii) does not involve any valuable consideration.

2. A person is not a minority controller for all the provisions of Division 4 of Part III of this Ordinance by reason only of being entitled to exercise voting rights in a corporation due to his appointment as a proxy where the appointment—
   (*a*) is for only one general meeting of the corporation; and
   (*b*) does not involve any valuable consideration.

PART 8

Exemption from Section 59(1) of this Ordinance

1. A person is exempt from section 59(1) of this Ordinance in so far as the person is—
   (*a*) a recognized clearing house (or its nominee) acting in its capacity as such; or
   (*b*) the controller of a corporation by reason only of being the chairman of a general meeting of the corporation entitled to exercise voting rights in the corporation due to his appointment as a proxy where the appointment—
      (i) is for that meeting only; and
      (ii) does not involve any valuable consideration.

SCHEDULE 4

[ss. 102, 103, 110 & 112]

Offers of Investments

PART 1

Sum Specified for Purposes of Section 103(3)(*f*)(i) and (*g*) of this Ordinance

$1 million or its equivalent in any foreign currency.

PART 2

INSTRUMENTS SPECIFIED FOR PURPOSES OF SECTION 103(3)(*g*) OF THIS ORDINANCE

1. A bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19).

2. A promissory note within the meaning of section 89 of the Bills of Exchange Ordinance (Cap. 19).

3. Any other instrument which evidences an obligation to pay a stated amount to bearer or to order, on or before a fixed time, with or without interest, being an instrument by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable (and, in the case of any such instrument which is a prescribed instrument by virtue of paragraph (*a*) of the definition of "prescribed instrument" in section 137B(1) of the Banking Ordinance (Cap. 155), such instrument includes any right or interest referred to in paragraph (*b*) of that definition in respect of such instrument).

PART 3

EXEMPTED BODIES

1. The Government.
2. Hong Kong Housing Authority.
3. Airport Authority.
4. Kowloon-Canton Railway Corporation.
5. Urban Renewal Authority.
6. Hong Kong Export Credit Insurance Corporation.
7. Hong Kong Science and Technology Parks Corporation.
8. Hong Kong Productivity Council.
9. Hong Kong Tourism Board.
10. Hong Kong Trade Development Council.
11. Any other corporation which has any of its shares listed and any wholly owned subsidiary of such a corporation, whether incorporated in Hong Kong or elsewhere.

PART 4

SUM SPECIFIED FOR PURPOSES OF DEFINITION OF "RELEVANT CONDITION" IN SECTION 103(12) OF THIS ORDINANCE

$100 million or its equivalent in any foreign currency.

SCHEDULE 5 [ss. 114, 118, 139 & 142 & Sch. 1]

Regulated Activities

PART 1

The following are regulated activities—

Type 1 : dealing in securities;
Type 2 : dealing in futures contracts;
Type 3 : leveraged foreign exchange trading;
Type 4 : advising on securities;
Type 5 : advising on futures contracts;
Type 6 : advising on corporate finance;
Type 7 : providing automated trading services;
Type 8 : securities margin financing;
Type 9 : asset management.

PART 2

In this Schedule—

"advising on corporate finance" (就機構融資提供意見) means giving advice—

(*a*) concerning compliance with or in respect of rules made under section 23 or 36 of this Ordinance governing the listing of securities and the code published under section 399(2)(*a*) or (*b*) of this Ordinance;

(*b*) concerning—

(i) any offer to dispose of securities to the public;

(ii) any offer to acquire securities from the public; or

(iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or

(*c*) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring in respect of securities (including the issue, cancellation or variation of any rights attaching to any securities),

but does not include such advice given by—

(i) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a person who is licensed for Type 1 regulated activity who gives such advice wholly incidental to the carrying on of that regulated activity;

(iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice wholly incidental to the carrying on of that regulated activity;

(iv) an individual—

(A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and

(B) who gives such advice wholly incidental to the carrying on of that regulated activity;

(v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(vi) counsel who gives such advice wholly incidental to his practice as such;

(vii) a professional accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);

(viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice wholly incidental to the discharge of its duty as such; or

(ix) a person through—

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

"advising on futures contracts" (就期貨合約提供意見) means—

(*a*) giving advice on—

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,

futures contracts should be entered into; or

(*b*) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,

futures contracts are to be entered into,

otherwise than by—

(i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a person who is licensed for Type 2 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iii) an authorized financial institution which is registered for Type 2 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iv) an individual—

(A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity; and

(B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;

(vii) a professional accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a professional accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);

(viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or

(ix) a person who gives such advice or issues such analyses or reports through—

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

"advising on securities" (就證券提供意見) means—

(*a*) giving advice on—

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,

securities should be acquired or disposed of; or

(*b*) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—

(i) whether;

(ii) which;

(iii) the time at which; or

(iv) the terms or conditions on which,

securities are to be acquired or disposed of,

otherwise than by—

(i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(ii) a person who is licensed for Type 1 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(iv) an individual—

(A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and

(B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;

(v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;

(vii) a professional accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a professional accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);

(viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or

(ix) a person who gives such advice or issues such analyses or reports through—

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise,

but does not include the giving of such advice that falls within the meaning of "advising on corporate finance";

"asset management" (資產管理), in relation to a person, means providing a service of managing a portfolio of securities or futures contracts for another person by the person, otherwise than by—

(*a*) a corporation which provides such service solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;

(*b*) a person who is licensed for Type 1 or Type 2 regulated activity who provides such service wholly incidental to the carrying on of that regulated activity;

(*c*) an authorized financial institution which is registered for Type 1 or Type 2 regulated activity which provides such service wholly incidental to the carrying on of that regulated activity;

(*d*) an individual—

(i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 2 (as the case may be) regulated activity by an authorized financial institution registered for that regulated activity; and

(ii) who provides such service wholly incidental to the carrying on of that regulated activity;

(*e*) a solicitor who provides such service wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);

(*f*) counsel who provides such service wholly incidental to his practice as such;

(*g*) a professional accountant who provides such service wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); or

(*h*) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which provides such service wholly incidental to the discharge of its duty as such;

"automated trading services" (自動化交易服務) means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house, whereby—

(*a*) offers to sell or purchase securities or futures contracts are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market;

(*b*) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of securities or futures contracts in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market; or

(*c*) transactions—

(i) referred to in paragraph (*a*);

(ii) resulting from the activities referred to in paragraph (*b*); or

(iii) effected on, or subject to the rules of, a stock market or futures market,

may be novated, cleared, settled or guaranteed,

but does not include such services provided by a corporation operated by or on behalf of the Government;

"dealing in futures contracts" (期貨合約交易), in relation to a person, means—

(*a*) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;

(*b*) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or

(*c*) inducing or attempting to induce another person to acquire or dispose of a futures contract,

by the person, except where the person—

(i) is carrying out his functions as a recognized clearing house;

(ii) performs the act referred to in paragraph (*a*), (*b*) or (*c*) through another person ("the futures dealer")—

(A) who is licensed or registered for Type 2 regulated activity; or

(B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity,

but the person shall be regarded as dealing in futures contracts if, in return for a commission, rebate or other remuneration, the person—

(I) receives from a third person an offer or invitation to enter into a futures contract, and communicates it, either in his name or in the name of the third person, to the futures dealer;

(II) effects an introduction between the futures dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, a futures contract with the futures dealer;

(III) effects an acquisition or disposal of a futures contract for a third person through the futures dealer;

(IV) makes an offer for the futures dealer to a third person to acquire or dispose of a futures contract; or

(V) accepts for the futures dealer an offer by a third person to acquire or dispose of a futures contract;

(iii) performs the act referred to in paragraph (*a*), (*b*) or (*c*) only on a market referred to in section 3(*a*), (*b*) or (*c*) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);

(iv) is a member of a commodity exchange referred to in section 3(*d*) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) who only performs the act referred to in paragraph (*a*), (*b*) or (*c*) on such an exchange;

(v) enters into a market contract;

(vi) is licensed or registered for Type 9 regulated activity and performs the act referred to in paragraph (*a*), (*b*) or (*c*) solely for the purposes of carrying on that regulated activity; or

(vii) as principal performs the act referred to in paragraph (*a*), (*b*) or (*c*) in relation to a futures contract traded otherwise than on a recognized futures market by way of dealing with a person who is a professional investor (whether acting as principal or agent);

"dealing in securities" (證券交易), in relation to a person, means making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement—

(*a*) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(*b*) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

by the person, except where the person—

(i) is a recognized exchange company operating a stock market;

(ii) is a recognized clearing house;

(iii) is a corporation providing automated trading services under authorization granted under section 95(2) of this Ordinance;

(iv) performs the act through another person ("the securities dealer")—

(A) who is licensed or registered for Type 1 regulated activity; or

(B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity,

but the person shall be regarded as dealing in securities if, in return for a commission, rebate or other remuneration, the person—

(I) receives from a third person an offer or invitation to enter into an agreement referred to in paragraph (*a*) or (*b*), and communicates it, either in his name or in the name of the third person, to the securities dealer;

(II) effects an introduction between the securities dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, an agreement referred to in paragraph (*a*) or (*b*) with the securities dealer;

(III) effects an agreement referred to in paragraph (*a*) or (*b*) on behalf of a third person through the securities dealer;

(IV) makes an offer to the securities dealer on behalf of a third person to acquire or dispose of securities; or

(V) accepts for the securities dealer an offer by a third person to enter into an agreement referred to in paragraph (*a*) or (*b*);

(v) as principal—
(A) performs the act by way of dealing with a person who is a professional investor (whether acting as principal or agent); or
(B) acquires, disposes of, subscribes for or underwrites securities;
(vi) enters into a market contract;
(vii) issues a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;
(viii) issues a document relating to the securities of a corporation incorporated in Hong Kong which is not a company, being a document which—
(A) would, if the corporation were a company, be a prospectus to which section 38 of the Companies Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(*b*) or 38A of that Ordinance; and
(B) contains all the matters which, under Part XII of that Ordinance, would be required to contain if the corporation were a corporation incorporated outside Hong Kong and the document were a prospectus issued by the corporation;
(ix) issues a form of application for the shares or debentures of a corporation, together with—
(A) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or
(B) in the case of a corporation incorporated in Hong Kong which is not a company, a document which contains the matters specified in paragraph (viii)(B);
(x) issues a prospectus the registration of which has been authorized by the Commission under section 342C of the Companies Ordinance (Cap. 32) in relation to a collective investment scheme that is a corporation—
(A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
(B) the shares in which are exclusively, or primarily, redeemable shares,
or issues together with the prospectus a form of application for the shares in the corporation;
(xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of this Ordinance;
(xii) is a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) acting as an agent for a collective investment scheme which, by performing the act, is carrying out its functions of distributing application forms, redemption notices, conversion notices and contract notes, receiving money and issuing receipts on behalf of its principal;
(xiii) is licensed or registered for Type 4 or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 175(1)(*a*)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 175(1)(*b*) and (*c*) of this Ordinance; or
(xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity;

"foreign exchange trading" (外匯交易) means entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a contract or arrangement whereby any person undertakes to—
(*a*) exchange currency with another person;
(*b*) deliver an amount of foreign currency to another person; or
(*c*) credit the account of another person with an amount of foreign currency,
but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement as described in paragraphs (i) to (xv) of the definition of "leveraged foreign exchange trading";

"leveraged foreign exchange contract" (槓桿式外匯交易合約) means a contract or arrangement the effect of which is that one party agrees or undertakes to—

(*a*) make an adjustment between himself and the other party or another person according to whether a currency is worth more or less (as the case may be) in relation to another currency;

(*b*) pay an amount of money or to deliver a quantity of any commodity determined or to be determined by reference to the change in value of a currency in relation to another currency to the other party or another person; or

(*c*) deliver to the other party or another person at an agreed future time an agreed amount of currency at an agreed consideration;

"leveraged foreign exchange trading" (槓桿式外匯交易) means—

(*a*) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a leveraged foreign exchange contract;

(*b*) the act of providing any financial accommodation to facilitate foreign exchange trading or to facilitate an act referred to in paragraph (*a*); or

(*c*) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person, on a discretionary basis or otherwise, to enter into a contract to facilitate an act referred to in paragraph (*a*) or (*b*),

but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement—

(i) wholly referable to the provision of property, other than currency, or services or employment at fair or market value;

(ii) where the contract or arrangement is entered into by a corporation—

(A) the principal business of which does not include dealing in currency in any form;

(B) for the purpose of hedging its exposure to currency exchange risks in connection with its business; and

(C) with another corporation;

(iii) that is an exchange transaction within the meaning of the Money Changers Ordinance (Cap. 34);

(iv) arranged by an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) and every party to which is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37);

(v) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on insurance business or deemed to be so authorized under section 61(1) or (2) of that Ordinance;

(vi) that is a contract executed on a specified futures exchange by or through a person who is licensed or registered for Type 2 regulated activity or is wholly incidental to one or more than one such contract or a series of such contracts;

(vii) arranged by—

(A) a body which, in the opinion of the Monetary Authority, is—

(I) a central bank; or

(II) an institution which performs the functions of a central bank; or

(B) an organization which, with the approval of the Monetary Authority, is acting on behalf of a body referred to in subparagraph (A);

(viii) that is a transaction executed on a specified stock exchange by or through a person who is licensed or registered for Type 1 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;

(ix) that is a transaction executed by or through a person who is licensed or registered for Type 7 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;

(x) that is a transaction in an interest or interests in a collective investment scheme authorized by the Commission under section 104 of this Ordinance;

(xi) that is wholly incidental to one or more than one transaction in specified debt securities or a series of such transactions;

(xii) by an authorized financial institution;

(xiii) by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph;

(xiv) by a person through a trader, but the person shall be regarded as carrying on leveraged foreign exchange trading if, in return for a commission, rebate or other remuneration, the person—

(A) receives from another person an offer or invitation to—

(I) enter into a leveraged foreign exchange contract; or

(II) use any financial accommodation to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract,

and communicates it, either in his name or in the name of the other person, to the trader;

(B) effects an introduction between the trader or its representative and another person, so that the other person may—

(I) enter into a leveraged foreign exchange contract with the trader; or

(II) use any financial accommodation provided by the trader to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract; or

(C) effects the entering into a leveraged foreign exchange contract by another person through the trader,

where in this paragraph, "trader" (交易商) means a corporation licensed for Type 3 regulated activity or an authorized financial institution; or

(xv) by—

(A) a collective investment scheme; or

(B) a person in the course of business for the purpose of operating a collective investment scheme,

authorized by the Commission under section 104 of this Ordinance;

"securities margin financing" (證券保證金融資) means providing a financial accommodation in order to facilitate—

(*a*) the acquisition of securities listed on any stock market, whether a recognized stock market or any other stock market outside Hong Kong; and

(*b*) (where applicable) the continued holding of those securities,

whether or not those or other securities are pledged as security for the accommodation, but does not include the provision of financial accommodation—

(i) that forms part of an arrangement to underwrite or sub-underwrite securities;

(ii) to facilitate an acquisition of securities in accordance with the term of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;

(iii) by a person who is licensed or registered for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;

(iv) by a collective investment scheme that is a corporation—

(A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and

(B) the shares in which are exclusively, or primarily, redeemable shares,

in order to finance investment in any interest in the collective investment scheme of which it is the issuer;

(v) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;

(vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities; or

(vii) by an intermediary by way of effecting an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation.

PART 3

The following are the specified activities referred to in section 114(5) of this Ordinance—

(*a*) the acquisition of securities listed on a stock market which is or forms part of a stock borrowing or stock return as defined in section 19(16) of the Stamp Duty Ordinance (Cap. 117), or any transaction in securities similar to such a borrowing or return; or

(*b*) the provision of financial accommodation—
(i) to a corporation licensed for Type 1 or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;
(ii) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities; or
(iii) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member.

SCHEDULE 6 [ss. 113, 139 & 143]

Specified Titles

Item	Provision	Specified titles
1.	Section 139(1) of this Ordinance	"bond broker", "bond dealer", "securities dealer", "stock dealer", "stockbroker", "股票經紀", "債券交易商", "債券經紀", "證券交易商" and "證券經紀"
2.	Section 139(2) of this Ordinance	"futures broker", "futures dealer", "期貨交易商" and "期貨經紀"
3.	Section 139(3) of this Ordinance	"leveraged foreign exchange trader" and "槓桿式外匯交易商"
4.	Section 139(4) of this Ordinance	"securities adviser", "securities consultant", "stock adviser", "股票顧問" and "證券顧問"
5.	Section 139(5) of this Ordinance	"futures adviser", "futures consultant" and "期貨顧問"
6.	Section 139(6) of this Ordinance	"corporate finance adviser", "corporate finance consultant" and "機構融資顧問"
7.	Section 139(7) of this Ordinance	"automated trading service provider" and "自動化交易服務提供者"
8.	Section 139(8) of this Ordinance	"margin lender", "securities margin financier" and "證券保證金融資人"

SCHEDULE 7 [ss. 175 & 177]

Offers by Intermediaries or Representatives for Type 1, Type 4 or Type 6 Regulated Activity under Section 175 of this Ordinance

PART 1

Requirements to be Satisfied in Relation to Offers to Acquire Securities

1. If the securities proposed to be acquired are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall—

(*a*) state that fact and specify the stock markets on which the securities are currently listed or quoted;
(*b*) specify the closing price in respect of the securities on each stock market on the latest practicable date immediately preceding the date of the offer;
(*c*) specify the closing price in respect of the securities on the last trading day of each of the 6 months immediately preceding the date of the offer;
(*d*) specify the highest and the lowest closing prices in respect of the securities during the period of 6 months immediately preceding the date of the offer; and
(*e*) where the offer has been the subject of a public announcement, whether in a newspaper or any other form of information medium or otherwise, specify the closing price in respect of the securities on the last trading day immediately preceding the public announcement.

2. If the securities proposed to be acquired are not listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, the offer shall contain—
(*a*) all information that the offeror may have as to the number and nominal value of those securities that have been sold in Hong Kong during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales; and
(*b*) particulars of any restriction in the constitution, by whatever name called, of the body in question on the right to transfer the securities, that has the effect of requiring the offerees, before transferring the securities, to offer those securities for purchase to any member of the body or to any other person and, where there is any such restriction, the arrangements (if any) being made to enable the securities to be transferred in pursuance of the offer.

3. If any requirement set out in sections 1 and 2 cannot be satisfied because any of the information and particulars required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in question is a corporation incorporated in Hong Kong but any of the information and particulars required under section 2 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

4. The offer shall contain in a prominent position—
(*a*) in the case of the English text, the following notice printed in type of a size not smaller than the type known as 8 point Times—

"IMPORTANT

If you are in doubt as to any aspect of this offer,
you should consult a licensed securities dealer,
bank manager, solicitor, professional
accountant or other professional
adviser."; and

(*b*) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth—

"重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、
銀行經理、律師、專業會計師或其他專業顧問。".

5. (1) In this Part, "body" (團體) has the meaning assigned to it by section 175(9) of this Ordinance.
(2) Section 175(8) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 175 of this Ordinance.

PART 2

REQUIREMENTS TO BE SATISFIED IN RELATION TO OFFERS TO DISPOSE OF SECURITIES

1. If the securities offered are currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, or, where the securities are not so listed or quoted, will be uniform in all respects with securities of the body in question that are so listed or quoted, the offer shall—

(*a*) state that fact and specify the stock markets on which the securities or the securities with which they will be uniform (as the case may be) are currently listed or quoted;

(*b*) specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on each stock market on the latest practicable date immediately preceding the date of the offer;

(*c*) specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on the last trading day of each of the 6 months immediately preceding the date of the offer;

(*d*) specify the highest and the lowest closing prices in respect of the securities or the securities with which they will be uniform (as the case may be) during the period of 6 months immediately preceding the date of the offer; and

(*e*) where the offer has been the subject of a public announcement, whether in a newspaper or any other form of information medium or otherwise, specify the closing price in respect of the securities or the securities with which they will be uniform (as the case may be) on the last trading day immediately preceding the public announcement.

2. If the securities offered are not listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, and will not be uniform in all respects with securities of the body in question that are so listed or quoted, the offer shall—

(*a*) contain particulars of any restriction in the constitution, by whatever name called, of the body on the right to transfer the securities, that has the effect of requiring the holder of the securities, before transferring them, to offer them for purchase to any member of the body or to any other person; and

(*b*) (i) where the securities are of, or issued by, a corporation, contain the particulars specified in section 3 or be accompanied by a statement in writing containing those particulars, unless the offer is accompanied by a document which conforms with Part II or XII of the Companies Ordinance (Cap. 32) in relation to the corporation;

(ii) where the securities are of, or issued by, a multilateral agency, contain the particulars specified in section 4 or be accompanied by a statement in writing containing those particulars; or

(iii) where the securities are of, or issued by, a government or municipal government authority, contain the particulars specified in section 5 or be accompanied by a statement in writing containing those particulars.

3. The particulars referred to in section 2(*b*)(i), in relation to the corporation referred to in that section, are as follows—

(*a*) (i) the year in which, and the country or territory in which, the corporation has been incorporated;

(ii) the address of its registered or principal office in Hong Kong; and

(iii) where the corporation has been incorporated outside Hong Kong, the address of its registered or principal office in the country or territory in which it is incorporated or is resident;

(*b*) (i) the authorized capital of the corporation;

(ii) the amount of that capital that has been issued and is outstanding at the date specified as being the close of the 5 financial years of the corporation immediately preceding the date of the offer;

(iii) the classes of shares into which that capital is divided;

(iv) the rights, in respect of capital, dividends and voting, of holders of each of such classes of shares; and

(v) the number and total nominal value respectively of shares of the corporation issued as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both;

(*c*) (i) the number and total nominal value of shares issued since the close of the last financial year of the corporation;

(ii) the classes of shares into which the shares issued since the close of the last financial year of the corporation are divided;

(iii) the rights, in respect of capital, dividends and voting, of holders of each of such classes of shares;

(iv) the number and total nominal value respectively of shares issued since the close of the last financial year of the corporation as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both;

(v) the number of redeemable preference shares redeemed since the close of the last financial year of the corporation and the amounts repaid in respect of the shares so redeemed; and

(vi) particulars of any reduction of capital lawfully authorized in respect of the corporation since the close of the last financial year of the corporation;

(*d*) particulars of any reorganization of the capital of the corporation during each of its 2 financial years immediately preceding the date of the offer;

(*e*) (i) the amount of the net profit or loss of the corporation (before taking into account any form of tax calculated by reference to the amount of profits of the corporation);

(ii) the rate per cent and the amount of each payment of dividends made by the corporation in respect of each class of shares during each of its 5 financial years immediately preceding the date of the offer; and

(iii) where no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(*f*) the total amount of any debentures issued by the corporation and outstanding not more than 28 days before the date of the offer, and the total amount of mortgage debts, loans or charges due from the corporation not more than 28 days before that date, together with the rate of interest payable in respect of them;

(*g*) the names and addresses of the directors of the corporation;

(*h*) the number, description, and nominal value of the securities of the corporation held by or on behalf of each of its directors or, if a director does not hold any such securities and no such securities are held on his behalf, a statement to that effect; and

(*i*) whether or not the securities offered are or, in the case of securities to be issued, will be fully paid up, and, if not, to what extent they are or will be paid up, and, if the corporation has fixed a date and amount for payment of outstanding calls, the date and amount of each such call.

4. The particulars referred to in section 2(*b*)(ii), in relation to the multilateral agency referred to in that section, are as follows—

(*a*) the details of the organization and administration of the multilateral agency;

(*b*) the description of the activities of the multilateral agency; and

(*c*) the particulars of the financial situation of the multilateral agency, including—

(i) the income and expenditure for the past 2 years immediately preceding the date of the offer and the budgetary forecasts for the current year; and

(ii) the public debt for the past 2 years immediately preceding the date of the offer.

5. The particulars referred to in section 2(*b*)(iii), in relation to the government or municipal government authority referred to in that section, are as follows—

(*a*) the details of the organization and administration of the government or municipal government authority;

(*b*) in the case of a government, the particulars of the economic situation of the place of which it is the government, including—

(i) general information on the government;

(ii) the gross national product by economic sector for the past 2 years immediately preceding the date of the offer;

(iii) the production trends in the various economic sectors with a breakdown of the principal production branches for the past 2 years immediately preceding the date of the offer;
(iv) the price, wage and employment trends over the past 2 years immediately preceding the date of the offer;
(v) the export and import trends by economic sector and country over the past 2 years immediately preceding the date of the offer;
(vi) the balance of payments in respect of economic and financial transactions with other places for the past 2 years immediately preceding the date of the offer; and
(vii) the gold and currency reserves;

(*c*) in the case of a municipal government authority, the particulars of the economic situation of the place of which it is the municipal government authority, including—
(i) general information on the municipal government authority;
(ii) the principal sources of revenue; and
(iii) the production trends in the various economic sectors with a breakdown of the principal production branches for the past 2 years immediately preceding the date of the offer; and

(*d*) the particulars of the financial situation of the government or municipal government authority, including—
(i) the income and expenditure for the past 2 years immediately preceding the date of the offer and the budgetary forecasts for the current year; and
(ii) the public debt for the past 2 years immediately preceding the date of the offer.

6. If the securities offered are yet to be issued by a body, the offer shall, in addition to any other requirements applicable to them in this Part—

(*a*) state—
(i) whether or not the issue requires the authority of a resolution of the body;
(ii) the first dividend in which the securities will participate; and
(iii) whether or not there has been, to the knowledge of the offeror, any material change in the financial position of the body since the date of the balance sheet and profit and loss account of the body for its financial year immediately preceding the date of the offer and, if so, the particulars of the change;

(*b*) be accompanied by copies of the balance sheet and profit and loss account of the body made up to (and including) the end of the last financial year of the body immediately preceding the date of the offer;

(*c*) be accompanied by copies of the constitution, by whatever name called, of the body unless the offer specifies—
(i) a place in Hong Kong at which such copies may be inspected by offerees; and
(ii) the times at which they may be inspected;

(*d*) in the case of securities which will be uniform in all respects with previously issued securities of the body that are not currently listed or quoted on any stock market, whether a recognized stock market or any other stock market outside Hong Kong, contain all information that the offeror may have as to the number and nominal value of those securities that have been sold during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales; and

(*e*) in the case of securities which will not be uniform in all respects with previously issued securities of the body, state—
(i) the respects in which the securities will differ from the previously issued securities;
(ii) whether or not any voting rights will attach to the securities and, if so, the limitations on those rights; and
(iii) whether or not application for permission to have the securities listed or quoted has been or will be made to any stock market, whether a recognized stock market or any other stock market outside Hong Kong, and, if such an application has been made, the name of the stock market to which the application has been made.

7. If any requirement set out in sections 1 to 6 cannot be satisfied because any of the information, particulars and documents required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in question is a corporation incorporated in Hong Kong but any of the information, particulars and documents required under sections 2 to 6 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

8. The offer shall contain in a prominent position—

(*a*) in the case of the English text, the following notice printed in type of a size not smaller than the type known as 8 point Times—

"IMPORTANT

If you are in doubt as to any aspect of this offer,
you should consult a licensed securities dealer,
bank manager, solicitor, professional
accountant or other professional
adviser."; and

(*b*) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth—

"重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、
銀行經理、律師、專業會計師或其他專業顧問。".

9. (1) In this Part, "body" (團體) has the meaning assigned to it by section 175(9) of this Ordinance.

(2) Section 175(8) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 175 of this Ordinance.

SCHEDULE 8

[ss. 215, 216, 217, 218, 219, 222, 232, 233 & 234 & Sch. 10]

SECURITIES AND FUTURES APPEALS TRIBUNAL

PART 1

APPOINTMENT OF MEMBERS AND PROCEEDINGS OF TRIBUNAL, ETC.

1. In this Schedule, unless the context otherwise requires—

"appeal panel" (上訴委員會) means the panel of persons appointed under section 2;

"application for review" (覆核申請) has the meaning assigned to it by section 215 of this Ordinance;

"chairman" (主席) means the chairman of the Tribunal;

"judge" (法官) has the meaning assigned to it by section 215 of this Ordinance;

"member" (成員) means a member of the Tribunal;

"ordinary member" (普通成員) means a member other than the chairman;

"panel member" (上訴委員) means a member of the appeal panel;

"parties" (各方) has the meaning assigned to it by section 215 of this Ordinance;

"relevant authority" (有關當局) has the meaning assigned to it by section 215 of this Ordinance;

"review" (覆核) has the meaning assigned to it by section 215 of this Ordinance;
"Secretary" (局長) means the Secretary for Financial Services;
"specified decision" (指明決定) has the meaning assigned to it by section 215 of this Ordinance;
"Tribunal" (審裁處) has the meaning assigned to it by section 215 of this Ordinance.

Appointment of appeal panel

2. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.

3. Subject to sections 4 and 5, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

4. A panel member may at any time resign his office by notice in writing to the Chief Executive.

5. The Chief Executive may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

6. For the avoidance of doubt, section 216(5) of this Ordinance does not require the appointment of persons to more than one panel under section 2.

Appointment of chairman

7. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

8. Subject to sections 9 to 11, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

9. The chairman may at any time resign his office by notice in writing to the Chief Executive.

10. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

11. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

Appointment of ordinary members

12. For the purpose of determining a review, the Secretary on the recommendation of the chairman shall appoint 2 panel members as ordinary members in relation to the review.

13. Subject to sections 14 and 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

14. An ordinary member may at any time resign his office by notice in writing to the Secretary.

15. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

Sittings

16. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.

17. Before convening a sitting under section 16 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.

18. Subject to section 19, at any sitting of the Tribunal—

(*a*) the chairman and 2 ordinary members shall be present;

(*b*) the chairman shall preside; and

(*c*) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

19. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 31 or 32, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

20. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

21. Where an application is made pursuant to section 20 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

22. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard—

(*a*) in person or, in the case of the relevant authority or a corporation, through an officer or employee of the relevant authority or the corporation (as the case may be); and

(*b*) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

23. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

24. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

Preliminary conferences and consent orders

25. At any time after an application for review has been made, the chairman may—

(*a*) on his own motion or on the application of any of the parties to the review;

(*b*) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application for review by the parties to the review; and

(*c*) if the parties agree or, in the case of an application made by any party pursuant to paragraph (*a*), the other party agrees,

direct that a conference, to be attended by the parties or their representatives and presided over by the chairman shall be held for the purposes of—

(i) enabling the parties to prepare for the conduct of the review;

(ii) assisting the Tribunal to determine issues for the purposes of the review; and

(iii) generally securing the just, expeditious and economical conduct of the review.

26. At a conference held in accordance with a direction of the chairman under section 25, the chairman may—

(*a*) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and

(*b*) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.

27. After a conference has been held in accordance with a direction of the chairman under section 25, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

28. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if—

(*a*) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and

(*b*) the parties consent to all of the terms of the order.

29. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 28 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

30. In sections 28 and 29, "order" (命令) includes any finding, determination and any other decision.

Chairman as sole member of Tribunal

31. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.

32. Where—

(*a*) an application is made to the Tribunal pursuant to section 217(4) of this Ordinance for the grant of an extension of the time within which an application for review shall be made; or

(*b*) an application is made to the Tribunal under section 227(2) of this Ordinance for a stay of execution of a specified decision,

the chairman may determine the application as the sole member of the Tribunal.

33. Where section 31 or 32 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

34. After the chairman has made any determination under section 31, or made any determination in respect of an application described in section 32(*b*), the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.

35. Where—

(*a*) there is an application described in section 32(*b*); and

(*b*) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application,

a judge within the meaning of paragraph (*a*) of the definition of "judge" in section 215 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

Miscellaneous

36. Except as otherwise provided in this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

PART 2

Specified Decisions

Division 1

Specified decisions made by Commission

Item	Provision	Description of decision
1.	Section 93(12) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2) of this Ordinance	Refusal to grant an authorization, or imposition of any condition.
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
5.	Section 104(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.
6.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.
7.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
8.	Section 104(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
9.	Section 105(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.
10.	Section 105(3) of this Ordinance	Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 105(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
12.	Section 105(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
13.	Section 106(1) of this Ordinance	Withdrawal of an authorization.
14.	Section 106(3) of this Ordinance	Refusal to withdraw an authorization.
15.	Section 106(4) of this Ordinance	Imposition of any condition.
16.	Section 116(1) of this Ordinance	Refusal to grant a licence.
17.	Section 116(6) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
18.	Section 117(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
19.	Section 117(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
20.	Section 119(1) of this Ordinance	Refusal to grant registration.

Item	Provision	Description of decision
21.	Section 119(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
22.	Section 120(1) of this Ordinance	Refusal to grant a licence.
23.	Section 120(5) of this Ordinance	Imposition of any condition.
24.	Section 120(7) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
25.	Section 121(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
26.	Section 121(3) of this Ordinance	Imposition of any condition.
27.	Section 121(5) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
28.	Section 122(1) of this Ordinance	Refusal to approve an accreditation.
29.	Section 122(2) of this Ordinance	Refusal to approve a transfer of an accreditation.
30.	Section 124(1) of this Ordinance	Refusal to issue a duplicate licence or certificate of registration.
31.	Section 126(1) of this Ordinance	Refusal to approve a person as a responsible officer.
32.	Section 126(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
33.	Section 127(1) of this Ordinance	Refusal to vary any regulated activity.
34.	Section 130(1) of this Ordinance	Refusal to approve premises.
35.	Section 132(1) of this Ordinance	Refusal to approve a person to become or continue to be a substantial shareholder.
36.	Section 132(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
37.	Section 133(1) of this Ordinance	Direction to a licensed corporation.
38.	Section 133(2) of this Ordinance	Direction to a person.
39.	Section 134(1)(*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*) or (*j*) of this Ordinance	Refusal to grant a modification or waiver.
40.	Section 134(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
41.	Section 146(2) or (5)(*b*) of this Ordinance	Imposition of any condition.
42.	Section 146(5)(*a*) of this Ordinance	Suspension of a licence.
43.	Section 146(6) or (7) of this Ordinance	Amendment of any condition.
44.	Section 147(3)(*a*) of this Ordinance	Suspension of a licence.
45.	Section 147(3)(*b*) of this Ordinance	Imposition of any condition.
46.	Section 147(4) or (5) of this Ordinance	Amendment of any condition.
47.	Section 159(1) of this Ordinance	Appointment of an auditor.
48.	Section 159(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.

Item	Provision	Description of decision
49.	Section 160(1) of this Ordinance	Appointment of an auditor.
50.	Section 160(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
51.	Section 194(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to impose a prohibition on a person.
52.	Section 194(2) of this Ordinance	Order to pay a pecuniary penalty.
53.	Section 195(1)(*a*), (*b*) or (*c*) of this Ordinance	Revocation or suspension of a licence.
54.	Section 195(2) of this Ordinance	Revocation of a licence.
55.	Section 195(7) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
56.	Section 196(1)(i), (ii) or (iii) of this Ordinance	Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person.
57.	Section 196(2) of this Ordinance	Order to pay a pecuniary penalty.
58.	Section 197(1)(*a*) or (*b*) of this Ordinance	Revocation or suspension of any registration.
59.	Section 197(2) of this Ordinance	Revocation of any registration.
60.	Section 202(1) of this Ordinance	Requirement to transfer records.
61.	Section 203(1) of this Ordinance	Imposition of any condition.
62.	Section 204(1)(*a*) or (*b*) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.
63.	Section 205(1)(*a*) or (*b*) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning relevant property.
64.	Section 206(1) of this Ordinance	Requirement imposed on a licensed corporation to maintain property.
65.	Section 208(1)(*b*) of this Ordinance	Substitution or variation of a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
66.	Section 208(1) of this Ordinance	Refusal to withdraw, substitute or vary a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
67.	Section 309(2) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
68.	Section 309(3) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
69.	Section 309(4)(*a*) or (*b*) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition.
70.	Section 403 of this Ordinance	Imposition of any condition.
71.	Section 38A(1) of the Companies Ordinance (Cap. 32)	Refusal to issue a certificate of exemption, or imposition of any condition.
72.	Section 342A(1) of the Companies Ordinance (Cap. 32)	Refusal to issue a certificate of exemption, or imposition of any condition.

Division 2

Specified decisions made by Monetary Authority

Item	Provision	Description of decision
1.	Section 58A(1)(*c*) or (*d*) of the Banking Ordinance (Cap. 155)	Removal or suspension of relevant particulars of a relevant individual from the register.
2.	Section 71C(1) of the Banking Ordinance (Cap. 155)	Refusal to give consent.
3.	Section 71C(2)(*b*) of the Banking Ordinance (Cap. 155)	Attachment of any condition.
4.	Section 71C(4)(*c*) or (*d*) of the Banking Ordinance (Cap. 155)	Withdrawal or suspension of consent.
5.	Section 71C(9) of the Banking Ordinance (Cap. 155)	Attachment or amendment of any condition.
6.	Section 71E(3) of the Banking Ordinance (Cap. 155)	Attachment or amendment of any condition.

Division 3

Specified decisions made by Commission or recognized investor compensation company

Item	Provision	Description of decision

PART 3

Division 1

Specified decisions referred to in section 217(3)(*b*) of this Ordinance

Item	Description of specified decision	Provision
1.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

Division 2

Specified decisions referred to in section 218(4)(*a*) of this Ordinance

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 56 or 57 of Division 1 of Part 2.	Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap. 155).

Division 3

Specified decisions referred to in section 218(4)(*b*) of this Ordinance

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 1 or 4 of Division 2 of Part 2.	Section 196(1) and (2) of this Ordinance.

Division 4

Specified decisions referred to in section 232(1) of this Ordinance

Item	Description of specified decision	Provision
1.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

Division 5

Specified decisions referred to in section 232(2) of this Ordinance

Item	Description of specified decision	Provision
1.	A specified decision set out in item 3 of Division 1 of Part 2.	Section 97(2) of this Ordinance.
2.	A specified decision set out in item 4 of Division 1 of Part 2.	Section 98(6) of this Ordinance.
3.	A specified decision set out in item 17 of Division 1 of Part 2.	Section 116(7) of this Ordinance.
4.	A specified decision set out in item 19 of Division 1 of Part 2.	Section 117(4) of this Ordinance.
5.	A specified decision set out in item 21 of Division 1 of Part 2.	Section 119(6) of this Ordinance.
6.	A specified decision set out in item 24 of Division 1 of Part 2.	Section 120(8) of this Ordinance.

Item	Description of specified decision	Provision
7.	A specified decision set out in item 27 of Division 1 of Part 2.	Section 121(6) of this Ordinance.
8.	A specified decision set out in item 36 of Division 1 of Part 2.	Section 132(4) of this Ordinance.
9.	A specified decision set out in item 42 of Division 1 of Part 2.	Section 146(9) of this Ordinance.
10.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
11.	A specified decision set out in item 44 of Division 1 of Part 2.	Section 147(7) of this Ordinance.
12.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.
13.	A specified decision set out in item 61 of Division 1 of Part 2.	Section 203(3) of this Ordinance.
14.	A specified decision set out in item 62, 63, 64 or 65 of Division 1 of Part 2.	Section 209(1) of this Ordinance.
15.	A specified decision set out in item 6 of Division 2 of Part 2.	Section 71E(4) of the Banking Ordinance (Cap. 155).

SCHEDULE 9

[ss. 251, 252, 253, 256 & 269]

MARKET MISCONDUCT TRIBUNAL

1. In this Schedule, unless the context otherwise requires—
"chairman" (主席) means the chairman of the Tribunal;
"judge" (法官) has the meaning assigned to it by section 245(1) of this Ordinance;
"member" (成員) means a member of the Tribunal;
"ordinary member" (普通成員) means a member other than the chairman;
"Presenting Officer" (提控官) has the meaning assigned to it by section 245(1) of this Ordinance;
"proceedings" (研訊程序) means proceedings instituted under section 252 of this Ordinance;
"Tribunal" (審裁處) has the meaning assigned to it by section 245(1) of this Ordinance.

Appointment of members

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

3. Subject to sections 6, 7 and 9, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

4. The ordinary members shall be appointed by the Chief Executive.

5. Subject to sections 6 and 8, an ordinary member shall be appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

6. A member may at any time resign his office by notice in writing to the Chief Executive.

7. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

8. The Chief Executive may by notice in writing remove an ordinary member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.

9. If any proceedings have been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the proceedings.

Appointment of persons to replace ordinary members

10. Subject to section 11, the Chief Executive may appoint a person, who is not a public officer, to replace an ordinary member if the ordinary member has died, or has resigned from office under section 6 or has been removed from office under section 8, and the person may, subject to the other provisions of this Ordinance, from time to time be reappointed.

11. The Chief Executive shall not appoint a person to replace an ordinary member of the Tribunal under section 10 unless the chairman of the Tribunal—

(*a*) has recommended that a person should be so appointed having regard to the interests of justice; and

(*b*) has given a reasonable opportunity of being heard to—

(i) any person whose identity is specified pursuant to section 13(*b*) in the statement for the proceedings as described in section 13; and

(ii) the Presenting Officer appointed for the proceedings.

12. A person appointed to replace an ordinary member under section 10 shall be deemed for all purposes to be the ordinary member.

Statements for institution of proceedings

13. The statement required to be contained in a notice given by the Financial Secretary under section 252(2) of this Ordinance shall specify—

(*a*) the provision or provisions of Part XIII of this Ordinance by reference to which any person appears to have perpetrated any conduct which constitutes market misconduct; and

(*b*) the identity of the person, and such brief particulars as are sufficient to disclose reasonable information concerning the nature and essential elements of the market misconduct.

14. Where it appears to the Financial Secretary that a person may have perpetrated any conduct which constitutes market misconduct by reference to more than one provision of Part XIII of this Ordinance, the statement described in section 13 may specify separately or in the alternative the market misconduct by reference to those provisions.

15. The Tribunal may at any time during the course of any proceedings order the Presenting Officer appointed for the proceedings to amend the statement for the proceedings as described in section 13 in such manner as it considers appropriate, except that—

(*a*) there shall be no amendment to the identity of the person originally specified pursuant to section 13(*b*) in the statement; and

(*b*) after the amendment the financial product which is the subject of any market misconduct specified in the statement shall remain the same as the financial product which is the subject of the market misconduct originally specified in the statement.

16. For the avoidance of doubt, the Tribunal shall have jurisdiction exercisable by reference to a statement as amended under section 15 in the same manner as it has jurisdiction exercisable by reference to a statement described in section 13.

17. Notwithstanding anything in Part XIII of this Ordinance, unless the identity of a person is specified pursuant to section 13(*b*) in a statement described in section 13—

(*a*) he shall not be identified as having engaged in market misconduct pursuant to section 252(3)(*b*) of this Ordinance; and

(*b*) no order shall be made in respect of him under section 257 or 258 of this Ordinance.

18. Any person whose identity is specified pursuant to section 13(*b*) in a statement described in section 13 shall be provided with a copy of the statement and, where the statement is amended under section 15, of the statement as so amended, in such manner as the Tribunal may direct.

19. After the conduct of any proceedings instituted under section 252 of this Ordinance, where it appears to the Tribunal that market misconduct has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 262(1) of this Ordinance a recommendation to the Financial Secretary to institute proceedings under section 252 of this Ordinance concerning the matter.

20. In section 15, "financial product" (金融產品) means—

(*a*) where the market misconduct in question is an insider dealing, listed securities or derivatives of listed securities as defined in section 245(2) of this Ordinance; or

(*b*) where the market misconduct in question is any other market misconduct, securities or futures contracts as defined in Schedule 1 to this Ordinance.

Presenting Officer

21. Without prejudice to any powers and functions of a Presenting Officer under Part XIII of this Ordinance, a Presenting Officer shall, in respect of the proceedings for which he is appointed, present to the Tribunal such available evidence, including any evidence which the Tribunal requests him to present to it, as shall enable the Tribunal to reach an informed decision as to whether market misconduct has taken place and, if so, the nature of the market misconduct.

22. The Secretary for Justice may at any time replace a Presenting Officer or any person appointed to assist a Presenting Officer.

Sittings

23. The chairman shall convene such sittings of the Tribunal as are necessary to hear and determine any question or issue arising out of or in connection with the proceedings.

24. Subject to section 25, at any sitting of the Tribunal—

(*a*) the chairman and 2 ordinary members shall be present;

(*b*) the chairman shall preside; and

(*c*) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

25. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 36, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

26. Every sitting of the Tribunal shall be held in public unless the Tribunal—

(*a*) on its own motion; or

(*b*) on the application of—

(i) any person whose identity is specified pursuant to section 13(*b*) in the statement for the proceedings as described in section 13; or

(ii) the Presenting Officer appointed for the proceedings,

determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

27. Where an application is made pursuant to section 26 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

28. At any sitting of the Tribunal relating to any proceedings, a person whose identity is specified pursuant to section 13(*b*) in the statement for the proceedings as described in section 13 shall be entitled to be heard—

(*a*) in person or, in the case of a corporation, through an officer or employee of the corporation; and

(*b*) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

29. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

Preliminary conferences and consent orders

30. At any time after any proceedings have been instituted under section 252 of this Ordinance, the chairman may—

(*a*) on his own motion or on the application of—

(i) any person whose identity is specified pursuant to section 13(*b*) in the statement for the proceedings as described in section 13; or

(ii) the Presenting Officer appointed for the proceedings;

(*b*) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the proceedings by any person who is entitled to make an application pursuant to paragraph (*a*)(i) or (ii); and

(*c*) if all persons who are entitled to make, but have not made, an application pursuant to paragraph (*a*)(i) or (ii) agree,

direct that a conference, to be attended by the parties to the proceedings or their representatives and presided over by the chairman, shall be held for the purposes of—

(i) enabling the parties to prepare for the conduct of the proceedings;

(ii) assisting the Tribunal to determine issues for the purposes of the proceedings; and

(iii) generally securing the just, expeditious and economical conduct of the proceedings.

31. At a conference held in accordance with a direction of the chairman under section 30, the chairman may—

(*a*) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the proceedings; and

(*b*) endeavour to secure that the parties to the proceedings make all agreements as they ought reasonably to have made in relation to the proceedings.

32. After a conference has been held in accordance with a direction of the chairman under section 30, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

33. At any time after any proceedings have been instituted under section 252 of this Ordinance, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if—

(*a*) the parties to the proceedings request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and

(*b*) the parties consent to all of the terms of the order.

34. Notwithstanding Part XIII of this Ordinance or any other provisions of this Schedule, where under section 33 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

35. In sections 33 and 34, "order" (命令) includes any finding, determination and any other decision.

Chairman as sole member of Tribunal

36. Where, at any time after any proceedings have been instituted under section 252 of this Ordinance but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings, the parties to the proceedings have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that any such question or issue may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the question or issue as the sole member of the Tribunal.

37. Where section 36 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

38. After the chairman has made any determination under section 36, the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.

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.

SCHEDULE 10 [ss. 237, 240, 242, 406, 407, 408 & 409]

SAVINGS, TRANSITIONAL, CONSEQUENTIAL AND RELATED PROVISIONS, ETC.

PART 1

SAVINGS, TRANSITIONAL AND SUPPLEMENTAL ARRANGEMENTS

Interpretation of Part 1

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)

2. Without prejudice to section 3 of this Ordinance—
   (*a*) 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;
   (*b*) 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;

(*c*) 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;

(*d*) 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;

"SEOCH" (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 SEOCH 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

(*b*) any matter in respect of which the issue of an advertisement, invitation or document is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(*g*) of the repealed Protection of Investors Ordinance,

shall, where its name appears in a list published by the Commission for the purposes of this section on the date of commencement of Part IV of this Ordinance, upon such commencement be deemed to have been authorized under section 104 of this Ordinance as a collective investment scheme, subject to the same conditions as were applicable had this Ordinance not been enacted.

17. Subject to sections 18 and 19, the issue of an advertisement, invitation or document that is immediately before the commencement of Part IV of this Ordinance authorized pursuant to section 4(2)(*g*) of the repealed Protection of Investors Ordinance shall upon such commencement be deemed to have been authorized under section 105 of this Ordinance, subject to the same conditions as were applicable had this Ordinance not been enacted.

18. Where no individual has been nominated pursuant to section 104(3) or 105(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall thereupon cease to have effect.

19. Where an individual has been nominated pursuant to section 104(3) or 105(3) of this Ordinance before the expiration of 6 months from the commencement of Part IV of this Ordinance, any authorization otherwise having effect by virtue of section 16 or 17 shall continue to have effect until the Commission decides otherwise.

20. Where an application for—

(*a*) authorization of any corporation or arrangement under section 15 of the repealed Securities Ordinance as a mutual fund corporation or a unit trust; or

(*b*) authorization of the issue of an advertisement, invitation or document pursuant to section 4(2)(*g*) of the repealed Protection of Investors Ordinance,

has been made before the commencement of Part IV of this Ordinance but has not been finally determined by the Commission before such commencement, the application shall upon such commencement be deemed to be—

(i) in the case of paragraph (*a*), an application for authorization of a collective investment scheme under section 104 of this Ordinance; or

(ii) in the case of paragraph (*b*), an application for authorization of a collective investment scheme under section 104 of this Ordinance, or an application for authorization of the issue of an advertisement, invitation or document under section 105 of this Ordinance, as the Commission considers appropriate.

21. A list published pursuant to section 16 is not subsidiary legislation.

Part V of this Ordinance (Licensing and registration)

Corporations other than exempt dealers and exempt investment advisers

22. Subject to section 55, a corporation which immediately before the commencement of Part V of this Ordinance is—

(*a*) registered under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(*b*) registered under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(*c*) registered under the repealed Securities Ordinance as a securities margin financier shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 8 regulated activity;

(*d*) registered under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(*e*) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(*f*) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader shall, upon such commencement, be deemed to have been licensed under section 116(1) of this Ordinance for Type 3 regulated activity,

and to have complied with the requirement of section 125(1)(*a*) and (*b*) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

23. Subject to section 55, where a corporation is deemed under section 22 to have been licensed, any director of that corporation who is an individual and immediately before the commencement of Part V of this Ordinance is—

(*a*) registered under the repealed Securities Ordinance as a dealer of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

(*b*) registered under the repealed Securities Ordinance as an investment adviser of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

(*c*) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 8 regulated activity and accredited to that corporation;

(*d*) registered under the repealed Commodities Trading Ordinance as a dealer of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;

(*e*) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;

(*f*) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 3 regulated activity and accredited to that corporation,

and approved under section 126(1) of this Ordinance as a responsible officer of that corporation, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

24. Subject to section 55, where a corporation is deemed under section 22 to have been licensed, any individual not being a director of that corporation who immediately before the commencement of Part V of this Ordinance is—

(*a*) registered under the repealed Securities Ordinance as a dealer's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

(*b*) registered under the repealed Securities Ordinance as an investment representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that corporation;

(*c*) registered under the repealed Securities Ordinance as a securities margin financier's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 8 regulated activity and accredited to that corporation;

(*d*) registered under the repealed Commodities Trading Ordinance as a dealer's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;

(*e*) registered under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that corporation;

(*f*) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a representative of that corporation shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 3 regulated activity and accredited to that corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Persons who are exempt dealers or exempt investment advisers

25. Subject to section 55—

(*a*) an authorized financial institution which immediately before the commencement of Part V of this Ordinance is—

(i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement;

(*b*) a corporation (other than an authorized financial institution), partnership or individual who immediately before the commencement of Part V of this Ordinance is—

(i) an exempt dealer within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) an exempt investment adviser within the meaning of the repealed Securities Ordinance shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement, and for so long as such corporation, partnership or individual is so deemed, the requirements of sections 125(1)(*a*) and (*b*) and 131(1) of this Ordinance shall not apply to it.

26. Where immediately before the commencement of Part V of this Ordinance an individual is engaged—

(*a*) by an authorized financial institution; or

(*b*) by a corporation (other than an authorized financial institution), partnership or individual,

to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the institution is deemed under section 25(*a*) to have been registered or the corporation, partnership or individual is deemed under section 25(*b*) to have been licensed (as the case may be), the first-mentioned individual shall, upon such commencement, be deemed—

(i) (if paragraph (*a*) applies to the first-mentioned individual) to be a person whose name has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the institution in respect of that regulated activity;

(ii) (if paragraph (*b*) applies to the first-mentioned individual) to have been licensed as a licensed representative under section 120(1) of this Ordinance for that regulated activity (subject to the condition specified in section 51) and accredited to the corporation, partnership or individual (in its capacity as a licensed corporation by virtue of section 25(*b*)),

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Partnerships

27. Subject to section 55, a partnership which immediately before the commencement of Part V of this Ordinance is registered—

(*a*) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(*b*) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(*c*) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(*d*) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities,

and to have complied with the requirement of section 125(1)(*a*) and (*b*) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

28. Subject to section 55, where a partnership is deemed under section 27 to be a licensed corporation, any partner of that partnership who immediately before the commencement of Part V of this Ordinance is registered—

(*a*) under the repealed Securities Ordinance as a dealer of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(*b*) under the repealed Securities Ordinance as an investment adviser of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(*c*) under the repealed Commodities Trading Ordinance as a dealer of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;

(*d*) under the repealed Commodities Trading Ordinance as a commodity trading adviser of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

29. Subject to section 55, where a partnership is deemed under section 27 to be a licensed corporation, any individual who immediately before the commencement of Part V of this Ordinance is registered—

(*a*) under the repealed Securities Ordinance as a dealer's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(*b*) under the repealed Securities Ordinance as an investment representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(*c*) under the repealed Commodities Trading Ordinance as a dealer's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;

(*d*) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of that partnership shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Sole-proprietorships

30. Subject to section 55, an individual who immediately before the commencement of Part V of this Ordinance is registered—

(*a*) under the repealed Securities Ordinance as a dealer shall, upon such commencement, be deemed—

(i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation; and

(iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;

(*b*) under the repealed Securities Ordinance as an investment adviser shall, upon such commencement, be deemed—

(i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation; and

(iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;

(*c*) under the repealed Commodities Trading Ordinance as a dealer shall, upon such commencement, be deemed—

(i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation; and

(iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation;

(*d*) under the repealed Commodities Trading Ordinance as a commodity trading adviser shall, upon such commencement, be deemed—

(i) to be a licensed corporation that has been licensed under section 116(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities;

(ii) to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation; and

(iii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that licensed corporation,

and to have complied with the requirement of section 125(1)(*a*) and (*b*) of this Ordinance, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

31. Subject to section 55, where an individual is deemed under section 30 to be a licensed corporation, any other individual who immediately before the commencement of Part V of this Ordinance is registered—

(*a*) under the repealed Securities Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 1, Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(*b*) under the repealed Securities Ordinance as an investment representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities and accredited to that licensed corporation;

(*c*) under the repealed Commodities Trading Ordinance as a dealer's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 2, Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation;

(*d*) under the repealed Commodities Trading Ordinance as a commodity trading adviser's representative of the first-mentioned individual shall, upon such commencement, be deemed to have been licensed as a licensed representative under section 120(1) of this Ordinance for Type 5 and (subject to the condition specified in section 52) Type 9 regulated activities and accredited to that licensed corporation,

and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Licensed banks

32. Where immediately before the commencement of Part V of this Ordinance, a licensed bank would have fallen within the meaning of the definition of "investment adviser" in section 2(1) of the repealed Securities Ordinance but for paragraph (i) of that definition, it shall, upon such commencement, be deemed to have been registered under section 119(1) of this Ordinance for Type 4, Type 6 and (subject to the condition specified in section 51) Type 9 regulated activities, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

33. Where immediately before the commencement of Part V of this Ordinance an individual is engaged by a licensed bank to perform any act which, after such commencement, would constitute a regulated function in relation to a regulated activity for which the bank is deemed under section 32 to have been registered, that individual shall, upon such commencement, be deemed to be a person whose name has been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the bank in respect of that regulated activity, and, subject to section 53, shall be so deemed for a period of 2 years from such commencement.

Persons providing automated trading services

34. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is—

(*a*) a corporation to which section 22(*a*) or (*d*) or 25(*b*)(i) applies;
(*b*) a partnership to which section 25(*b*)(i) or 27(*a*) or (*c*) applies; or
(*c*) an individual to whom section 25(*b*)(i) or 30(*a*) or (*c*) applies,

then in relation to the person, any of those sections that applies to the person as such corporation, partnership or individual (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the person is deemed to have been licensed (in its capacity as a licensed corporation by virtue of that section), and the provisions of sections 22 to 60 shall be construed accordingly.

35. Where section 34 is applicable to a corporation, partnership or individual ("the first-mentioned individual"), then in relation to—

(*a*) a director of the corporation to whom section 23(*a*) or (*d*) applies;
(*b*) an individual (not being a director) of the corporation to whom section 24(*a*) or (*d*) applies;
(*c*) a partner of the partnership to whom section 28(*a*) or (*c*) applies;
(*d*) an individual (not being a partner) of the partnership to whom section 29(*a*) or (*c*) applies;
(*e*) the first-mentioned individual, to whom section 30(*a*)(ii) and (iii) or (*c*)(ii) and (iii) applies;
(*f*) an individual to whom section 31(*a*) or (*c*) applies in relation to the first-mentioned individual; or
(*g*) an individual to whom section 26(ii) applies in relation to the corporation, partnership or first-mentioned individual,

any of those sections that applies to such director, partner or individual (including the first-mentioned individual) (as the case may be) shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which such director, partner or individual is deemed to have been licensed (in his capacity as a licensed representative by virtue of that section) or approved (in his capacity as a responsible officer by virtue of that section) and the provisions of sections 22 to 60 shall be construed accordingly.

36. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services, and the person is an authorized financial institution to which section 25(*a*)(i) applies, then in relation to the institution, that section shall be read and construed as if Type 7 regulated activity were added as a regulated activity for which the institution is deemed to have been registered and the provisions of sections 22 to 60 shall be construed accordingly.

37. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in providing automated trading services and none of sections 34, 35 and 36 is applicable in relation to the person, then the person may continue carrying on the business for a period of 6 months from such commencement, and for such continuation of the business, this Ordinance shall not apply to—

(*a*) the person; and
(*b*) any individual engaged by the person to perform any act in providing automated trading services in the business,

until the expiration of that period.

Persons dealing in certain interests
in collective investment scheme

38. For the purposes of sections 39, 40, 41, 42, 43 and 44, "excluded interests" (豁除權益) means interests in a collective investment scheme, where such interest does not fall within the meaning of "securities" as defined in section 2(1) of the repealed Securities Ordinance.

39. Where immediately before the commencement of Part V of this Ordinance, a person—

(*a*) is carrying on a business in dealing in excluded interests; and

(*b*) is registered under the repealed Commodities Trading Ordinance as a dealer, other than as such dealer in the capacity of—

(i) a director of a corporation; or

(ii) a partner of a partnership,

that is registered as such dealer,

then the person may continue carrying on the business referred to in paragraph (*a*) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

40. Where section 39 is applicable to a person, and immediately before the commencement of Part V of this Ordinance—

(*a*) (if the person is a corporation) a director of the person is registered as a dealer;

(*b*) (if the person is a partnership) a partner of the person is registered as a dealer;

(*c*) an individual is registered as a dealer's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may deal in excluded interests in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in excluded interests in such business, this Ordinance shall not apply to such director, partner or individual until the expiration of that period.

41. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in dealing in excluded interests, and neither section 39 nor 40 is applicable to the person, then the person may continue carrying on the business in dealing in excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to—

(*a*) the person; and

(*b*) any individual engaged in the business by the person to deal in excluded interests,

until the expiration of that period.

Persons advising on certain interests
in collective investment scheme

42. Where immediately before the commencement of Part V of this Ordinance, a person—

(*a*) is carrying on a business in advising on excluded interests (as defined in section 38); and

(*b*) is registered under the repealed Commodities Trading Ordinance as a commodity trading adviser, other than as such adviser in the capacity of—

(i) a director of a corporation; or

(ii) a partner of a partnership,

that is registered as such adviser,

then the person may continue carrying on the business referred to in paragraph (*a*) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

43. Where section 42 is applicable to a person, and immediately before the commencement of Part V of this Ordinance—

(*a*) (if the person is a corporation) a director of the person is registered as a commodity trading adviser;

(*b*) (if the person is a partnership) a partner of the person is registered as a commodity trading adviser;

(*c*) an individual is registered as a commodity trading adviser's representative,

of the person under the repealed Commodities Trading Ordinance, then the director, partner or individual may advise on excluded interests in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of advising on excluded interests in such business, this Ordinance shall not apply to such director, partner or individual until the expiration of that period.

44. Where immediately before the commencement of Part V of this Ordinance, a person is carrying on a business in advising on excluded interests, and neither section 42 nor 43 is applicable to the person, then the person may continue carrying on the business in advising on excluded interests for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to—

(*a*) the person; and

(*b*) any individual engaged in the business by the person to advise on excluded interests,

until the expiration of that period.

Persons dealing in futures contracts solely with persons outside Hong Kong

45. For the purposes of sections 47, 48, 49 and 50, "excluded clients" (豁除客戶) means persons outside Hong Kong.

46. For the purposes of sections 48, 49 and 50, "dealing in futures contracts" (期貨合約交易) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance.

47. Where immediately before the commencement of Part V of this Ordinance, a person—

(*a*) is carrying on a business which does not fall within the meaning of "trading in commodity futures contracts", as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and

(*b*) (i) is registered under the repealed Securities Ordinance as a dealer, other than as such dealer in the capacity of—

(A) a director of a corporation; or

(B) a partner of a partnership,

that is registered as such dealer; or

(ii) is declared under the repealed Securities Ordinance as an exempt dealer,

then the person may continue carrying on the business referred to in paragraph (*a*) for a period of 2 years from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to the person until the expiration of that period.

48. Where section 47 is applicable to a person who falls within the description of section 47(*b*)(i), and immediately before the commencement of Part V of this Ordinance—

(*a*) (if the person is a corporation) a director of the person is registered as a dealer;

(*b*) (if the person is a partnership) a partner of the person is registered as a dealer;

(*c*) an individual is registered as a dealer's representative,

of the person under the repealed Securities Ordinance, then the director, partner or individual may deal in futures contracts solely with excluded clients in the business carried on by the person for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the director, partner or individual until the expiration of that period.

49. Where section 47 is applicable to a person who falls within the description of section 47(*b*)(ii), and immediately before the commencement of Part V of this Ordinance, an individual is engaged by the person to deal solely with excluded clients in the person's business referred to in section 47(*a*), then the individual may deal in futures contracts solely with excluded clients in such business for a period of 2 years from such commencement, and solely for the purposes of dealing in futures contracts solely with excluded clients in such business, this Ordinance shall not apply to the person until the expiration of that period.

50. Where immediately before the commencement of Part V of this Ordinance, a person—

(*a*) is carrying on a business which does not fall within the meaning of "trading in commodity futures contracts", as defined in section 2(1) of the repealed Commodities Trading Ordinance, solely because the person while engaging in such trading only deals with excluded clients; and

(*b*) none of sections 47, 48 and 49 is applicable to the person,

then the person may continue carrying on the business referred to in paragraph (*a*) for a period of 6 months from such commencement, and solely for the purposes of the continuation of such business, this Ordinance shall not apply to—

(i) the person; and

(ii) any individual engaged in the business by the person to deal in futures contracts solely with excluded clients,

until the expiration of that period.

Deemed condition for Type 9 regulated activity

51. Where a person is—

(*a*) immediately before the commencement of Part V of this Ordinance—

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, dealer's representative or investment representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser; or

(iii) a licensed bank referred to in section 32; and

(*b*) deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 to have been licensed or registered for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 55, such licence or registration referred to in paragraph (*b*) shall be subject to a condition that the person shall not provide a service of managing a portfolio of futures contracts for another person.

52. Where a person is—

(*a*) immediately before the commencement of Part V of this Ordinance registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; and

(*b*) deemed under section 22, 23, 24, 27, 28, 29, 30 or 31 to have been licensed for Type 9 regulated activity under Part V of this Ordinance,

then without prejudice to section 55, such licence referred to in paragraph (*b*) shall be subject to a condition that the person shall not provide a service of managing a portfolio of securities for another person.

Further provisions on transitional period

53. (1) Where, within 2 years from the commencement of Part V of this Ordinance—

(*a*) a corporation deemed under section 22 or 25(*b*) to have been licensed for a regulated activity applies to be licensed for that regulated activity under section 116(1) of this Ordinance, then without prejudice to subsection (3)(C), it shall be deemed—

(i) to have been so licensed; and

(ii) (in the case of a corporation deemed under section 22 to have been licensed) to have complied with the requirement of section 125(1)(*a*) and (*b*) of this Ordinance in relation to that regulated activity,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

(*b*) a company, or an overseas company that has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents, applies to be licensed under section 116(1) of this Ordinance for a regulated activity and—

(i) all the partners of a partnership deemed under section 25(*b*) or 27 to have been licensed for that regulated activity are shareholders of the applicant;

(ii) the collective shareholdings of such partners would have made them a majority shareholder of the applicant if they were one single shareholder of the applicant; and

(iii) the applicant satisfies the Commission that—

(A) it is incorporated for the purposes of taking over the business carried on by that partnership in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that partnership to the applicant,

then without prejudice to subsection (3)(C), that partnership shall be deemed—

(A) to have been so licensed; and

(B) (in the case of a partnership deemed under section 27 to have been licensed) to have complied with the requirement of section 125(1)(*a*) and (*b*) of this Ordinance in relation to that regulated activity,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

(*c*) a company, or an overseas company that has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents, applies to be licensed under section 116(1) of this Ordinance for a regulated activity and—

(i) an individual deemed under section 25(*b*) or 30 to have been licensed for that regulated activity is a majority shareholder of the applicant; and

(ii) the applicant satisfies the Commission that—

(A) it is incorporated for the purposes of taking over the business carried on by that individual in that regulated activity; and

(B) sufficient arrangements have been or will be made to effect the transfer of such business from that individual to the applicant,

then without prejudice to subsection (3)(C), that individual shall be deemed—

(A) to have been so licensed;

(B) (in the case of an individual deemed under section 30 to have been licensed) to have complied with the requirement of section 125(1)(*a*) and (*b*) of this Ordinance in relation to that regulated activity; and

(C) (in the case of an individual deemed under section 30 to have been licensed) to have been approved under section 126(1) of this Ordinance as a responsible officer in relation to that licensed corporation,

until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

(*d*) a director deemed under section 23, or a partner deemed under section 28—

(i) to have been licensed for a regulated activity and accredited to a corporation; and

(ii) to have been approved as a responsible officer of that corporation,

applies to be licensed for the regulated activity under section 120(1) of this Ordinance, he shall, subject to subsection (6), be so deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be);

(*e*) an individual deemed under section 24, 26(ii), 29 or 31 to have been licensed for a regulated activity and accredited to a corporation applies to be licensed for the regulated activity under section 120(1) of this Ordinance, he shall, subject to subsection (6), be so deemed until the licence applied for is granted or the Commission's refusal to grant the licence takes effect as a specified decision under section 232 of this Ordinance (as the case may be).

(2) Where, within 2 years from the commencement of Part V of this Ordinance, an authorized financial institution deemed under section 25(*a*) to have been registered, or a licensed bank deemed under section 32 to have been registered, for a regulated activity, applies to be registered for that regulated activity under section 119(1) of this Ordinance, then without prejudice to subsection (3)(C)—

(*a*) it shall be deemed to have been so registered; and

(*b*) an individual deemed under section 26(i) or 33 to be a person whose name has been entered in the register referred to in that section as engaged by the institution or licensed bank (as the case may be) in that regulated activity shall, subject to subsection (6), be so deemed,

until the applicant is registered pursuant to the application or the Commission's refusal to register the applicant takes effect as a specified decision under section 232 of this Ordinance (as the case may be).

(3) Where—

(*a*) an application referred to in subsection (1)(*a*), (*b*) or (*c*) or (2) in relation to a regulated activity is refused; or

(*b*) such an application is refused and the applicant applies for review of the refusal under section 217 of this Ordinance, and the refusal is confirmed by the Securities and Futures Appeals Tribunal,

then—

(i) in the case of an application referred to in subsection (1)(*a*) or (2), the applicant;

(ii) in the case of an application referred to in subsection (1)(*b*), the partnership from which the applicant intends to take over the business in that regulated activity; or

(iii) in the case of an application referred to in subsection (1)(*c*), the individual from whom the applicant intends to take over the business in that regulated activity,

shall—

(A) cease to carry on that regulated activity within 21 days of the refusal or the confirmation (as the case may be) or within such further period as the Commission notifies the applicant, partnership or individual (as the case may be) in writing;

(B) comply with such reasonable conditions as the Commission may impose for such cessation; and

(C) before such cessation but in any event not later than the 21 days or further period referred to in paragraph (A) and solely for the purpose of winding up its business in that regulated activity, continue to be deemed to have been licensed or registered or to have complied with the requirement of section 125(1)(*a*) and (*b*) of this Ordinance or to have been approved as a responsible officer for or in relation to that regulated activity, as may be applicable,

and may be subject to the exercise of the power of the Commission under section 201 of this Ordinance as if the licence or registration referred to in paragraph (C) in respect of the applicant, partnership or individual (as the case may be) had been revoked on the occurrence of the circumstances specified in paragraphs (*a*) and (*b*) (whichever is applicable).

(4) Where a person is deemed under section 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 or 32 to have been licensed or registered for a regulated activity or approved as a responsible officer, the provisions of this Ordinance shall—

(*a*) apply to or in relation to the person as they apply to or in relation to a person who is licensed or registered for that regulated activity or approved as a responsible officer (as the case may be); and

(*b*) in case the person is a partnership or an individual (as the case may be) carrying on a business in that regulated activity, so apply with such modifications under section 134 of this Ordinance as may be necessary.

(5) Where an individual's name is deemed—

(*a*) under section 26(i); or

(*b*) under section 33,

to have been entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the institution concerned or the bank concerned in respect of a regulated activity, the provisions of this Ordinance shall apply to or in relation to the individual as they apply to or in relation to an individual whose name is entered in such register in respect of that regulated activity with such modifications under section 134 of this Ordinance as may be necessary.

(6) If—

(*a*) a director of a corporation who is deemed under section 23—

(i) to have been licensed as a licensed representative and accredited to that corporation; and

(ii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a director of that corporation, he shall upon such cessation cease to be so deemed;

(*b*) a partner of a partnership who is deemed under section 28—

(i) to have been licensed as a licensed representative and accredited to that partnership (deemed under section 27 to be a licensed corporation); and

(ii) to have been approved under section 126(1) of this Ordinance as a responsible officer of that corporation,

ceases to be a partner of that partnership, he shall upon such cessation cease to be so deemed;

(*c*) an individual who is deemed under section 24, 26(ii), 29 or 31 to have been licensed as a licensed representative and accredited to a licensed person ceases to act for or on behalf of that licensed person in relation to the regulated activity for which he is so deemed, he shall upon such cessation cease to be so deemed;

(*d*) an individual who is deemed under section 26(i) or 33 to be a person whose name has been entered in the register referred to in that section ceases to be engaged by the institution concerned or the bank concerned to perform any act which constitutes a regulated function in relation to the relevant regulated activity, he shall upon such cessation cease to be so deemed.

Certain unregistered persons to be permitted to carry on limited business

54. A person who—

(*a*) immediately before the commencement of Part XA of the repealed Securities Ordinance, carried on a business of securities margin financing; and

(*b*) continues to collect interest accrued or accruing on sums already advanced under financial accommodation granted before the commencement of that Part,

is deemed not to be carrying on a business in Type 8 regulated activity for the purposes of section 114(1) of this Ordinance, but only if the person does not carry on, or hold itself out as carrying on, any business in securities margin financing other than that as referred to in paragraph (*b*).

Miscellaneous

55. Where a person is—

(*a*) immediately before the commencement of Part V of this Ordinance—

(i) registered under the repealed Securities Ordinance as a dealer, investment adviser, securities margin financier, dealer's representative, investment representative or securities margin financier's representative;

(ii) declared under the repealed Securities Ordinance as an exempt dealer or an exempt investment adviser;

(iii) registered under the repealed Commodities Trading Ordinance as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; or

(iv) licensed under the repealed Leveraged Foreign Exchange Trading Ordinance as a leveraged foreign exchange trader or representative; and

(*b*) deemed under section 22, 23, 24, 25, 27, 28, 29, 30, 31 or 32 to have been licensed or registered under Part V of this Ordinance,

any condition that has been attached or imposed by the Commission to the registration, exemption or licence referred to in paragraph (*a*) which is in force immediately before such commencement shall, upon such commencement, be deemed to have been imposed in respect of the licence or registration referred to in paragraph (*b*).

56. Where—

(*a*) approval for premises to be used for keeping records or documents has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance; and

(*b*) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under section 130(1) of this Ordinance.

57. Where—

(*a*) approval for a subordinated loan has been given by the Commission under the Financial Resources Rules (Cap. 24 sub. leg.) repealed under section 406 of this Ordinance or the Leveraged Foreign Exchange Trading (Financial Resources) Rules (Cap. 451 sub. leg.) repealed under section 406 of this Ordinance; and

(*b*) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under this Ordinance.

58. Where—

(*a*) approval to be a substantial shareholder has been given by the Commission under the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance; and

(*b*) the approval subsists immediately before the commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be deemed to have been granted under section 132 of this Ordinance.

59. Where—

(*a*) an application is made before the commencement of Part V of this Ordinance for approval to be a substantial shareholder under section 26A of the repealed Securities and Futures Commission Ordinance or section 14A of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(*b*) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application to become a substantial shareholder under section 132 of this Ordinance.

60. (1) Where—

(*a*) an application is made before the commencement of Part V of this Ordinance for—

(i) registration; or

(ii) a licence,

in any capacity specified in column 2 of the Table; and

(*b*) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement, be treated as an application for a licence as specified opposite thereto in column 3 of the Table, and the Commission shall be entitled to determine the application accordingly.

TABLE

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
1.	For registration as a dealer under the repealed Securities Ordinance, by—	
	(*a*) a corporation	(*a*) Under section 116(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
	(*b*) an individual	(*b*) Under section 120(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
2.	For registration as an investment adviser under the repealed Securities Ordinance, by—	
	(*a*) a corporation	(*a*) Under section 116(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
	(*b*) an individual	(*b*) Under section 120(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable
3.	For registration as a dealer's representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 1, Type 4, Type 6, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
4.	For registration as an investment representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities, or any one or more of them, as may be applicable
5.	For registration as a dealer under the repealed Commodities Trading Ordinance, by—	
	(*a*) a corporation	(*a*) Under section 116(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
	(*b*) an individual	(*b*) Under section 120(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
6.	For registration as a commodity trading adviser under the repealed Commodities Trading Ordinance, by—	
	(*a*) a corporation	(*a*) Under section 116(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
	(*b*) an individual	(*b*) Under section 120(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
7.	For registration as a dealer's representative under the repealed Commodities Trading Ordinance	Under section 120(1) of this Ordinance for Type 2, Type 5, Type 7 and Type 9 regulated activities, or any one or more of them, as may be applicable
8.	For registration as a commodity trading adviser's representative under the repealed Commodities Trading Ordinance	Under section 120(1) of this Ordinance for Type 5 and Type 9 regulated activities, or any one of them, as may be applicable
9.	For a licence as a leveraged foreign exchange trader under the repealed Leveraged Foreign Exchange Trading Ordinance	Under section 116(1) of this Ordinance for Type 3 regulated activity
10.	For a licence as a representative under the repealed Leveraged Foreign Exchange Trading Ordinance	Under section 120(1) of this Ordinance for Type 3 regulated activity
11.	For registration as a securities margin financier under the repealed Securities Ordinance	Under section 116(1) of this Ordinance for Type 8 regulated activity

Item	Application pending at commencement of Part V of this Ordinance	To be treated as application for a licence
12.	For registration as a securities margin financier's representative under the repealed Securities Ordinance	Under section 120(1) of this Ordinance for Type 8 regulated activity

(2) Where—

(*a*) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt dealer under the repealed Securities Ordinance; and

(*b*) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement—

(i) where the applicant is an authorized financial institution, be treated as an application under section 119(1) of this Ordinance for registration for Type 1, Type 4, Type 6 and Type 9 regulated activities; or

(ii) where the applicant is not an authorized financial institution, be treated as an application under section 116(1) of this Ordinance for Type 1, Type 4, Type 6 and Type 9 regulated activities.

(3) Where—

(*a*) an application is made before the commencement of Part V of this Ordinance for a declaration as an exempt investment adviser under the repealed Securities Ordinance; and

(*b*) immediately before such commencement the application has not been granted, refused or withdrawn,

the application shall, upon such commencement—

(i) where the applicant is an authorized financial institution, be treated as an application under section 119(1) of this Ordinance for registration for Type 4, Type 6 and Type 9 regulated activities; or

(ii) where the applicant is not an authorized financial institution, be treated as an application under section 116(1) of this Ordinance for Type 4, Type 6 and Type 9 regulated activities.

Part VI of this Ordinance (Capital requirements, client assets, records and audit relating to intermediaries)

61. Where—

(*a*) before the commencement of Part VI of this Ordinance, any power could have been, but was not, exercised under—

(i) section 52 or 53 of the repealed Commodities Trading Ordinance;

(ii) section 90, 91, 121AW or 121AX of the repealed Securities Ordinance; or

(iii) section 33 or 34 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(*b*) before such commencement any power has been exercised under any of the provisions referred to in paragraph (*a*)(i), (ii) and (iii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then—

(i) (A) where paragraph (*a*) applies, the power may be exercised; or

(B) where paragraph (*b*) applies, the exercise of the power shall continue to have force and effect,

as if this Ordinance had not been enacted; and

(ii) the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

Part VIII of this Ordinance (Supervision and investigations)

62. Where—

(*a*) before the commencement of Part VIII of this Ordinance, any power could have been, but was not, exercised under—

(i) section 29A, 30, 31, 33 or 36 of the repealed Securities and Futures Commission Ordinance; or

(ii) section 12, 41, 42, 44 or 47 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(*b*) before such commencement any power has been exercised under any of the provisions referred to in paragraph (*a*)(i) and (ii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then—

(i) (A) where paragraph (*a*) applies, the power may be exercised; or

(B) where paragraph (*b*) applies, the exercise of the power shall continue to have force and effect,

as if this Ordinance had not been enacted; and

(ii) the provisions of the repealed Securities and Futures Commission Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

63. Without prejudice to section 62, section 179 of this Ordinance applies even if—

(*a*) in the case of subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*) of that section 179, the matter described in such subsection as being suggested by the circumstances referred to in such subsection has occurred, or appears to the Commission as occurring, before the commencement of Part VIII of this Ordinance; or

(*b*) in the case of subsection (1)(*f*) of that section 179, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 of this Ordinance has occurred, or appears to the Commission as occurring, before such commencement.

Part IX of this Ordinance (Discipline, etc.)

64. Where—

(*a*) before the commencement of Part IX of this Ordinance, any power could have been, but was not, exercised under—

(i) section 35 or 36 of the repealed Commodities Trading Ordinance;

(ii) section 55, 56, 60(5), 61(2), 121R, 121S, 121T, 121U, 121V or 121X of the repealed Securities Ordinance; or

(iii) section 11 or 12 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(*b*) before such commencement any power has been exercised under any of the provisions referred to in paragraph (*a*)(i), (ii) and (iii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then—

(i) (A) where paragraph (*a*) applies, the power may be exercised; or

(B) where paragraph (*b*) applies, the exercise of the power shall continue to have force and effect,

as if this Ordinance had not been enacted; and

(ii) subject to section 66, the provisions of the repealed Commodities Trading Ordinance, the repealed Securities Ordinance or the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) and the repealed Securities and Futures Commission Ordinance (where applicable) shall continue to apply to the exercise of the power and to any appeals and other matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

65. Where—

(*a*) the exercise of any power under section 64 results in the revocation of any declaration of exemption or the revocation or suspension of any registration or licence of any person, or the suspension of any such registration or licence continues to have force and effect by virtue of that section; and

(*b*) the person has, by reason of the declaration or registration or licence referred to in paragraph (*a*), been deemed under any of the provisions of sections 22 to 37 to have been registered or licensed under this Ordinance,

the registration or licence of the person under this Ordinance shall, notwithstanding sections 22 to 37, be regarded as having been revoked or suspended (as the case may be) on the same terms and conditions on which the declaration or registration or licence referred to in paragraph (*a*) is revoked or suspended, and sections 200(1) to (3), 201(2) and (5), 202 and 203 of this Ordinance shall apply, with necessary modifications, in relation to the revocation or suspension as if it were a revocation or suspension under Part IX of this Ordinance.

66. Where, but for this section, the exercise of any power under section 64 would have been subject to appeal to the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance, an application for review to the Securities and Futures Appeals Tribunal, but not such appeal to the Securities and Futures Appeals Panel, may be made in respect of the exercise of the power and disposed of in all respects as if the exercise of the power were a specified decision as defined in section 215 of and section 1 of Schedule 8 to this Ordinance, and the other provisions of this Ordinance shall, with necessary modifications, apply accordingly.

Part X of this Ordinance (Powers of intervention and proceedings)

67. Where—

(*a*) before the commencement of Part X of this Ordinance, any power could have been, but was not, exercised under—

(i) section 39, 40, 41 or 43 of the repealed Securities and Futures Commission Ordinance; or

(ii) section 50, 51, 52 or 54 of the repealed Leveraged Foreign Exchange Trading Ordinance; or

(*b*) before such commencement any power has been exercised under any of the provisions referred to in paragraph (*a*)(i) and (ii), and the exercise of the power would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then—

(i) (A) where paragraph (*a*) applies, the power may be exercised; or

(B) where paragraph (*b*) applies, the exercise of the power shall continue to have force and effect,

as if this Ordinance had not been enacted; and

(ii) subject to section 68, the provisions of the repealed Securities and Futures Commission Ordinance or both the repealed Securities and Futures Commission Ordinance and the repealed Leveraged Foreign Exchange Trading Ordinance (as the case may be) shall continue to apply to the exercise of the power and to any appeals and other matters relating thereto (including any further exercise of power) as if this Ordinance had not been enacted.

68. Where, but for this section, the exercise of any power under section 67 would have been subject to appeal to the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance, an application for review to the Securities and Futures Appeals Tribunal, but not such appeal to the Securities and Futures Appeals Panel, may be made in respect of the exercise of the power and disposed of in all respects as if the exercise of the power were a specified decision as defined in section 215 of and section 1 of Schedule 8 to this Ordinance, and the other provisions of this Ordinance shall, with necessary modifications, apply accordingly.

69. Section 214 of this Ordinance applies even if the conduct of business or affairs in question has occurred, or appears to the Commission as occurring, before the commencement of Part X of this Ordinance.

Part XI of this Ordinance (Securities and Futures Appeals Tribunal)

70. Where a person has made an appeal to the Securities and Futures Appeals Panel before the commencement of Part XI of this Ordinance under—

(*a*) Part III of the repealed Securities and Futures Commission Ordinance; or

(*b*) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

and the appeal has not been finally determined before such commencement, the appeal may be continued and disposed of in all respects (and, without limiting the generality of the foregoing, any power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of a tribunal appointed under any of the provisions referred to in paragraphs (*a*) and (*b*) may be exercised for the purposes of the appeal) as if this Ordinance had not been enacted.

71. Where—

(*a*) before the commencement of Part XI of this Ordinance an appeal has not been made to the Securities and Futures Appeals Panel under—

(i) Part III of the repealed Securities and Futures Commission Ordinance; or

(ii) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance; and

(*b*) the time within which the appeal may be made under such Part is running and has not expired upon such commencement,

the appeal may be made to the Securities and Futures Appeals Panel and disposed of in all respects (and, without limiting the generality of the foregoing, any power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of a tribunal appointed under any of the provisions referred to in paragraph (*a*)(i) and (ii) may be exercised for the purposes of the appeal) as if this Ordinance had not been enacted.

72. Where, by virtue of section 70 or 71, any appeal is or is to be made or continued, and disposed of, under—

(*a*) Part III of the repealed Securities and Futures Commission Ordinance; or

(*b*) Part IX of the repealed Leveraged Foreign Exchange Trading Ordinance,

then, without limiting the generality of sections 70 and 71 (including the exercise of the power to appoint any person as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel established by section 18 of the repealed Securities and Futures Commission Ordinance or as a member of a tribunal appointed under any of the provisions referred to in paragraphs (*a*) and (*b*))—

(i) any person who immediately before the commencement of Part XI of this Ordinance holds any office as a member (whether as the chairman, deputy chairman or other member) of the Securities and Futures Appeals Panel or as a member of the tribunal to determine the appeal shall, for the purposes of the appeal, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and

(ii) the Securities and Futures Appeals Panel and the tribunal shall, for the purposes of the appeal, continue in existence as if this Ordinance had not been enacted.

Part XII of this Ordinance (Investor compensation)

73. (1) In sections 74 to 76—

"Futures Exchange Compensation Fund" (期交所賠償基金) and "Unified Exchange Compensation Fund" (聯交所賠償基金) have the meanings respectively assigned to them in section 235 of this Ordinance;

"repealed Commodities Trading Rules" (已廢除的《商品交易規則》) means the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap. 250 sub. leg.) repealed under section 406 of this Ordinance;

"repealed Contract Levy Rules" (已廢除的《合約徵費規則》) means the Commodities Trading (Contract Levy) Rules (Cap. 250 sub. leg.) repealed under section 406 of this Ordinance;

"repealed Securities Rules" (已廢除的《證券規則》) means the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) repealed under section 406 of this Ordinance.

(2) For the avoidance of doubt, it is hereby declared that nothing in sections 74 to 76 shall be construed as enabling a claim to be made which is barred under any enactment or rule of law.

Unified Exchange Compensation Fund

74. (1) Despite the repeals effected by section 406 of this Ordinance, Part X of the repealed Securities Ordinance shall, subject to this section, continue to apply to and in relation to—

(*a*) any claim for compensation from the Unified Exchange Compensation Fund made under that Part before the appointed day; or

(*b*) any default occurring before the appointed day,

as if that section had not been enacted, subject to the following modifications—

(i) section 112 of that Part X shall cease to apply as from the appointed day;

(ii) for any reference to the Unified Exchange, there shall be substituted a reference to a recognized stock market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Stock Exchange Company within the meaning of this Ordinance;

(iv) the expression "dealing in securities" shall be construed in accordance with Part 2 of Schedule 5 to this Ordinance; and

(v) the expressions "exchange participant", "listed", "securities" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Unified Exchange Compensation Fund as it considers appropriate, having regard to—

(*a*) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund; and

(*b*) the amounts deposited in cash under section 104 of the repealed Securities Ordinance, which have not previously been reimbursed under this section.

(3) Where the Commission considers that the amount at credit in the Unified Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance.

(4) As soon as reasonably practicable after the appointed day, the Stock Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Unified Exchange Compensation Fund may be made by any person.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Unified Exchange Compensation Fund, he shall lodge his claim in writing with the Stock Exchange Company—

(*a*) if a notice under subsection (4) has been published, on or before the date specified in the notice; or

(*b*) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under section 109 of the repealed Securities Ordinance and other provisions of Part X of that Ordinance shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Stock Exchange Company otherwise determines, be barred.

(8) After—

(*a*) all claims made or continued under this section have been disposed of; and

(*b*) all outstanding liabilities against the Unified Exchange Compensation Fund have been satisfied,

the Commission shall apply any balance remaining in the Fund in accordance with subsection (9).

(9) Any balance mentioned in subsection (8) shall—

(*a*) be used to reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance, which have not previously been reimbursed under this section; and

(*b*) if there is any remaining balance, be paid into the compensation fund.

(10) Upon any reimbursement referred to in subsection (3) or (9)(*a*), the amount of the reimbursement shall form part of the assets of the Stock Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

(11) Where a claim for compensation from the Unified Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (9).

(12) Except as provided in this section, no claim for compensation from the Unified Exchange Compensation Fund may be made after the appointed day.

(13) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(14) In this section—

"appointed day" (指定日期) means the date appointed under subsection (13);

"default" (違責) means an act referred to in section 109(1) of the repealed Securities Ordinance.

Futures Exchange Compensation Fund

75. (1) Despite the repeals effected by section 406 of this Ordinance, Part VIII of the repealed Commodities Trading Ordinance and the repealed Contract Levy Rules shall, subject to this section, continue to apply to and in relation to—

(*a*) any claim for compensation from the Futures Exchange Compensation Fund made under that Part before the appointed day; or

(*b*) any default occurring before the appointed day,

as if that section had not been enacted, subject to the following modifications—

(i) section 89 of that Part VIII shall cease to apply as from the appointed day;

(ii) for any reference to the Commodity Exchange, there shall be substituted a reference to a recognized futures market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Futures Exchange Company within the meaning of this Ordinance; and

(iv) the expressions "exchange participant", "futures contracts" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Futures Exchange Compensation Fund as it considers appropriate, having regard to—

(*a*) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund; and

(*b*) the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, which have not previously been reimbursed under this section.

(3) Where the Commission considers that the amount at credit in the Futures Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance.

(4) As soon as reasonably practicable after the appointed day, the Futures Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Futures Exchange Compensation Fund may be made by any person.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Futures Exchange Compensation Fund, he shall lodge his claim in writing with the Futures Exchange Company—

(*a*) if a notice under subsection (4) has been published, on or before the date specified in the notice; or

(*b*) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under section 87 of the repealed Commodities Trading Ordinance and other provisions of Part VIII of that Ordinance shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Futures Exchange Company otherwise determines, be barred.

(8) After—

(*a*) all claims made or continued under this section have been disposed of; and

(*b*) all outstanding liabilities against the Futures Exchange Compensation Fund have been satisfied,

the Commission shall apply any balance remaining in the Fund in accordance with subsection (9).

(9) Any balance mentioned in subsection (8) shall—

(*a*) be used to reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, which have not previously been reimbursed under this section; and

(*b*) if there is any remaining balance, be paid into the compensation fund.

(10) Upon any reimbursement referred to in subsection (3) or (9)(*a*), the amount of the reimbursement shall form part of the assets of the Futures Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

(11) Where a claim for compensation from the Futures Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (9).

(12) Except as provided in this section, no claim for compensation from the Futures Exchange Compensation Fund may be made after the appointed day.

(13) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(14) In this section—

"appointed day" (指定日期) means the date appointed under subsection (13);

"default" (違責) means a default referred to in section 87(1) of the repealed Commodities Trading Ordinance.

Dealers Deposit Scheme

76. (1) Despite the repeals effected by section 406 of this Ordinance—

(*a*) sections 52 (except subsections (1), (1A) and (6)) and 52A of the repealed Securities Ordinance;

(*b*) rules 2, 4, 5 and 6 (other than rule 6(4)) of the repealed Securities Rules;

(*c*) section 33 of the repealed Commodities Trading Ordinance; and

(*d*) Part III (other than rule 15(5)) of the repealed Commodities Trading Rules,

shall, subject to this section, continue to apply for the purposes of this section as if that section 406 had not been enacted.

(2) Where, prior to the appointed day—

(*a*) there arises any of the circumstances described in section 52(2) or (11) of the repealed Securities Ordinance or section 33(1) or (11) of the repealed Commodities Trading Ordinance; and

(*b*) no transfer, payment, forfeiture or application for release of the deposit (as the case may be) paid or deposited by the dealer concerned has been made pursuant to either of those sections,

then such transfer, payment, forfeiture or application for release and any subsequent application of such deposit may be made under the applicable provisions specified in subsection (1).

(3) A claim for compensation made before the appointed day in respect of a default occurring prior to that day that has not been disposed of may be continued and disposed of under subsection (1).

(4) As soon as reasonably practicable after the appointed day, the Commission shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation against the deposit forfeited under section 52(2)(*c*) of the repealed Securities Ordinance or section 33(1)(*c*) of the repealed Commodities Trading Ordinance may be made.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation against any deposit referred to in subsection (4), he shall lodge his claim in writing with the Commission—

(*a*) if a notice under subsection (4) has been published, on or before the date specified in the notice; or

(*b*) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under rule 6(5) of the repealed Securities Rules or rule 15(6) of the repealed Commodities Trading Rules (as the case may be), and other provisions of the Rules shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Commission otherwise determines, be barred.

(8) Where a claim made or continued under this section is not allowed or the amount or amounts determined to be payable as compensation do not exceed the amount of the deposit, the Commission shall repay the deposit to which the claim relates or the remaining balance of the deposit (as the case may be) to the dealer concerned.

(9) Where—

(*a*) a deposit made under section 52 of the repealed Securities Ordinance or section 31 of the repealed Commodities Trading Ordinance has not been or is not required to be disposed of under the Ordinance; and

(*b*) the deposit is not required to be disposed of under this section,

the Commission shall repay the deposit to the dealer concerned.

(10) Where a claim made or continued under this section is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall repay the amount to the dealer concerned.

(11) Where—

(*a*) a deposit or its remaining balance is required to be repaid to a dealer under subsection (8) or (9) or any amount is required to be repaid to a dealer under subsection (10); but

(*b*) the Commission is unable to locate the dealer for the purpose of repayment during the period of 3 years beginning with—

(i) in the case of subsection (8), the date of the determination of the claim;

(ii) in the case of subsection (9), the appointed day; or

(iii) in the case of subsection (10), the end of the 3-year period referred to in that subsection,

the Commission shall pay the deposit or the remaining balance or the amount (as the case may be) to the compensation fund.

(12) Except as provided in this section, no claim for compensation may be made against any deposit forfeited under section 52(2)(*c*) of the repealed Securities Ordinance or section 33(1)(*c*) of the repealed Commodities Trading Ordinance after the appointed day.

(13) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(14) In this section—

"appointed day" (指定日期) means the date appointed under subsection (13);

"default" (違責) means a default referred to in rule 6(2) of the repealed Securities Rules or rule 15(2) of the repealed Commodities Trading Rules.

Part XIII of this Ordinance (Market Misconduct Tribunal)

77. Where—

(*a*) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing within the meaning of the repealed Securities (Insider Dealing) Ordinance; and

(*b*) the insider dealing has taken place before the commencement of Part XIII of this Ordinance,

and the Financial Secretary has before the commencement of Part XIII of this Ordinance instituted an inquiry with reference to the insider dealing under section 16(2) of the repealed Securities (Insider Dealing) Ordinance, then the repealed Securities (Insider Dealing) Ordinance shall continue to have application in connection with the insider dealing and with any inquiry, appeal, and other matters relating thereto (including, without limiting the generality of the foregoing, the exercise of any power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance for the purposes of any inquiry relating thereto) as if this Ordinance had not been enacted.

78. Where—

(*a*) the repealed Securities (Insider Dealing) Ordinance would but for the enactment of this Ordinance have effect with respect to an insider dealing within the meaning of the repealed Securities (Insider Dealing) Ordinance; and

(*b*) the insider dealing has in whole or in part taken place before the commencement of Part XIII of this Ordinance,

but the Financial Secretary has not before the commencement of Part XIII of this Ordinance instituted an inquiry with reference to the insider dealing under section 16(2) of the repealed Securities (Insider Dealing) Ordinance, then the repealed Securities (Insider Dealing) Ordinance shall continue to have application in connection with the insider dealing and with any inquiry, appeal, and other matters relating thereto (including, without limiting the generality of the foregoing, the exercise of any power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance for the purposes of any inquiry relating thereto) as if—

(i) this Ordinance had not been enacted; and

(ii) the repealed Securities (Insider Dealing) Ordinance had been amended in the manner described in section 80.

79. For the purposes of section 78, where—

(*a*) a series of conduct has taken place, partly before the commencement of Part XIII of this Ordinance, and partly on or after such commencement;

(*b*) apart from this section, such series of conduct—

(i) by reason of the part that has taken place before the commencement of Part XIII of this Ordinance, would constitute one or more insider dealing taking place under the repealed Securities (Insider Dealing) Ordinance by reference to information which constitutes relevant information within the meaning of section 9(1)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*) or (2) of the repealed Securities (Insider Dealing) Ordinance; and

(ii) by reason of the part that has taken place on or after the commencement of Part XIII of this Ordinance, would but for the enactment of this Ordinance also constitute one or more insider dealing taking place under the repealed Securities (Insider Dealing) Ordinance by reference to information which constitutes relevant information within the meaning of section 9(1)(*a*), (*b*), (*c*), (*d*), (*e*) or (*f*) or (2) of the repealed Securities (Insider Dealing) Ordinance; and

(*c*) the information referred to in paragraph (*b*)(i) and (ii) is the same or substantially the same information,

the series of conduct shall be regarded as constituting an insider dealing within the meaning of section 78 which has in part taken place before the commencement of Part XIII of this Ordinance.

80. Where section 78 applies, the repealed Securities (Insider Dealing) Ordinance shall apply as if it had been amended—

(*a*) by adding—

"**27A. Recommendations to Financial Secretary to institute inquiry**

At the conclusion of any inquiry or as soon as is reasonably practicable thereafter, where it appears to the Tribunal that insider dealing has taken place or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, recommend the Financial Secretary to institute an inquiry under section 16 to inquire into the matter.";

(*b*) in the Schedule, in paragraph 17, by adding ", at the first sitting of the Tribunal relating to the inquiry," after "shall determine".

81. Where, by virtue of section 77 or 78, any inquiry is or is to be instituted or continued, and disposed of, under the repealed Securities (Insider Dealing) Ordinance, then, without limiting the generality of sections 77 and 78 (including the exercise of the power to appoint any person as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal referred to in section 15 of that Ordinance)—

(*a*) any person who immediately before the commencement of Part XIII of this Ordinance holds any office as a member (whether as the chairman or other member) or as a temporary member of the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue to hold the same office on the same terms and conditions as if this Ordinance had not been enacted; and

(*b*) the Insider Dealing Tribunal shall, for the purposes of the inquiry, continue in existence as if this Ordinance had not been enacted.

Part XV of this Ordinance (Disclosure of Interests)

82. The repeal of the Securities (Disclosure of Interests) Ordinance (Cap. 396) shall not affect any duty of disclosure or duty to give notification that has arisen under that Ordinance, and such duty shall be performed in accordance with that Ordinance as if this Ordinance had not been enacted, whether or not—

(*a*) a duty of disclosure or duty to give notification in respect of the same subject matter (or part thereof) has arisen under this Ordinance; or

(*b*) the duty referred to in paragraph (*a*) has been performed in accordance with this Ordinance.

83. Any exemption that is granted under section 2A of the repealed Securities (Disclosure of Interests) Ordinance and is in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect and be deemed to have been granted, subject to the same conditions as were applicable had this Ordinance not been enacted, under section 309 of this Ordinance.

84. Where an application has been made under the repealed Securities (Disclosure of Interests) Ordinance but has not been finally determined before the commencement of Part XV of this Ordinance, the application shall, upon such commencement, continue to be dealt with in accordance with that Ordinance as if this Ordinance had not been enacted.

85. Any restrictions imposed, or any orders made, by the court or the Financial Secretary (as the case may be) under the repealed Securities (Disclosure of Interests) Ordinance and are in effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, continue to have effect as if this Ordinance had not been enacted.

86. Where an investigation is carried out under the repealed Securities (Disclosure of Interests) Ordinance but has not been concluded before the commencement of Part XV of this Ordinance—

(*a*) any power that is exercisable under that Ordinance for the purposes of the investigation shall, upon such commencement, remain exercisable as if this Ordinance had not been enacted; and

(*b*) the provisions of the repealed Securities (Disclosure of Interests) Ordinance shall continue to apply to the exercise of the power and to any other matters relating thereto as if this Ordinance had not been enacted.

87. Any register (including any part of it and any index) or report that is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, be regarded as kept under this Ordinance and, subject to section 88, the relevant provisions of this Ordinance relating to the keeping and inspection of such register or report (as the case may be) shall apply, and the penalty for non-compliance with such provisions may be imposed, accordingly.

88. Where a register (including any part of it and any index) or report is kept or maintained under the repealed Securities (Disclosure of Interests) Ordinance immediately before the commencement of Part XV of this Ordinance, and such register or report is required to be kept, or any entry of such register is not to be removed, under that Ordinance until the elapse of 6 years, the 6-year period shall be computed in accordance with the relevant provisions of that Ordinance as if this Ordinance had not been enacted.

General

89. Where any rules have been published in the Gazette for the purposes of section 28(2) of the Interpretation and General Clauses Ordinance (Cap. 1), as rules made by the Commission under any provision of this Ordinance, after the enactment of this Ordinance but before the commencement of Part XVI of this Ordinance, section 398(1) to (3) of this Ordinance shall for all purposes be deemed to have been complied with in relation to those rules.

90. For the purposes of section 399 of this Ordinance—

(*a*) the code published by the Commission as the Code on Takeovers and Mergers and in use immediately before the commencement of Part XVI of this Ordinance; and

(*b*) the code published by the Commission as the Code on Share Repurchases and in use immediately before such commencement,

shall upon such commencement be regarded as the codes published under section 399(2)(*a*) and (*b*) respectively of this Ordinance, and the provisions of this Ordinance shall apply to the codes accordingly.

91. Where—

(*a*) any provision of an Ordinance repealed under section 406 of this Ordinance provides for the issue, giving or service to, on or by the Commission of any document (whether described as a notice or otherwise) or information;

(*b*) the document or information has been issued, given or served to, on or by the Commission under or pursuant to the provision; and

(*c*) any provision in this Ordinance also provides for the issue, giving or service to, on or by the Commission of the document or information,

the document or information shall be deemed to have been issued, given or served to, on or by the Commission under or pursuant to such provision in this Ordinance.

92. Where—

(*a*) any period of time specified for the purposes of any provision ("repealed provision") of an Ordinance repealed under section 406 of this Ordinance is running at the time of the repeal of the repealed provision; and

(*b*) there is a provision ("corresponding provision") in this Ordinance which in the opinion of the Commission corresponds to the repealed provision,

then, in reckoning the period of time for the purposes of the corresponding provision, this Ordinance shall have effect on the basis that—

(i) the period of time specified for the purposes of the repealed provision is to apply, whether or not any other period of time is specified for the purposes of the corresponding provision; and

(ii) subject to paragraph (i), the corresponding provision had come into operation when the period of time, which is to apply under paragraph (i), began to run.

93. Except as otherwise provided in this Part, any judicial proceedings commenced under, or by virtue of the performance of any function conferred by, any provision of an Ordinance repealed under section 406 of this Ordinance, and pending or otherwise not finally determined at the time of the repeal of the provision may after the repeal be continued and disposed of in all respects as if this Ordinance had not been enacted.

PART 2

CONSEQUENTIAL AND SUPPLEMENTAL AMENDMENTS

Item	Enactment	Amendment
1.	Specification of Public Offices (Cap. 1 sub. leg.)	In the Schedule— (*a*) repeal— "Commissioner for Commodities Trading — Commodities Trading Ordinance (Chapter 250)."; (*b*) repeal— "Commissioner for Securities — Securities Ordinance (Chapter 333).".
2.	Trustee Ordinance (Cap. 29)	In the Second Schedule— (*a*) repeal paragraph 1(*a*)(i) and substitute— "(i) the shares are listed on a recognized stock market or specified stock exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);"; (*b*) in paragraph 2(*c*), repeal "Part III of the Schedule to the Protection of Investors Ordinance (Cap. 335)" and substitute "Part 4 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)"; (*c*) repeal paragraph 3 and substitute— "3. Any unit trust or mutual fund authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (5 of 2002)."; (*d*) in paragraph 7— (i) repeal "market listed in Schedule 5 to the Financial Resources Rules (Cap. 24 sub. leg.)" and substitute "recognized stock market, specified stock exchange, recognized futures market or specified futures exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)";

Item	Enactment	Amendment
		(ii) in subparagraph (*b*), repeal "an investment adviser (as defined in section 2 of the Securities Ordinance (Cap. 333)) or of a commodity trading adviser (as defined in section 2 of the Commodities Trading Ordinance (Cap. 250))" and substitute "a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in advising on securities, advising on futures contracts, advising on corporate finance or asset management under Part V of the Securities and Futures Ordinance (5 of 2002)"; (*e*) in paragraph 8— (i) repeal the definition of "exempted body" and substitute— " "exempted body" (豁免團體) means a body specified in Part 3 of Schedule 4 to the Securities and Futures Ordinance (5 of 2002) but does not include a body referred to in item 11 of that Part;"; (ii) repeal the definition of "Unified Exchange".
3.	Companies Ordinance (Cap. 32)	(*a*) In section 2(1)— (i) repeal the definition of "Commission" and substitute— " "Commission" (監察委員會) means— (*a*) subject to paragraphs (*b*) and (*c*), the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (5 of 2002); (*b*) where any relevant transfer order made under section 25 of that Ordinance is in force, the recognized exchange company concerned or both the Securities and Futures Commission and the recognized exchange company concerned, in accordance with the provisions of that order; or (*c*) where any relevant transfer order made under section 68 of that Ordinance is in force, the recognized exchange controller concerned or both the Securities and Futures Commission and the recognized exchange controller concerned, in accordance with the provisions of that order;"; (ii) repeal the definition of "Exchange Company" and substitute— " "recognized exchange company" (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (5 of 2002) as an exchange company for operating a stock market;";

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(iii) in the definition of "listed company", repeal "the Unified Exchange" and substitute "a recognized stock market";

(iv) repeal the definition of "Unified Exchange" and substitute—

" "recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);";

(v) in the definition of "unlisted company", repeal "the Unified Exchange" and substitute "a recognized stock market";

(vi) add—

" "recognized exchange controller" (認可控制人) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);".

(*b*) In section 38(5)(*b*), repeal "the Unified Exchange" and substitute "a recognized stock market".

(*c*) In section 38B(2)(*c*), repeal "section 4(2)(*g*) of the Protection of Investors Ordinance (Cap. 335)" and substitute "section 105 of the Securities and Futures Ordinance (5 of 2002)".

(*d*) Repeal section 38D(2)(*a*) and substitute—

"(*a*) on the face of it, state that a copy has been registered as required by this section and immediately after such statement—

(i) state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus;

(ii) where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (5 of 2002), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus; or

(iii) where the prospectus is or is to be authorized for issue by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, state that neither the Commission nor the recognized exchange controller nor the Registrar takes any responsibility as to the contents of the prospectus;".

(*e*) Repeal section 40(1A) and substitute—

"(1A) Subsection (1)(*d*) shall not apply—

(*a*) to the Commission;

(*b*) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (5 of 2002), to the Commission or the recognized exchange company; or

Item Enactment Amendment

(*c*) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller.".

(*f*) Repeal section 40A(3) and substitute—

"(3) Subsection (1) shall not apply—

(*a*) to the Commission;

(*b*) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (5 of 2002), to the Commission or the recognized exchange company; or

(*c*) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller.".

(*g*) In section 49B(5), repeal "the Unified Exchange" and substitute "a recognized stock market".

(*h*) In section 49BA—

(i) in subsections (1)(*b*) and (*c*) and (2)(*b*)—

(A) repeal "the Unified Exchange" and substitute "a recognized stock market";

(B) repeal "a recognized stock exchange" and substitute "an approved stock exchange";

(ii) in subsection (8), repeal "registered or exempt investment adviser within the meaning of the Securities Ordinance (Cap. 333)" and substitute "corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in advising on securities or advising on corporate finance under Part V of the Securities and Futures Ordinance (5 of 2002)";

(iii) in subsection (9), repeal the definition of "recognized stock exchange" and substitute—

" "approved stock exchange" (核准證券交易所) means a stock exchange approved, by notice published in the Gazette, for the purposes of this section by—

(*a*) the Commission; and

(*b*) the recognized exchange company that operates the recognized stock market on which the shares concerned are listed;".

(*i*) In section 71A—

(i) in subsections (3) and (4)(*a*), repeal "Unified Exchange" and substitute "recognized stock market concerned";

(ii) in subsection (5)—

(A) repeal "The Unified Exchange" and substitute "Each recognized stock market";

(B) repeal "the exchange" and substitute "it";

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(iii) in subsection (8), repeal "Unified Exchange" and substitute "recognized stock market concerned";

(iv) in subsection (12), in the definition of "company", repeal "the Unified Exchange" and substitute "a recognized stock market".

(*j*) In section 114A(2)(*a*), repeal "the Unified Exchange" and substitute "a recognized stock market".

(*k*) In section 115(1A), repeal "section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)".

(*l*) In section 141D(3)(*c*), repeal "a dealer registered under the Securities Ordinance (Cap. 333)" and substitute "a corporation licensed under Part V of the Securities and Futures Ordinance (5 of 2002) to carry on a business in any regulated activity within the meaning of that Ordinance".

(*m*) In section 153(2), repeal "the Unified Exchange" and substitute "a recognized stock market".

(*n*) In section 154A(3), repeal "the Unified Exchange" and substitute "a recognized stock market".

(*o*) In section 155A(1)(*a*), repeal "the Unified Exchange" and substitute "a recognized stock market".

(*p*) In section 157H(1) (in the definition of "company", in paragraph (*b*)(ii)) and (9)(*a*), repeal "the Unified Exchange" and substitute "a recognized stock market".

(*q*) Repeal section 168R(5) and substitute—

"(5) For the purposes of this section—

"court" (法院) includes—

(*a*) a magistrate;

(*b*) a Tribunal within the meaning of section 2 of the repealed Ordinance; and

(*c*) the Market Misconduct Tribunal within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);

"disqualification order" (取消資格令) means an order of the court under—

(*a*) section 168E, 168F, 168G, 168H, 168J or 168L;

(*b*) section 23(1)(*a*) or 24(1) of the repealed Ordinance; or

(*c*) section 214(2)(*d*), 257(1)(*a*), 258(1) or 303(2)(*a*) of the Securities and Futures Ordinance (5 of 2002);

"repealed Ordinance" (已廢除條例) means the Securities (Insider Dealing) Ordinance (Cap. 395) repealed under the Securities and Futures Ordinance (5 of 2002).".

(*r*) In section 333(2)(*a*) and (*aa*), repeal "the Unified Exchange" and substitute "a recognized stock market".

(*s*) In section 342(5)(*b*), repeal "the Unified Exchange" and substitute "a recognized stock market".

Item	Enactment	Amendment
		(*t*) In section 342B(1A)(*a*), repeal "shares in a body corporate authorized as a mutual fund corporation under section 15 of the Securities Ordinance (Cap. 333)" and substitute "interests in a mutual fund authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (5 of 2002)".
		(*u*) Repeal section 342F(3) and substitute— "(3) Subsection (1) shall not apply— (*a*) to the Commission; (*b*) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (5 of 2002), to the Commission or the recognized exchange company; or (*c*) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller.".
		(*v*) Repeal section 345(2)(*c*).
		(*w*) In the Ninth Schedule, in Part 1, in paragraphs 1 and 2, repeal "the Unified Exchange" and substitute "a recognized stock market".
		(*x*) In the Tenth Schedule, in paragraphs 9(3) and 31(*a*), repeal "the Unified Exchange" and substitute "a recognized stock market".
		(*y*) In the Sixteenth Schedule, in Part I, repeal items 3, 4, 5, 6 and 7 and substitute— "3. A corporation licensed under Part V of the Securities and Futures Ordinance (5 of 2002) to carry on a business in any regulated activity within the meaning of Schedule 5 to that Ordinance and an associated entity of the corporation within the meaning of Part VI of that Ordinance.".
4.	Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg.)	(*a*) Repeal section 3(1)(*aa*) and substitute— "(*aa*) where a disqualification order is made by the Tribunal within the meaning of section 2 of the repealed Ordinance (within the meaning of section 168R(5) of the Ordinance) or the Market Misconduct Tribunal within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002), the clerk to the Tribunal concerned, except that, where there is no clerk to the first-mentioned Tribunal, then the clerk to the second-mentioned Tribunal;".
		(*b*) In Schedule 1, in Form D.O. 1, in item (1)— (i) repeal "or Securities (Insider Dealing) Ordinance ("SIDO")" and substitute ", the repealed Securities (Insider Dealing) Ordinance ("SIDO") or the Securities and Futures Ordinance ("SFO")";

Item	Enactment	Amendment

(ii) add at the end of the table—

"

Section 214(2)(*d*) of SFO	
Section 257(1)(*a*) of SFO	
Section 258(1) of SFO	
Section 303(2)(*a*) of SFO	

".

(*c*) In Schedule 3, in Form D.O. 3, repeal "or the Securities (Insider Dealing) Ordinance (Cap. 395)" and substitute ", the repealed Securities (Insider Dealing) Ordinance (Cap. 395) or the Securities and Futures Ordinance (5 of 2002)".

5. Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg.)

(*a*) Repeal section 2 and substitute—

"**2. Interpretation**

In this Notice—

"GEM" (創業板) means the recognized stock market called the Growth Enterprise Market;

"listing rules" (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (5 of 2002) by a recognized exchange company that governs the listing of securities on a stock market it operates.".

(*b*) In section 4—

(i) in subsections (1)(*b*) and (2)(*b*), repeal "the Unified Exchange for listing on the Unified Exchange or on GEM" and substitute "a recognized exchange company for listing on a stock market it operates";

(ii) in subsection (3)(*a*), repeal "SEHK Listing Rules or the GEM Listing Rules" and substitute "listing rules applicable to the stock market referred to in subsection (1)(*b*) or (2)(*b*)".

(*c*) In section 5(1)(*b*) and (2)(*b*), repeal "Unified Exchange" and substitute "recognized exchange company that operates GEM".

(*d*) In section 6—

(i) in subsections (1)(*b*) and (2)(*b*), repeal "the Unified Exchange for listing on the Unified Exchange or on GEM" and substitute "a recognized exchange company for listing on a stock market it operates";

(ii) in subsection (3)—

(A) in paragraph (*a*), repeal "SEHK Listing Rules or the GEM Listing Rules" and substitute "listing rules applicable to the stock market referred to in subsection (1)(*b*) or (2)(*b*)";

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		(B) in paragraph (*c*)(i), repeal "Unified Exchange" and substitute "recognized exchange company referred to in subsection (1)(*b*) or (2)(*b*), as the case may be".
6.	Insurance Companies Ordinance (Cap. 41)	(*a*) In section 51— (i) repeal paragraph (*h*) and substitute— "(*h*) a recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002) only to the extent that it guarantees the settlement of transactions in securities or futures contracts as defined in that section;"; (ii) add— "(*i*) a person who is authorized under Part III of the Securities and Futures Ordinance (5 of 2002) to provide automated trading services within the meaning of Schedule 5 to that Ordinance only to the extent that it guarantees the settlement of transactions in securities or futures contracts as defined in section 1 of Part 1 of Schedule 1 to that Ordinance.". (*b*) In section 53A(3B)(*b*), repeal "established under the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance (5 of 2002)". (*c*) In the Eighth Schedule— (i) in paragraph 1(*i*), repeal ""unit trust" (單位信託), as defined in the Securities Ordinance (Cap. 333)," and substitute "unit trust"; (ii) add— "2. For the purpose of paragraph 1(*i*), "unit trust" (單位信託) means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.".
7.	Insurance Companies (General Business) (Valuation) Regulation (Cap. 41 sub. leg.)	In section 2, in the definition of "listed"— (*a*) repeal "the Unified Exchange as defined in the Stock Exchange Unification Ordinance (Cap. 361)" and substitute "a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)"; (*b*) repeal "of the Unified Exchange" and substitute "of such a recognized stock market".
8.	Control of Exemption Clauses Ordinance (Cap. 71)	In Schedule 1, in paragraph 1(*f*)— (*a*) repeal "participant within the meaning of section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "clearing participant within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)"; (*b*) in sub-subparagraph (ii), add "該" before "參".

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9.	Commodity Exchanges (Prohibition) Ordinance (Cap. 82)	In section 3— (*a*) repeal paragraph (*e*) and substitute— "(*e*) a recognized futures market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);"; (*b*) add— "(*f*) any activity which under section 19(9) of the Securities and Futures Ordinance (5 of 2002) shall not be regarded as contravening section 19(1)(*b*) of that Ordinance.".
10.	Telecommunications Ordinance (Cap. 106)	Repeal section 13J(4)(*b*)(iii) and substitute— "(iii) an exchange participant as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002), or a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in dealing in securities or securities margin financing under Part V of that Ordinance,".
11.	Estate Duty Ordinance (Cap. 111)	(*a*) In section 3(1)— (i) in the definition of "settlement", repeal the semicolon and substitute a full stop; (ii) repeal the definition of "Unified Exchange" and substitute— ""recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002); ". (*b*) In section 34(5)(*b*), repeal "the Unified Exchange and the shares were quoted in any list of that exchange" and substitute "a recognized stock market and the shares were quoted in any list of that market". (*c*) In section 44(4), repeal "the Unified Exchange in the ordinary course of business on that exchange" and substitute "a recognized stock market in the ordinary course of business on that market".
12.	Inland Revenue Ordinance (Cap. 112)	(*a*) In section 15E— (i) in subsection (8)— (A) in the definition of "borrower", "borrowed stock", "lender", "specified purpose", "stock borrowing", "stock borrowing and lending agreement", "stock return" and "Unified Exchange"— (I) after ""lender" (借出人)", add ", "recognized stock market" (認可證券市場)"; (II) repeal ", "stock return" (證券交還) and "Unified Exchange" (聯合交易所)" and substitute "and "stock return" (證券交還)"; (B) in the definition of "specified securities", repeal "the Unified Exchange" and substitute "a recognized stock market"; (ii) in subsection (9), repeal "the Unified Exchange" and substitute "a recognized stock market". (*b*) In section 16(2)(*f*)(ii)(B), repeal "section 4(2)(*g*) of the Protection of Investors Ordinance (Cap. 335)" and substitute "section 105 of the Securities and Futures Ordinance (5 of 2002)".

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(*c*) In section 20AA(6)—

(i) repeal the definition of "approved investment adviser" and substitute—

"“approved investment adviser” (認可投資顧問) means—

(*a*) a corporation licensed to carry on a business in advising on securities or asset management under Part V of the Securities and Futures Ordinance (5 of 2002); or

(*b*) an authorized financial institution registered for carrying on such a business under that Part, only to the extent that the institution carries on such a business;";

(ii) repeal the definition of "broker" and substitute—

"“broker” (經紀) means—

(*a*) a corporation licensed to carry on a business in dealing in securities under Part V of the Securities and Futures Ordinance (5 of 2002); or

(*b*) an authorized financial institution registered for carrying on such a business under that Part, only to the extent that the institution carries on such a business;".

(*d*) In section 26A—

(i) in subsection (1A)—

(A) repeal paragraph (*a*)(i) to (v) and substitute—

"(i) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment scheme that is authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (5 of 2002); or

(ii) a person chargeable to tax under this Part in respect of a mutual fund, unit trust or similar investment scheme where the Commissioner is satisfied that the mutual fund, unit trust or investment scheme is a bona fide widely held investment scheme which complies with the requirements of a supervisory authority within an acceptable regulatory regime.";

(B) in paragraph (*b*)(i)—

(I) in sub-subparagraph (A), repeal "or (ii)";

(II) in sub-subparagraph (B), repeal "(iii), (iv) or (v)" and substitute "(ii)";

(C) in paragraph (*b*)(ii)—

(I) in sub-subparagraph (A), repeal "or (ii)";

(II) in sub-subparagraph (B), repeal "(iii), (iv) or (v)" and substitute "(ii)";

(ii) in subsection (2)—

(A) repeal the definition of "authorized";

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		(B) in the definition of "Commission", repeal "established by section 3 of the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance (5 of 2002)"; (C) repeal the definition of "mutual fund corporation" and substitute— ""mutual fund" (互惠基金) means any arrangement made for the purpose, or having the effect, of providing facilities for investment in shares in a corporation which is or hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities and which is offering for sale or has outstanding any redeemable shares of which it is the issuer;"; (D) repeal the definition of "unit trust" and substitute— ""unit trust" (單位信託) means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.".
13.	Stamp Duty Ordinance (Cap. 117)	(*a*) In section 2(1)— (i) repeal the definition of "Exchange Company" and substitute— ""recognized exchange company" (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (5 of 2002) as an exchange company for operating a stock market;"; (ii) in the definition of "exchange participant", repeal "section 2(1) of the Stock Exchanges Unification Ordinance (Cap. 361)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)"; (iii) in the definition of "loan capital", in paragraph (*c*), repeal "the Unified Exchange" and substitute "a recognized stock market"; (iv) repeal the definition of "Unified Exchange" and substitute— ""recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);";

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(v) add—

"“authorized ATS provider” (認可自動化交易服務提供者) means a person authorized under Part III of the Securities and Futures Ordinance (5 of 2002) to provide automated trading services within the meaning of Part 2 of Schedule 5 to that Ordinance;”.

(*b*) In section 5(2A)(*b*), repeal “the Exchange Company” and substitute “a recognized exchange company or an authorized ATS provider”.

(*c*) In section 5A—

(i) in subsection (1), repeal “the Exchange Company” and substitute “a recognized exchange company or an authorized ATS provider”;

(ii) in subsections (2)(*b*) and (*c*) and (3), repeal “Exchange Company” and substitute “recognized exchange company or authorized ATS provider”.

(*d*) In section 19—

(i) in subsection (1B)(*a*), repeal “規則” and substitute “規章”;

(ii) in subsection (8)(*c*), repeal “規則” and substitute “規章”;

(iii) in subsection (12AA)(*c*), repeal “Unified Exchange” and substitute “relevant recognized stock market”;

(iv) in subsection (16)—

(A) in the definition of “market contract”, repeal “section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)” and substitute “section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)”;

(B) in the definition of “previous closing price”, repeal “Unified Exchange” and substitute “recognized exchange company that operates the relevant stock market”;

(C) in the definition of “recognized clearing house”, repeal “section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)” and substitute “section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)”;

(D) repeal the definition of “rules” and substitute—

"“rules” (規章), in relation to a recognized clearing house and a recognized exchange company, has the same meaning as it has in relation to those bodies in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);”;

(E) in the definition of “stock borrowing”—

(I) repeal “Unified Exchange” and substitute “recognized exchange company that operates the relevant stock market”;

(II) in paragraph (*b*), repeal “規則” and substitute “規章”;

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(F) in the definition of "證券交還", in paragraph (ii), repeal "規則" and substitute "規章";
(G) in the definition of "證券借用及借出協議", in paragraph (*b*), repeal "規則" wherever it appears and substitute "規章".

(*e*) In the First Schedule, in head 2(4), in the Note, in paragraph (*b*), repeal "規則" and substitute "規章".

(*f*) In the Fourth Schedule—

(i) in section 1, repeal "the Unified Exchange" and substitute "a recognized stock market";

(ii) repeal section 2 and substitute—

"2. For the purpose of this Schedule, a recognized exchange company that operates a stock market may, by notice in the Gazette, specify any regional stock exchange as an approved regional exchange.";

(iii) in section 3—

(A) in the definition of "approved basket stock", in paragraph (*a*)—

(I) in subparagraph (i), repeal "stock";
(II) in subparagraph (ii), repeal "the Unified Exchange" and substitute "a recognized stock market";

(B) in the definition of "approved regional stock", repeal "stock" before "exchange";

(C) repeal the definition of "approved regional stock exchange" and substitute—

""approved regional exchange" (認可地區性交易所) means a regional stock exchange specified as an approved regional exchange under section 2;";

(D) in the definition of "previous closing price"—

(I) in paragraph (*a*)—

(*aa*) repeal "stock" before "exchange";
(*bb*) in subparagraph (i), repeal "規則" and substitute "規章";

(II) in paragraph (*b*)—

(*aa*) repeal "the Unified Exchange" where it first appears and substitute "a recognized stock market";
(*bb*) repeal "the Unified Exchange" where it secondly appears and substitute "the recognized exchange company that operates the stock market";

(E) repeal the definition of "rules" and substitute—

""rules" (規章), in relation to—

(*a*) an approved regional exchange, means the rules governing the operation and management of the approved regional exchange or the conduct of its members, by whatever name called and wherever contained;

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		(*b*) a recognized exchange company, has the same meaning as in section 19(16) of this Ordinance;"; (F) in the definition of "specified derivative", in paragraph (*a*), repeal "Unified Exchange" and substitute "recognized exchange company that operates the relevant stock market"; (G) in the definition of "value"— (I) repeal "stock exchange or on the Unified Exchange" and substitute "exchange or a recognized stock market"; (II) repeal "stock exchange or the Unified Exchange" and substitute "exchange or the recognized stock market".
14.	Stamp Duty (Jobbing Business) (Options Market Makers) Regulation (Cap. 117 sub. leg.)	(*a*) In section 2— (i) in the definition of "options contract", repeal "the Unified Exchange" and substitute "a recognized exchange company"; (ii) in the definition of "options market maker", repeal "the Unified Exchange" and substitute "a recognized exchange company"; (iii) repeal the definition of "rules" and substitute— ""rules" (規章), in relation to a recognized exchange company, has the same meaning as in section 19(16) of the Ordinance;". (*b*) In section 3(*a*) and (*b*), repeal "the Unified Exchange" and substitute "a recognized stock market".
15.	Gambling Ordinance (Cap. 148)	(*a*) In section 2, repeal the definition of "Unified Exchange". (*b*) Repeal section 29 and substitute— "**29. Exclusion of contracts under the Securities and Futures Ordinance** This Ordinance shall not apply to any contract for differences which is listed on any specified stock exchange, or traded on any specified futures exchange, within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002), save to the extent that this Ordinance applies to the contract by virtue of section 404(2) of that Ordinance.". (*c*) Repeal the Schedule.
16.	Banking Ordinance (Cap. 155)	(*a*) In section 2(1), repeal the definition of "Unified Exchange" and substitute— ""recognized stock market" (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);". (*b*) In section 3(1)— (i) repeal paragraphs (*j*), (*ja*), (*k*) and (*ka*) and substitute—

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		"(*j*) a corporation who is licensed to carry on a business in dealing in securities, dealing in futures contracts, leveraged foreign exchange trading or securities margin financing under Part V of the Securities and Futures Ordinance (5 of 2002) where rules made under section 149 of that Ordinance apply to such deposit; (*ja*) a mutual fund or unit trust authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (5 of 2002); (*k*) a person authorized under Part III of the Securities and Futures Ordinance (5 of 2002) to provide automated trading services as defined in Part 2 of Schedule 5 to that Ordinance, where such deposit is provided as security in relation to a transaction referred to in paragraph (*c*) of that definition;"; (ii) in paragraph (*l*), repeal "section 2 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)". (*c*) In section 79(1), in the definition of "non-listed company", repeal "the Unified Exchange" and substitute "a recognized stock market". (*d*) In section 92(5)(*b*), repeal everything after "to which" and substitute "section 103(1) of the Securities and Futures Ordinance (5 of 2002) does not apply by virtue of section 103(3)(*f*), (*g*), (*h*) or (*i*) of that Ordinance or the issue of which is authorized under section 105(1) of that Ordinance; or". (*e*) In section 137B(2), repeal "Securities Ordinance (Cap. 333)" and substitute "Securities and Futures Ordinance (5 of 2002)". (*f*) In the Third Schedule, in paragraph 3(*i*), repeal "Unified Exchange or on any exchange referred to in the Schedule to the Securities (Specification of Approved Assets, Liquid Assets and Ranking Liabilities) Notice 1990 (Cap. 333 sub. leg.)" and substitute "recognized stock market or on any stock exchange referred to in Part 3 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)".
17.	Banking Ordinance (Declaration Under Section 2(14)(*b*)) Notice 1998 (Cap. 155 sub. leg.)	Repeal section 2 and substitute— "**2. Declaration** It is hereby declared that a corporation licensed to carry on a business in leveraged foreign exchange trading under Part V of the Securities and Futures Ordinance (5 of 2002) is not a money broker for the purposes of the definition of "money broker".".

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18.	Money Lenders Ordinance (Cap. 163)	In Schedule 1— (*a*) in Part 1, repeal paragraphs 10 and 11 and substitute— "10. A corporation licensed to carry on a business in securities margin financing under Part V of the Securities and Futures Ordinance (5 of 2002). 11. A corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in dealing in securities under Part V of the Securities and Futures Ordinance (5 of 2002) who engages in securities margin financing in order to facilitate acquisitions or holdings of securities by the corporation or institution for its client."; (*b*) in Part 2, in paragraph 14— (i) repeal subparagraph (*a*) and substitute— "(*a*) a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002); or"; (ii) in subparagraph (*b*), repeal "established under the Securities and Futures Commission Ordinance (Cap. 24)" and substitute "referred to in section 3(1) of the Securities and Futures Ordinance (5 of 2002)".
19.	Census and Statistics (Survey of External Claims, Liabilities and Income) Order (Cap. 316 sub. leg.)	In section 1(1), in the definition of "listed corporation", repeal "the Unified Exchange as defined in section 2(1) of the Stock Exchanges Unification Ordinance (Cap. 361)" and substitute "a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)".
20.	Exchanges (Special Levy) Ordinance (Cap. 351)	Add— "**10. Provisions consequential to the Securities and Futures Ordinance** (1) Subject to subsections (2) and (3), a reference in this Ordinance to a repealed Ordinance, or an expression in a repealed Ordinance, is a reference to the repealed Ordinance or that expression (as the case may be) as it existed immediately before the repeal of the repealed Ordinance. (2) Any transfer under section 5(2)(*a*) effected after the compensation fund referred to in that section ceases to exist shall be effected in favour of the compensation fund within the meaning of Part XII of the Securities and Futures Ordinance (5 of 2002). (3) The reference to the Commission in sections 5(2)(*b*) and 8 (in the case of paragraphs (*b*) and (*d*)) shall on the commencement of Part II of the Securities and Futures Ordinance (5 of 2002) mean the Commission within the meaning of section 1 of Part 1 of Schedule 1 to that Ordinance. (4) In this section, "repealed Ordinance" (已廢除條例) means— (*a*) the Securities and Futures Commission Ordinance (Cap. 24);

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		(*b*) the Commodities Trading Ordinance (Cap. 250); (*c*) the Securities Ordinance (Cap. 333); or (*d*) the Stock Exchanges Unification Ordinance (Cap. 361), repealed under the Securities and Futures Ordinance (5 of 2002).”.
21.	Occupational Retirement Schemes Ordinance (Cap. 426)	In section 27, repeal subsection (2)(*c*)(i) and (ii) and substitute— “(i) listed on a recognized stock market as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002); or (ii) publicly listed on a specified stock exchange as defined in that section.”.
22.	Organized and Serious Crimes Ordinance (Cap. 455)	In section 24A, in the definition of “remittance agent”, repeal paragraph (*b*)(iii) and (iv) and substitute— “(iii) a corporation licensed under Part V of the Securities and Futures Ordinance (5 of 2002) to carry on a business in any regulated activity within the meaning of Schedule 5 to that Ordinance or the licensed representative of such corporation within the meaning of that Ordinance;”.
23.	Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.)	(*a*) In section 2— (i) repeal the definitions of “authorized mutual fund” and “authorized unit trust” and substitute— ““authorized mutual fund” (認可互惠基金) means a mutual fund authorized as a collective investment scheme by the Securities and Futures Commission under section 104 of the Securities and Futures Ordinance (5 of 2002); “authorized unit trust” (認可單位信託) means a unit trust authorized as a collective investment scheme by the Securities and Futures Commission under section 104 of the Securities and Futures Ordinance (5 of 2002);”; (ii) in the definition of “financial futures contract”, repeal “a recognized futures exchange” and substitute “an approved futures exchange”; (iii) in the definition of “financial option contract”, repeal “a recognized futures exchange or a recognized stock exchange” and substitute “an approved futures exchange or an approved stock exchange”; (iv) repeal the definition of “Futures Exchange” and substitute— ““recognized futures market” (認可期貨市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);”; (v) repeal the definition of “recognized futures exchange” and substitute— ““approved futures exchange” (核准期貨交易所) means—

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(*a*) a recognized futures market; or
(*b*) any futures exchange established in a place outside Hong Kong that is declared by the Authority by notice published in the Gazette to be an approved futures exchange for the purposes of this Regulation;";

(vi) repeal the definition of "recognized stock exchange" and substitute—
"“approved stock exchange” (核准證券交易所) means—
(*a*) a recognized stock market; or
(*b*) any stock exchange established in a place outside Hong Kong that is declared by the Authority by notice published in the Gazette to be an approved stock exchange for the purposes of this Regulation;";

(vii) in the definition of "securities", repeal "section 2 of the Securities Ordinance (Cap. 333)" and substitute "section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002)";

(viii) add—
"“recognized stock market” (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);".

(*b*) In section 13(*a*), repeal "an overseas bank within the meaning of section 2 of the Protection of Investors Ordinance (Cap. 335)" and substitute "a bank incorporated outside Hong Kong and not holding a valid banking licence under the Banking Ordinance (Cap. 155)".

(*c*) Repeal section 44(3)(*c*) and substitute—
"(*c*) is a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in asset management under Part V of the Securities and Futures Ordinance (5 of 2002).".

(*d*) In section 45—

(i) repeal subsection (3)(*b*) and substitute—
"(*b*) a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in asset management under Part V of the Securities and Futures Ordinance (5 of 2002).";

(ii) in subsection (4)—

(A) repeal paragraph (*b*) and substitute—
"(*b*) is an associate of a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in asset management under Part V of the Securities and Futures Ordinance (5 of 2002); or";

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		(B) in paragraph (*c*), repeal "registered as an investment adviser under that Ordinance" and substitute "a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in asset management under Part V of the Securities and Futures Ordinance (5 of 2002)".
		(*e*) In Schedule 1—
		(i) in Part I, in section 1(1)—
		(A) in the definition of "call warrant", repeal "a recognized stock exchange or a recognized futures exchange" and substitute "an approved stock exchange or an approved futures exchange";
		(B) in the definition of "put warrant", repeal "a recognized stock exchange or a recognized futures exchange" and substitute "an approved stock exchange or an approved futures exchange";
		(C) in the definition of "warrant", repeal "a recognized stock exchange" where it twice appears and substitute "an approved stock exchange";
		(ii) in Part II—
		(A) in sections 3(2)(*a*), 7(2)(*d*), 8(1) and (2)(*a*) and (*b*), 9(*a*) and 13(1)(*b*), repeal "a recognized stock exchange" and substitute "an approved stock exchange";
		(B) in section 14—
		(I) in subsection (2), repeal "a recognized futures exchange" and substitute "an approved futures exchange";
		(II) in subsection (3), repeal "a recognized futures exchange or a recognized stock exchange" and substitute "an approved futures exchange or an approved stock exchange";
		(iii) in Part III, in section 16(3), in the definition of "Hong Kong dollar currency investment"—
		(A) in paragraphs (*c*) and (*d*), repeal "the Unified Exchange" and substitute "a recognized stock market";
		(B) in paragraph (*e*), repeal "the Futures Exchange or the Unified Exchange" and substitute "a recognized futures market or a recognized stock market";
		(iv) in Part IV—
		(A) in section 17(2)(*a*), repeal "the investment arrangements within the meaning of the Protection of Investors Ordinance (Cap. 335)" and substitute "collective investment schemes under Part IV of the Securities and Futures Ordinance (5 of 2002)";

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		(B) in section 19(5), repeal "registered as an investment adviser under the Securities Ordinance (Cap. 333)" and substitute "a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in asset management under Part V of the Securities and Futures Ordinance (5 of 2002)".
24.	Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.)	In Schedule 3, in section 3(1)— (*a*) repeal paragraph (*a*) and substitute— "(*a*) is a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in asset management under Part V of the Securities and Futures Ordinance (5 of 2002); or"; (*b*) in paragraph (*b*), repeal "business as an investment adviser under a law of a place outside Hong Kong" and substitute "under the law of a place outside Hong Kong the business referred to in paragraph (*a*)".
25.	Personal Data (Privacy) Ordinance (Cap. 486)	In section 2(1), in the definition of "financial regulator", repeal paragraphs (*b*), (*c*), (*d*), (*e*) and (*ea*) and substitute— "(*b*) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (5 of 2002); (*c*) a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002); (*d*) a person authorized under Part III of the Securities and Futures Ordinance (5 of 2002) to provide automated trading services as defined in Schedule 5 to that Ordinance;".
26.	Legislative Council Ordinance (Cap. 542)	(*a*) In section 20U— (i) repeal subsection (1)(*a*) and (*b*) and substitute— "(*a*) subject to subsection (2), exchange participants of a recognized exchange company; and"; (ii) in subsection (2)— (A) in paragraph (*a*), repeal "an Exchange Company" and substitute "a recognized exchange company"; (B) in paragraph (*b*)— (I) repeal "an Exchange Company" and substitute "a recognized exchange company"; (II) in subparagraph (i), repeal "Exchange Company" and substitute "recognized exchange company"; (iii) in subsection (3)— (A) repeal the definition of "Exchange Company" and substitute—

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		""recognized exchange company" (認可交易所) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);"; (B) repeal the definition of "exchange participant" and substitute— ""exchange participant" (交易所參與者) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);"; (C) in the definition of "rules"— (I) repeal "an Exchange Company" and substitute "a recognized exchange company"; (II) repeal "the Exchange Company" and substitute "the recognized exchange company". (*b*) In section 25(4), repeal "and (*b*)".
27.	Electronic Transactions Ordinance (Cap. 553)	In Schedule 2— (*a*) in paragraph (*m*), after "(Cap. 395)", add "repealed under the Securities and Futures Ordinance (5 of 2002)"; (*b*) add— "(*ma*) the Securities and Futures Appeals Tribunal or the Market Misconduct Tribunal established under Part XI or XIII of the Securities and Futures Ordinance (5 of 2002); (*mb*) any person arbitrating disputes in accordance with rules made under section 118(2) of the Securities and Futures Ordinance (5 of 2002);"; (*c*) repeal paragraphs (*zk*) and (*zl*).
28.	Mass Transit Railway Ordinance (Cap. 556)	Repeal section 58(2)(*c*) and substitute— "(*c*) the listing of any shares in the Corporation on a recognized stock market or a specified stock exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002),".
29.	Broadcasting Ordinance (Cap. 562)	In Schedule 1— (*a*) in section 1(1), in the definition of "qualified voting controller", in paragraph (*b*)(i), repeal "corporation authorized under section 15 of the Securities Ordinance (Cap. 333)" and substitute "authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (5 of 2002)"; (*b*) in sections 15(1) and 29(1), repeal "section 18 of the Securities (Disclosure of Interests) Ordinance (Cap. 396)" and substitute "section 329 of the Securities and Futures Ordinance (5 of 2002)".
30.	Banking (Amendment) Ordinance 2001 (32 of 2001)	In section 19, in the new section 92(2)(*b*), repeal everything after "which" and substitute "section 103(1) of the Securities and Futures Ordinance (5 of 2002) does not apply to the advertisement, invitation or document by virtue of section 103(3)(*f*), (*g*), (*h*) or (*i*) of that Ordinance or the issue of which is authorized under section 105(1) of that Ordinance;".