

Securities and Futures Bill

**The Government of the
Hong Kong Special Administrative Region**

April 2000

SECURITIES AND FUTURES BILL

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A BILL

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 the terms thereof.

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

(3) The Commission may, by notice published in the Gazette, amend Parts 2, 3 and 4 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 382, the body established by section 3 of that Ordinance as the Securities and Futures Commission shall continue in existence in that 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 of others in relation to the Commission, are not affected by the repeal of the Securities and Futures Commission Ordinance (Cap. 24) under section 382, and any reference to the Commission (whether by reference to the Securities and Futures Commission Ordinance (Cap. 24) 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 the understanding by the public of the operation and functioning of the securities and futures industry;
- (c) to secure the appropriate degree of 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 to, so far as reasonably practicable -

(a) 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) 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 exempt persons; and

(ii) such of the activities carried on by exempt persons as are regulated by the Commission under any of the relevant provisions;

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

(d) 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) encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
- (f) take such steps as it considers appropriate to ensure that the relevant provisions are complied with;
- (g) promote and maintain 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) co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere;
- (i) promote the understanding by the public of the securities and futures industry and of the benefits, risks and liabilities associated with investing in financial products;
- (j) 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) promote the 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) secure the 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) 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 exempt persons; and
 - (ii) the adoption of appropriate internal controls and risk management systems by exempt persons in the conduct of activities regulated by the Commission under any of the relevant provisions;
- (n) suppress illegal, dishonourable and improper practices in the securities and futures industry;
- (o) take appropriate steps in relation to the securities and futures industry further to the requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;
- (p) recommend reforms of the law relating to the securities and futures industry;
- (q) 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) 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 any authorized financial institution as an exempt person, may rely, in whole or in part, on the supervision of such authorized financial institution by the Monetary Authority.

(4) The Commission has the power to do such things as it considers necessary in connection with, or reasonably incidental to, the performance of its functions and, without limiting the generality of the foregoing, 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, 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.

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;
- (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 Schedule.

(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, whether or not the person is an executive director or a

non-executive director 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 -

(a) may elect one of its members -

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

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

(b) may, subject to this Ordinance, regulate its own procedure and business; and

(c) is subject to and shall act in accordance with directions given to it by the Commission for the purposes of this subsection.

(7) A committee 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 or pursuant to subsection (6).

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) an executive director of the Commission;
- (b) a non-executive director of the Commission;
- (c) a committee established under section 8; or
- (d) 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 is 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 any 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 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 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.

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 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 the financial statements prepared for the financial year under section 15(2) to the auditors appointed under subsection (1) for audit.

(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 a copy of the report and a copy of the financial statements to the Financial Secretary.

(4) The auditors appointed under subsection (1) shall include in their report a statement as to whether, in their opinion, the financial statements for the financial year 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 and of the results of its operations and cash flows in the financial year.

(5) 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.

(6) The Director of Audit or another public officer authorized by him for the purposes of this subsection may at any reasonable time examine any books, accounts, vouchers, records or documents kept by the Commission and, if he considers appropriate, make a copy of the whole of, or any entry in, such books, accounts, vouchers, records or documents.

(7) An auditor appointed under subsection (1) has a right of access at all reasonable times to the books, accounts, vouchers, records and documents of 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.

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

18. Interpretation of Part III

(1) In this Part and Schedule 3, 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 shares or 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 shares, 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 3 as are specified in Part 1 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 3 as are specified in Part 2 of Schedule 3, a person, or a person belonging to a class of

persons, specified in that Part, not to be an associated person;

"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, or subject to the rules of a stock market;
- (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, or subject to the rules of a futures market; or
- (c) who guarantees the settlement of any such transactions as are referred to in paragraph (a) or (b);

"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;

"commodity" (商品) includes any item, whether or not capable of being delivered, which is listed or specified (as the case may be) in -

- (a) the Schedule to the Commodity Exchanges (Prohibition) Ordinance (Cap. 82); or
- (b) Part 3 of Schedule 3;

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

"default rules" (<<失責處理規則>>), in relation to a recognized clearing house, means the rules of the clearing house required by section 41(2);

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

"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 on or through the 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 on or through the market operated by that exchange company;

"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 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 commodity or other property, or an agreed quantity of a commodity or other 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 commodity or other property is worth more or less, or an index or other factor stands at a higher or lower level (as the case may be) 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 counter-party 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;

"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 to act;

(b) excludes, in relation to such provisions of Division 3 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 specified in Part 5 of Schedule 3 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 specified in Part 5 of Schedule 3 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;

"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, or subject to the rules of, a recognized exchange company;

"recognized clearing house" (認可結算所) means a company recognized as a clearing house under section 38(1);

"recognized exchange company" (認可交易所) means a company recognized as an exchange company under section 19(2);

"recognized exchange controller" (認可控制人) means a company recognized as an exchange controller under section 59(2);

"recognized investor compensation company" (認可投資者賠償公司) means a company recognized as an investor compensation company under section 77(1);

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

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

- (a) the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6);
- (b) a person acting in relation to a company as its liquidator, provisional 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 the controller of the Stock Exchange Company;

"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) by the controller;

"rules" (規章), in relation to -

- (a) a recognized clearing house, means -
 - (i) its constitution; and

- (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing -
 - (A) its clearing participants;
 - (B) the persons who may participate in any of the services it provides;
 - (C) the setting and levying of fees;
 - (D) the provision of clearing and settlement services, and the suspension or withdrawal of such services;
 - (E) the provision of other services; and
 - (F) generally, its management, operations and procedures;
- (b) a recognized exchange company, means -
 - (i) its constitution; and
 - (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing -
 - (A) its exchange participants;
 - (B) the persons who may participate in any of the services it provides;
 - (C) the setting and levying of fees;
 - (D) the listing of securities;
 - (E) the trading of securities or futures contracts;
 - (F) the provision of other services; and

(G) generally, its management,
operations and procedures;

(c) a recognized exchange controller, means -

(i) its constitution; and

(ii) the rules, regulations and directions, by
whatever name they may be called and
wherever contained, governing the conduct
or procedure of -

(A) the recognized exchange controller;

(B) the Risk Management Committee;

(C) any person or body of persons

declared in a notice under

subsection (6) to be a person or

body of persons (as the case may be)

to which this paragraph shall apply;

and

(d) a recognized investor compensation company, means -

(i) its constitution; and

(ii) the rules, regulations and directions, by
whatever name they may be called and
wherever contained, governing its
management, operations and procedures and
its provision of services;

"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;

"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 under section 20; or
- (b) a recognized clearing house.

(2) Where a charge is granted partly for the purpose specified in the definition of "market charge" and partly for other purposes, the charge is in Division 2 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" and partly for

other purposes, the collateral is in Division 2 market collateral in so far as it has been provided for that specified purpose.

(4) References in Division 2 to the law of insolvency include references 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) References in Division 2 to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(6) 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) of the definition of "rules" shall apply.

(7) A notice under subsection (6) is subsidiary legislation.

(8) Where there is a reference in this Ordinance or any other enactment to the 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.

19. Recognition of exchange company

(1) No person shall -

- (a) operate a stock market or futures market unless the person is a recognized exchange company; or
- (b) assist in the operation of a stock market or futures market which is not operated by a recognized exchange company.

(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 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, add conditions to, or vary or repeal any conditions specified in, the first-mentioned notice 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) A person who -

(a) contravenes subsection (1); or

(b) without lawful authority or reasonable excuse, fails to comply with a condition imposed by a notice served on the person under subsection (2) 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; and

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

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

(6) 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 to so recognize or not recognize the company.

(7) For the purposes of subsection (1) -

(a) a person providing automated trading services shall not be regarded as operating a futures market if -

- (i) that person is authorized to provide the services under section 94(2)(a) or (b) or is licensed to provide the service under section 115; and
 - (ii) by virtue of the authorization or licence, that person is permitted to engage in activities that constitute an operation of a futures market;
- (b) a person carrying on the business of dealing in futures contracts shall not be regarded as operating a futures market if -
 - (i) that person is a corporation licensed or exempted from the requirement to hold a licence under Part V to carry on the business of dealing in futures contracts; and
 - (ii) those activities are wholly incidental to the carrying on of the business of dealing in futures contracts.

20. Persons authorized to operate stock market

Only -

- (a) the Stock Exchange Company;
 - (b) a recognized exchange company of which a relevant recognized exchange controller is the controller;
- or

(c) a relevant recognized exchange controller which is itself a recognized exchange company, may operate a stock market in Hong Kong.

21. Transactions that may be conducted on an exchange

(1) The transactions that may be conducted on a recognized stock market are dealings in securities.

(2) The transactions that may be conducted on a recognized futures market are dealings in such futures contracts as are approved in writing by the Commission, either generally or in a particular case.

22. 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 through its facilities;

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

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

(2) In discharging its obligations under subsection (1), a recognized exchange company shall -

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

(b) ensure that the interests of the public prevail where they conflict with the interests of the recognized exchange company or the interests that it is required to serve under any other law.

(3) A recognized exchange company shall operate its facilities in accordance with the rules made under section 24 and approved under section 25.

(4) A recognized exchange company shall ensure that its exchange participants comply with the rules of the company.

(5) 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, accounts 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,

and the company shall comply with the requirement.

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

(7) 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.

(8) A recognized exchange company shall at all times provide and maintain to the satisfaction of the Commission -

- (a) adequate and properly equipped premises;
- (b) competent personnel; and
- (c) automated systems with adequate capacity, facilities to meet emergencies, security arrangements and technical support,

for the conduct of its business.

23. Immunity, etc.

(1) No liability 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 with reasonable care and in good faith in the discharge or purported discharge of the obligations under section 22 (except subsections (5) and (6)) or under the rules of the company.

(2) Where a recognized exchange controller is the controller of a recognized exchange company, the company's obligations referred to in subsection (1) are not applicable to the company in respect of anything done or omitted to be done with reasonable care and in good faith by the company in consequence of the discharge or purported discharge by the recognized exchange controller of the recognized exchange controller's obligations under section 63.

(3) Any failure by a recognized exchange company 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.

24. Rules of 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; or
- (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 under section 20 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 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) 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;
- (f) dealing with possible conflicts of interest that might arise where a relevant company or a relevant recognized exchange controller seeks to be or is a listed corporation.

(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) 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 recognized exchange company.

(5) The following persons 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 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;
- (d) a director of a listed corporation or a person seeking approval from the company or the Commission, to his appointment as such; and
- (e) an adviser of a listed corporation.

(6) 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.

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

(8) For the purposes of subsections (6) and (7), 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 is not 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.

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

(1) Subject to subsection (7), no rule (whether or not made under section 24) 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) the rules and every amendment thereto which belong to a class the subject of a declaration under subsection (7) 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 of a recognized exchange company nor a notice under subsection (7) is subsidiary legislation.

**26. Transfer and resumption of functions
of recognized exchange company**

(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 ("designated exchange company") by the Commission for the purposes of this section -

(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 138; 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 exercise 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, consequential and supplemental 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 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 charged 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.

27. Appointment of chief executive to be approved by Commission

The appointment of the chief executive of a recognized exchange company does not have effect unless the appointment is approved by the Commission.

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

(1) Subject to subsections (2) to (4), 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;

(b) direct the company to cease -

(i) to provide or operate with effect from a date specified in the notice for the purpose such facilities as are specified therein; or

(ii) to provide with effect from a date specified in the notice for the purpose such services as are specified therein.

(2) The Commission may only serve a notice under subsection (1) in relation to a company that -

(a) fails to comply with the requirements 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.

(3) 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.

(4) Except where responding to a request under subsection (2)(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.

(5) Where the Commission withdraws a company's recognition as an exchange company 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 notwithstanding that an appeal against the notice has been or may be made under section 33.

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 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 or futures market (as the case may be).

(3) The Commission may, by notice in writing served on the 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 notwithstanding that an appeal against the notice has been or may be made under section 33.

30. Contravention of notice constitutes offence

A person who -

- (a) provides or operates facilities; or
- (b) provides services,

in contravention of a notice under section 28(1) 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; and
- (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) or 29(1) or (3) and may, in particular, secure -

- (a) the facilities to which the notice relates; or
- (b) the premises at which such facilities are kept or the premises at which the services to which the notice relates are provided,

against use for dealing 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 he, without the authority of the Commission -

- (a) makes use of any facilities or services to which the notice under section 28(1) or 29(1) or (3) relates; or
- (b) enters the premises at which such facilities are kept or the premises at which such services are provided,

in contravention of the notice.

32. Publication of directions

The Commission shall publish in the English and Chinese languages, in such manner as it considers appropriate, notice of any direction under section 28(1)(b) or 29(1) or (3).

33. Appeals

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.

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

(1) A person commits an offence if he, without the authorization of the Commission, takes or uses the title -

- (a) "stock exchange";
- (b) "stock market";
- (c) "commodity exchange";
- (d) "futures exchange";
- (e) "futures market";
- (f) "證券交易所";
- (g) "股票交易所";
- (h) "證券市場";
- (i) "股票市場";
- (j) "商品交易所";
- (k) "期貨交易所";
- (l) "期貨市場",

or anything which closely resembles any such title or description.

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

35. Trading and position limits and reportable open position

- (1) The Commission may make rules -
 - (a) prescribing 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 through the facilities of a futures market operated by a recognized exchange company;
 - (b) prescribing 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 through the facilities of a stock market operated by a recognized exchange company; or
 - (c) requiring a person holding or controlling a reportable position to notify the Commission or such person as the Commission may specify, within such period as may be prescribed by the rules, of that reportable position in prescribed form, together with such other information as may be prescribed by the rules.

(2) The Commission shall consult the Financial Secretary before making rules under subsection (1)(c) in relation to the other information referred to in that subsection.

(3) Subsection (1) does not prohibit the Commission from fixing different trading or position limits, 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)(a), the Commission may, without prejudice to section 373(8) and (9), make rules for the purposes of this section to prohibit a person from -

- (a) directly or indirectly entering, during a prescribed period, into transactions of a specified class in excess of the prescribed amount; or
- (b) directly or indirectly holding or controlling positions of a specified class in excess of a prescribed position limit.

(5) A person who contravenes any rules made under subsection (1) or (4) commits an offence and is liable -

- (a) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(6) In this section -

"prescribed form" (訂明表格) means a form prescribed by the

Commission for the purposes of 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 the Commission for the purposes of this section.

36. Rule-making powers of Commission

(1) The Commission may, without prejudice to section 373(8) and (9), make rules in respect of all or any 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; and
 - (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 be permitted to 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 to become 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 20 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 or through the market it operates 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 24.

(2) Before making any rules in respect of any matter specified in subsection (1), the Commission shall consult the recognized exchange company or (as the case may be) all the recognized exchange companies to which that matter relates.

(3) Nothing in this section prevents a recognized exchange company from making rules under section 24 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).

37. Amendment of Schedule 3

The Chief Executive in Council may, by order published in the Gazette, amend Part 3 of Schedule 3.

Division 2 - Clearing houses

38. Recognition of clearing houses

(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, add conditions to, or vary or repeal any conditions specified in, the first-mentioned notice 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 a company becomes a recognized clearing house, the Commission shall cause notice of that fact to be published in the Gazette.

(4) 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 to so recognize or not recognize the company.

39. 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 arrangements for any securities or futures contracts cleared through its facilities; and
- (b) that risks associated with its business and operations are managed prudently.

(2) In discharging its obligations under subsection (1), a recognized clearing house shall -

- (a) act in the interests of the public, having particular regard to the interests of the investing public; and
- (b) ensure that the interests of the public prevail where they conflict with the interests of the recognized clearing house or the interests that it is required to serve under any other law.

(3) A recognized clearing house shall operate its facilities in accordance with the rules made under section 41 and approved under section 42.

(4) A recognized clearing house shall ensure that its clearing participants comply with the rules of the clearing house.

(5) 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, accounts and records kept by it in connection with or for the purposes of its business or in respect of any clearing arrangements for securities or futures contracts; and

(b) such other information relating to its business or any clearing arrangements for securities or futures contracts,

and the clearing house shall comply with the requirement.

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

(7) A recognized clearing house shall at all times provide and maintain to the satisfaction of the Commission -

(a) adequate and properly equipped premises;

(b) competent personnel; and

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

for the conduct of its business.

40. Immunity, etc.

(1) No liability 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 with reasonable care and in good faith in the discharge or purported discharge of the obligations under -

- (i) section 39 (except subsections (5) and (6));
- (ii) section 47; or
- (iii) the rules of the clearing house, including its default rules.

(2) Where a recognized exchange controller is the controller of a recognized clearing house, the clearing house's obligations referred to in subsection (1) are not applicable to the clearing house in respect of anything done or omitted to be done with reasonable care and in good faith by the clearing house in

consequence of the discharge or purported discharge by the recognized exchange controller of the recognized exchange controller's obligations under section 63.

(3) No liability shall be incurred by -

(a) a person discharging, by virtue of a delegation under the default rules of a recognized clearing house, an obligation 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 with reasonable care and in good faith in the discharge or purported discharge of that obligation.

(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 and has reasonable grounds for believing 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.

41. Rules of 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 facilities which it operates;
- (b) for the proper regulation of its clearing participants; or
- (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 for all unsettled or open market contracts to which he is a party; and
- (b) shall comply with Part 6 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) 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.

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

(1) Subject to subsection (7), no rule (whether or not made under section 41) 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) the rules and every amendment thereto which belong to a class the subject of a declaration under subsection (7) 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 of a recognized clearing house nor a notice under subsection (7) is subsidiary legislation.

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

(1) Subject to subsections (2) to (4), 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 only serve a notice under subsection (1) in relation to a company that -

- (a) fails to comply with the requirements of this Ordinance or with a condition imposed under section 38;
- (b) is being wound up; or
- (c) requests the Commission to do so.

(3) 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.

(4) Except where responding to a request under subsection (2)(c), 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.

(5) Where the Commission withdraws a company's recognition as a clearing house 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 notwithstanding that an appeal against the notice has been or may be made under section 44.

44. Appeals

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.

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) 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) Sections 12, 14 and 20 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" 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 certified under section 47(1)(a) by a recognized clearing house, upon the completion by it of any default proceedings, to be payable by or to a defaulter.

(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 of the provisions 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 participant ("the first participant") enters into a transaction for the sale or purchase of securities with

another 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; or
- (c) the estate of the second participant or of the person referred to in paragraph (b),

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, an amount equal to the prescribed gain obtained under the transaction by the first participant, or the person, who was in respect of the transaction, the principal of the first participant (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 person who is, in respect of the transaction, the principal of the second participant; or
- (b) the first participant, or the person who is, in respect of the transaction, the principal of the

first participant, 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 person who is, in respect of the transaction, the principal of the second participant;

(ii) in the case of that person, that a prescribed event was likely to occur in relation to the person referred to in subparagraph (i),

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 person who is or was, in respect of a transaction referred to in subsection (1), the principal of the second participant, means -

(a) a bankruptcy order has been made against the second participant or that person (as the case may be);

(b) the making of a statutory declaration in respect of the second participant or that person (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 that person (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 that person (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. Securities deposited with recognized clearing house

(1) Subject to subsections (2) and (3), where securities are deposited 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 those securities 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 securities deposited 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 or 6 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 6 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 3 - Exchange controllers

59. Recognition of exchange controller

(1) Subject to subsection (19) and section 62, no person shall become or continue to be the 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, add conditions to, or vary or repeal any conditions specified in, the first-mentioned notice 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) Subject to subsection (5), a person who -

- (a) contravenes subsection (1); or
- (b) fails to comply with a condition imposed by a notice served on the person under subsection (2) 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; and
- (ii) 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 shall be a defence to the charge for the person to prove -

- (a) in the case of subsection (4)(a), that the person 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 concerned;

(b) in the case of subsection (4)(b), that the person exercised reasonable diligence to comply with the condition concerned.

(6) Where a person -

(a) became 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 (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 he became the controller of the recognized exchange company or recognized clearing house; and

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

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

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

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

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

(8) Where a person is the 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 (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 company or recognized clearing house (as the case may be) by the person after he became the 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 the 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 (4) in relation to the contravention) -

(a) the person or any of his associated persons shall not exercise any rights conferred on him as a holder of shares or securities in the recognized exchange company or recognized clearing house, or any rights in shares or securities in any such company which are otherwise controlled by him; 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 such controller; and

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

(10) 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 the controller of the recognized exchange company or recognized clearing house concerned.

(11) 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.

(12) The period specified in a notice under subsection (9)(b) for taking the steps specified in the notice shall not expire before the end of the period specified in section 71 within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

(13) Subject to subsection (14) a person served with a notice under subsection (9)(b) who contravenes 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; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(14) It shall be 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) contravenes the notice (and whether or not the person is charged with an offence under subsection (13)), the provisions of Part 7 of Schedule 3 shall immediately apply.

(16) The provisions of this section, except subsection (4)(a), shall apply to a person who became the controller of a recognized exchange company or recognized clearing house before the commencement of this section as they apply to a person who became the 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 to so recognize or not recognize the company.

(19) Subsection (1) shall not apply to a person who is the 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.

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 the 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) 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 8 of Schedule 3 not to be a minority controller for the purposes of this Division.

(2) Subject to subsections (3) and (17), on and 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.

(3) The Commission shall not give an approval under subsection (2)(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.

(4) Where the Commission refuses to give an approval under subsection (2)(a) or (b), it shall give notice in writing of its reasons for the refusal to the person concerned.

(5) Subject to subsection (6), a person who -

(a) contravenes subsection (2); or

(b) fails to comply with a condition specified in an approval under subsection (2),

commits an offence and is liable -

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

(ii) 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 shall be a defence to the charge for the person to prove -

(a) in the case of subsection (5)(a), that the person -

(i) 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 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

(ii) exercised reasonable diligence to avoid contravening subsection (2);

(b) in the case of subsection (5)(b), that the person exercised reasonable diligence to comply with the condition concerned.

(7) Where a person -

(a) became a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (2) (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 he 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 he has become such a controller,

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

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

- (a) approve the person as a minority controller in accordance with subsection (2); or
- (b) refuse to approve the person as a minority controller.

(9) Where a person is the minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house in contravention of subsection (2)(and whether or not the person is charged with an offence under subsection (5) 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 he became the 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.

(10) Where a person has contravened subsection (2) or 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 (5) in relation to the contravention or failure) -

- (a) the person or any of the associated persons shall not exercise any rights conferred on him as a holder of shares or securities in the recognized exchange controller, recognized exchange company or recognized clearing house concerned or any rights in shares or securities in any such company which are otherwise controlled by him; 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.

(11) Without limiting the generality of steps referred to in subsection (10)(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.

(12) The steps specified in a notice under subsection (10)(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.

(13) The period specified in a notice under subsection (10)(b) for taking the steps specified in the notice shall not expire before the end of the period specified in section 71 within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

(14) Subject to subsection (15), a person served with a notice under subsection (10)(b) who contravenes 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; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(15) It shall be a defence for a person charged with an offence under subsection (14) to prove that the person exercised reasonable diligence to comply with the notice concerned under subsection (10)(b) served on the person.

(16) Where a person served with a notice under subsection (10)(b) contravenes the notice (and whether or not the person is charged with an offence under subsection (14)), the provisions of Part 7 of Schedule 3 shall immediately apply.

(17) 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 (2) subject to such conditions (if any) as are specified in the rules.

(18) 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 (2) in relation thereto, the Commission shall give the person a reasonable opportunity of being heard before making a decision to give or not give such approval.

(19) Nothing in this section shall operate to prevent the Commission from approving under this Ordinance or any other enactment 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).

(20) Rules made under subsection (17) are subsidiary legislation.

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

(4) It shall be 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 9 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 the 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 or through each recognized exchange company;
- (b) that there are orderly, fair and expeditious clearing arrangements for the securities or futures contracts cleared through the facilities of each 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 obligation under subsection (1)(a), (b) or (c), a recognized exchange controller shall -

- (a) act in the interests of the public, having particular regard to the interests of the investing public; and
- (b) ensure that the interests of the public prevail where they conflict with the interests of the

recognized exchange controller or the interests that it is required to serve under any other law.

(3) 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, accounts 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 or any clearing arrangements, referred to in subsection (1); and

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

and the recognized exchange controller shall comply with the requirement.

(4) A recognized exchange controller served with a notice under subsection (3) which, without reasonable excuse, contravenes the notice commits an offence and is liable on conviction to a fine at level 5.

64. Immunity, etc.

(1) No liability 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 with reasonable care and in good faith in the discharge or purported discharge of the obligations under section 63(1) and (2) or under the rules of the controller.

(2) Any failure by a recognized exchange controller 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.

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 the 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 3 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 75(1); and

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

66. Rules of recognized exchange controllers

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 performance of its duties under section 63; or

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

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

(1) Subject to subsection (6), 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 for its approval the rules of the controller and every amendment thereto.

(3) The Commission shall, not later than 6 weeks after the receipt of a submission under subsection (2) 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 in a particular case, with the agreement of the recognized exchange controller concerned, extend the time prescribed in subsection (3).

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

(6) 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.

(7) Neither the rules of a recognized exchange controller nor a notice under subsection (6) is subsidiary legislation.

68. Chairman of recognized exchange controller

(1) No person shall be the chairman of a company which is a recognized exchange controller, whether he became such chairman before, on or after the commencement of this section, 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.

69. 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, whether made before, on or after the commencement of this section, 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 notwithstanding that an appeal against the notice has been or may be made under section 71.

70. 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;

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

(5) The period specified in a notice under subsection (1) for taking the steps (if any) specified in the notice shall not expire before the end of the period specified in section 71 within which an appeal against the notice may be made and, if such an

appeal is made, those steps need not be taken pending the determination, withdrawal or abandonment of the appeal.

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

(7) Subject to subsection (8), a company served with a notice under subsection (1) which contravenes 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; and

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

(8) It shall be 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 under subsection (1) to which the offence relates.

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

71. Appeals

A person served with a notice under section 59(9)(b), 61(10)(b), 69(2), 70(1) or 73(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.

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

(1) The 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 24 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 or through the recognized exchange company concerned; 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 powers and 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.

73. 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 Ordinance or any other enactment (including any rules made under any enactment, 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 reason or 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 notwithstanding that an appeal against the notice has been or may be made under section 71.

(3) A recognized exchange controller or relevant corporation served with a notice under subsection (1) which contravenes 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; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

74. 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 the 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.

75. Financial Secretary may appoint not more than 8 persons to board of directors of recognized exchange controller

(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 a recognized exchange controller 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 recognized exchange controller 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 recognized exchange controller).

(3) Subject to subsection (4), a member of the board of directors of the recognized exchange controller 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 recognized exchange controller may be removed from that office by a resolution of the other directors of the board or a special resolution of the recognized exchange controller.

76. Amendment of Schedule 3

The Chief Executive in Council may, by order published in the Gazette, amend Parts 1, 2, 4, 7 to 9 of Schedule 3.

Division 4 - Investor compensation companies

77. 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, add conditions to, or vary or repeal any conditions specified in, the first-mentioned notice 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 a company becomes a recognized investor compensation company, the Commission shall cause notice of that fact to be published in the Gazette.

(4) 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 to so recognize or not recognize the company.

78. Transfer and resumption of functions of recognized investor compensation company

(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 ("designated investor compensation company") by the Commission for the purposes of this section, 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 section 228(2)).

(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 exercise 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, consequential and supplemental 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.

79. Duties of recognized investor compensation companies

(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, accounts 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; and

(b) such other information relating to its business or the management and administration of the compensation fund,

and the company shall comply with the requirement.

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

80. Immunity, etc.

(1) No liability 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 with reasonable care and in good faith in the discharge or purported discharge of the obligations to which this subsection applies.

(2) The obligations 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 78; or

(b) to which the company is subject under rules made under Part XII.

(3) Any failure by a recognized investor compensation company 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.

81. Rules of recognized investor compensation company

(1) Without limiting any of its other powers to make rules, a recognized investor compensation company may make rules which -

- (a) provide for or facilitate the proper and efficient operation and management of the company;
- (b) provide 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; and
- (c) provide for or facilitate the proper and efficient performance of a function transferred to the company under section 78.

82. 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 81) 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) the rules and every amendment thereto which belong to a class the subject of a declaration under subsection (7) 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 of a recognized investor compensation company nor a notice under subsection (7) is subsidiary legislation.

83. Withdrawal of recognition of investor compensation company

(1) Subject to subsections (2) to (4), 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 only serve a notice under subsection (1) in relation to a company that -

- (a) fails to comply with the requirements of this Ordinance or with a condition imposed under section 77;

(b) is being wound up; or

(c) requests the Commission to do so.

(3) 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.

(4) Except where responding to a request under subsection (2)(c), 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.

(5) 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.

(6) A notice served under this section shall take effect immediately notwithstanding that an appeal against the notice has been or may be made under section 84.

84. Appeals

A company served with a notice under section 83(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.

85. Subrogation of recognized investor compensation company to rights, etc., of claimant on payment from compensation fund

(1) On a recognized investor compensation company making 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 of that payment, to all the rights and remedies of the claimant in relation to the loss sustained by him by reason of the default on which the claim was based; and

(b) the claimant shall have no right in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss any sum out of the assets of the exchange participant or other person concerned who is in default, or where the loss was caused by the defalcation, fraud or misfeasance of an employee of that exchange participant or that other person, the assets of that employee, until the recognized investor compensation company has been reimbursed the full amount of its payment.

(2) All amounts recovered by the recognized investor compensation company under subsection (1) shall be paid in such manner as the Commission may direct and shall become part of the compensation fund.

86. 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 by the Commission for the purposes of this subsection; and
- (b) lodge the financial statements and other documents, together with an auditor's report containing such information as is so prescribed, with 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 include the requirement that -

- (a) the financial statements and other documents are to relate to such matters and contain such particulars as are specified in the rules;
- (b) the auditor's report is to contain such particulars, including such statement of opinion, as is specified in the rules;
- (c) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with such basis as are specified in 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 a recognized investor compensation company, the Commission may extend the period within which the financial statements and other documents and the auditor's report that are required under subsection (1) to be lodged by it for such period and subject to such conditions as the Commission considers appropriate, if the Commission is satisfied that there are special reasons for granting the extension.

(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 lodged by it to be sent to the Financial Secretary and to be published in the Gazette.

87. Employees of and delegations by a recognized investor compensation company

(1) The Commission may arrange for any of its employees, officers, 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 employees, officers, 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 81.

88. Investment of moneys

Where -

- (a) by virtue of a transfer of a function under section 78, any money which forms part of the compensation fund is held by a recognized investor compensation company; and
- (b) such money is not immediately required for performing that function,

the company may invest the money in such manner as the Commission shall approve.

89. 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 78, 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 conducive to the management or administration of the compensation fund under Part XII or is otherwise conducive to the maintenance of the integrity of dealing in securities or futures contracts, or the

entering into of property investment arrangements or leveraged foreign exchange contracts.

Division 5 - General - Exchange companies, clearing houses, exchange controllers and investor compensation companies

90. 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 an exchange company, the affairs of any of its exchange participants; and

(b) in the case of a clearing house, the affairs of any of its clearing participants.

(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 the relevant provisions, including information in its possession relating to -

(a) in the case of an exchange company, the affairs of any of its exchange participants;

(b) in the case of a clearing house, the affairs of any of its clearing participants; and

(c) in the case of a recognized exchange controller, the affairs of any of its subsidiaries.

(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, subject to section 358, 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 controller or the clearing house 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.

91. Additional powers of Commission - restriction notices

(1) Subject to subsections (2), (5) and (13), 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 set out in the notice -

(A) to amend, supplement, withdraw or revoke, in the manner specified in the notice, a provision of its memorandum, articles, rules or regulations 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 memorandum or articles 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 memorandum or articles.

(4) An appeal under subsection (3) does not affect the coming into force of the restriction notice to which the appeal relates.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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 memorandum, articles, rules or regulations or other instrument -

(a) in the case of a requirement to amend such provision, the provision shall be deemed to have effect as if the requirement had been complied with;

(b) in the case of a requirement to withdraw or revoke such provision, the provision ceases to have effect.

(10) Where -

(a) a restriction notice includes a requirement described in subsection (1)(i)(A) and the requirement relates to the memorandum or articles of a company; and

(b) by virtue of subsection (9) the provision to which the requirement relates has effect as if the requirement had been complied with or (as the case may be) has ceased to have effect,

the Commission shall, as soon as may be, deliver to the Registrar of Companies a copy of the notice.

(11) 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.

(12) None of the following persons shall be liable in damages for any act or omission done or omitted in compliance or in purported compliance with a restriction notice unless the act or omission is shown by the person claiming the damages to have been done or omitted in bad faith -

- (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; and
- (d) a clearing participant.

(13) This section shall not be construed as requiring the Commission to do under this section anything which may be done by the Commission by direction under section 28(1)(b) or 29.

**92. 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, issue a 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, whether called that or not, 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) Subject to subsection (7), a suspension order shall continue in force for the period not exceeding 6 months specified in the order.

(4) A suspension order or an extension of it under subsection (7) shall take effect when a copy of the order or notice of the extension is served under subsection (8)(a) on the exchange company, clearing house, exchange controller or investor compensation company to which the order relates.

(5) 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.

(6) Nothing in subsection (5) affects subsection (4).

(7) 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.

(8) 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 media a copy of the suspension order or, as may be appropriate, notice of its extension.

(9) 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.

(10) The exchange company, clearing house, exchange controller or investor compensation company concerned shall pay to the Commission on demand costs or expenses reasonably incurred by the Commission or an executive or a non-executive director or employee of the Commission in connection with a suspension order.

(11) The amount of the costs or expenses demanded under subsection (10) are recoverable by the Commission as a civil debt.

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

93. 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 6 - Automated trading services

94. Authorization for providing automated trading services

(1) No person shall provide automated trading services unless that person has been authorized to do so under subsection (2) or has been granted a licence to do so under Part V.

(2) Where the Commission is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest, the Commission may -

- (a) upon application by a person, by notice in writing served on that person, authorize that person to provide automated trading services -

- (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; or
- (b) authorize a stock exchange or futures exchange outside Hong Kong to provide automated trading services with effect from a date specified in the notice for the purpose.

(3) Where a person or a stock exchange or futures exchange outside Hong Kong 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 or a stock exchange or futures exchange outside Hong Kong 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 or (as the case may be) the stock exchange or futures exchange a reasonable opportunity of being heard before making a decision to grant or not grant the authorization.

(5) 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.

(6) Any guidelines published under subsection (5) are not subsidiary legislation.

95. Application for authorization

(1) An application under section 94(2)(a) shall be accompanied by -

- (a) such information and particulars as the Commission may reasonably require; and
- (b) an application fee prescribed by the Commission under section 371.

(2) Without limiting the generality of subsection (1)(a), an application under section 94(2)(a) 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, 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 94(2)(a), the Commission may have regard to any information in its possession whether provided by the applicant or not.

96. Conditions for authorization

(1) Without limiting the generality of conditions which may be specified in a notice under section 94(2)(a), the Commission may, by notice in writing served on a person authorized under that section, add conditions to, or vary or repeal any conditions specified under that section where the Commission is satisfied that it is appropriate to do so.

(2) Without limiting the generality of section 94(2)(a) or subsection (1), 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 discharging its functions under this Ordinance;
- (f) permit any person authorized in that behalf by the Commission to enter at any reasonable time the premises at which the services are provided and to inspect the electronic facilities by means of which the services are provided;
- (g) maintain automated systems with adequate capacity, facilities to meet contingencies or emergencies, and security 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 95(1) or (2);
- (i) pay to the Commission an annual fee prescribed by the Commission under section 371.

97. Withdrawal of authorization

(1) Subject to subsection (2), 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 or a stock exchange or futures exchange granted an authorization under section 94(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 shall not exercise its power under subsection (1) in relation to a person or a stock exchange or futures exchange granted an authorization under section 94(2) unless it has given the person or (as the case may be) the stock exchange or futures exchange a reasonable opportunity of being heard.

(3) A notice served under the section shall take effect immediately notwithstanding that an application for review of the decision to serve the notice has been or may be made under section 203.

98. Rule-making powers

(1) The Commission may, without prejudice to section 373(8) and (9), make rules -

- (a) requiring 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 94(2)(a) or 96 are complied with;

- (b) providing for the time within which and the manner in which the information under paragraph (a) shall be provided; and
- (c) providing for generally 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 practice 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 or interest; and
 - (ii) to take such steps as the Commission may specify to ensure that there is

integrity, 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 the 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, fails to comply with any specified provision of the rules that apply to it or him (as the case may be) commits an offence and is liable -

(a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 2 years; and

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

99. Breach of condition of authorization

A person who -

- (a) contravenes section 94(1); or
- (b) fails to comply with a condition specified in a notice under section 94(2)(a) or 96 served on the person,

commits an offence and shall be liable -

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; and
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

PART IV

OFFERS OF INVESTMENTS

Division 1 - Interpretation

100. 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 a person approved by the Commission under
section 103(3);

(b) in relation to the issue of an advertisement,
invitation or document, means a person approved by
the Commission under section 104(3);

"certificate of deposit" (存款證) means a certificate of deposit as
defined in section 2(1) of the Inland Revenue Ordinance (Cap.
112);

"collective investment scheme" (集體投資計劃) means -

- (a) a mutual fund;
- (b) a unit trust; or
- (c) any investment arrangements;

"credit union" (儲蓄互助社) means a credit union registered under
the Credit Unions Ordinance (Cap. 119);

"document" (文件) means any publication (including a newspaper, magazine, journal or other publication, a poster or notice, a circular, brochure, pamphlet or handbill, or a prospectus) -

(a) directed at, or 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 an exempted body specified in Part 4 of Schedule 4;

"investment arrangements" (投資安排) 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, specified as investment arrangements under section 101(1),

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 carries on a business other than investment business and enters into the arrangements for commercial purposes related to that business;
- (iii) arrangements under which each of the participating persons is a corporation in the same group of companies as the person operating the arrangements;
- (iv) 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;
- (v) 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;

- (vi) arrangements the purpose of which is the provision of services provided by a recognized exchange company or recognized clearing house and which are operated by such recognized exchange company or recognized clearing house (as the case may be);
- (vii) 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;
- (viii) 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 this Ordinance for the purpose of providing compensation in the event of default by an exchange participant or a clearing participant;
- (ix) arrangements made by any credit union in accordance with the objects thereof;
- (x) arrangements made for the purposes of any chit-fund permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262);

- (xi) arrangements made for the purposes of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66); and
- (xii) arrangements which are arrangements, or are of a class or description of arrangements, specified as not constituting investment arrangements under section 101(2);

"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 advertisement, invitation or document, includes publishing, circulating, distributing or otherwise disseminating the advertisement, invitation or document, 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 cinematography films;
- (f) by way of sound broadcasting or television;
- (g) by computer 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 advertisement, invitation or document to be issued;

"licensed or exempt securities adviser" (持牌或獲豁免證券顧問) means a person licensed or exempt under Part V for Type 4 regulated activity;

"licensed or exempt securities dealer" (持牌或獲豁免證券交易商) means a person licensed or exempt under Part V for Type 1 regulated activity;

"multilateral agency" (多邊機構) means a body specified in Part 3 of Schedule 4;

"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 mutual fund corporation;

"mutual fund corporation" (互惠基金法團) means 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;

"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;

"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 in profits or income arising from the acquisition, holding, management or disposal of any property (including securities and futures contracts), where their participation is -

- (a) as beneficiaries under a trust; or
- (b) under an arrangement prescribed by rules made by the Commission, either generally or in any particular case, as being a unit trust for the purposes of this definition.

(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;
- (c) a body corporate shall be regarded as the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

**101. Investment arrangements as specified by
Financial Secretary**

(1) For the purposes of the definition of "investment arrangements" in section 100(1), the Financial Secretary may, by notice published in the Gazette, specify any arrangements, or any class or description of arrangements, as investment arrangements where the arrangements -

(a) are made available in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling the participating persons -

- (i) to acquire any right, interest, title or benefit in any property for valuable consideration;
 - (ii) to defer taking possession of the property; and
 - (iii) 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

(b) 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 -

- (i) 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
- (ii) 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.

(2) For the purposes of the definition of "investment arrangements" in section 100(1), the Financial Secretary may, by notice published in the Gazette, specify any arrangements, or any class or description of arrangements, as not constituting investment arrangements.

Division 2 - Regulation of offers of investments, etc.

102. Offence to issue advertisements, invitations or documents relating to investments in certain cases

(1) Subject to the other provisions of this section, a person commits an offence if he issues, or has in his possession for the purposes of issue, 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 an agreement -
 - (i) to acquire, dispose of, subscribe for or underwrite securities; or
 - (ii) 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 (including securities); 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) Subsection (1) does not apply in relation to any advertisement, invitation or document which is made -

- (a) by a licensed or exempt securities dealer or a licensed or exempt securities adviser, whether as principal or agent, in respect of securities;
- (b) 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 corporation which is a related corporation of that corporation, in

respect of securities of that corporation or that related corporation;

- (c) by or on behalf of the Government in respect of securities issued by it;
- (d) by or on behalf of a credit union in respect of shares in the credit union;
- (e) by or on behalf of a person acting as a trustee of a trust, not being a unit trust, to beneficiaries under the trust; or
- (f) by a person who is engaged in the business of buying and selling property other than securities, whether as principal or agent, in the ordinary course of that business.

(3) Subsection (1) does not apply in relation to -

- (a) the issue 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) the issue of a document relating to 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 company incorporated outside Hong Kong and the document were a prospectus issued by that company;

(c) the issue of a form of application for shares or debentures of a company, together with -

(i) 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, complies with or is exempt from compliance with Part XII of that Ordinance;

- (ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing the matters referred to in paragraph (b)(ii);
- (d) the issue of a form of application for the securities of a corporation in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;
- (e) the issue 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) the issue 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) the issue 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 15 of Part 4 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 15 of Part 4 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 15 of Part 4 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and that corporation complies with the relevant condition;
- (h) the issue of any advertisement, invitation or document made in respect of leveraged foreign exchange trading which complies with such requirements applicable thereto as are specified by the rules made by the Commission under section 159;
- (i) the issue of any advertisement, invitation or document taking place when the issue is authorized by the Commission under section 104(1);
- (j) the issue 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 24 or 36 governing the listing of securities, except to the extent that compliance is, in accordance with those rules, waived, modified or not required; or

(k) the issue of any advertisement, invitation or document made in respect of securities or interests in any collective investment scheme, which are or are intended to be disposed of only to persons outside Hong Kong, or only to persons whose business involves the acquisition, disposal or holding of securities, whether as principal or agent.

(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; and
- (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, any advertisement, invitation or document which is or contains an invitation to do any act referred to in subsection (1)(a) or (b) to persons who are licensed or exempt securities dealers or licensed or exempt securities advisers.

(6) A person shall not be regarded as committing an offence under subsection (1) in respect of an advertisement, invitation or document which is or contains an invitation to do any act referred to in subsection (1)(a) or (b) if -

- (a) he carried on a business the principal purpose of which was to provide the service of issuing or receiving materials provided to him by others;
- (b) the advertisement, invitation or document (as the case may be) was issued or received by him in the ordinary course of that business;
- (c) the content of the advertisement, invitation or document (as the case may be) was wholly devised by a customer of his or by a person acting on behalf of a customer of his; and
- (d) the nature of the service which he provided in relation to the advertisement, invitation or document (as the case may be) was such that he did not select, modify or otherwise exercise control over the content of the advertisement, invitation or document (as the case may be) prior to its issue or receipt.

(7) A person shall not be regarded as committing an offence under subsection (1) in respect of an advertisement, invitation or document which is or contains an invitation to do any act referred to in subsection (1)(a) or (b) if -

- (a) he was a broadcaster;

- (b) the advertisement, invitation or document (as the case may be) was broadcast live by him as a broadcaster;
- (c) he did not modify the content of the advertisement, invitation or document (as the case may be) prior to its broadcast; and
- (d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast and with any code of practice or guidelines (however described) issued under or pursuant to the Television Ordinance (Cap. 52) or the Telecommunication Ordinance (Cap. 106) and applicable to him as a broadcaster.

(8) 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.

(9) For the purposes of any proceedings under this section, 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.

(10) Nothing in subsection (2)(a) applies to anything done by a licensed or exempt securities dealer or a licensed or exempt securities adviser in respect of any securities which are

interests in a collective investment scheme that is not authorized by the Commission under section 103.

(11) Nothing in subsection (2)(f) applies to anything done by a person in respect of any interest in a collective investment scheme that is not authorized by the Commission under section 103.

(12) In this section -

"broadcast live" (直播), in relation to any advertisement, invitation or document, means having the advertisement, invitation or document (as the case may be) broadcast without its being recorded in advance;

"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 5 of Schedule 4.

103. Commission may authorize collective investment schemes

(1) On an application by any person in accordance with subsection (6), 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 a person 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 person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the 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 made in accordance with subsection (6), the Commission may, where it considers appropriate, approve any person nominated 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 cancel any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization given 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 a person 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).

**104. Commission may authorize issue of advertisements,
invitations or documents**

(1) On an application by any person in accordance with subsection (6), 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 102(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 a person 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 person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the 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 made in accordance with subsection (6), the Commission may, where it considers appropriate, approve any person nominated 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 cancel any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization given 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 a person 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.

105. Withdrawal of authorization

(1) The Commission may at any time consider whether any of the conditions imposed in respect of an authorization of a collective investment scheme under section 103, or an authorization of the issue of an advertisement, invitation or document under section 104, are being complied with.

(2) Subject to the other provisions of this section, where, in relation to an authorization of a collective investment scheme under section 103, or an authorization of the issue of an advertisement, invitation or document under section 104, the Commission decides that -

- (a) any information provided to the Commission pursuant to section 103(6) or 104(6) (as the case may be) is false or misleading in a material particular;
- (b) any of the conditions imposed in respect of the authorization under section 103 or 104 (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 103 or 104 (as the case may be) is 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.

(3) The Commission shall not withdraw an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (2), without first giving the approved person for the scheme or the issue (as the case may be) an opportunity of being heard.

(4) Where the Commission withdraws an authorization of a collective investment scheme or of the issue of an advertisement, invitation or document under subsection (2), 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 the reasons for which it is made.

(5) Subject to subsection (6), 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.

(6) 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 (5) where -

- (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 that subsection; or
- (b) the withdrawal of the authorization would not be in the interest of the investing public.

(7) Where the Commission withdraws an authorization under subsection (2) or (5), it may -

- (a) impose such conditions on the withdrawal of the authorization as it considers appropriate; and
- (b) publish notice of the withdrawal and the reasons therefor in such manner as it considers appropriate.

(8) Notwithstanding section 375, any notice or decision required to be issued or served to or on an approved person shall for all purposes be regarded as duly issued or served to or on the approved person if, but only if, it has been delivered or sent by post or by facsimile or electronic mail transmission to the approved person in accordance with the particulars of which the Commission is informed in respect of the approved person for the purposes of section 103(2)(b) or 104(2)(b).

106. Offence to fraudulently or recklessly induce others to invest money

(1) A person commits an offence if he, by any fraudulent or reckless misrepresentation, induces another person -

- (a) to enter into or offer to enter into an agreement -
 - (i) to acquire, dispose of, subscribe for or underwrite securities; or
 - (ii) 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 (including securities); 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; and

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

(3) In this section, "fraudulent or reckless misrepresentation" (欺詐的或罔顧實情的失實陳述) means -

(a) any statement -

(i) which, to the knowledge of its maker, was false, misleading or deceptive; or

(ii) which is false, misleading or deceptive and was made recklessly;

(b) any promise -

(i) which its maker had no intention of fulfilling;

(ii) which, to the knowledge of its maker, was not capable of being fulfilled; or

- (iii) which is not capable of being fulfilled and was made recklessly;
- (c) any forecast -
- (i) which, to the knowledge of its maker, was not justified on the facts known to him at the time when he made it; or
 - (ii) which was not justified on the facts known to its maker at the time when he made it and was made recklessly; or
- (d) any statement, promise or forecast from which its maker intentionally or recklessly omitted a material fact, with the result that -
- (i) in the case of the statement, the statement was rendered false, misleading or deceptive;
 - (ii) in the case of the promise, the promise was not capable of being fulfilled or was rendered misleading or deceptive;
 - (iii) in the case of the forecast, the forecast was not capable of being justified or was rendered misleading or deceptive.

107. Civil liability for inducing others to invest money in certain cases

(1) Subject to the other provisions of this section, a person who, by any fraudulent, reckless or negligent misrepresentation, induces another person -

- (a) to enter into or offer to enter into an agreement -
 - (i) to acquire, dispose of, subscribe for or underwrite securities; or
 - (ii) 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 (including securities); or
- (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

shall, in addition to any other penalty to which he may be liable under this Part, 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) No person shall be liable to pay compensation under subsection (1) for any pecuniary loss sustained by any other person as a result of the reliance by the other person on any fraudulent, reckless or negligent misrepresentation unless the loss was within the reasonable contemplation of both persons at the time when the misrepresentation was made.

(3) For the purposes of this section, where a company or other body corporate has, by any fraudulent, reckless or negligent

misrepresentation, induced another person 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, by the misrepresentation, induced that other person to do such act.

(4) 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 do so, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(5) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance (Cap. 32) applies.

(6) 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.

(7) Nothing in this section limits or diminishes any liability which a person may incur under the common law.

(8) In this section, "fraudulent, reckless or negligent misrepresentation" (欺詐的、罔顧實情的或疏忽的失實陳述) means -

(a) any statement -

- (i) which, to the knowledge of its maker, was false, misleading or deceptive;
 - (ii) which is false, misleading or deceptive and was made recklessly; or
 - (iii) which is false, misleading or deceptive and was made without reasonable care having been taken to ensure its accuracy;
- (b) any promise -
- (i) which its maker had no intention of fulfilling;
 - (ii) which, to the knowledge of its maker, was not capable of being fulfilled; or
 - (iii) which is not capable of being fulfilled and was made recklessly or without reasonable care having been taken to ensure that it could be fulfilled;
- (c) any forecast -
- (i) which, to the knowledge of its maker, was not justified on the facts known to him at the time when he made it; or
 - (ii) which was not justified on the facts known to its maker at the time when he made it and was made recklessly or without reasonable care having been taken to ensure the accuracy of those facts; or
- (d) any statement, promise or forecast from which its maker intentionally, recklessly or negligently

omitted a material fact of which he had knowledge or ought to have had knowledge, with the result that -

- (i) in the case of the statement, the statement was rendered false, misleading or deceptive;
- (ii) in the case of the promise, the promise was not capable of being fulfilled or was rendered misleading or deceptive;
- (iii) in the case of the forecast, the forecast was not capable of being justified or was rendered misleading or deceptive.

108. Offers by securities dealers or advisers

(1) Subject to the other provisions of this section, a licensed or exempt securities dealer or a licensed or exempt securities adviser 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 document in an official language; or
 - (ii) if communicated verbally, is reduced to writing in a document in an official language and delivered to the person or persons to whom it was made not later than 24 hours after the verbal 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 that person will become liable to pay in respect of the transaction under the Stamp Duty Ordinance (Cap. 117);
 - (B) if the offeror will not so pay the stamp duty, the rate of the stamp duty that such person 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 the licensed or exempt securities dealer or the licensed or exempt securities adviser (as the case may be);
- (vi) if contained in a 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 the 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 5;
 - (D) where the offer is for the disposal of securities, satisfies the requirements of Part 2 of Schedule 5; 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 verbally, 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 document referred to in paragraph (a)(i) or is reduced to writing in a document referred to in paragraph (a)(ii) but the document is in only one official language, the 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 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 document.

(3) Where an offer communicated verbally 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 licensed or exempt securities dealer or licensed or exempt securities adviser who communicates an offer to acquire or dispose of any securities without having complied with subsections (1) to (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 to dispose of securities of, or issued by, a body in favour of persons who already hold securities of, or issued by, the body;

(b) an offer by a licensed or exempt securities dealer or a licensed or exempt securities adviser if the offer is made to a person with whom, or on whose behalf, the dealer or the adviser (as the case may be) 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;

(c) an offer made to -

(i) a person whose business involves the acquisition, disposal or holding of securities;

(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 by the Commission for the purposes of this paragraph; or

(d) an offer made by an exchange participant in the ordinary course of trading on a recognized stock market.

(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 made without subsections (1) to (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 licensed or exempt securities dealer or the licensed or exempt securities adviser who communicated the offer, within 14 days after the date on which he becomes aware of the matter described in paragraph (b).

- (7) For the purposes of this section -

- (a) where a licensed or exempt securities dealer or a licensed or exempt securities adviser invites 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 reference to 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 regarded as a reference to securities within the meaning of section 1 of Part 1 of Schedule 1 which are -

- (a) issued, made available or granted by the body; or
- (b) proposed to be 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.

109. Offence to issue advertisements relating to advice on corporate finance, etc.

(1) Subject to the other provisions of this section, 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 a person holds himself out as being prepared -

- (i) to carry on Type 4 regulated activity, Type 5 regulated activity, Type 6

regulated activity, or Type 7 regulated activity; or

(ii) to carry on a business of advising on interests in investment arrangements; or

(b) any document which to his knowledge contains such advertisement.

(2) Subsection (1) does not apply to any advertisement or document relating to a licensed or exempt person who is licensed or exempt for the purpose of carrying on the regulated activity to which the advertisement or document (as the case may be) relates.

(3) Subsection (1) does not apply to any advertisement or document relating to a business of advising on interests in investment arrangements that are not securities if the business is or is to be carried on by -

(a) an authorized financial institution which is not an exempt person;

(b) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29);

(c) an insurer who is authorized within the meaning of the Insurance Companies Ordinance (Cap. 41); or

(d) an approved trustee as defined in the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

(4) 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.

(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, any advertisement or document referred to in subsection (1)(a) or (b) to persons who are licensed or exempt securities dealers or licensed or exempt securities advisers.

(6) A person shall not be regarded as committing an offence under subsection (1) in respect of any advertisement or document referred to in subsection (1)(a) or (b) if -

- (a) he carried on a business the principal purpose of which was to provide the service of issuing or receiving materials provided to him by others;
- (b) the advertisement or document (as the case may be) was issued or received by him in the ordinary course of that business;
- (c) the content of the advertisement or document (as the case may be) was wholly devised by a customer of his or by a person acting on behalf of a customer of his; and
- (d) the nature of the service which he provided in relation to the advertisement or document (as the case may be) was such that he did not select, modify or otherwise exercise control over the content of the advertisement or document (as the case may be) prior to its issue or receipt.

(7) A person shall not be regarded as committing an offence under subsection (1) in respect of any advertisement or document referred to in subsection (1)(a) or (b) if -

- (a) he was a broadcaster;

- (b) the advertisement or document (as the case may be) was broadcast live by him as a broadcaster;
- (c) he did not modify the content of the advertisement or document (as the case may be) prior to its broadcast; and
- (d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast and with any code of practice or guidelines (however described) issued under or pursuant to the Television Ordinance (Cap. 52) or the Telecommunication Ordinance (Cap. 106) and applicable to him as a broadcaster.

(8) 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.

(9) In this section, "broadcast live" (直播), in relation to any advertisement or document, means having the advertisement or document (as the case may be) broadcast without its being recorded in advance.

Division 3 - Miscellaneous

110. Submission of information to Commission

- (1) Subject to the other provisions of this section -

- (a) an authorized financial institution;
- (b) an exempted body or, in the case of a wholly owned subsidiary specified in item 15 of Part 4 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 it fails, within 10 business days after the issue of any advertisement, invitation or document referred to in section 102(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 the Commission may specify by notice published in the Gazette.

(2) The Commission may, by notice published in the Gazette, specify for any purpose or by reference to any special circumstances a number of business days in substitution for the number of business days referred to in subsection (1).

(3) 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.

(4) 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 15 of Part 4 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. Amendment of Schedules 4 and 5

(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, 4 and 5 of Schedule 4.

(3) The Chief Executive in Council may, by order published in the Gazette, amend Schedule 5.

PART V
LICENSING AND EXEMPTION

112. Interpretation of Part V

(1) In this Part, unless the context otherwise requires -
"accredited" (隸屬) means accredited to a licensed corporation
under section 119, 120 or 121;

"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 an exempt person, means any officer
of the exempt person who is nominated by the exempt
person and approved by the Monetary Authority under
the Banking Ordinance (Cap. 155);

"prescribed fee" (訂明費用) means a fee prescribed by rules made
under section 371;

"principal" (主事人), in relation to a licensed representative,
means the licensed corporation to whom the representative is
accredited;

"responsible officer" (負責人員) means an individual who is
approved by the Commission under section 123(1) as a
responsible officer of a licensed corporation.

(2) For the purposes of this Part -

- (a) a corporation shall be regarded as carrying on a regulated activity if it carries on a business in that regulated activity;
- (b) an individual shall be regarded as carrying on a regulated activity if he performs or takes part in any act which constitutes that regulated activity but he shall not be so regarded if he performs only clerical duties;
- (c) if a corporation is granted a licence under section 115 or 116 to carry on a regulated activity, it shall be regarded as being licensed under that section for that regulated activity;
- (d) if an individual is granted a licence under section 119, 120 or 121 to carry on a regulated activity for or on behalf of a licensed corporation, he shall be regarded as being licensed under that section for that regulated activity;
- (e) if an exemption granted to an exempt person exempts it from the requirement to hold a licence to carry on a regulated activity, he shall be regarded as being exempt under that section for that regulated activity.

113. Restriction on carrying on business in regulated activities

- (1) No person shall -
 - (a) carry on a business in a regulated activity; or

- (b) describe himself, or otherwise hold himself out, as carrying on a business in a regulated activity,

unless he -

- (i) is a corporation licensed under section 115 or 116 for that regulated activity;
- (ii) is an authorized financial institution exempt under section 118 for that regulated activity; or
- (iii) where the regulated activity is Type 7 regulated activity, has been granted an authorization under section 94 to provide automated trading services.

(2) Any person who, without reasonable excuse, contravenes subsection (1)(a) or (b) commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$250,000 for every day during which the offence continues; and
- (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.

114. Restriction on performing acts that constitute regulated activities

(1) No person shall perform or take part in any act which constitutes a regulated activity, or describe himself, or otherwise hold himself out, as doing so unless -

- (a)
 - (i) he is a licensed representative for that regulated activity;
 - (ii) he is accredited to a licensed corporation;
 - (iii) the licensed corporation is licensed for that regulated activity; and
 - (iv) he performs or takes part in that act for or on behalf of the licensed corporation; or
- (b)
 - (i) he is an individual employed by an exempt person;
 - (ii) his name is entered in a register kept by the Monetary Authority for the purpose of this section under the Banking Ordinance (Cap. 155) as employed by the exempt person in respect of that regulated activity;
 - (iii) the exempt person is exempt for that regulated activity; and
 - (iv) he performs or takes part in that act for or on behalf of the exempt person; or
- (c) where the regulated activity is Type 7 regulated activity, he is an individual employed by a corporation which has been authorized under section 94 to provide automated trading services.

(2) A person shall not be regarded as contravening subsection (1) by reason only of offering advice on securities, futures contracts or corporate finance if such advice is offered other than -

- (a) on a regular basis; and
- (b) for any remuneration.

(3) A person shall not be regarded as contravening subsection (1) by reason only of managing a portfolio of securities or futures contracts for another person if he does not do so for remuneration.

(4) Any 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, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; and
- (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.

115. 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 such regulated activity as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence under subsection (1) unless -

(a) the applicant is -

(i) a company; or

(ii) an overseas company incorporated outside Hong Kong to which Part XI of the Companies Ordinance (Cap. 32) applies and which has complied with the provisions of that Part for the registration of documents;

(b) applications have been lodged under section 123 in respect of at least 2 individuals for approval of them as the responsible officers of the applicant; and

(c) an application has been lodged under section 127 in respect of any premises for approval of them to be used by the applicant for keeping records or documents.

(3) The Commission shall refuse to grant a licence under subsection (1) unless the applicant satisfies the Commission that -

(a) it is a fit and proper person to be licensed;

(b) it will be able, if licensed, to comply with the financial resources rules; and

(c) it -

(i) is insured to the satisfaction of the Commission against risks prescribed by it; or

(ii) has lodged and maintains with the Commission a security in accordance with rules made under subsection (5).

(4) In the case of an application for a licence to carry on Type 7 regulated activity that constitutes operating a stock market, the Commission shall refuse to grant the licence unless -

(a) the applicant is an exchange participant of a company recognized under section 19 to operate a stock market; and

(b) the applicant satisfies the Commission that the grant of the licence will not prejudice the interests of the investing public.

(5) The Commission may make rules for the purposes of subsection (3)(c) that provide -

(a) that a security lodged and maintained with the Commission may be applied by the Commission in such circumstances, for such purposes and in such manner as may be prescribed in the rules; and

(b) for any other matter relating to a security lodged with the Commission.

(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.

(7) Where the Commission amend or revoke any condition or impose any new condition under subsection (6), the amendment, revocation or imposition takes effect at the time of the service of the notice given in respect thereof or the time specified in the notice, whichever is the later.

(8) A licensed corporation shall not, when carrying on a business in a regulated activity, use a name other than the name specified in the licence.

(9) Without prejudice to the Commission's powers in Part IX, a licence granted to a licensed corporation to carry on Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the licensed corporation's being granted an authorization under section 94 to provide automated trading services.

116. Grant of temporary licences to corporations for carrying on business in 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, for a period not exceeding 3 months, such regulated activity as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence for a regulated activity under subsection (1) unless the applicant is a corporation and it satisfies the Commission that -

- (a) it is a fit and proper person to be licensed;
- (b) it carries on principally outside Hong Kong any activity which, if carried on in Hong Kong, would constitute that regulated activity;
- (c) it seeks to be licensed solely for carrying on in Hong Kong any regulated activity that is incidental to its carrying on the activity referred to in paragraph (b);
- (d) it carries on the activity referred to in paragraph (b) in a place outside Hong Kong under an authorization granted by an authority 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, conduct of the applicant in Hong Kong; and
- (e) in the 24 months immediately before the date on which it lodges the application, it has not carried

on that regulated activity in Hong Kong for a period of more than 6 months.

(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 person concerned, amend or revoke any such condition or impose new conditions.

117. Licensing conditions in certain cases

(1) Without limiting the generality of section 115(6), it shall be a condition of a licence granted under section 115(1) for the carrying on of -

(a) any regulated activity -

(i) that the licensed corporation is insured to the satisfaction of the Commission;
and

(ii) that the licensed corporation maintains with the Commission a security in accordance with rules made under section 115(5);

(b) Type 3 regulated activity, that in relation to any dispute, regarding or touching upon any matter concerning the carrying on of that regulated activity, between the licensed corporation and a client, 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 constitutes operating a stock market -

(i) that the licensed corporation shall continue to be an exchange participant of a company recognized under section 19 to operate a stock market; and

(ii) that the licensed corporation shall, if so required by the Commission in writing, apply within such reasonable period as may be specified by the Commission for an authorization under section 94 to provide automated trading services;

(d) Type 8 regulated activity, that the licensed corporation's sole business shall continue to be securities margin financing.

(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 the exercise of its functions under the relevant provisions; and
- (g) the exercise of any discretion by a person under the rules.

118. Exempt persons

(1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, grant a declaration of exemption to the applicant exempting it from the requirement to hold a licence to carry on such regulated activity specified in paragraph (a), (b), (d), (e), (f) or (i) in Part 1 of Schedule 6 as the Commission may specify.

(2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).

(3) Upon receiving an application for an exemption 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 granted the exemption for that regulated activity.

(4) The Commission shall refuse to grant an exemption under subsection (1) unless -

(a) the Commission is advised by the Monetary Authority under subsection (3) that he is satisfied; and

(b) the Commission is otherwise satisfied,

that the applicant is a fit and proper person to be granted the exemption for the regulated activity concerned.

(5) An exemption 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 exempt person concerned, amend or revoke any such condition or impose new conditions.

(6) Where the Commission amend or revoke any condition or impose any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice given in respect thereof or the time specified in the notice, whichever is the later.

(7) The Commission shall not exercise its power under subsection (5) without consulting the Monetary Authority in advance.

119. 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 perform or take part in any act which constitutes such regulated activity as the Commission may specify in the licence for or on behalf of the licensed corporation specified in the licence.

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by an individual licensed under subsection (1), approve the accreditation of the individual to a licensed corporation.

(3) The Commission shall refuse to -

(a) grant a licence under subsection (1) or section 120(1) or 121(1);

(b) approve an accreditation under subsection (2) or section 120(2) or 121(2); or

(c) approve a transfer of accreditation under subsection (6),

in respect of a regulated activity unless the applicant satisfies the Commission that -

(i) he is a fit and proper person to be licensed for that regulated activity; and

(ii) 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) 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 representative concerned, amend or revoke any such condition or impose new conditions.

(5) A licensed representative shall not, when carrying on the regulated activity for which he is licensed, use a name other than the name specified in the licence.

(6) Subject to subsections (3) and (4), the Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the transfer of the accreditation of a licensed representative from his principal to another principal.

(7) If a licence is returned by an individual under section 122(1)(b) and the Commission approves the transfer of his accreditation to a licensed corporation under subsection (6), the Commission shall re-grant the licence to the individual with the name of the licensed corporation specified in the licence as the principal to whom he is accredited.

120. Grant of provisional licence for representatives

(1) Subject to subsection (3) and section 119(3), the Commission may in its absolute discretion, upon application by an individual for a licence under section 119(1) and upon the request of the applicant in the prescribed form, grant to the applicant a provisional licence to perform or take part in any act which constitutes such regulated activity as the Commission may specify

in the provisional licence for or on behalf of a licensed corporation specified in the licence.

(2) Subject to section 119(3), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by an individual licensed under subsection (1), approve the accreditation of the individual to a licensed corporation.

(3) The Commission shall refuse to grant a provisional licence under subsection (1) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interests of the investing public.

(4) A provisional 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 representative concerned, amend or revoke any such condition or impose new conditions.

(5) A provisional licence granted to an individual shall be deemed to be revoked -

(a) upon the Commission's refusal of the individual's application for a licence under section 119(1); or

(b) upon the grant of a licence to the individual under section 119(1).

(6) Without prejudice to its powers under Part IX, the Commission may, having regard to the interests of the investing public and in its absolute discretion, revoke a provisional licence granted under subsection (1) by serving a notice in writing on the licensed representative concerned.

(7) If a provisional licence granted to an individual under subsection (1) is deemed to be revoked under subsection (5) or revoked under subsection (6), he shall, within 2 business days after such deemed revocation or revocation, return the licence to the Commission.

(8) Any person who contravenes subsection (7) commits an offence and is liable on conviction to a fine of \$200,000 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.

121. Grant of temporary licence 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 perform or take part in, for a period not exceeding 3 months, any act which constitutes such regulated activity as the Commission may specify in the licence for or on behalf of a licensed corporation licensed under section 116 specified in the licence.

(2) Subject to section 119(3), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by an individual licensed under subsection (1), approve the accreditation of the individual to a licensed corporation licensed under section 116.

(3) Subject to section 119(3), the Commission shall refuse to grant a licence for a regulated activity under subsection (1) unless the applicant satisfies the Commission that -

- (a) he seeks to be licensed solely for performing or taking part in Hong Kong any act which constitutes the regulated activity that is incidental to his principal's carrying on the activity referred to in section 116(2)(b);
- (b) he carries on, in a place outside Hong Kong, an activity which, if carried on in Hong Kong, would constitute performing or taking part in any act which constitutes the regulated activity under an authorization granted by an authority 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, conduct of the applicant in Hong Kong; and

(c) in the 24 months immediately before the date on which he lodges the application, he has not carried on that regulated activity in Hong Kong for a period of more than 6 months.

(4) 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 representative concerned, amend or revoke any such condition or impose new conditions.

(5) A licensed representative licensed under subsection (1) shall not, when carrying on the regulated activity for which he is licensed, use a name other than the name specified in the licence.

122. Commission to be notified if licensed representative ceases to act for principal

(1) If an individual licensed under section 119(1), 120(1) 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 2 business days after such cessation, notify the Commission of the cessation;

(b) the individual shall, within 2 business days after such cessation, return the licence to the Commission; and

(c) where the licence is granted under section 120 or 121, the licence shall, upon such cessation, be deemed to have been revoked.

(2) Any person who contravenes subsection (1)(a) or (b) commits an offence and is liable on conviction to a fine of \$200,000 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.

123. Requirement for executive officers

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative, approve the applicant as a responsible officer of the licensed corporation to which he is accredited.

(2) A licensed corporation licensed under section 115 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;
- (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; and

(c) there is at all times at least one such responsible officer of the licensed corporation in Hong Kong.

(3) An exempt person shall not carry on the regulated activity for which it is exempt unless -

- (a) at least 2 officers of the exempt person are for the time being approved by the Monetary Authority under the Banking Ordinance (Cap. 155) as the executive officers of the exempt person; and
- (b) there is at all times at least one such executive officer in Hong Kong.

(4) If a licensed corporation contravenes subsection (2) or an exempt person contravenes subsection (3), the licensed corporation or exempt person (as the case may be) and every executive officer of it commit an offence and each 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; and
- (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.

(5) 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 he -

- (a) is a fit and proper person to be so approved;
- (b) has sufficient educational or other qualifications or experience; and
- (c) has sufficient authority within the licensed corporation.

(6) 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 such condition or impose new conditions.

(7) 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 employed by,

the licensed corporation.

124. Variation of types of regulated activity

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, vary the type or types of regulated activity specified in the applicant's licence or declaration of exemption by adding to or reducing the type or types of regulated activity.

(2) Where a person applies for variation of the type or types of regulated activity specified in his licence or declaration of exemption by adding any regulated activity, such application shall, for the purposes of this Part, be regarded as an application for the licence or exemption (as the case may be) in respect of that regulated activity.

125. Applicant to provide information

- (1) A person who applies -
- (a) for a licence under section 115, 116, 119, 120 or 121;
 - (b) for an exemption under section 118;
 - (c) for accreditation of a person under section 119, 120 or 121;
 - (d) for approval to be a responsible officer under section 123;
 - (e) for variation, under section 124, of the type or types of regulated activity for which the person is licensed or exempt;
 - (f) for approval of premises under section 127;
 - (g) for approval to become a substantial shareholder under section 128;
 - (h) for a modification or waiver under section 129; or
 - (i) for any other matter requiring the approval of the Commission under this Part,

shall provide the Commission with such information as may be prescribed in rules made under subsection (3).

(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 for the purpose of subsection (1) make rules providing for -

- (a) the types of information to be provided by applicants to enable the Commission to consider their applications;
- (b) the form, manner and time period in which such information is to be provided; and
- (c) any other matter relating thereto.

126. 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 Ordinance, the Commission shall, in addition to any other matter that it may think relevant, but subject to section 129, 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 -
 - (A) any other person concerned in the management of the corporation; and
 - (B) any officer of the corporation.

(2) Without limiting the generality of subsection (1), the Commission 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) the Monetary Authority;
 - (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 its possession, whether provided by the person or not, relating to -

- (i) where such consideration relates to a licence or an application for a licence under section 115 or 116, 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 or exemption or an application for a licence under section 115 or 116 or an exemption under section 118, any other person who will be acting for or on behalf of the person in relation to the regulated activity for which the licence or exemption is granted or the application is made (as the case may be);
- (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 or an application for a licence under section 115 or 116, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under the relevant provisions, having regard in particular to the information provided in accordance with section 125; and
- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

127. Suitability of premises for storing records and 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 not 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 storage 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 of its decision under subsection (1) in writing as soon as reasonably practicable after receipt of the application.

128. Restriction on substantial shareholdings

(1) Subject to subsection (3), a person shall not become a substantial shareholder of a licensed corporation licensed under section 115 unless he has been approved by the Commission under subsection (2).

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the applicant to become a substantial shareholder of the licensed corporation.

(3) A person who becomes a substantial shareholder of a licensed corporation shall not be regarded as contravening subsection (1) if -

(a) at the time he became a substantial shareholder, he did not know, and had no reason to suspect, the existence of the act or circumstances by virtue of

which he became a substantial shareholder of the licensed corporation;

- (b) he subsequently becomes aware that he has become a substantial shareholder of the licensed corporation; and
- (c) he applies for approval under subsection (2) as soon as reasonably practicable and in any event within 2 business days after he becomes so aware.

(4) The Commission shall refuse to approve an applicant to become a substantial shareholder of a licensed corporation unless the applicant satisfies the Commission that the licensed corporation will remain a fit and proper person to be licensed if the application is approved.

(5) An approval under subsection (2) shall be subject to such reasonable conditions as the Commission may impose upon the applicant and upon the licensed corporation of which he is a substantial shareholder, and the Commission may at any time, by notice in writing served on the approved substantial shareholder and the licensed corporation, amend or revoke any such condition or impose new conditions.

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

(7) It is a defence for a person charged with an offence under subsection (6) to prove that he -

(a) did not know; and

(b) could not have by the exercise of reasonable diligence ascertained the existence of, the act or circumstances by virtue of which he became a substantial shareholder of the licensed corporation.

(8) If a person becomes a substantial shareholder of a licensed corporation without the Commission's approval under subsection (2), until the Commission approves him to become such substantial shareholder -

(a) the transfer of shares concerned and, in the case of unissued shares, the transfer of the right to be issued with them and their subsequent issue are of no effect at law or in equity except the effect of making the person a substantial shareholder for the purposes of subsections (1) and (6);

(b) the voting rights conferred by the shares concerned are not exercisable; and

(c) the licensed corporation shall not purport to issue shares, the issue of which is of no effect at law or in equity under paragraph (a).

(9) A person who purportedly exercises any right that is by virtue of subsection (8) of no effect at law or in equity or not exercisable commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(10) It is a defence for a person charged with an offence under subsection (9) to prove that he -

- (a) did not know; and
- (b) could not have by the exercise of reasonable diligence known,

that the right which he purportedly exercised is by virtue of subsection (8) of no effect at law or in equity or not exercisable.

(11) If a corporation gives effect to a transfer of shares or issues shares, the transfer or issue of which is of no effect at law or in equity by virtue of subsection (8), the corporation and every officer of the corporation who knowingly permits the transfer or the issue commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

129. 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 exempt person;
- (c) an applicant for a licence under section 115, 116, 119, 120 or 121;
- (d) an applicant for an exemption under section 118;
- (e) a substantial shareholder approved under section 128; or
- (f) an applicant for approval under section 128 to become a substantial shareholder,

grant a modification or waiver, in relation to the applicant, in respect of any condition specified in section 117 or imposed under section 115, 116, 118, 119, 120, 121, 123 or 128 or any of the requirements of the following -

- (i) sections 115(2)(b) and 123(2) and (3) (executive officers);
- (ii) sections 115(2)(c) and 127 (location of records and documents);
- (iii) section 126 (determination of "fit and proper");
- (iv) rules made under section 138 (financial resources rules);
- (v) rules made under section 141 (disposal of client securities);
- (vi) rules made under section 142 (segregated trust or client accounts);
- (vii) rules made under section 144 (keeping of accounts and records);

- (viii) rules made under section 145 (contract notes, receipts and statements of account);
- (ix) rules made under section 159 (conduct of business);
- (x) rules made under section 161 (options trading); or
- (xi) 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 person applying for it specifying the period (if any) for which the modification or waiver (as the case may be) is valid.

(3) Subject to subsection (7), the Commission may by notice published in the Gazette grant a modification or waiver, in relation to a class of licensed person or exempt person, in respect of any of the requirements of the rules referred to in subsection (1)(iv), (v), (vi) or (vii).

(4) A modification or waiver granted under subsection (1) or (3) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by -

- (a) (in the case of a modification or waiver granted under subsection (1)) notice in writing served on an executive officer of the licensed corporation or exempt person concerned; or
- (b) (in the case of a modification or waiver granted under subsection (3)) notice published in such manner, as the Commission considers appropriate,

amend such modification or waiver, or amend or revoke any such condition or impose new conditions.

(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) or published under subsection (3) 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 -

(i) (in the case of a modification or waiver granted under subsection (1)) notice in writing served on an executive officer of the licensed corporation or exempt person concerned;

(ii) (in the case of a modification or waiver granted under subsection (3)) notice published in such manner, as the Commission considers appropriate.

(6) 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 115, 116, 118, 119, 120, 121, 123 or 128, 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 117 or any of the requirements of that section, rules or provision specified in subsection (1)(i) to (xi), the interests of the investing public.

(7) The Commission shall not grant a modification or waiver under subsection (3) unless it is satisfied that to do so will not prejudice the interests of the investing public.

(8) Any person who fails to comply with a condition imposed by the Commission under subsection (4) commits an offence and is liable on conviction to a fine at level 6.

130. Events to be reported by licensed persons and exempt persons

(1) A licensed person or exempt person who intends to cease to carry on any regulated activity for which he is licensed or exempt shall notify the Commission 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) A licensed person or exempt person shall give to the Commission at least 7 business days' advance notice in writing of any intended change of address at which he proposes to carry on the regulated activity for which he is licensed or exempt.

(3) Where any information required under any provision of this Ordinance has been provided to the Commission by a person -

- (a) in connection with an application under any provision of this Part and the application has not been granted, refused or withdrawn; or
- (b) in connection with such application which has been granted or with any other matter,

the person shall, within 7 business days of any change in the information, give to the Commission notice in writing of the change containing a full description of it.

(4) Where a person becomes or ceases to be a director of an intermediary, both the person and the intermediary shall, within 5 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).

(5) An executive officer of a licensed corporation or exempt person shall report to the Commission if any person prevents or attempts to prevent him from properly discharging his responsibilities in supervising the carrying on of the regulated activity for which the licensed corporation is licensed or for which the exempt person is exempt (as the case may be).

(6) Any person who, without reasonable excuse, fails to comply with subsection (1), (2), (3), (4) or (5) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

131. Commission to maintain register of licensed persons and exempt persons

(1) The Commission shall maintain a register of licensed persons and exempt persons in the form or forms it considers appropriate.

(2) The register maintained under subsection (1) shall contain in relation to each licence or exemption -

- (a) the name and address of the licensed person or exempt person (as the case may be);
- (b) such conditions of the licence or the exemption 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 exempt person (as the case may be) the name and business address of each executive officer of it; and
- (e) such other particulars as the Commission considers desirable or expedient in the interests of the investing public.

(3) The register shall, at all reasonable times, be made available for inspection by members of the public and a copy of the register, or any extract of or entry in it, may be obtained on payment of the prescribed fee.

(4) A copy of any extract of or entry in the register maintained under this section purporting to be certified by an officer or employee of the Commission shall be admissible as evidence of its contents in any legal proceedings.

132. Publication of names of licensed persons and exempt persons

(1) The Commission shall at least once in each year publish in the Gazette, and in such other manner as it considers appropriate, at the time and in the manner it considers appropriate, the names and addresses of all licensed persons and exempt persons and such conditions of their licences or exemptions as the Commission considers appropriate.

(2) If the Commission amends the register maintained under section 131 by adding or removing the name of a person or changing any condition of a licence or exemption, it shall publish particulars of the amendment in the Gazette within 1 month after making the amendment.

133. Annual fee

A person licensed under section 115 or 119 or an exempt person shall pay an annual fee prescribed by rules made under section 371 and submit an annual return to the Commission within 1 month after each anniversary of the date on which he is licensed or exempt (as the case may be).

134. Prohibition of use of certain titles

(1) A person shall not take or use the title or description "securities dealer", "stock dealer", "stockbroker", "證券交易商", "股票經紀" or "證券經紀" unless -

(a) he is licensed for; or

- (b) he is an authorized financial institution exempt
for,

Type 1 regulated activity.

(2) A person shall not take or use the title or description "futures dealer", "futures broker", "期貨交易商" or "期貨經紀" unless -

- (a) he is licensed for; or
- (b) he is an authorized financial institution exempt
for,

Type 2 regulated activity.

(3) A person shall not take or use the title or description "leveraged foreign exchange trader" or "槓桿式外匯交易商" unless -

- (a) he is licensed for Type 3 regulated activity; or
- (b) he is an authorized financial institution.

(4) A person shall not take or use the title or description "securities adviser", "stock adviser", "securities consultant", "證券顧問" or "股票顧問" unless -

- (a) he is licensed for; or
- (b) he is an authorized financial institution exempt
for,

Type 4 regulated activity.

(5) A person shall not take or use the title or description "futures adviser", "futures consultant" or "期貨顧問" unless -

- (a) he is licensed for; or
- (b) he is an authorized financial institution exempt
for,

Type 5 regulated activity.

(6) A person shall not take or use the title or description "corporate finance adviser", "corporate finance consultant" or "機構融資顧問" unless -

(a) he is licensed for; or

(b) he is an authorized financial institution exempt for,

Type 6 regulated activity.

(7) A person shall not take or use the title or description "automated trading service provider" or "自動化交易服務提供者" unless -

(a) he is licensed for Type 7 regulated activity; or

(b) he is granted an authorization under section 94 to provide automated trading services.

(8) A person shall not take or use the title or description "securities margin financier", "margin lender" or "證券保證金融資人" unless -

(a) he is licensed for Type 8 regulated activity; or

(b) he is an authorized financial institution.

(9) A person shall not take or use the title or description "asset manager", "fund manager", "portfolio manager", "資產管理人", "基金管理人" or "基金經理" unless -

(a) he is licensed for; or

(b) he is an authorized financial institution exempt for,

Type 9 regulated activity.

(10) A person shall not take or use any title or description, other than any title or description specified in subsection (1), (2), (3), (4), (5), (6), (7), (8) or (9), which suggests that he carries on any regulated activity unless he is licensed or exempt for that regulated activity.

(11) Any person who contravenes subsection (1), (2), (3), (4), (5), (6), (7), (8), (9) or (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

135. Procedural requirements

(1) Where a person makes an application to the Commission under this Part and the Commission tentatively decides to -

(a) refuse the application in whole or in part; or

(b) impose conditions on approving the application,

it shall not make a final decision thereupon without first giving the applicant an opportunity of being heard.

(2) Where the Commission -

(a) refuses the application in whole or in part; or

(b) imposes conditions on approving the application,

it shall notify the applicant in writing of its decision and the reasons for making such decision.

136. Amendment of Schedule 6

The Financial Secretary may, by notice published in the Gazette, amend Schedule 6.

PART VI

CAPITAL REQUIREMENTS, CLIENT ASSETS,
RECORDS AND AUDIT

Division 1 - Interpretation

137. Interpretation of Part VI

In this Part, unless the context otherwise requires -
"associated entity" (有聯繫實體), in relation to an intermediary,
means -

- (a) a corporation that receives or holds client assets of the intermediary, where -
 - (i) the intermediary is a controlling entity of the corporation; or
 - (ii) another person, who is a controlling entity of the corporation, is also a controlling entity of the intermediary;and
- (b) an individual or a partnership that -
 - (i) receives or holds client assets of the intermediary; and
 - (ii) is legally obliged or otherwise accustomed to act in accordance with instructions given to it, whether directly or indirectly, by the intermediary in relation to the receipt or holding of the client assets;

"client assets" (客戶資產), in relation to an intermediary, means -

- (a) any securities, securities collateral and other collateral received or held by or on behalf of the intermediary, which is so received or held on behalf of a client of the intermediary or in which a client of the intermediary has a legal, equitable or beneficial interest; and
- (b) any client money of the intermediary;

"client money" (客戶款項), in relation to an intermediary, means any

money received or held by or on behalf of the intermediary, which is so received or held on behalf of a client of the intermediary or in which a client of the intermediary has a legal, equitable or beneficial interest, including any accretions thereto whether as capital or income;

"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 by the Commission 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) vary, modify, limit or add conditions to any resolution,at general meetings of the corporation;

"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 an exempt person, means any officer of the exempt person who is nominated by the exempt person and approved by the Monetary Authority under the Banking Ordinance (Cap. 155) to be responsible for directly supervising the conduct of the business conducted by the exempt person that constitutes a regulated activity; and
- (c) in relation to an associated entity of an intermediary which is a corporation, 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;

"financial resources rules" (<<財政資源規則>>) means rules made under section 138;

"other collateral" (其他抵押品), in relation to an intermediary, means any property, other than securities or money, provided by or on behalf of a client of the intermediary to the intermediary or any person on behalf of the intermediary as collateral security, and includes any property, other than securities or money, provided to any other person under an arrangement under which the intermediary or the person on behalf of the intermediary obtains an interest in the property under a collateral security;

"securities collateral" (證券抵押品), in relation to an intermediary, means any securities provided by or on behalf of a client of the intermediary to the intermediary or any person on behalf of the intermediary as collateral security, and includes any securities provided to any other person under an arrangement under which the intermediary or the person on behalf of the intermediary obtains an interest in the securities under a collateral security.

Division 2 - Capital requirements

138. Financial resources

(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), the Commission may, without prejudice to section 373(8) and (9), in the rules referred to in subsection (1) -

- (a) require licensed corporations to maintain financial resources in accordance with requirements as to the amount in which they are to be so maintained, and any other requirements, specified in the rules;
- (b) specify the assets, liabilities and other matters to be taken into account under the rules to determine 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 the modifications or only in the circumstances specified in the rules;

- (e) provide for the grant of approvals for such purposes as are specified in the rules and to amend or revoke such approvals, and for the publication of such approvals and any amendment or revocation of such approvals in any manner so specified;
- (f) require licensed corporations to submit to the Commission -
 - (i) at intervals specified in the rules, returns relating to their financial resources and trading activities; and
 - (ii) notice in writing of such circumstances relating to their financial resources and trading activities as are specified in the rules;
- (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; and
- (h) provide for any other matter relating to financial resources of licensed corporations.

139. Failure to comply with financial resources rules

(1) If a licensed corporation becomes aware of its inability to maintain, or to ascertain that it has maintained, financial resources in accordance with such requirements as to the amount in which they are to be so maintained as are specified in the financial resources rules that apply to it, it shall on the same day as that on which it becomes aware of such inability -

(a) notify the Commission by notice in writing of that fact; and

(b) (i) subject to subparagraph (ii), 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; or

(ii) where the Commission considers appropriate, carry on any regulated activity for which it is licensed, subject to such conditions as the Commission considers appropriate.

(2) If a licensed corporation becomes aware of its inability to comply with, or to ascertain its compliance with, all or any of the requirements of the financial resources rules that apply to it, other than such of the requirements relating to the maintenance of financial resources as are referred to in

subsection (1), it shall within one business day thereafter notify the Commission by notice in writing of that fact.

(3) Without limiting the generality of the financial resources rules and the rules that may be made under section 144, a licensed corporation to which any of the financial resources rules apply shall -

- (a) keep its records in sufficient detail to establish readily whether or not the financial resources rules that apply to it are being complied with; and
- (b) where the Commission by notice in writing served on it requires it to do so, make available such records to the Commission within 5 business days after the service of the notice.

(4) A licensed corporation shall be regarded as being aware of an inability described in subsection (1) or (2) if any of its directors or employees is, or should with the exercise of reasonable diligence have been, aware of such inability.

(5) Without prejudice to sections 180 and 181, where the Commission reasonably believes that a licensed corporation is unable to maintain, or to ascertain that it has maintained, financial resources in accordance with such requirements as to the amount in which they are to be so maintained as are specified in the financial resources rules that apply to it, the Commission may, whether or not notice has been given under subsection (1)(a) -

- (a) suspend the licensed corporation's licence; or

(b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as the Commission considers appropriate.

(6) Where a licensed corporation fails to comply with subsection (1)(a) or (b)(i) or (3), the licensed corporation and each of its executive officers commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(7) A licensed corporation which fails to comply with a condition imposed by the Commission pursuant to subsection (1)(b)(ii) or (5)(b) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(8) Where a licensed corporation fails to comply with subsection (2), the licensed corporation and each of its executive officers commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(9) The financial resources rules may provide that where a licensed corporation fails to comply with any specified provision of the financial resources rules that applies to it, other than

such of the requirements relating to the maintenance of financial resources as are referred to in subsection (1), the licensed corporation and each of its executive officers commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

140. 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 (5) may exercise any of the powers of an auditor referred to in section 155 to ascertain whether or not a licensed corporation complies with all of the requirements of the financial resources rules that apply to it.

(3) Without prejudice to sections 180 and 181, where a licensed corporation, upon being required to do so under this section, fails to satisfy the Commission, or a person authorized by the Commission under subsection (5), that it is able to

maintain, and to ascertain that it has maintained, financial resources in accordance with such requirements as to the amount in which they are to be so maintained as are specified in the financial resources rules that apply to it, the Commission may -

- (a) suspend the licensed corporation's licence; or
- (b) permit the licensed corporation to carry on any regulated activity for which it is licensed, subject to such conditions as the Commission considers appropriate.

(4) A licensed corporation which fails to comply with a condition imposed by the Commission pursuant to subsection (3)(b) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(5) 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 as if he were an auditor appointed under section 155.

Division 3 - Client assets

141. Client securities held by intermediaries

(1) The Commission may make rules requiring intermediaries and their associated entities to treat and deal with securities received or held by them as client assets of the intermediaries in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1), the Commission may, without prejudice to section 373(8) and (9), in the rules referred to in subsection (1) -

- (a) provide for the manner of holding, and of accounting for, the securities to which the rules apply;
- (b) provide that the securities to which the rules apply shall not be deposited, transferred, lent, pledged or otherwise dealt with except in the manner specified in the rules;
- (c) provide for the maintenance of records in relation to the securities to which the rules apply (including records of performance of reconciliations in respect of movements of such securities into and out of accounts of intermediaries or their associated entities) in the manner specified in the rules;
- (d) require the submission to the Commission, upon request or at intervals specified in the rules, of the information and records specified in the rules and of any further information, records or documents for the purpose of enabling the Commission to ascertain readily whether or not the rules are being complied with;
- (e) specify the circumstances in which securities to which the rules apply may, notwithstanding that

they are subject to a lawful claim or lien, be dealt with by intermediaries or their associated entities;

- (f) provide for the type and level of charges that may be imposed by intermediaries or their associated entities in respect of securities held by them;
- (g) provide for the approval, subject to such conditions as the Commission considers appropriate, of institutions suitable for the safe custody of the securities to which the rules apply;
- (h) require a person who becomes aware that he does not comply with any specified provision of the rules to notify the Commission of that fact and of any further information, within the time specified in the rules; and
- (i) provide for any other matter relating to the securities to which the rules apply.

(3) Except as provided in the rules made under this section, securities received or held by an intermediary or an associated entity of an intermediary as client assets of the intermediary -

- (a) are not available for disposal, in any manner or by any means, by the intermediary or an associated entity of the intermediary, whether for the payment of a debt or the settlement of a liability of the intermediary or the associated entity (as the case may be) or otherwise; and

(b) 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) A disposal of securities in contravention of subsection (3) is void, and a person in favour of whom the securities are so disposed of, or who takes securities so disposed of, does not obtain any title to them.

(5) Rules made under this section may provide that where a person fails to comply with any specified provision of the rules that applies to him, the person and, in the case of an intermediary or an associated entity of an intermediary which is a corporation, each of its executive officers commit an offence and each is liable -

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

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

(6) Rules made under this section may provide that a person who -

(a) with intent to defraud, fails to comply with any specified provision of the rules that applies to him; or

(b) being a director or employee of an intermediary or of an associated entity of an intermediary, with intent to defraud, causes or allows a failure on the part of the intermediary or the associated

entity (as the case may be) to comply with any specified provision of the rules that applies to the intermediary or the associated entity (as the case may be),

commits an offence and is liable -

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
 - (ii) on summary conviction to a fine of \$200,000 and to imprisonment for 1 year.
- (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 exempt persons, be regarded as the power to make rules in respect of the exempt persons only in relation to securities received or held by them in the course of the businesses which constitute the regulated activities for which the exempt persons are exempt;
 - (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 securities received or held by them in the course of their businesses of receiving or holding securities as client assets of

intermediaries of which they are associated entities.

(8) Notwithstanding anything in subsections (3) and (4), those subsections -

- (a) apply to securities received or held by an exempt person only if the securities were received or held by the exempt person in the course of the business which constitutes any regulated activity for which the exempt person is exempt;
- (b) apply to securities received or held by an associated entity which is an authorized financial institution only if the securities were received or held by the associated entity in the course of its business of receiving or holding securities as client assets of the intermediary of which the associated entity is an associated entity.

(9) In this section, "securities" (證券) includes securities collateral and other collateral in which a client of an intermediary has a legal, equitable or beneficial interest.

142. Client money held by licensed corporations

(1) The Commission may make rules requiring licensed corporations and their associated entities to treat and deal with client money in such manner as is specified in the rules.

(2) Without limiting the generality of subsection (1), the Commission may, without prejudice to section 373(8) and (9), in the rules referred to in subsection (1) -

- (a) specify that client money of licensed corporations or any part thereof is 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 how it is to be dealt with and accounted for;
- (c) specify what amount or proportion of the client money 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) provide how interest accruing from the holding of the client money in such accounts is to be dealt with and paid;
- (f) provide for the type and level of charges that may be imposed by licensed corporations or their associated entities in relation to such accounts;

- (g) specify the persons with whom such accounts are to be established and maintained;
- (h) provide for 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 manner specified in the rules;
- (i) require the submission to the Commission, upon request or at intervals specified in the rules, of the information and records specified in the rules and of any further information, records or documents for the purpose of enabling the Commission to ascertain readily whether or not the rules are being complied with;
- (j) provide for authorization by the Commission as a condition for payment out of such accounts in circumstances specified in the rules;
- (k) specify matters that are to be notified to the clients of licensed corporations or the Commission, or both, and the circumstances relevant thereto;
- (l) require a person who becomes aware that he does not comply with any specified provision of the rules to notify the Commission of that fact and of any further information, within the time specified in the rules; and

(m) 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 -

(a) is not available for disposal, in any manner or by any means, by the licensed corporation or an associated entity of the licensed corporation, whether for the payment of a debt or the settlement of a liability of the licensed corporation or the associated entity (as the case may be) or otherwise; and

(b) 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) A disposal of client money in contravention of subsection (3) is void, and a person in favour of whom the client money is so disposed of, or who takes client money so disposed of, does not obtain any title to them.

(5) Rules made under this section may provide that where a person fails to comply with any specified provision of the rules that applies to him, the person and, in the case of a licensed corporation or an associated entity of a licensed corporation which is a corporation, each of its executive officers commit an offence and each is liable -

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

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

(6) Rules made under this section may provide that a person who -

(a) with intent to defraud, fails to comply with any specified provision of the rules that applies to him; or

(b) being a director or employee of a licensed corporation or of an associated entity of a licensed corporation, with intent to defraud, causes or allows a failure on the part of the licensed corporation or the associated entity (as the case may be) to comply with any specified provision of the rules that applies to the licensed corporation or the associated entity (as the case may be),

commits an offence and is liable -

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and

(ii) on summary conviction to a fine of \$200,000 and to imprisonment for 1 year.

(7) Notwithstanding anything in this section, 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 money received or held by them in the course of their businesses of receiving or holding client money of licensed corporations of which they are associated entities.

(8) Notwithstanding anything in subsections (3) and (4), those subsections apply to client money received or held by an associated entity which is an authorized financial institution only if the client money was received or held by the associated entity in the course of its business of receiving or holding client money of the licensed corporation of which the associated entity is an associated entity.

143. Claims and liens not affected

Subject to sections 141(4) and 142(4), nothing in sections 141 and 142 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 the rules made under any of those sections that apply to the intermediary or the associated entity (as the case may be).

**144. Keeping of accounts and records
by intermediaries**

(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; and
- (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), the Commission may, without prejudice to section 373(8) and (9), in the rules referred to in subsection (1) -

- (a) require intermediaries, in relation to every transaction entered into with or on behalf of a client of the intermediaries, in relation to any of the businesses which constitute the regulated activities for which they are licensed or exempt, to keep such accounts and records as are specified in the rules;
- (b) require intermediaries and their associated entities to keep the accounts and records for such purposes as are specified in the rules;
- (c) provide for the manner in which the accounts and records are to be kept;

- (d) provide for the period for which, and the location at which, the accounts and records are to be kept before they may be destroyed;
- (e) require a person who becomes aware that he does not comply with any specified provision of the rules to notify the Commission of that fact and of any further information, within the time specified in the rules; and
- (f) provide for any other matter relating to accounts and records to be kept by intermediaries and their associated entities.

(3) An intermediary, and an associated entity of an intermediary, shall at all reasonable times keep its accounts and records open to inspection by a person authorized for the purpose under this Part or Part VIII.

(4) An entry in the accounts or records of an intermediary or an associated entity of an intermediary shall, unless there is evidence to the contrary, be deemed to have been made by it or with its authority.

(5) Where a person fails to comply with subsection (3), the person and, in the case of an intermediary or an associated entity of an intermediary which is a corporation, each of its executive officers commit an offence and each is liable -

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

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

(6) A person who -

(a) with intent to defraud, fails to comply with subsection (3); or

(b) being a director or employee of an intermediary or of an associated entity of an intermediary, with intent to defraud, causes or allows a failure on the part of the intermediary or the associated entity (as the case may be) to comply with subsection (3),

commits an offence and is liable -

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and

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

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

(8) Rules made under this section may provide that where a person fails to comply with any specified provision of the rules that applies to him, the person and, in the case of an intermediary or an associated entity of an intermediary which is a corporation, each of its executive officers commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(9) Rules made under this section may provide that a person who -

- (a) with intent to defraud, fails to comply with any specified provision of the rules that applies to him; or
- (b) being a director or employee of an intermediary or of an associated entity of an intermediary, with intent to defraud, causes or allows a failure on the part of the intermediary or the associated entity (as the case may be) to comply with any specified provision of the rules that applies to the intermediary or the associated entity (as the case may be),

commits an offence and is liable -

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) 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 exempt persons, be regarded as the power to make rules in respect of the exempt persons only in relation to accounts and records relating to the businesses which constitute the regulated activities for which the exempt persons are exempt;

- (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 accounts and records in respect of client assets, which are of intermediaries of which they are associated entities, that are received or held by them.

145. Contract notes, receipts, statements of account and notifications

- (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; and
 - (b) the preparation by associated entities of intermediaries, in respect of client assets of the intermediaries received or held by them, 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), the Commission may, without prejudice to section 373(8) and (9), in the rules referred to in subsection (1) -

- (a) require intermediaries, in relation to every transaction entered into with or on behalf of a client of the intermediaries, in relation to any of the businesses which constitute the regulated activities for which they are licensed or exempt, to prepare and provide to the client a contract note and, where applicable, a statement of account in the circumstances and in the manner specified in the rules;
- (b) require intermediaries and their associated entities, in relation to every client of the intermediaries to whom they have provided financial accommodation, to prepare and provide to the client a statement of account in the circumstances and in the manner specified in the rules;
- (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 circumstances and in the manner specified in the rules;
- (d) require intermediaries and their associated entities, in relation to every notification that

relates to client assets held on behalf of a client of the intermediaries and 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 circumstances and in the manner specified in the rules;

- (e) provide for the manner in which contract notes, receipts, statements of account and notifications are to be prepared or provided, when they are to be provided and the period for 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 to notify the Commission of that fact and of any further information, within the time specified in the rules; and
- (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 by the intermediaries and their associated entities.

(3) Rules made under this section may provide that where a person fails to comply with any specified provision of the rules that applies to him, the person and, in the case of an intermediary or an associated entity of an intermediary which is a

corporation, each of its executive officers commit an offence and each is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(4) Rules made under this section may provide that a person who -

- (a) with intent to defraud, fails to comply with any specified provision of the rules that applies to him; or
- (b) being a director or employee of an intermediary or of an associated entity of an intermediary, with intent to defraud, causes or allows a failure on the part of the intermediary or the associated entity (as the case may be) to comply with any specified provision of the rules that applies to the intermediary or the associated entity (as the case may be),

commits an offence and is liable -

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
- (ii) on summary conviction to a fine of \$200,000 and to imprisonment for 1 year.

(5) 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 exempt persons, be regarded as the power to make rules in respect of the exempt persons only in relation to contract notes, receipts, statements of account and notifications relating to the businesses which constitute the regulated activities for which the exempt persons are exempt;
- (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 receipts, statements of account and notifications relating to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

Division 5 - Audit

146. Auditor to be appointed

- (1) A licensed corporation shall appoint an auditor -
 - (a) within one month after it becomes licensed; and

- (b) within one month after an auditor appointed for the licensed corporation ceases to be an auditor of the corporation,

to perform the function required of an auditor of the corporation under or pursuant to the provisions of this or any other Ordinance.

(2) An associated entity of a licensed corporation shall appoint an auditor -

- (a) within one month after it becomes such an associated entity; and
- (b) within one month after an auditor appointed for the associated entity ceases to be an auditor of the associated entity,

to perform the function 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 a licensed corporation, shall, within 5 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) An auditor is not eligible for appointment under subsection (1) or (2) -

- (a) 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

(b) unless he belongs to a class of persons prescribed by rules made by the Commission for the purposes of this subsection.

(5) A person who fails to comply with 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 1 year; and

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

147. Notification of proposed change of auditors

(1) A licensed corporation, and an associated entity of a licensed corporation, shall notify the Commission by notice in writing within one business day after -

(a) where it is a corporation -

(i) it gives notice to its members of a motion, to be moved at its general meeting, to remove before the expiration of his term of office an auditor appointed by it under section 146; or

(ii) it gives notice to its members of a motion, to be moved at its general meeting, to replace an auditor appointed

by it under section 146 at the expiration of his term of office with another auditor; or

- (b) an auditor appointed by it under section 146 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).

(2) A person who fails to comply with subsection (1) commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; and
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

148. Notification of end of financial year

(1) A licensed corporation, and an associated entity of a licensed corporation, shall -

- (a) in the case of the licensed corporation, within one month after it becomes licensed;
- (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) On an application in writing by a licensed corporation or an associated entity of a licensed corporation, the Commission may, subject to such conditions as it considers appropriate, grant

approval in writing in respect of an alteration of the date notified to the Commission under subsection (1) as the date on which its financial year ends.

(3) A person who fails to comply with subsection (1) or with a condition imposed by the Commission pursuant to subsection (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 4 months.

(4) Except with the approval in writing of the Commission, the period of the financial year of a licensed corporation or an associated entity of a licensed corporation shall not exceed 12 months.

(5) Where the period of the financial year of a licensed corporation or an associated entity of a licensed corporation exceeds 12 months without the approval in writing of the Commission, the licensed corporation or the associated entity (as the case may be) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 4 months.

(6) Nothing in this section prejudices the operation of section 122 of the Companies Ordinance (Cap. 32).

149. Audited accounts to be submitted by licensed corporations and their associated entities, etc.

(1) Subject to subsections (3) and (4), a licensed corporation, and an associated entity of a licensed corporation, shall -

- (a) prepare such financial statements and other documents, for such periods, as are prescribed by rules made by the Commission 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 by the Commission for the purposes of this section, carrying on any of the regulated activities for which it is licensed, and an associated entity of a licensed corporation that ceases to be such an associated entity, shall -

- (a) prepare such financial statements and other documents, which shall be made up to the date of the cessation, as are prescribed by rules made by the Commission 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 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 by the Commission for the purposes of this section;
- (b) the auditor's report is to contain such particulars, including such statement of opinion, as are specified in the rules;
- (c) the financial statements and other documents, and the auditor's report, are to be prepared in accordance with such basis as is specified in 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 specified in 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 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, if the Commission is satisfied that there are special reasons for granting the extension; and upon the

Commission granting the extension, the requirements under subsection (1) or (2) (as the case may be) shall be construed accordingly.

(5) Where a person fails to comply with subsection (1) or (2) or with a condition imposed by the Commission pursuant to subsection (4), the person and, in the case of a licensed corporation or an associated entity of a licensed corporation which is a corporation, each of its executive officers commit an offence and each is liable -

(a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; and

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

(6) A person who -

(a) with intent to defraud, fails to comply with subsection (1) or (2) or with a condition imposed by the Commission pursuant to subsection (4); or

(b) being a director or employee of a licensed corporation or of an associated entity of a licensed corporation, with intent to defraud, causes or allows a failure on the part of the licensed corporation or the associated entity (as the case may be) to comply with subsection (1) or (2) or with a condition imposed by the Commission pursuant to subsection (4),

commits an offence and is liable -

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and
- (ii) on summary conviction to a fine of \$200,000 and to imprisonment for 1 year.

(7) 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 financial statements and other documents, and auditor's report, relating to their businesses of receiving or holding client assets of licensed corporations of which they are associated entities.

**150. Auditors to lodge report with
Commission in certain cases**

- (1) If a person, in the course of performing his duties as an auditor appointed under section 146 by a licensed corporation or an associated entity of a licensed corporation -
- (a) becomes aware of a reportable matter; or
 - (b) 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 149,

he shall, as soon as reasonably practicable after he becomes aware of the reportable matter or he first proposes the inclusion of the qualification or adverse statement (as the case may be), lodge with the Commission a written report on the reportable matter or the qualification or adverse statement (as the case may be).

(2) If a person appointed as an auditor under section 146 by a licensed corporation or an associated entity of a licensed corporation -

- (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 an 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 an 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 there are no such circumstances, make a statement to that effect.

(3) In this section -

"reportable matter" (須報告事情), in relation to a person acting as an auditor appointed under section 146 by a licensed corporation or an associated entity of a licensed corporation, means a matter that, in the opinion of the person -

(a) in the case of a licensed corporation -

- (i) adversely affects to a material extent the financial position of the licensed corporation or its associated entity;
- (ii) constitutes on the part of the licensed corporation a failure to comply with section 139 or with all or any of the requirements of the financial resources rules that apply to it;
- (iii) constitutes on the part of the licensed corporation or its associated entity a failure to comply with any specified requirement;

(b) in the case of an associated entity of a licensed corporation -

- (i) adversely affects to a material extent the financial position of the associated entity;
- (ii) constitutes on the part of the associated entity a failure to comply with any specified requirement;

"specified requirement" (指明規定) means -

- (a) any of the requirements under section 141(3) or 142(3);
- (b) such of the requirements under any of the rules made under section 141, 142, 144 or 145 as are specified as such by rules made by the Commission for the purposes of this definition.

151. Immunity in respect of communication by auditors with Commission

(1) Without prejudice to sections 359 and 360, no duty which a person may be subject to as an auditor appointed under section 146 by a licensed corporation or an associated entity of a licensed corporation shall be regarded as contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request made by the Commission, any information or opinion on a matter which he becomes aware of in his capacity as such an auditor and which is relevant to any function of the Commission.

(2) In addition to applying to a person who is an auditor appointed under section 146 by a licensed corporation or an associated entity of a licensed corporation, subsection (1) also applies to -

- (a) a person whose appointment as an auditor appointed under section 146 by a licensed corporation or an

associated entity of a licensed corporation has ceased; and

- (b) an auditor appointed under section 146 by a former licensed corporation or by a former associated entity of a licensed corporation.

(3) In this section -

"former associated entity of a licensed corporation" (持牌法團的前有聯繫實體) means a person who was formerly an associated entity of a licensed corporation;

"former licensed corporation" (前持牌法團) means a corporation which was formerly a licensed corporation.

152. Power of Commission to appoint auditors

(1) Subject to subsection (2), where -

- (a) a licensed corporation has failed to satisfy the Commission in accordance with section 140 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 its associated entity has failed to comply with any specified requirement;
- (c) the Commission has reasonable cause to believe that a licensed corporation or its associated entity has failed to submit any financial statements or other documents in accordance with section 149; or

(d) the Commission has received a written report lodged by a person under section 150 in relation to a licensed corporation or its associated entity, 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 its associated entity (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 its associated entity), and, without prejudice to section 154, to report to the Commission on such matters as the Commission may direct.

(2) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity which 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.

(3) If the Commission is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by it under subsection (1) should be borne by any person or persons, being the licensed corporation the accounts and records of which are examined and audited by the auditor, or the associated entity the accounts and records of which are examined and audited by the auditor, or both of them, the Commission may, by notice in writing, direct the person or persons (as the case may be) to pay

a specified amount, being the whole or a part of the costs and expenses, within the specified time and in the specified manner.

(4) Where a licensed corporation or an associated entity of a licensed corporation fails to comply with a direction of the Commission under subsection (3), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

(5) In this section, "specified requirement" (指明規定) means -

- (a) any of the requirements under section 141(3) or 142(3);
- (b) such of the requirements under any of the rules made under section 141, 142, 144 or 145 as are specified as such by rules made by the Commission for the purposes of this definition.

153. Commission may appoint auditors on application of clients

(1) Subject to the other provisions of this section, on an application in writing by a person who alleges that a licensed corporation or its associated entity has failed -

- (a) to account to the person 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) to act in accordance with instructions given by the person to the licensed corporation or the associated entity (as the case may be), and -

(i) has failed 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) has failed 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 its associated entity (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 its associated entity), and, without prejudice to section 154, to report to the Commission on such matters as the Commission may direct.

(2) The Commission shall not appoint an auditor under subsection (1) to examine and audit the accounts and records of an associated entity which 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.

(3) 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 it has given the licensed corporation or the associated entity (as the case may be) an opportunity of being heard.

(4) An application under subsection (1) shall contain -

- (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 (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.

(5) A person shall not incur any liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of anything done, or omitted to be done, by him in good faith in making an application under subsection (1).

(6) The Commission shall not appoint an auditor under subsection (1) unless it is satisfied that -

- (a) the person making the application under that subsection has a good reason for making the application; and
- (b) it is in the interest of the licensed corporation and the associated entity the accounts and records of which are to be examined and audited by the auditor, the person making the application, the investing public or the public that the auditor be appointed.

(7) If the Commission is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by it under subsection (1) should be borne by any person or persons, being the licensed corporation the accounts and records of which are examined and audited by the auditor, or the associated entity the accounts and records of which are examined and audited by the auditor, or the person making the application under that subsection in respect of the appointment, or all or any of them, the Commission may, by notice in writing, direct the person or persons (as the case may be) to pay a specified amount, being the whole or a part of the costs and expenses, within the specified time and in the specified manner.

(8) Where a licensed corporation, an associated entity of a licensed corporation or a person making an application under subsection (1) fails to comply with a direction of the Commission under subsection (7), the Commission may recover the specified amount referred to in the direction as a civil debt due to it.

154. Auditors to report to Commission

An auditor appointed under section 152 or 153 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.

155. Powers of auditors appointed by Commission

(1) An auditor appointed under section 152 or 153 to examine and audit the accounts and records of any licensed corporation and its associated entity, 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, affirmation or otherwise any associated entity of the licensed corporation who is an individual, any officer, employee and agent of the licensed corporation or its associated entity, and any other auditor appointed by the licensed corporation or its associated entity under section 146, in respect of any matter relating to the business of the licensed corporation or its associated entity or to the client assets of the licensed corporation received or held by the licensed corporation or its associated entity (and may administer oaths and affirmations accordingly);

- (b) require any associated entity of the licensed corporation who is an individual, and any officer, employee and agent of the licensed corporation or its associated entity to -
 - (i) produce any accounts and records concerning any matter relating to the business of the licensed corporation or its associated entity or to the client assets of the licensed corporation received or held by the licensed corporation or its associated entity; and
 - (ii) explain the contents of the accounts and records so produced;
- (c) require any other auditor appointed by the licensed corporation or its associated entity under section 146 to produce any accounts and records held by him concerning any matter relating to the business of the licensed corporation or its associated entity or to the client assets of the licensed corporation received or held by the licensed corporation or its associated entity;
- (d) require a recognized exchange company or recognized clearing house to 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 its associated entity

or to the client assets of the licensed corporation received or held by the licensed corporation or its associated entity;

- (e) require any person receiving or holding client assets on behalf of the licensed corporation or its associated entity to produce any accounts and records kept by the person, or information in his possession, concerning any matter relating to the client assets;
- (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 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 (other than the examination of a person on oath or affirmation under paragraph (a)).

(2) If an auditor appointed under section 152 or 153, 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 its associated entity which the auditor is appointed to carry out, the powers referred to in subsection (1) are exercisable in relation to -

- (a) any other business carried on by the licensed corporation in conjunction with any regulated activity for which it is licensed, and any business of its associated entity;
- (b) a related corporation of the licensed corporation or its associated entity, and any officer, employee or agent of the related corporation.

(3) A person who -

- (a) 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 152 or 153 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 152 or 153 or a person authorized under subsection (1)(g)), produces any accounts and records or gives an answer which he knows to be false or misleading in a material particular, or recklessly produces any accounts and 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 2 years; and
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (4) 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 152 or 153 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 152 or 153 or a person authorized under subsection (1)(g)), produces any accounts and 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; and
- (ii) on summary conviction to a fine of \$200,000 and to imprisonment for 1 year.

156. 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 account, record or document concerning any matter relating to the business of a licensed corporation or its associated entity or to the client assets of the licensed corporation received or held by the licensed corporation or its associated entity, 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 belonging to or in the possession of a licensed corporation or its associated entity, 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; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(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 account, record or document concerning any matter relating to the business of a licensed corporation or its associated entity or to the client assets of the licensed corporation received or held by the licensed corporation or its associated entity, 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 any examination and audit which an auditor appointed under this Part is required to carry out.

Division 6 - Miscellaneous

157. Associated entities

(1) An associated entity of an intermediary shall within 5 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 by the Commission 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 5 business days

thereafter notify the Commission by notice in writing of that fact and in the notice provide particulars of the change.

(3) Where an associated entity of an intermediary, other than an authorized financial institution, holds client assets as nominee for the intermediary or for a client of the intermediary, the associated entity shall not, unless authorized in writing by the Commission, conduct any business other than that of holding the client assets on behalf of the intermediary, its clients or its associated entities.

(4) Where an associated entity of an intermediary, without reasonable excuse, fails to comply with subsection (1), (2) or (3), the associated entity and, in the case of a corporation, each of its executive officers commit an offence and each is liable -

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

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

(5) Where -

(a) an associated entity of an intermediary, with intent to defraud, fails to comply with subsection (1), (2) or (3); or

(b) a director or employee of an associated entity of an intermediary, with intent to defraud, causes or allows a failure on the part of the associated entity to comply with subsection (1), (2) or (3),

it or he (as the case may be) commits an offence and is liable -

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; and

(ii) on summary conviction to a fine of \$200,000 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) Where an associated entity of an intermediary fails to comply with subsection (6), the associated entity and, in the case of a corporation, each of its executive officers commit an offence and each is liable on conviction to a fine at level 4 and to imprisonment for 4 months.

(8) 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.

PART VII
BUSINESS CONDUCT, ETC.

Division 1 - Interpretation

158. Interpretation of Part VII

In this Part, unless the context otherwise requires -
"representative" (代表) -

- (a) in relation to a licensed corporation, means an individual who -
 - (i) is licensed by the Commission to carry on a regulated activity; and
 - (ii) carries on that regulated activity on behalf of the licensed corporation to which he is accredited;
- (b) in relation to an exempt person, means an individual who -
 - (i) carries on a regulated activity on behalf of the exempt person; and
 - (ii) has his name entered in a register kept by the Monetary Authority under the Banking Ordinance (Cap. 155) as that of a person employed by the exempt person in respect of that regulated activity.

Division 2 - Business conduct**159. Business conduct**

(1) The Commission may make rules requiring intermediaries and their representatives to comply with such practices and standards, relating to their conduct in carrying on the regulated activities for which the intermediaries are licensed or exempt, as are specified in the rules.

(2) Without limiting the generality of subsection (1), the Commission may, without prejudice to section 373(8) and (9), 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) specify terms and conditions which are required to be included in client contracts and which shall, unless the Commission in relation to any particular term or condition otherwise directs, 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) specify information that an intermediary is to provide to its client on entering into a client contract with the client, and thereafter from time to time on request by the client, 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 that an intermediary, and any representative of an intermediary, are to take steps to ascertain, in relation to each of the clients of the intermediary, such matters relating to his identity and his financial situation, investment experience and investment objectives relevant to the services to be provided by the intermediary as are specified in the rules, and specify the steps that an intermediary, and any representative of an intermediary, are to take to ascertain such matters;
- (e) require that an intermediary, and any representative of an intermediary, when providing information or advice concerning financial products to any client of the intermediary, are to take steps to ensure the suitability of such information or advice for being provided to the client, and specify the steps that an intermediary, and any representative of an intermediary, are to take to ensure that such information or advice is suitable for being so provided;
- (f) require that an intermediary, and any representative of an intermediary, are to make

disclosure to any client of the intermediary of financial risks in relation to any financial product that the intermediary or the representative (as the case may be) recommends to the client, and specify the steps that an intermediary, and any representative of an intermediary, are to take to ensure that the disclosure is made;

(g) require that an intermediary, and any representative of an intermediary, are to make disclosure 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, and specify the steps that an intermediary, and any representative of an intermediary, are to take to ensure that the disclosure is made;

(h) require that an intermediary, and any representative of an intermediary, are not to effect a transaction on behalf of any client of the intermediary except in specified circumstances;

(i) specify the circumstances in which, and the conditions under which, an intermediary, and any representative of an intermediary, may use

information relating to the affairs of a client of the intermediary;

- (j) require that an intermediary, and any representative of an intermediary, are to take steps to avoid cases of conflict arising between any of their interests and those of a client of the intermediary, and specify the steps that an intermediary, and any representative of an intermediary, are to take in the event that there is a potential or actual case of such conflict arising;
- (k) specify the circumstances in which an intermediary may receive any property or services from another intermediary in consideration of directing business to that other intermediary;
- (l) specify the circumstances in which, and the conditions under which, any representative of an intermediary is permitted to deal for his own account in securities or futures contracts;
- (m) require that procedures be introduced and implemented to discourage and identify any money laundering activities, and specify the steps that an intermediary, and any representative of an intermediary, are to take to introduce and implement such procedures;
- (n) 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 exempt.

(3) Rules made under this section may provide that any client contract entered into by an intermediary with its client otherwise than in compliance with any specified provisions of the rules that apply to it or its representative is, notwithstanding anything in the contract, unenforceable at the option of the client.

(4) Rules made under this section may provide that an intermediary, and any representative of an intermediary, who, without reasonable excuse, fails to comply with any specified provision of the rules that applies to it or him (as the case may be) commits an offence and is liable -

(a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 2 years; and

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

(5) In this section, "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 which constitute a regulated activity.

160. Codes for business conduct

(1) Without prejudice to the power of the Commission to make rules under section 159, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of

conduct for the purpose of setting out guidelines 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 exempt.

(2) Without limiting the generality of subsection (1), any code of conduct referred to in subsection (1) may, in setting out guidelines 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;

(ii) in the case of a representative of an intermediary, to undergo continuous training; and

(c) practices and standards concerning any of the matters described in section 159(2).

(3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section, and -

(a) the other provisions of this section apply, with the 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 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 a code of conduct published under this section that apply to it or him (as the case may be) shall not by itself render it or him (as the case may be) liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any of the provisions 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 exempt; or
- (b) in the case of a representative of an intermediary, whether he is a fit and proper person to be or to remain licensed as a representative under Part V.

(5) A code of conduct published under this section -

- (a) may be of general or special application and may be made so as to apply only in specified circumstances; and
- (b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) A code of conduct published under this section is not subsidiary legislation.

Division 3 - Other requirements

161. Requirements for options trading

(1) The Commission may make rules prohibiting securities dealers from transacting in Hong Kong, or holding themselves out in Hong Kong as being prepared to transact, 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 securities otherwise than in the manner specified in the rules.

(2) Rules made under this section may provide that where a securities dealer fails to comply with any specified provision of the rules that applies to it, the securities dealer and each of its executive officers commit an offence and each is liable -

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

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

(3) In this section -

"executive officer" (主管人員) has the same meaning as in Part V;

"securities dealer" (證券交易商) means a person carrying on Type 1 regulated activity.

162. Certain agreements not to be made during unsolicited calls

(1) Subject to the other provisions of this section, a licensed or exempt person shall not, as principal or agent, during or as a consequence of an unsolicited call made by 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, securities, futures contract or leveraged foreign exchange contract;

(ii) an agreement the purpose, or pretended purpose, of which is to provide, whether conditionally or unconditionally, to that other person a profit, income or other returns from securities, futures contract or leveraged foreign exchange contract or a profit, income or other returns calculated by reference to changes in the value of any property (including securities, futures contract and 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 he does any other act or thing.

(2) A licensed or exempt person shall not be regarded as contravening subsection (1) by reason only that he -

(a) makes a call on another person who is a solicitor or professional accountant acting in his professional capacity or a licensed person, exempt person, money lender or existing client, or who is

a person whose business involves the acquisition, disposal or holding of securities; 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) a person who is of a class prescribed by rules made by the Commission for the purposes of this subsection;

(b) securities, futures contracts or leveraged foreign exchange contracts which are of a class prescribed by rules made by the Commission for the purposes of this subsection;

(c) calls made on a person who is of a class prescribed by rules made by the Commission for the purposes of this subsection; or

(d) calls which are of a class prescribed by rules made by the Commission for the purposes of this subsection.

(4) A person who 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; and

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

(5) Where, in consequence of a contravention of subsection (1), a person enters into an agreement with another person, that other person 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 the person who contravenes that subsection, within 28 days after the date on which he becomes aware of the contravention.

(6) 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;

"client" (客戶), in relation to a licensed or exempt person, means a person for whom the licensed or exempt person provides a service in the course of his business;

"existing client" (原有客戶), in relation to a licensed or exempt person, means a client who has entered into an agreement with the licensed or exempt person as a client in accordance with requirements prescribed by rules made by the Commission for the purposes of this definition;

"futures contract" (期貨合約) includes -

- (a) a futures contract as defined in section 1 of Part 1 of Schedule 1; and
- (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 by the Commission for the purposes of this definition;

"money lender" (放債人) has the meaning assigned to it in section 2(1) of the Money Lenders Ordinance (Cap. 163);

"unsolicited call" (未獲邀約的造訪) means any call made other 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.

163. 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 made to the effect that a person is licensed or exempt under this Ordinance does not by itself constitute a failure to comply with subsection (1).

(3) A person who, without reasonable excuse, fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

PART VIII

SUPERVISION AND INVESTIGATIONS

Division 1 - Interpretation

164. Interpretation of Part VIII

In this Part, unless the context otherwise requires -

"audit working papers" (審計工作底稿) 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 168(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 168(1).

Division 2 - Powers to require information, etc.

165. Power to require production of records and documents concerning listed corporations

(1) Where, in relation to a corporation which is or was at the relevant time listed -

- (a) it appears to the Commission that there are circumstances suggesting that the business of the corporation is being or 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 persons involved in the management of the affairs of the corporation are or 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 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) if the Commission decides to provide assistance to investigate a matter relating to the corporation under section 173, the matter 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,

the Commission may in writing authorize a person for the purposes of this section, whereupon the authorized person may, subject to the other provisions of this section, give a direction to -

- (i) the corporation;
- (ii) a corporation that is or was at the relevant 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 relating to the affairs of a corporation by the corporation or any other 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) that other person; or

(B) where the record or document relates to the affairs of a corporation, any other person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,

to provide any explanation 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

(b) if the record or document is not produced, to require -

(i) that other person; or

(ii) where the record or document relates to the affairs of a corporation, any other 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 shall, before requiring a person to provide or make an explanation or statement under this section, ensure that the person has been informed of the limitations imposed by subsection (4) on the admissibility in evidence of the requirement and of any explanation or statement provided or made.

(4) Notwithstanding any other provisions of this Ordinance, where an authorized person requires a person to provide or make an explanation or statement under this section, the person so required is obliged to provide or make the explanation or statement, but if the explanation or statement might tend to incriminate the person, and he so claims before providing or making the explanation or statement, the requirement and the explanation or statement -

(a) are, subject to paragraph (b), not 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 subsection (14), (15) or (16) or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation or statement;

(b) are admissible in evidence for all the purposes of Part XIII (other than for the purposes of any criminal proceedings instituted under or pursuant to that Part).

(5) 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.

(6) 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.

(7) 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 relevant time a related corporation.

(8) 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 is or 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 173.

(9) 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 is or 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 173.

(10) 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 with or has had dealings 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 is or 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 173; and

(iii) cannot be obtained by giving a direction to any other person under subsection (1)(i), (ii), (iii) or (iv).

(11) 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 173 is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (e) as being suggested by the circumstances referred to in that paragraph.

(12) 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 the controller of an authorized financial institution, or has as its controller an authorized financial institution, or has the same controller as 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.

(13) 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.

(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; and

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

(15) A person who, 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 he knows to be false or misleading in a material particular or recklessly produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular 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

(b) 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 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; and

- (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

(1);

"controller" (控權人) 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) 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 to be occurring or have occurred; 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 173 appears to the Commission to be occurring or have occurred.

166. Supervision of intermediaries and their associated entities

(1) Subject to the other provisions of this section, the relevant authority may in writing authorize a person for the purposes of this section, whereupon the 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 the intermediary's premises approved by the Commission under section 127(1) or the associated entity's premises (as the case may be);
- (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) 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 of the provisions of this Ordinance;
- (b) any notice or requirement given under any of the relevant provisions;
- (c) any of the terms and conditions of a licence or an exemption under this Ordinance.

(3) Subject to the other provisions of this section, 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) 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 the other provisions of this section, 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 that subsection, 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 which is not an intermediary to disclose any information or produce any record or document relating to the affairs of a customer unless the Commission 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 in respect of a corporation which is not an intermediary -

- (a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is the controller of an authorized financial institution, or has as its controller an authorized financial institution, or has the same controller as 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 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.

(12) 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.

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

(14) A person who, 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 he knows to be false or misleading in a material particular or recklessly produces any record or document or gives an answer which is false or misleading in a material particular 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
- (b) 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 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; and

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

(16) In this section -

"authorized person" (獲授權人) means a person authorized under subsection (1);

"controller" (控權人) 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 the intermediary referred to in subsection (1) is an exempt person which is an authorized financial institution, the Monetary Authority;
- (b) in any other case, the Commission.

167. Information relating to transactions

(1) The Commission may in writing authorize a person for the purposes of this section, whereupon the authorized person may, for the purpose of performing a function of the Commission 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 or exempt person through whom 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 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.

(6) 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; and

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

(7) A person who, in purported compliance with a requirement imposed on him by an authorized person under this section, furnishes to the authorized person information which he knows to be false or misleading in a material particular or recklessly furnishes to the authorized person information which is false or misleading in a material particular 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

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

(8) 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; and

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

(9) In this section -

"authorized person" (獲授權人) means a person authorized under subsection (1);

"interest" (權益) includes an interest of any nature, whether legal, equitable, proprietary or otherwise.

Division 3 - Powers of investigations

168. 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 collective investment scheme or leveraged foreign exchange contract; or

- (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;
- (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 (iv) is not in the interest of the investing public or in the public interest;
- (e) the Commission has reason to inquire whether any person, who is or was at any time a licensed person, or a responsible officer of or a person involved in the management of the business of a licensed person -
 - (i) is or has at any time been guilty of misconduct within the meaning of Part IX; or
 - (ii) is or has at any time otherwise not been a fit and proper person to remain licensed, or to remain a responsible officer of or a person involved in the management of the business of the licensed person (as the case may be); or

(f) if the Commission decides to provide assistance to investigate a matter under section 173, the matter is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d) or (e) as that 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 (f).

(2) The costs or 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 169(1), (2) or (3), shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.

169. Conduct of investigations

(1) The person under investigation or a person whom the investigator has reasonable cause to believe or suspect has in his possession any record or document which contains, or which is likely to contain, information relevant to an investigation under section 168,

or whom the investigator has reasonable cause to believe or suspect 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 to 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 requires in writing, and answer any question relating to the matters under investigation that the investigator may raise with him; and
- (d) give to 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 168 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 to the Commission, and on the conclusion of his investigation shall make a final report to the Commission.

(6) The Commission may, with the consent of the Secretary for Justice, cause a report under this section to be published.

170. Incriminating answers in investigations

(1) An investigator shall, before requiring a person to give an answer to any question under section 169, ensure that the person has been informed of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement, the question and any answer given.

(2) Notwithstanding any other provisions of this Ordinance, where an investigator raises any question with a person under section 169, the person is obliged to answer the question, but if the answer to the question might tend to incriminate the person, and he so claims before giving the answer, the question and the answer -

(a) are, subject to paragraph (b), not admissible in evidence against him in any criminal proceedings in a court of law other than those in which he is charged with an offence under section 171 or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer;

(b) are admissible in evidence for all the purposes of Part XIII (other than for the purposes of any criminal proceedings instituted under or pursuant to that Part).

171. 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 169(1)(a);

- (b) fails to give an explanation or further particulars required under section 169(1)(b);
- (c) fails to attend before the investigator as required under section 169(1)(c);
- (d) fails to answer a question raised by the investigator under section 169(1)(c);
- (e) fails to comply with section 169(1)(d); or
- (f) fails to comply with a requirement under section 169(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; and
 - (ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (2) A person who -
- (a) in answering a question raised by the investigator under section 169(1)(c), says anything which he knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular; or
 - (b) in responding to any written question raised by the investigator under section 169(1)(d), states anything which he knows to be false or misleading in a material particular or recklessly makes a 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 2 years; and
 - (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 answering a question raised by the investigator under section 169(1)(c), says anything which is false or misleading in a material particular; or
 - (iii) in responding to any written question raised by the investigator under section 169(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 answering a question raised by the investigator under section 169(1)(c), say anything which is false or misleading in a material particular; or

- (iii) in responding to any written question raised by the investigator under section 169(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; and
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) Where the person under investigation or any other person is convicted by a court on a prosecution instituted as a result of an investigation under section 168, the court may order him to pay to the Commission the whole or part of the costs or expenses of the investigation and the Commission may recover such costs as a civil debt due to it.

(5) Where the Commission receives an amount under an order made under subsection (4) in respect of any costs or expenses of an investigation, and all or any of the costs or 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

172. Certification to Court of First Instance relating to non-compliance with requirements under section 165, 166, 167 or 169

(1) If a person, without reasonable excuse, fails to do anything upon being required to do so by an authorized person under section 165, 166 or 167, or to do anything upon being required to do so by an investigator under section 169(1), (2) or (3), the authorized person or the investigator (as the case may be) may, by originating summons or originating motion, certify the failure to the Court of First Instance, and the Court may inquire into the case and -

- (a) 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 who appears to have been 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) A person shall not be punished under subsection (1)(b) and section 165, 166, 167 or 171(1), (2) or (3) in respect of the same failure.

173. 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 165, 167, 168, 169 and 358(3)(g)(i).

(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 165, 167, 168, 169 and 358(3)(g)(i).

(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 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;

(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 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) For the purposes of subsection (1) or (2), where the Commission is satisfied 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 obliged to give an answer to any question raised with him by an authorized person within the meaning of section 165, or

by an investigator, exercising pursuant to subsection (1) or (2) a power under section 165 or 169, and the answer might tend to incriminate him and he so claims before giving the answer, then, without limiting the provisions of section 165(4) or 170 (as the case may be), the authorized person or investigator (as the case may be) shall not provide evidence of the question or answer 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 costs or expenses incurred in providing assistance under this section, and all or any of the costs or 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) In this section, "companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions and duties under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place.

174. 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.

175. Production of computerized information

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 a computer, in a form which enables the information or matter to be reproduced in a legible form.

176. Inspection of records or documents seized, etc.

Where an authorized person within the meaning of section 165, 166 or 167 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.

177. Magistrate's warrants

(1) If a magistrate is satisfied on information on oath laid by an employee of the Commission or, where exercise of powers under section 166 is in question, of the relevant authority within the meaning of that section, or by an authorized person within the meaning of section 165, 166 or 167, or by an investigator, that there are reasonable grounds for suspecting 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 -

- (a) 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

(b) 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 proceedings before the Market Misconduct Tribunal, 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 exercise of powers under section 166 is in question, 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; and

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

178. 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, unless it is shown that at the relevant time he had no intention of concealing, from the person by whom the requirement to produce was imposed, facts 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; and

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

PART IX
DISCIPLINE, ETC.

Division 1 - Interpretation

179. Interpretation of Part IX

(1) In this Part, unless the context otherwise requires -
"misconduct" (失當行為), in relation to a person, means -

- (a) a contravention of any of the relevant provisions;
- (b) a contravention of any of the terms and conditions of a licence or an exemption under this Ordinance; or
- (c) an act or omission relating to the carrying on of any regulated activity for which a person is licensed or exempt 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.

(2) In this part, where any person is, or has at any time been, guilty of misconduct within the meaning of paragraph (a), (b) or (c) of the definition of "misconduct" in subsection (1) as a result of the commission of any conduct which occurred with the consent or connivance of, or was attributable to any neglect on the part of, another person as a responsible officer, or a person involved in the management of the business, of a licensed person, the conduct, in relation to that other

person, shall also be regarded as "misconduct", and "guilty of misconduct" shall also be construed accordingly.

Division 2 - Discipline, etc.

180. Disciplinary action in respect of licensed persons, etc.

- (1) Subject to section 182, where -
 - (a) a regulated person is, or has at any time been, 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 licensed, or to be or to remain a responsible officer, or a person involved in the management of the business, of a licensed 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 in relation to all or any of the regulated activities for which he is licensed; or
 - (B) suspend his licence in relation to 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 person -

- (A) revoke the approval granted under section 123(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 applying to be licensed, or to be approved under section 123(1) as a responsible officer of a licensed person, for such period as the Commission may specify.

(2) Subject to the other provisions of this section and section 182, where -

- (a) a regulated person is, or has at any time been, 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 licensed, or to be or to remain a responsible officer, or a person involved in the management of the business, of a licensed 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 secured or increased or loss avoided or reduced 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, take into consideration 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 after being informed of the order by a notice under section 182(2), or such further period as the Commission may specify by notice in writing to him.

(5) The Commission may, in the manner prescribed by rules made by the Commission 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) The Commission shall not perform any of its functions under subsection (2) unless 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.

(8) Any guidelines published under subsection (7) are not subsidiary legislation.

(9) In this section -

"regulated person" (受規管人士) means a person who is or at the relevant time was -

(a) a licensed person; or

(b) a responsible officer, or a person involved in the management of the business, of a licensed person;

"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 has been, guilty of misconduct; or

(b) where subsection (1)(b) or (2)(b) applies, the time when the person is, in the opinion of the Commission, not a fit and proper person within the meaning of such subsection.

181. Other circumstances for disciplinary actions in respect of licensed persons, etc.

(1) Subject to section 182, the Commission may revoke a licensed person's licence in relation to all or any of the regulated activities for which he is licensed, or suspend a licensed person's licence in relation to 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); 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); 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 to which the revocation or suspension (as the case may be) relates;
- (d) the licensed person did not, at the time of issue of the licence or at any time thereafter, comply with and

continues not to comply with any requirement applicable to him under section 115(2)(a)(i) or (ii) or (4)(b), 116(2)(b), (c) or (d)(i), (ii) or (iii) or 117(1)(b); or

- (e) the licensed person requests the Commission to so revoke or suspend the licence.

(2) Subject to section 182, the Commission may revoke a licensed person's licence in relation to Type 7 regulated activity if -

- (a) the Commission has imposed a condition under section 115(6) that the licensed person should, if he is to continue to carry on the regulated activity, be authorized to provide the automated trading services in question under section 94; and
- (b)
 - (i) the licensed person has failed to make an application for the authorization under section 94, within a period that is reasonable in the circumstances of the case, or has otherwise informed the Commission that he proposes not to make an application for the authorization under section 94; or
 - (ii) the licensed person has made an application for the authorization under section 94, 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 or is otherwise dissolved.

(4) A licence shall be deemed to be suspended if -

(a) the licensed person fails to pay an annual fee to the Commission in accordance with section 133; or

(b) the licensed person fails to make an annual return to the Commission in accordance with section 133,

and, subject to subsection (5), 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) Where a licence is suspended under subsection (4) and the event described in subsection (4)(a) or (b) has not been remedied within 30 days after the date 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.

(6) Subject to section 182, where a person who is a responsible officer of a 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 person to remain such a responsible officer, the Commission may -

- (a) revoke the approval granted under section 123(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.

182. Procedural requirements in respect of exercise of powers under section 180 or 181

(1) The Commission shall not exercise any power under section 180(1) or (2) or 181(1)(a), (b), (c) or (d), (2) or (6) without first giving the person against whom the power is exercised an opportunity of being heard.

(2) Where the Commission decides to exercise any power under section 180(1) or (2) or 181(1)(a), (b), (c) or (d), (2) or (6), the Commission shall inform the person against 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 date on which the decision is to take effect;
- (c) in so far as applicable, the duration and terms of any revocation, suspension or prohibition imposed under the decision; and
- (d) the amount of any pecuniary penalty imposed under the decision and the date by which it is required to be paid.

(3) Where the Commission decides to revoke or suspend a person's licence under section 181(1)(e), the Commission shall inform the person

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 date on which the decision is to take effect; and
- (c) in so far as applicable, the duration and terms of any revocation or suspension imposed under the decision.

183. Disciplinary action in respect of exempt persons

(1) Subject to the other provisions of this section and section 184, the Commission may revoke an exempt person's exemption in relation to all or any of the regulated activities for which he is exempt -

- (a) if the exempt person ceases to be an authorized financial institution;
- (b) if the exempt person carries on any of the regulated activities for which he is exempt other than in accordance with the conditions imposed under section 118(5);
- (c) if the exempt person is, or has at any time been, guilty of misconduct;
- (d) if the Commission is of the opinion that the exempt person is not a fit and proper person to remain exempt;
- (e) if -
 - (i) a receiver or manager of the property or business of the exempt person is appointed;

- (ii) the exempt person fails to satisfy a levy of execution;
 - (iii) the exempt person enters into a compromise or scheme of arrangement with its creditors;
 - (iv) the exempt person goes into liquidation or is ordered to be wound up;
 - (v) the exempt 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 exempt person to remain exempt;
- (f) if the exempt person does not carry on the regulated activity or regulated activities to which the revocation relates; or
- (g) if the exempt person requests the Commission to so revoke the exemption.

(2) The Commission, in determining whether an exempt person is a fit and proper person within the meaning of subsection (1)(d), may, among other matters -

- (a) take into consideration such present or past conduct of the exempt person as it considers appropriate in the circumstances of the case; and
- (b) do so on the ground (whether there are any other grounds or not) that any employee or director of the exempt

person is not a fit and proper person to remain an employee or director of a corporation which carries on a regulated activity of the kind to which the exemption relates.

(3) An exemption by which a person has become an exempt person shall be deemed to be revoked if the exempt person is wound up or is otherwise dissolved.

(4) No exemption by which an authorized financial institution has become an exempt person shall be revoked under subsection (1) unless the Commission has first consulted the Monetary Authority.

(5) An exemption by which a person has become an exempt person shall be deemed to be suspended if the exempt person fails to pay an annual fee to the Commission in accordance with section 133 and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the exemption should no longer be suspended and informs the exempt person to that effect by notice in writing.

(6) Where an exemption is suspended under subsection (5) and the failure to pay the annual fee described in that subsection has not been remedied within 30 days after the date on which the suspension becomes effective under that subsection, or such further period as the Commission may specify by notice in writing to the exempt person, the exemption shall be deemed to be revoked.

**184. Procedural requirements in respect of
exercise of powers under section 183**

(1) The Commission shall not revoke an exemption under section 183(1)(a), (b), (c), (d), (e) or (f) without first giving the exempt person concerned an opportunity of being heard.

(2) Where the Commission decides to revoke an exemption under section 183(1), the Commission shall inform the exempt person concerned 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; and
- (b) the date on which the decision is to take effect.

Division 3 - Miscellaneous

185. Effect of suspension under Part IX

(1) Where a licence of a person is suspended under section 180 or 181 in relation to all or any of the regulated activities for which the person is licensed, the person shall, during the period of the suspension, be deemed for the purposes of this Ordinance not to be licensed in relation to the regulated activities to which the suspension relates.

(2) Where an approval of a person as a responsible officer of a licensed person is suspended under section 180 or 181, the person shall, during the period of the suspension, be deemed for the purposes of this Ordinance not to be such a responsible officer.

(3) Where an exemption by which a person has become an exempt person is suspended under section 183, the person shall, during the period of the suspension, be deemed for the purposes of this Ordinance not to be an exempt person.

(4) A licence of a person may be revoked under section 180 or 181 notwithstanding that, at the time of revocation, the licence is suspended in relation to all or any of the regulated activities for which the person is licensed.

(5) An approval of a person as a responsible officer of a licensed person may be revoked under section 180 or 181 notwithstanding that, at the time of revocation, the approval is suspended.

(6) An exemption by which a person has become an exempt person may be revoked under section 183 notwithstanding that, at the time of revocation, the exemption is suspended.

186. General provisions relating to exercise of powers under Part IX

(1) In reaching a decision under section 180(1) or (2), 181(1), (2) or (6) or 183(1), 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 a licence or an exemption 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 exempt person (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 against a person under section 180(1) or (2) or 181(1)(a), (b), (c) or (d), (2) or (6), 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 under such section; 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 action under subsection (3), it shall comply with section 182(2), but, subject to the agreement of the person against whom it decides to exercise the power or take the action (as the case may be), it is not obliged to comply with section 182(1).

(5) Nothing in this Part affects the power of the Court of First Instance to make any order under or pursuant to section 196, 197, 198 or 199.

187. Duty of licensed or exempt persons upon revocation of licence or exemption

(1) Where a licence or exemption is revoked or suspended under this Part, the Commission may by notice in writing require the person

to whom the licence was issued or the person who became an exempt person by the exemption (as the case may be) 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 reasonably specifies 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) Where a person is charged under subsection (2) for failure to comply with a requirement imposed under subsection (1), it is a defence to the charge for the person to prove that, in the circumstances of the case, he acted reasonably in purported compliance with the requirement.

(4) 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 within the meaning of Part 1 of Schedule 1;
"client assets" (客戶資產) has the same meaning as in Part VI.

PART X

POWERS OF INTERVENTION AND PROCEEDINGS

Division 1 - Interpretation

188. Interpretation of Part X

In this Part, unless the context otherwise requires -
"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).

Division 2 - Powers of intervention

189. Restriction of business

(1) Subject to section 193, 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 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.

190. Restriction on dealing with property

Subject to section 193, the Commission may, as regards any property (whether of a licensed corporation or not), by notice in writing -

(a) prohibit the licensed corporation from -

(i) disposing of the property; or

- (ii) dealing with the property in a specified manner or other than in a specified manner;
- (b) require the licensed corporation to deal with the property in, and only in, a specified manner.

191. Maintenance of property

(1) Subject to section 193, 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.

192. Requirement to transfer custody of property

(1) Subject to section 193, the Commission may by notice in writing require a licensed corporation or any other person

to transfer the custody of relevant property of a specified description (whether of the licensed corporation or the other person (as the case may be) or not) to the Commission or to any person appointed in that behalf by the Commission.

(2) A requirement imposed under subsection (1) shall be regarded as also requiring the licensed corporation or the other person on whom the requirement is imposed to assist the Commission or the person appointed by the Commission pursuant to that subsection (as the case may be) to discharge its or his functions relating to the requirement.

(3) Where the custody of any relevant property has been transferred to the Commission, or to any person appointed by the Commission, pursuant to a requirement imposed under subsection (1), the Commission or the person (as the case may be) shall, subject to any order of a court (whether made under subsection (5) or otherwise) affecting all or any of the relevant property, take all reasonable steps to preserve the relevant property.

(4) Where the custody of any relevant property has been transferred to the Commission, or to any person appointed by the Commission, pursuant to a requirement imposed under subsection (1) -

(a) the Commission shall, as soon as reasonably practicable thereafter, apply to the Court of First Instance for an order under subsection (5) in respect of the relevant property; and

(b) the following persons may apply to the Court of First Instance for an order under subsection (5) in respect of the relevant property, or any part thereof -

- (i) the licensed corporation or the other person (as the case may be) from whom the custody of the relevant property has been transferred; and
- (ii) any other person having a claim to or any interest in, or in relation to, all or any of the relevant property.

(5) The Court of First Instance may, on an application of the Commission, the licensed corporation or any other person made under subsection (4), make such order as it considers appropriate in relation to any of the relevant property in respect of which the application is made.

(6) Neither this section nor a transfer of the custody of any relevant property pursuant to a requirement imposed under subsection (1) shall affect any legal or equitable title to any of the relevant property.

(7) In this section, "relevant property" (有關財產) means -

- (a) any property held by a licensed corporation, acting within the capacity for which it is licensed, for or on behalf of any of its clients, or 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 connected with the business which constitutes a regulated activity for which it is licensed,

but does not include securities deposited by a clearing participant with a recognized clearing house in accordance with the rules of the clearing house.

**193. Imposition of prohibition or requirement
under section 189, 190, 191 or 192**

(1) The Commission may impose a prohibition or requirement under section 189, 190, 191 or 192 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 the clients or creditors of the licensed corporation;
- (b) the licensed corporation is not a fit and proper person to remain licensed or is not a fit and proper person (having regard, among other matters, to the matters specified in section 126) to carry on any regulated activity for which it is licensed;
- (c) the licensed corporation has failed to comply with the requirement specified in section 166(2) or, in purported compliance with such requirement, has furnished the Commission with information which is 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 180(1) or 181(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.

(2) Notwithstanding section 185(1) and any other provisions of this Ordinance, the Commission may impose a prohibition or requirement under section 189, 190, 191 or 192 in respect of, or with reference to, a corporation the licence of which is revoked or suspended under section 180(1) or 181(1) or (2) notwithstanding that an application for review has been made in respect of the revocation or suspension (as the case may be) under section 203 or the time for making any such application under section 203 has not expired, as if the corporation were a licensed corporation, and references in this Division to a licensed corporation shall be construed accordingly.

194. Withdrawal, substitution or variation of prohibitions or requirements under section 189, 190, 191 or 192

(1) Subject to subsection (2), where a prohibition or requirement imposed under section 189, 190, 191 or 192 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) No withdrawal, substitution or variation may be made under subsection (1) in respect of a requirement imposed under section 192 after the Court of First Instance has made any order under section 192(5) in respect of the relevant property, or any of the relevant property, the custody of which has been transferred pursuant to the requirement.

(3) Subject as otherwise provided in any order made by the Court of First Instance under section 192(5), a prohibition or requirement imposed under section 189, 190, 191 or 192, or a prohibition or requirement substituting 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 until it is -

- (a) withdrawn; or
- (b) substituted by another prohibition or requirement, or varied,

by the Commission under this section.

(4) Where the Commission substitutes or varies a prohibition or requirement under subsection (1), the provisions of this section apply, with necessary modifications, to a prohibition or requirement substituting 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 189, 190, 191 or 192, and the provisions of this Division shall be construed accordingly.

(5) Without prejudice to subsection (4), where the Commission substitutes or varies under subsection (1) a requirement imposed under section 192, section 192(2) to (6) applies, with necessary modifications, to a requirement substituting the requirement under subsection (1)(b), or the requirement as varied under subsection (1)(b), as it applies to the requirement imposed under section 192, and the provisions of this Division shall be construed accordingly.

**195. General provisions relating to sections
189, 190, 191, 192 and 194**

(1) Where the Commission imposes under section 189, 190, 191 or 192, or withdraws, substitutes or varies under section 194, 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 the time specified in the notice, whichever is the later.

(2) Where the Commission imposes under section 189, 190, 191 or 192, or withdraws, substitutes or varies under section 194, 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 194(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);
- (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 189, 190, 191 or 192, or withdraws, substitutes or varies under section 194, 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) Where the Commission imposes a requirement under section 192, or withdraws, substitutes or varies such a requirement under section 194, 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 -

- (a) identify any person who, not being a person on whom the requirement was imposed, has a claim to or any interest in, or in relation to, all or any of the relevant property to which the requirement relates; and
- (b) serve on the person so identified 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).

(6) The Commission may publish in the Gazette, and by such additional means as it may consider appropriate, a notice regarding the imposition under section 189, 190, 191 or 192, or the withdrawal, substitution or variation under section 194, of a prohibition or requirement.

(7) Where the imposition of a prohibition or requirement is published under subsection (6), the Commission shall also publish in the Gazette, and by such additional means as it may consider appropriate, a notice regarding any subsequent withdrawal, substitution or variation of the prohibition or requirement under section 194.

(8) A notice published under subsection (6) or (7) 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.

(9) The Commission shall -

- (a) before imposing under section 189, 190, 191 or 192, or withdraws, substitutes or varies under section 194, a prohibition or requirement in respect of, or with reference to, a licensed 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 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 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.

(10) Sections 189, 190, 191, 192 and 194, and the imposition, withdrawal, substitution or variation of a prohibition or requirement under section 189, 190, 191, 192 or 194, do not operate so as to render a contract unenforceable by a party to the contract if he proves that in entering into the contract he acted in good faith and was unaware of any notice given, served or published, whether under section 189, 190, 191, 192 or 194 or under this section, in respect of or regarding the imposition, withdrawal, substitution or variation (as the case may be).

(11) Where by virtue of the application of section 189, 190, 191, 192 or 194 or of the giving, service or publication of any notice, whether under section 189, 190, 191, 192 or 194 or under this section, a person rescinds a contract, he shall restore to any other party to the contract any money or other benefit received or obtained by him under the contract from that party.

196. Certification to Court of First Instance relating to non-compliance with prohibitions or requirements under section 189, 190, 191, 192 or 194

(1) If a person, without reasonable excuse, 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 189, 190, 191, 192 and 194, the Commission may, by originating summons or originating motion,

certify the failure to the Court of First Instance, and the Court may inquire into the case and -

- (a) 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 who appears to have been 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 189, 190, 191, 192 and 194, 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 3 - Other powers and proceedings

197. Winding-up orders and bankruptcy orders

- (1) If -

- (a) it appears to the Commission that it is desirable in the public interest that a corporation should be wound up; and
- (b) the corporation is of a class of corporations which the Court of First Instance has jurisdiction to wind up in specified circumstances under the Companies Ordinance (Cap. 32),

the Commission may present a petition for it to be wound up under that Ordinance on the ground that it is just and equitable that it should be so wound up.

(2) If -

- (a) grounds exist for the presentation of a petition for a bankruptcy order against a licensed person 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 person in accordance with that Ordinance,

the Commission may present a petition for a bankruptcy order against the licensed person 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 this section against a corporation or a licensed 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 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 presentation by notice in writing, forthwith after the presentation inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

198. Injunctions and other orders

(1) Where -

(a) a person has -

(i) contravened -

(A) any of the relevant provisions;

(B) any notice or requirement given under any of the relevant provisions; or

(C) any of the terms and conditions of a licence or an exemption under 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;

(v) attempted, or conspired with others, to commit any such contravention; or

(b) it appears that any of the matters referred to in paragraph (a)(i) to (v) has occurred, is occurring or may occur, whether during the course of an investigation under section 168 or not,

the Court of First Instance, on the application of the Commission, may, subject to the other provisions of this section, 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;
- (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 making of the 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 making of the 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) Where the Commission applies to the Court of First Instance for an order pursuant to subsection (1), it shall not be required, as a condition of the granting of an interim order under subsection (6), to give an undertaking as to damages.

(8) 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.

(9) 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.

(10) 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.

**199. Remedies in cases of unfair prejudice, etc.
to interests of members**

(1) If it appears to the Commission that the business or affairs of a listed corporation (other than a listed corporation which is an authorized financial institution) are being, or at or after the time of the formation 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, after consultation with the Financial Secretary, may by petition apply to the Court of First Instance for an order under this section, whether or not at the time of such application the corporation remains a listed corporation.

(2) If on a petition under this section, the Court of First Instance is of opinion that the business or affairs of a listed corporation are being or 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) 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) subject to subsection (3), order that a person wholly or partly responsible for the business or affairs of the corporation being 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) No order made under subsection (2)(d) shall prohibit a person from being a director, liquidator, or receiver or manager of the property or business, of a corporation which is an authorized financial institution.

(4) 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 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.

(5) Subject to this section, 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.

(6) 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.

(7) If a company fails to comply with subsection (6), it commits an offence and is liable on conviction to a fine at level 2 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**200. Civil liability for public misstatements, etc.
concerning securities and futures contracts**

- (1) Subject to the other provisions of this section, where -
- (a) a person is responsible for an announcement, disclosure, statement or other 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 announcement, disclosure, statement or other communication (as the case may be) concerns securities or futures contracts, or may affect the price of securities or futures contracts; and
- (c) the announcement, disclosure, statement or other communication (as the case may be) is false or misleading in a material particular,

that person shall 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 announcement, disclosure, statement or other communication (as the case may be).

(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) No person shall be liable to pay compensation under subsection (1) for any pecuniary loss sustained by any other person as a result of the other person acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on an announcement, disclosure, statement or other communication which is false or misleading in a material particular if -

- (a) the first-mentioned person carried on a business the principal purpose of which was to provide the service

of issuing or reproducing materials provided to him by others;

- (b) the announcement, disclosure, statement or other communication (as the case may be) was issued or reproduced by him in the ordinary course of that business;
- (c) the content of the announcement, disclosure, statement or other communication (as the case may be) was wholly devised by a customer of his or by a person acting on behalf of a customer of his;
- (d) the nature of the service which he provided in relation to the announcement, disclosure, statement or other communication (as the case may be) was such that he did not select, modify or otherwise exercise control over the content of the announcement, disclosure, statement or other communication (as the case may be) prior to its issue or reproduction; and
- (e) at the time he issued or reproduced the announcement, disclosure, statement or other communication (as the case may be) he did not know that it was false or misleading in a material particular.

(4) No person shall be liable to pay compensation under subsection (1) for any pecuniary loss sustained by any other person as a result of the other person acting, or refraining from acting in a manner in which he would otherwise have acted, in reliance on an announcement,

disclosure, statement or other communication which is false or misleading in a material particular if -

- (a) the first-mentioned person was a broadcaster;
- (b) the announcement, disclosure, statement or other communication (as the case may be) was broadcast live by him as a broadcaster;
- (c) he did not modify the content of the announcement, disclosure, statement or other communication (as the case may be) prior to its broadcast; and
- (d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast and with any code of practice or guidelines (however described) issued under or pursuant to the Television Ordinance (Cap. 52) or the Telecommunication Ordinance (Cap. 106) and applicable to him as a broadcaster.

(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 do so, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(6) For the purposes of subsection (1), a person responsible for an announcement, disclosure, statement or other communication being made or issued includes -

- (a) any person making or issuing it; and

- (b) any person who in a material manner assisted or participated in, or approved, the making or issuing of it.

(7) It is a defence to an action brought against a person under subsection (1) in respect of an announcement, disclosure, statement or other communication for the person to prove -

- (a) where the action is brought by reference to subsection (6)(b), that he only assisted or participated in, or approved, the making or issuing of a part of the announcement, disclosure, statement or other communication (as the case may be) which part was not false or misleading in a material particular;
- (b) where the action is brought by reference to subsection (6)(b) on the basis that he assisted or participated in the making or issuing of an announcement, disclosure, statement or other communication, that at the time when it was made or issued, he opposed to the making or issuing of it because it was false or misleading in a material particular; or
- (c) that -
 - (i) at the time when the announcement, disclosure, statement or other communication (as the case may be) was made or issued, he acted in good faith and had reasonable grounds to believe that it was not false or misleading in a material particular, or he acted in good

faith and did not know, and could not reasonably have been expected to know, that it was false or misleading in a material particular; and

(ii) at the time when the pecuniary loss referred to in subsection (1) was sustained -

(A) the circumstances referred to in subparagraph (i) remained unchanged; or

(B) he had become aware that the announcement, disclosure, statement or other communication (as the case may be) was false or misleading in a material particular, but had, as soon as reasonably practicable after becoming aware of this, taken such action as was reasonable to clarify, or procure the clarification of, the matter which rendered the announcement, disclosure, statement or other communication (as the case may be) false or misleading in a material particular.

(8) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance (Cap. 32) or section 107 applies.

(9) Nothing in this section limits or diminishes any liability which a person may incur under the common law.

(10) In this section -

"broadcast live" (直播), in relation to any announcement, disclosure, statement or other communication, means having the announcement, disclosure, statement or other communication (as the case may be) broadcast without its being recorded in advance;

"issue" (發出), in relation to any material (including any announcement, disclosure, statement or other communication), includes publishing, circulating, distributing or otherwise disseminating the material, 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 cinematography films;
- (f) by way of sound broadcasting or television;
- (g) by computer 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.

PART XI

SECURITIES AND FUTURES APPEALS TRIBUNAL

Division 1 - Interpretation**201. 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 203(1);

"excluded decision" (豁除決定) means a decision made in respect of an authorized financial institution as an exempt person or as an associated entity of an intermediary which -

(a) is made by the Commission under or pursuant to any of the provisions set out in column 2 of Part 3 of Schedule 7; and

(b) is within the description set out, opposite to such provisions, in column 3 of Part 3 of Schedule 7;

"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, or of the Court of Appeal which was in operation before 1 July 1997;

(c) a former judge or a former deputy judge of the Court of First Instance, or of the High Court of Justice which was in operation before 1 July 1997;

"parties" (各方), in relation to an application for review, means the Commission and the person making the application;

"specified decision" (指明決定) means a decision which -

(a) is made by the Commission under or pursuant to any of the provisions set out in column 2 of Part 2 of Schedule 7; and

(b) is within the description set out, opposite to such provisions, in column 3 of Part 2 of Schedule 7,

but does not include an excluded decision;

"Tribunal" (審裁處) means the Securities and Futures Appeals Tribunal established by section 202.

Division 2 - Securities and Futures Appeals Tribunal

202. 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 hear and determine applications for review in accordance with this Part and Schedule 7.

(2) Subject as otherwise provided in this Part or Schedule 7, the Tribunal shall be presided over by a chairman appointed by the Chief Executive on the recommendation of the Chief Justice, who shall sit with 2 other members appointed by the Chief Executive.

(3) The chairman of the Tribunal shall be a judge and the other 2 members of the Tribunal shall not be public officers.

(4) Part 1 of Schedule 7 shall have effect in relation to the appointment of members and temporary members of the Tribunal, and to the proceedings and hearings of, and procedural and other matters concerning, the Tribunal.

(5) The Tribunal may, where the Chief Executive considers appropriate, be divided into 2 or more divisions, whereupon the provisions of this Ordinance and any other Ordinance shall apply, subject to necessary modifications, to each division of the Tribunal 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 201, 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 201 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.

203. Applications for review of specified decisions of the Commission

(1) Subject to the other provisions of this section, a person aggrieved by a specified decision of the Commission made in respect of him may, by notice in writing served on the Tribunal, apply to the Tribunal for a review of the decision.

(2) A notice in writing served on 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 Commission shall be made within 21 days after -

- (a) where there is any requirement in this or any other Ordinance for notice in writing 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.

(4) Where the Tribunal receives a notice served on it under subsection (1), it shall as soon as reasonably practicable thereafter serve a copy of the notice on the Commission.

204. Proceedings before Tribunal

(1) Following the submission of an application for review, the Tribunal shall conduct a hearing to hear and determine the application by reviewing 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 substitute for the decision any other decision which the Tribunal considers appropriate;
- (b) remit the matter in question to the Commission with the directions it considers appropriate, which may include a direction to the Commission to make a decision afresh in respect of any matter specified by the Tribunal.

(3) The Tribunal shall not determine an application for review without first giving the parties to the application an opportunity of being heard.

(4) Subject to section 206(3), where the Tribunal is required to determine any matter of fact, it shall do so on the balance of probabilities from the evidence before it.

205. Powers of Tribunal

(1) Subject to the provisions of Part 1 of Schedule 7 and any rules made by the Chief Justice under section 218, the Tribunal may, for the purpose of hearing and determining an

application for review, on its own motion or on the application of any of the parties to the application for review -

- (a) receive and consider any material by way of oral evidence, written statements, documents or otherwise, 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 a hearing of the application for review and to give evidence and produce any article, record or document in his possession which is relevant to the application for review;
- (c) administer oaths and affirmations;
- (d) examine or cause to be examined on oath, affirmation or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers relevant to the application for review;
- (e) order a witness to provide evidence in a truthful manner for the purposes of the application for review by affidavit or affirmation;
- (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 during the course of

a hearing of the application for review, or any part thereof, which is held in private;

- (h) determine the manner in which any material referred to in paragraph (a) is received;
- (i) determine the procedure to be followed in connection with the application for review;
- (j) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the hearing of the application for review or the carrying out of its functions.

(2) A person commits an offence if he, without reasonable excuse -

- (a) refuses or 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 a hearing of an application for review;
- (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 hearing of an application for 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;
- (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) Where a person is charged under subsection (2)(a) for refusal or failure to comply with a prohibition made in respect of any material under subsection (1)(g), it is a defence to the charge for the person to prove that he did not know and had no reason for knowing that the Tribunal had made the prohibition in respect of the material.

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

206. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance in the exercise of its civil jurisdiction to punish for contempt, as if it were contempt of court, a person who -

- (a) without reasonable excuse, refuses or fails to comply with an order, notice, prohibition or

requirement of the Tribunal made or given under or pursuant to section 205(1); or

(b) commits an offence under section 205(2).

(2) A person shall not be punished both for contempt under subsection (1) and upon conviction under section 205(2) for the same refusal or failure or the same offence (as the case may be).

(3) For the avoidance of doubt, the Tribunal shall, in the exercise of its powers under subsection (1), adopt the same standard of proof as the Court of First Instance in the exercise of its civil jurisdiction to punish for contempt.

207. Privileged information

Nothing in this Part and Schedule 7 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.

208. Costs

(1) 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 a hearing of an application for review;

(b) any party to the application,

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 application and the hearing of the application.

(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 application in question as the Tribunal considers appropriate;

(b) where the costs are awarded to any party to the application under subsection (1)(b), the other party to the application.

(3) Subject to any rules made by the Chief Justice under section 218, 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).

(4) The Tribunal may order that any costs awarded under subsection (1) shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.).

209. Notification of Tribunal determinations

(1) The Tribunal shall, as soon as reasonably practicable after the conclusion of a hearing of an application for review, deliver -

- (a) its determination in respect of the application, and the reasons therefor; and
- (b) any order made by it under section 208 in relation to the application, and the reasons therefor.

(2) Where the hearing of an application for 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, refuses or fails to comply with an order of the Tribunal made pursuant to subsection (2).

(4) Where a person is charged under subsection (3) for refusal or failure to comply with an order made in respect of any determination or order or any reasons, or any part of a determination or order or any reasons, pursuant to subsection (2), it is a defence to the charge for the person to prove that he did not know and had no reason for knowing that the Tribunal had made the order in respect of the determination or order or the reasons, or the part of the determination or order or the reasons (as the case may be).

210. 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 when the order is made.

(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.

211. Orders of Tribunal may be registered in Court of First Instance

The Tribunal may, in the manner prescribed by rules made by the Chief Justice, 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.

212. Applications for stay of specified decisions

(1) A person who has made an application for review may, at any time before the application is determined by the Tribunal, apply to the Tribunal for a stay of the specified decision to which the application relates.

(2) On an application made under subsection (1), the Tribunal shall as soon as reasonably practicable conduct a hearing to determine the application, and may, where it considers appropriate, grant a stay 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.

213. Referral of case stated to Court of Appeal

(1) The Tribunal may on its own motion refer, by way of case stated, to the Court of Appeal for determination of any question of law arising out of the application for review.

(2) In addition to any other power of the Court of Appeal in relation to any question of law referred to it by way of case stated under subsection (1), the Court of Appeal may amend the case or order it to be sent back to the Tribunal for amendment.

(3) Where the Tribunal refers any question of law to the Court of Appeal under subsection (1), the Tribunal shall not determine the application for review until after the Court of Appeal has given its determination in respect of the question of law referred to it.

(4) Where the Court of Appeal has given its determination in respect of any question of law referred to it under subsection (1), the Tribunal shall determine the relevant application for review having regard to the determination of the Court of Appeal.

Division 3 - Appeals

214. Appeal to Court of Appeal

(1) A party to an application for review who is dissatisfied with a finding or determination of the Tribunal (whether or not it is a determination in respect of an application for review, or an

order made under section 208 or 212) may appeal to the Court of Appeal against the finding or determination 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; or
- (c) 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 hearing of the application for review afresh for the purpose of determining any question specified by the Court of Appeal.

(3) In an appeal under subsection (1), the Court of Appeal may make such order as to costs as it considers appropriate.

(4) Subject to this section 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.

215. No stay of execution on appeal

The lodging of an appeal under section 214 does not operate as a stay of execution of a finding or determination of the Tribunal (whether or not it is a determination in respect of an application for review, or an order made under section 208 or 212) 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.

Division 4 - Miscellaneous

**216. 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 shall take effect at any time before -

- (a) where there is any requirement in this or any other Ordinance for notice in writing 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 that to which section 115(6), 180(4) or 195(1) applies, shall take effect -

- (a) where, prior to the expiration of the time specified in section 203(3) as that within which an application for review of the decision shall be made, the person in respect of whom the decision is made notifies the Commission that he will not make the application, on the date on which he so notifies the Commission;

(b) subject to paragraph (a), where the person does not make an application for review of the decision within the time specified in section 203(3) as that within which the application shall be made, on the date of expiration of the time; or

(c) where the person makes an application for review of the decision within the time specified in section 203(3) as that within which the application shall be made -

(i) where the decision is confirmed by the Tribunal, on the date on which the decision is so confirmed;

(ii) where the decision is varied, or substituted by another decision, by the Tribunal, on the date on which the decision is so varied or substituted, subject however to the terms of the variation or substitution; or

(iii) where the application is withdrawn, on the date on which it is so withdrawn.

(3) Notwithstanding subsection (2) and any other provisions of this or any other Ordinance, but subject to subsection (1), the Commission 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 date, other than that on which the decision is apart from this

subsection to take effect, as the date on which the decision is to take effect, in which case the decision shall take effect on the date so specified.

217. Appeals to Chief Executive in Council in respect of excluded decisions

(1) A person aggrieved by an excluded decision of the Commission made in respect of him may appeal to the Chief Executive in Council against the decision.

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

(3) Notwithstanding subsections (4) and (5) and any other provisions of this or any other Ordinance, no excluded decision shall take effect at any time before -

(a) where there is any requirement in this or any other Ordinance for notice in writing 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.

(4) An excluded decision, other than that to which section 118(5), 180(4) or 195(1) applies, shall take effect -

(a) where, prior to the expiration of the time specified in section 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which a written memorandum in respect of the

decision shall be submitted, the person in respect of whom the decision is made notifies the Commission that he will not submit the written memorandum, on the date on which he so notifies the Commission;

(b) subject to paragraph (a), where the person does not submit a written memorandum in respect of the decision within the time specified in section 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which the written memorandum shall be submitted, on the date of expiration of the time; or

(c) where the person submits a written memorandum in respect of the decision within the time specified in section 4 of the Administrative Appeals Rules (Cap. 1 sub. leg.) as that within which the written memorandum shall be submitted -

(i) where the decision is confirmed by the Chief Executive in Council, on the date on which the decision is so confirmed;

(ii) where the decision is varied or reversed, or substituted by another decision, by the Chief Executive in Council, on the date on which the decision is so varied, reversed or substituted, subject however

to the terms of the variation, reversal or substitution; or

- (iii) where the written submission is withdrawn, on the date on which it is so withdrawn.

(5) Notwithstanding subsection (4) and any other provisions of this or any other Ordinance, but subject to subsection (3), where the Commission considers appropriate in the interest of the investing public or in the public interest to do so, it may, after consultation with the Monetary Authority, specify in the notice served in respect of an excluded decision any date, other than that on which the decision is apart from this subsection to take effect, as the date on which the decision is to take effect, in which case the decision shall take effect on the date so specified.

218. Chief Justice may make rules

The Chief Justice may make rules -

- (a) regulating the procedure for the hearing of appeals made under section 214;
- (b) regulating the procedure for the registration of orders of the Tribunal in the Court of First Instance under section 211;
- (c) providing for matters of procedure relating to applications for review, or hearings of applications for review, or matters relating to

such hearings, which are not provided for in this Part or Part 1 of Schedule 7;

- (d) providing for the award of costs under section 208 and the taxation of those costs;
- (e) prescribing the fees for any matter in relation to applications for review;
- (f) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

219. Amendment of Parts 2 and 3 of Schedule 7

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

PART XII

INVESTOR COMPENSATION

220. 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 228;

"compensation fund" (賠償基金) means the Investor Compensation Fund established under section 221;

"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 Exchange Compensation Fund" (期交所賠償基金), "Unified Exchange Compensation Fund" (聯交所賠償基金), "repealed Commodities Trading Ordinance" (已廢除的《商品交易條例》) and "repealed Securities Ordinance" (已廢除的《證券條例》) have the same meanings respectively as in section 43 of Schedule 10.

221. Establishment of compensation fund

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 purposes of this Part.

222. 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 into the compensation fund under sections 44(2) or (10)(c), 45(2) or (10)(b) and 46(11) of Schedule 10;
 - (c) all amounts recovered by the Commission or a recognized investor compensation company in exercise of a right of action conferred by this Part or Part III;
 - (d) all amounts borrowed under subsection (3);
 - (e) any return or profit received on an investment made under section 225;
 - (f) all other amounts lawfully paid into the compensation fund.

- (2) The Commission -
 - (a) shall maintain separate accounts in respect of the amounts that are respectively paid into the compensation fund under sections 44, 45 and 46 of Schedule 10;
 - (b) may, if it considers it necessary to do so, maintain sub-accounts in respect of the separate accounts in such manner as it considers appropriate; and

(c) may, if it considers it necessary to do so, maintain separate accounts in respect of the compensation fund -

- (i) for different exchanges or providers of automated trading services;
- (ii) for different classes of investors; or
- (iii) generally, for the better management or administration of the fund.

(3) With the prior written consent of the Financial Secretary, the Commission may, for the purposes of the compensation fund, borrow from any authorized financial institution on such terms and at such rates of interest as it considers acceptable and may charge any investments acquired under section 225 by way of security for any such loan.

223. 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.

224. Accounts of compensation fund

(1) The Commission shall keep proper accounts of the compensation fund, and 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 revenue and expenditure account and a balance sheet made up to the last day of that year; and
- (b) in the case where separate accounts are maintained under section 222(2)(a) or (c) or sub-accounts are maintained under section 222(2)(b) -

- (i) a consolidated revenue and expenditure account and a balance sheet made up to the last day of that year, in respect of the separate accounts or sub-accounts (as the case may be); and
 - (ii) a separate revenue and expenditure account and balance sheet made up to the last day of that year, in respect of each separate account or sub-account (as the case may be).

(2) A revenue and expenditure account and a balance sheet prepared under subsection (1) shall each be signed by the chairman and at least one non-executive director of the Commission.

(3) The Commission shall appoint an auditor to audit the compensation fund.

(4) 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 revenue and expenditure

account and balance sheet prepared under subsection (1) and shall submit the report to the Commission.

(5) An auditor's report prepared under subsection (4) shall contain a statement made by the auditor as to whether in his opinion the revenue and expenditure accounts and balance sheets give a true and fair view of the matters to which those accounts and balance sheets relate.

(6) The auditor appointed under this section may call for and inspect such books and records of any recognized investor compensation company as he may require in order to perform his functions under this section.

(7) Not later than 4 months after the end of each financial year the Commission shall cause a copy of each of the audited revenue and expenditure account and balance sheet prepared under subsection (1) to be sent to the Financial Secretary together with the auditor's report on such accounts and balance sheets and shall cause the accounts and balance sheets to be published in the Gazette.

225. 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 or other document evidencing the investment of money under subsection (1) may be kept in the office of the Commission or deposited for safe keeping with an authorized financial institution.

226. 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 in investigating or defending claims made under rules made under this Part or incurred in relation to the compensation fund or in the exercise by the Commission of the rights, powers, and authorities vested in it by this Part in relation to the compensation fund;
- (b) the expenses incurred or involved in the management or administration of the compensation fund;
- (c) the expenses incurred in obtaining insurance, surety, guarantee or other security, or in making

financial arrangement, in respect of claims which may be made against the compensation fund under rules made under this Part;

(d) interest on any sum borrowed under section 222(3);

(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; and

(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); and

(c) in the case of the Unified Exchange Compensation Fund, the repayment of the amounts (if any) which the Commission has paid into the Unified Exchange

Compensation Fund under section 99(2) of the
repealed Securities Ordinance,

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 equitable.

(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 44(2) or 45(2) of Schedule 10 (as the case may be).

(4) In the event that the compensation fund is dissolved, the Commission may, in its absolute discretion, after the satisfaction of all outstanding liabilities against the compensation fund, pay -

- (a) to the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, to the liquidator of the Stock Exchange Company the whole or a portion of that part of the compensation fund which is derived from the Unified Exchange Compensation Fund under section 44(2) and (10)(c) of Schedule 10, and on any such payment being made those amounts shall form part of the assets of the Stock Exchange Company or, if it is in liquidation, shall be available to the liquidator for

distribution in accordance with the Companies Ordinance (Cap. 32); and

- (b) to the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, to the liquidator of the Futures Exchange Company the whole or a portion of that part of the compensation fund which is derived from the Futures Exchange Compensation Fund under section 45(2) and (10)(b) of Schedule 10, and on any such payment being made those amounts shall form part of the assets of the Futures Exchange Company or, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

227. Subrogation of the Commission to rights, etc., of claimant on payment from compensation fund

(1) On the Commission making any payment out of the compensation fund in respect of any claim made under rules made under this Part -

- (a) the Commission shall be subrogated, to the extent of that payment, to all the rights and remedies of the claimant in relation to the loss sustained by him by reason of the default on which the claim was based; and

(b) the claimant shall have no right in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss any sum out of the assets of the exchange participant or other person concerned who is in default, or where the loss was caused by the defalcation, fraud or misfeasance of an employee of that exchange participant or that other person, the assets of that employee, until the Commission has been reimbursed the full amount of its payment.

(2) All amounts recovered by the Commission by virtue of subsection (1) shall become part of the compensation fund.

228. Rule-making powers

(1) The Chief Executive in Council may, without prejudice to section 373(8) and (9), 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 222(2)(b), 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; and

(d) generally providing for the better carrying out of the provisions and purposes of this Part.

(2) 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;
- (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 circumstances and manner in which the Commission may determine, deal with and pay 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 system 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 78;
- (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 provisions of this Part; and

(n) generally providing for the better carrying out of the provisions 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.

PART XIII

MARKET MISCONDUCT TRIBUNAL

Division 1 - Interpretation

229. 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; and
- (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 with respect to the acquisition, holding or disposal of such securities or such

interest or under which they undertake to act together in exercising their voting power, as rights arising out of the holding of such securities or such interest, 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 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" (内幕交易) means insider dealing within the meaning of section 253;

"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, or of the Court of Appeal which was in operation before 1 July 1997;

- (c) a former judge or a former deputy judge of the Court of First Instance, or of the High Court of Justice which was in operation before 1 July 1997;

"market misconduct" (市場失當行為) means -

- (a) insider dealing;
- (b) false trading in securities within the meaning of section 257;
- (c) price rigging in securities markets within the meaning of section 258;
- (d) disclosure of information about prohibited transactions in securities within the meaning of section 259;
- (e) stock market manipulation within the meaning of section 260;
- (f) disclosure of false or misleading information inducing transactions in securities within the meaning of section 261;
- (g) false trading in futures contracts within the meaning of section 262;
- (h) price rigging in futures markets within the meaning of section 263;
- (i) disclosure of information about prohibited transactions in futures contracts within the meaning of section 264; or

(j) disclosure of false or misleading information inducing transactions in futures contracts within the meaning of section 265,

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 (j);

"Presenting Officer" (提控官), in relation to any proceedings instituted under section 236, means the person appointed under section 235(4) to conduct the proceedings;

"Tribunal" (審裁處) means the Market Misconduct Tribunal established by section 235.

(2) In this subsection and sections 230 to 233 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 dealt in or listed on a recognized stock market and regardless of who issued or made them;

"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 on a recognized stock market;

"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 on a recognized stock market;
- (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 on a recognized stock market, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so listed; or
- (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 on a recognized stock market, 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 369 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) A person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

230. Interest in securities (insider dealing)

For the purposes of sections 229(2) and 231 to 233 and Division 4, a reference to an interest in securities shall be construed as including an interest of any kind 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.

231. 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 of any kind in the relevant share capital of the corporation, the nominal value of which is equal to or more than 5% of the relevant share capital of the corporation.

232. 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 this section, 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 or a recognized clearing house;
- (e) an officer or employee of a body corporate incorporated by an Ordinance; or
- (f) an officer or employee of a body corporate specified by the Financial Secretary for the purposes of this subsection by notice published in the Gazette,

whether 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.

**233. Dealing in securities or their derivatives
(insider dealing)**

For the purposes of section 229(2) and Division 4, a person shall be regarded as dealing in securities or their derivatives if, whether as principal or agent, he buys, sells, exchanges or subscribes for, or agrees to buy, sell, exchange or subscribe for, any securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for, any securities or their derivatives.

234. 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 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 has 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

235. 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 8 any question or issue arising out of or in connection with the proceedings instituted under section 236.

(2) Subject as otherwise provided in this Part or Schedule 8, the Tribunal shall be presided over by a chairman appointed by the Chief Executive on the recommendation of the Chief Justice, who shall sit with 2 other members appointed by the Chief Executive.

(3) The chairman of the Tribunal shall be a judge and the other 2 members of the Tribunal shall not be public officers.

(4) The Secretary for Justice shall, in respect of any proceedings instituted under section 236, 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, a counsel or a solicitor.

(6) Schedule 8 shall have effect in relation to the appointment of members and temporary 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) The Tribunal may, where the Chief Executive considers appropriate, be divided into 2 or more divisions, whereupon the provisions of this Ordinance and any other Ordinance shall apply, subject to necessary modifications, to each division of the Tribunal 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 229(1));

(b) a Presenting Officer (other than a Presenting Officer who is a legal officer); and

(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 229(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.

236. Market misconduct proceedings

(1) If it appears to the Financial Secretary, whether or not following any report by the Commission under subsection (8) or 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 to the chairman of the Tribunal a notice in writing which shall contain a written statement specifying such matters as are prescribed in Schedule 8.

(3) Without limiting the generality of section 235(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 secured or increased or loss avoided or reduced as a result of the market misconduct.

(4) Subject to the other provisions of this section, the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection (3)(b) if -

- (a) the person has perpetrated any act which constitutes the market misconduct;
- (b) notwithstanding that the person has not perpetrated any act which constitutes the market misconduct -
 - (i) the Tribunal identifies a corporation as having engaged in market misconduct pursuant to that subsection; and
 - (ii) the market misconduct was directly or indirectly attributable to, or occurred with the knowledge, consent or connivance of, the person as an officer of the corporation; or
- (c) notwithstanding that the person has not perpetrated any act which constitutes the market misconduct -
 - (i) the Tribunal identifies any other person as having engaged in market misconduct pursuant to that subsection; and
 - (ii) the person assisted or connived with that other person in the perpetration of any

act which constitutes the market misconduct, with the knowledge that such act 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 the person is a person who shall not by reason of the market misconduct be regarded as having engaged in market misconduct under any of the provisions of this Part.

(6) The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection (3)(b) without first giving the person an opportunity of being heard.

(7) It is declared that, subject to section 245(3), the standard of proof required to determine any question or issue before the Tribunal shall be that 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 report to the Financial Secretary 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 by the

Secretary for Justice under subsection (9), that an offence under any of the provisions of Part XIV has been committed.

237. Powers of Tribunal

(1) Subject to the provisions of Schedule 8 and any rules made by the Chief Justice under section 252, the Tribunal, for the purposes of any proceedings instituted under section 236, 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, documents or otherwise, 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 and affirmations;
- (d) examine or cause to be examined on oath, affirmation 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 or affirmation;

- (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 a sitting, or 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) determine the procedure to be followed in connection with the proceedings;
- (j) 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) refuses or 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 236;

- (e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance;
- (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) Where a person is charged under subsection (2)(a) for refusal or failure to comply with a prohibition made in respect of any material under subsection (1)(g), it is a defence to the charge for the person to prove that he did not know and had no reason for knowing that the Tribunal had made the prohibition in respect of the material.

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

238. Further powers of Tribunal concerning evidence

(1) For the purposes of any proceedings instituted under section 236, 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 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 there are 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 the record or document was prepared or created, details of all instructions given or received in connection therewith and an explanation of the reasons for the making of entries contained therein);
- (d) to require any person to give, within a specified time, information as to whether or not there is at

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 every record or document in his custody or under his control where the Commission seeks inspection 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 he -

- (a) without reasonable excuse, fails to comply with subsection (4) or (5);
- (b) in purported compliance with subsection (4) or (5), makes any statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular;
- (c) obstructs the Commission in the exercise of any of its powers under this section; or
- (d) destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document which is relevant to any proceedings instituted under section 236.

(7) It is a defence to a charge for an offence under subsection (6)(d) for the person charged to prove that he had no intention of hindering the Tribunal or the Commission from becoming aware of facts capable of being disclosed by the record or document.

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

239. Use of evidence in other 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 236 (including any material or document received by the Tribunal from the person or produced to the Tribunal by the person under section 237, and any document or information given, provided, produced or disclosed to the Tribunal by the person under section 238) is 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 subsections (2) and (3), is not admissible in evidence against that person in any other 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 236 as referred to in subsection (1) is admissible in evidence against that person in -

- (a) 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 236;
- (b) criminal proceedings where the person is charged with an offence 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 236.

(3) The evidence given by any person at or for the purposes of any proceedings instituted under section 236 as referred to in

subsection (1) is admissible in evidence against that person in any other proceedings (civil or criminal) in a court of law where, had there been no such proceedings instituted under section 236, the same evidence would have been admissible in evidence in such other proceedings under the law or procedures applicable to such other proceedings in that court.

240. Privileged information

Nothing in this Part and Schedule 8 requires an authorized financial institution, acting as the banker or financial adviser of a person whose conduct is the subject of any proceedings instituted under section 236, to disclose information as to the affairs of any of its customers other than that person.

241. Orders, etc. of Tribunal

(1) The Tribunal may at the conclusion of any proceedings instituted under section 236 make one, or more than one, of the following orders in respect of a person identified as having engaged in market misconduct pursuant to section 236(3)(b) -

- (a) an order that the person shall not, without the leave of the Court of First Instance, be a director or a liquidator or a receiver or manager of the property 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, 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 act 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 secured or increased or loss avoided or reduced by the person as a result of the market misconduct in question;
- (e) without prejudice to any power of the Tribunal under section 244, an order that the person pay to the Government the sum the Tribunal considers appropriate for the expenses 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 244, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the expenses 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 under any of the provisions of Part XIV;
- (b) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 236(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 Securities (Insider Dealing) Ordinance (Cap. 395).

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person an opportunity of being heard.

(4) For the purposes of subsection (1)(a), a corporation may be specified 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 act which constitutes the market misconduct.

(6) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(7) An order made in respect of a person under subsection (1) takes effect from the date on which it is notified to the person, or a later date specified in the notice.

(8) Where the Tribunal makes an order under subsection (1)(b), the Commission may notify any licensed or exempt person of the order in such manner as it considers appropriate.

(9) A person commits an offence if he refuses or fails to comply with an order made under subsection (1)(a) and is liable -

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

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

242. Further orders in respect of officers of corporation

(1) Where a corporation has been identified as having engaged in market misconduct pursuant to section 236(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 266, the Tribunal may make one, or more than one, of the orders referred to in section 241(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 236(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 under any of the provisions of Part XIV;
- (b) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 236(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 Securities (Insider Dealing) Ordinance (Cap. 395).

(3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person an opportunity of being heard.

(4) Where the Tribunal, in relation to any person, makes under subsection (1) an order referred to in section 241(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 act which constitutes the market misconduct.

(5) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(6) An order made in respect of a person under subsection (1) takes effect from the date on which it is notified to the person, or a later date specified in the notice.

(7) Where the Tribunal makes under subsection (1) an order referred to in section 241(1)(b), the Commission may notify any licensed or exempt person of the order in such manner as it considers appropriate.

(8) Where an order referred to in section 241(1)(a) is made in respect of a person under subsection (1), the person commits an offence if he refuses or 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; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

243. Interest on moneys payable under section 241 or 242

Where the Tribunal makes an order under section 241 or 242 requiring the payment of money by a person, the payment shall carry compound interest calculated from -

- (a) where the payment is required under an order referred to in section 241(1)(e) or (f), whether made under section 241(1) or 242(1), the date of the order; or
- (b) in any other case, the date of occurrence of the market misconduct in question,

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.

244. Costs

(1) Subject to subsection (5), at the conclusion of any proceedings instituted under section 236 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 during the course of the proceedings;
- (b) any person whose conduct is, in whole or in part, the subject of the proceedings;
- (c) the Commission,

such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the Commission (as the case may be) in relation to the proceedings.

(2) Any costs awarded by the Tribunal under this section are a charge on the general revenue.

(3) Subject to any rules made by the Chief Justice under section 252, 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) The Tribunal may order that any costs awarded under this section shall be taxed on the basis of one of the scales of costs in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.).

(5) Subsection (1)(a) and (b) does not apply to -

- (a) a person who has by virtue of section 236(4)(a), (b) or (c) been identified as having engaged in market misconduct pursuant to section 236(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; or
- (c) a person whom the Tribunal considers has by his conduct caused, whether wholly or in part, the institution of the proceedings.

245. Contempt dealt with by Tribunal

(1) The Tribunal shall have the same powers as the Court of First Instance in the exercise of its civil jurisdiction to punish for contempt, as if it were contempt of court, a person who -

- (a) without reasonable excuse, refuses or fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to section 237(1);
- (b) without reasonable excuse, refuses or fails to comply with an order of the Tribunal referred to in section 241(1)(b) or (c), whether made under section 241(1) or 242(1); or
- (c) commits an offence under section 237(2) or 238(6).

(2) A person shall not be punished both for contempt under subsection (1) and upon conviction under section 237(2) or 238(6) for the same refusal or failure or the same offence (as the case may be).

(3) For the avoidance of doubt, the Tribunal shall, in the exercise of its powers under subsection (1), adopt the same standard of proof as the Court of First Instance in the exercise of its civil jurisdiction to punish for contempt.

246. Report of Tribunal

(1) The Tribunal shall, after the conduct of any proceedings instituted under section 236, prepare a written report in respect of the proceedings, which shall contain -

- (a) any of its determinations made pursuant to section 236(3) and any order made under sections 241 and 242, and the reasons therefor; and
- (b) any order made under section 244, and the reasons therefor.

(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 thereof 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 236(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 professional 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).

247. 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 when the order is made.

(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.

248. Orders of Tribunal may be registered in Court of First Instance

The Tribunal may, in the manner prescribed by rules made by the Chief Justice, 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.

Division 3 - Appeals, etc.

249. Appeal to Court of Appeal

(1) Where, after the Tribunal has made any finding or determination for the purposes of any proceedings instituted under section 236, the Presenting Officer appointed for the proceedings, or a person identified as having engaged in market misconduct pursuant to section 236(3)(b), is dissatisfied with the finding or determination, the Presenting Officer or the person (as the case may be) may 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 241, 242 or 244 may appeal to the Court of Appeal against the order.

250. Powers of Court of Appeal on appeal

(1) In an appeal under section 249(1), the Court of Appeal may -

- (a) allow the appeal;
- (b) dismiss the appeal; or

(c) 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 249(2), the Court of Appeal may -

- (a) quash the order appealed against; or
- (b) substitute another order it considers appropriate, whether more or less onerous, being an order that the Tribunal had power to make in respect of the appellant.

(3) In an appeal under section 249, the Court of Appeal may make such order as to costs as it considers appropriate.

251. No stay of execution on appeal

Neither the lodging of an appeal nor the filing of an application for leave to appeal under section 249 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.

252. Chief Justice may make rules

The Chief Justice may make rules -

- (a) regulating the procedure for -
 - (i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 249;
 - (ii) the hearing of appeals under section 249;
 - (iii) the registration of orders of the Tribunal in the Court of First Instance under section 248;
- (b) providing for matters of procedure relating to the proceedings instituted under section 236, or matters relating to such proceedings, which are not provided for in this Part or Schedule 8;
- (c) providing for the award of costs under section 244 and the taxation of those costs;
- (d) prescribing the fees for any matter in relation to the proceedings instituted under section 236;
- (e) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

Division 4 - Insider dealing

253. Insider dealing

- (1) Insider dealing in relation to a listed corporation takes place -

- (a) when a person connected with the corporation and possessing 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 would 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;

(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 possesses 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 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.

254. Insider dealing - certain persons not to be regarded as having engaged in market misconduct

(1) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that he entered into the transaction -

- (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 securities to which the transaction relates; or
- (c) in the exercise in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

(2) A corporation which enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if it establishes that -

- (a) a person other than that in possession of the relevant information in relation to the corporation the securities of which were, or the derivatives of

the securities of which were, the subject of the insider dealing took the decision to enter into the transaction for it;

(b) arrangements then existed to secure that -

(i) the information was not communicated to the person who took the decision; and

(ii) a person in possession of the information did not give advice concerning the transaction to the person who took the decision; and

(c) the information was not in fact so communicated and a person in possession of the information did not in fact so give the advice.

(3) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that the purpose for which he entered into the transaction was not, or, where there was more than one purpose, the purposes for which he entered into the transaction 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 who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that -

(a) he entered into the transaction as agent for another person;

- (b) he did not select or advise on the selection of the listed securities or their derivatives to which the transaction relates;
- (c) he had no knowledge or reason to suspect that the other person possessed the relevant information in question; and
- (d) he did not counsel or procure the other person in relation to the transaction.

(5) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that -

- (a) he and the other party to the transaction entered into the transaction directly with each other; and
- (b) at the time he entered into the transaction -
 - (i) the other party to the transaction knew, or ought reasonably to have known, of the relevant information in question; and
 - (ii) the transaction was not required to be recorded on a recognized stock market or to be notified to a recognized stock market under the rules of the recognized exchange company by which the recognized stock market is operated.

(6) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be

regarded as having engaged in market misconduct if he establishes that -

- (a) he entered into the transaction, other than as a person who has counselled or procured the other party to the transaction to deal in listed securities or their derivatives; and
- (b) at the time he entered into the transaction, the other party to the transaction knew, or ought reasonably to have known, that he was a person connected with the corporation the securities of which were, or the derivatives of the securities of which were, the subject of the insider dealing.

(7) A person who enters into a transaction which is an insider dealing, as a person who has counselled or procured another person to deal in listed securities of a corporation or their derivatives, shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that -

- (a) the other person entered into the transaction, other than as a person who has counselled or procured the other party to the transaction to deal in listed securities or their derivatives; and
- (b) at the time the other person entered into the transaction, the other party to the transaction knew, or ought reasonably to have known, that the other person was a person connected with the corporation.

(8) A person who enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that the transaction is a market contract.

255. Insider dealing - certain trustees and personal representatives not to be regarded as having engaged in market misconduct

A person who, as trustee or personal representative, enters into a transaction which is an insider dealing shall not by reason of the insider dealing be regarded as having engaged in market misconduct if he establishes that he acted on advice obtained in good faith from another person, and -

- (a) that other person appeared to him to be an appropriate person from whom to seek the advice; and
- (b) it did not appear to him that, had that other person entered into the transaction, that other person would be entering into a transaction which would be an insider dealing.

256. 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 who enters into a transaction which is an insider dealing through his exercise of a right to subscribe for or otherwise acquire the listed securities of a corporation or their derivatives shall not by reason of the insider dealing be regarded

as having engaged in market misconduct if he establishes that 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.

Division 5 - Other market misconduct

257. False trading in securities

(1) False trading in securities takes place if, in Hong Kong or elsewhere, a person intentionally or recklessly creates, causes to be created, or does anything that is likely to create, a false or misleading appearance -

- (a) of active trading in securities traded on a recognized stock market or by means of authorized automated trading services; or
- (b) with respect to the market for, or the price for dealings in, securities traded on a recognized stock market or by means of authorized automated trading services.

(2) False trading in securities takes place if, in Hong Kong, a person intentionally or recklessly creates, causes to be created, or does anything that is likely to create, a false or misleading appearance -

- (a) of active trading in securities traded on a stock market outside Hong Kong; or

(b) with respect to the market for, or the price for dealings in, securities traded on a stock market outside Hong Kong.

(3) False trading in securities takes place if, in Hong Kong or elsewhere, a person intentionally or recklessly takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether any of them is a dealing in securities or not) that has or have, 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 traded on a recognized stock market or by means of authorized automated trading services.

(4) False trading in securities takes place if, in Hong Kong, a person intentionally or recklessly takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether any of them is a dealing in securities or not) that has or have, 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 traded on a stock market outside Hong Kong.

(5) Without limiting the general nature of the conduct which constitutes false trading in securities under subsection (1) or (2), a person who -

(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 buy the same or substantially the same, number of them; or

(c) offers to buy 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,

shall, for the purposes of subsection (1) or (2), be regarded as having created, or done something that is likely to create, a false or misleading appearance of active trading in securities or with respect to the market for, or the price for dealings in, securities.

(6) A person who has committed an act referred to in subsection (5)(a), (b) or (c) shall not be regarded as having engaged in market misconduct by reason of false trading in securities 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 within the meaning of subsection (1) or (2).

(7) In this section -

- (a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or buy securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or buy 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).

258. Price rigging in securities markets

(1) Price rigging in securities markets takes place -

- (a) if, in Hong Kong or elsewhere, a person maintains, increases, reduces, stabilizes, or causes fluctuations in, the price of securities traded on a recognized stock market or by means of authorized automated trading services, through the sale or purchase of securities that does not involve a change in the beneficial ownership of those securities or by any fictitious or artificial transaction or device; or

(b) if, in Hong Kong, a person maintains, increases, reduces, stabilizes, or causes fluctuations in, the price of securities traded on a stock market outside Hong Kong, through the sale or purchase of securities that does not involve a change in the beneficial ownership of those securities or by any fictitious or artificial transaction or device.

(2) For the purposes of subsection (1), the fact that a transaction is, or at any time was, intended by the parties who entered into it to have effect according to its terms is not conclusive in determining whether a transaction is or was fictitious or artificial.

(3) A person shall not be regarded as having engaged in market misconduct by reason of price rigging in securities markets taking place through any sale or purchase of securities that does not involve a change in the beneficial ownership of those securities 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.

259. Disclosure of information about prohibited transactions in securities

(1) Disclosure of information about prohibited transactions in securities takes place if 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 traded on a recognized stock 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, and if he, or an associate of his -

- (a) has entered into 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 in securities on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit as a result of disclosure, circulation or dissemination of the information, 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 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 the

prohibited transaction in question, or an associate of such person, but up to 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 act 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 the prohibited transaction shall be construed accordingly.

260. Stock market manipulation

(1) Stock market manipulation takes place if, in Hong Kong or elsewhere -

- (a) a person enters into or carries out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction increases, or is likely to increase, the price of any securities traded on a recognized stock 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 issued by the corporation or by a related corporation of the corporation;

(b) a person enters into or carries out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction reduces, or is likely to reduce, the price of any securities traded on a recognized stock market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the corporation or by a related corporation of the corporation; or

(c) a person enters into or carries out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction maintains or stabilizes, or is likely to maintain or stabilize, the price of any securities traded on a recognized stock 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 issued by the corporation or by a related corporation of the corporation.

(2) Stock market manipulation takes place if, in Hong Kong -

(a) a person enters into or carries out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction increases, or is likely to

increase, the price of any securities traded on a stock market outside Hong Kong, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities issued by the corporation or by a related corporation of the corporation;

- (b) a person enters into or carries out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction reduces, or is likely to reduce, the price of any securities traded on a stock market outside Hong Kong, with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the corporation or by a related corporation of the corporation; or
- (c) a person enters into or carries out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction maintains or stabilizes, or is likely to maintain or stabilize, the price of any securities traded on a stock market outside Hong Kong, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities issued by the corporation or by 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).

261. Disclosure of false or misleading information inducing transactions in securities

(1) Disclosure of false or misleading information inducing transactions in securities takes place if, 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 false or misleading as to a material fact, or is false or misleading through the omission of a material fact, and is likely -

- (a) to induce another person to subscribe for securities 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 in Hong Kong.

(2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading

information inducing transactions in securities if he establishes that -

- (a) he carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;
- (b) the information was issued or reproduced by him in the ordinary course of that business;
- (c) the content of the information was wholly devised by a customer of his or by a person acting on behalf of a customer of his;
- (d) the nature of the service which he provided in relation to the information was such that he did not select, modify or otherwise exercise control over the content of the information prior to its issue or reproduction; and
- (e) at the time he issued or reproduced the information, he did not know that it 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 in securities if he establishes that -

- (a) he was a broadcaster;
- (b) the information was broadcast live by him as a broadcaster;

(c) he did not modify the content of the information prior to its broadcast; and

(d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast and with any code of practice or guidelines (however described) issued under or pursuant to the Television Ordinance (Cap. 52) or the Telecommunication Ordinance (Cap. 106) and applicable to him as a broadcaster.

(4) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions in securities if he establishes that up to the time of the disclosure, circulation or dissemination of the information he -

(a) acted in good faith; and

(b) (i) did not know; and

(ii) could not in the circumstances of the case reasonably have known or could not in the circumstances of the case reasonably have been expected to 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.

(5) In this section -

"broadcast live" (直播), in relation to any information, means

having the information broadcast without its being recorded
in advance;

"issue" (發出), in relation to any material (including any
information), includes publishing, circulating, distributing
or otherwise disseminating the material, 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 cinematography
films;
- (f) by way of sound broadcasting or television;
- (g) by computer 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.

262. False trading in futures contracts

(1) False trading in futures contracts takes place if, in Hong Kong or elsewhere, a person intentionally or recklessly creates, causes to be created, or does anything that is likely to create, a false or misleading appearance -

- (a) of active trading in futures contracts traded on a recognized futures market or by means of authorized automated trading services; or
- (b) with respect to the market for, or the price for dealings in, futures contracts traded on a recognized futures market or by means of authorized automated trading services.

(2) False trading in futures contracts takes place if, in Hong Kong, a person intentionally or recklessly creates, causes to be created, or does anything that is likely to create, a false or misleading appearance -

- (a) of active trading in futures contracts traded on a futures market outside Hong Kong; or
- (b) with respect to the market for, or the price for dealings in, futures contracts traded on a futures market outside Hong Kong.

(3) False trading in futures contracts takes place if, in Hong Kong or elsewhere, a person intentionally or recklessly takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether any of them is a dealing in a futures contract or not) that has or have, 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 futures contracts traded on a recognized futures market or by means of authorized automated trading services.

(4) False trading in futures contracts takes place if, in Hong Kong, a person intentionally or recklessly takes part in, is concerned in, or carries out, directly or indirectly, one or more transactions (whether any of them is a dealing in a futures contract or not) that has or have, 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 futures contracts traded on a futures market outside Hong Kong.

263. Price rigging in futures markets

(1) Price rigging in futures markets takes place -

- (a) if, in Hong Kong or elsewhere, a person maintains, increases, reduces, stabilizes, or causes fluctuations in, the price for dealings in futures contracts traded on a recognized futures market or by means of authorized automated trading services, by any fictitious or artificial transaction or device; or
- (b) if, in Hong Kong, a person maintains, increases, reduces, stabilizes, or causes fluctuations in, the price for dealings in futures contracts traded on a

futures market outside Hong Kong, by any fictitious or artificial transaction or device.

(2) For the purposes of subsection (1), the fact that a transaction is, or at any time was, intended by the parties who entered into it to have effect according to its terms is not conclusive in determining whether a transaction is or was fictitious or artificial.

(3) A person shall not be regarded as having engaged in market misconduct by reason of price rigging in futures markets in relation to any dealing in futures contracts if he establishes that the purpose of the dealing was not, or, where there was more than one purpose, the purposes of the dealing did not include, the purpose of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price for dealings in futures contracts.

264. Disclosure of information about prohibited transactions in futures contracts

(1) Disclosure of information about prohibited transactions in futures contracts takes place if 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 for dealings in futures contracts traded on a recognized futures 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 the futures contracts, and if he, or an associate of his -

- (a) has entered into 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 in futures contracts on the basis that he, or an associate of his, received, or expected to receive, directly or indirectly, a benefit as a result of disclosure, circulation or dissemination of the information, 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 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 the prohibited transaction in question, or an associate of such person, but up to 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 act 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 the prohibited transaction shall be construed accordingly.

265. Disclosure of false or misleading information inducing transactions in futures contracts

(1) Disclosure of false or misleading information inducing transactions in futures contracts takes place if, 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 false or misleading as to a material fact, or is false or misleading through the omission of a material fact, and is likely -

- (a) to induce another person to deal in futures contracts in Hong Kong; or
- (b) to maintain, increase, reduce or stabilize the price for dealings in futures contracts in Hong Kong.

(2) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions in futures contracts if he establishes that -

- (a) he carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;
- (b) the information was issued or reproduced by him in the ordinary course of that business;
- (c) the content of the information was wholly devised by a customer of his or by a person acting on behalf of a customer of his;
- (d) the nature of the service which he provided in relation to the information was such that he did not select, modify or otherwise exercise control over the content of the information prior to its issue or reproduction; and
- (e) at the time he issued or reproduced the information, he did not know that it 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 in futures contracts if he establishes that -

- (a) he was a broadcaster;
- (b) the information was broadcast live by him as a broadcaster;
- (c) he did not modify the content of the information prior to its broadcast; and

(d) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast and with any code of practice or guidelines (however described) issued under or pursuant to the Television Ordinance (Cap. 52) or the Telecommunication Ordinance (Cap. 106) and applicable to him as a broadcaster.

(4) A person shall not be regarded as having engaged in market misconduct by reason of disclosure of false or misleading information inducing transactions in futures contracts if he establishes that up to the time of the disclosure, circulation or dissemination of the information he -

(a) acted in good faith; and

(b) (i) did not know; and

(ii) could not in the circumstances of the case reasonably have known or could not in the circumstances of the case reasonably have been expected to 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.

(5) In this section -

"broadcast live" (直播), in relation to any information, means

having the information broadcast without its being recorded in advance;

"issue" (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material, 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 cinematography films;
- (f) by way of sound broadcasting or television;
- (g) by computer 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.

Division 6 - Miscellaneous

266. 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 act which constitutes market misconduct.

267. Transactions constituting market misconduct not void or voidable

A transaction is not void or voidable by reason only of its constituting market misconduct.

268. Civil liability for market misconduct

(1) Subject to the other provisions of this section, a person who has committed a relevant act in relation to market misconduct shall, in addition to any other penalty to which he may be liable under this Part, 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 the loss arises from the other person having dealt in securities or futures contracts at a price affected by the market misconduct, or otherwise.

(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 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 do so, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(4) For the purposes of this section, a person shall, subject to subsection (5), be regarded as having committed a relevant act in relation to market misconduct if -

(a) he has perpetrated any act which constitutes market misconduct;

(b) (i) a corporation has perpetrated any act which constitutes market misconduct; and
(ii) the market misconduct was directly or indirectly attributable to, or occurred with the knowledge, consent or connivance of, him as an officer of the corporation;
or

(c) (i) any other person has perpetrated any act which constitutes market misconduct; and
(ii) he assisted or connived with that other person in the perpetration of the act, with the knowledge that such act constitutes or might constitute market misconduct.

(5) For the purposes of this section, a person who is not to be regarded as having engaged in market misconduct under any of the provisions of this Part shall not, in relation to the market misconduct, be regarded as having committed a relevant act in relation to market misconduct.

(6) A person may bring an action under subsection (1) even though the person against whom the action is brought has not been identified by the Tribunal pursuant to section 236(3)(b) as having

engaged in market misconduct from which the pecuniary loss of the person bringing the action is alleged to result.

(7) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1) -

(a) a determination by the Tribunal pursuant to section 236(3)(a) that market misconduct has taken place;

or

(b) a determination by the Tribunal pursuant to section 236(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;

(ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.

(8) For the purposes of subsection (7) -

(a) where there is a determination referred to in subsection (7)(a) or (b) -

(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;

(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 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 246(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 that purpose.

(9) Where in an action brought under subsection (1) -

(a) 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 246(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 that subsection; and
- (ii) the contents of the report shall be admissible for the purpose specified in that subsection.

(10) Nothing in this section limits or diminishes any liability which a person may incur under the common law.

269. Transactions not to constitute market misconduct

(1) Subject to subsections (2) and (3), the Commission may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which acts that would otherwise constitute market misconduct under section 257, 258, 260, 262 or 263 shall not be regarded as constituting market misconduct.

(2) Where the Commission proposes to make rules under subsection (1), it shall prepare and publish a draft of the rules, in such manner as it considers appropriate, for the purpose of inviting representations on the rules by the public.

(3) After a draft of the rules which the Commission proposes to make under subsection (1) is published under subsection (2), the Commission may, after consultation with the Financial Secretary, modify the rules, taking into consideration any representation on the rules received as a result of the

publication, in such manner as it considers appropriate, for the purpose of having the rules made under subsection (1).

(4) Notwithstanding any other provisions of this Part, a person shall not be regarded as having engaged in market misconduct by reason of an act that would otherwise constitute market misconduct under section 257, 258, 260, 262 or 263 if he establishes -

- (a) that the act is, according to the rules made under subsection (1), not to be regarded as constituting market misconduct; or
- (b) where it is alleged that the person has engaged in market misconduct on the basis that the act is carried out not in respect of securities or futures contracts traded on a recognized stock market or a recognized futures market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a stock market or a futures market outside Hong Kong, that in each of the place in which such stock market or futures market outside Hong Kong is situated the act would not have constituted a criminal offence had it been carried out there.

**270. No further proceedings after Part XIV
criminal proceedings**

No proceedings may be instituted under section 236 in respect of any conduct, if no proceedings may be instituted at that time

under Part XIV in respect of the same conduct as an offence under that Part by reason of prior institution of proceedings in respect of such conduct under that Part.

271. 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 236(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.

272. No retrospectivity

For the avoidance of doubt, this Part shall not have effect with respect to any act that would otherwise constitute market misconduct under this Part if the act took place before the commencement of this Part.

PART XIV

OFFENCES RELATING TO DEALINGS IN SECURITIES AND
FUTURES CONTRACTS, ETC.

Division 1 - Interpretation

273. 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; and
- (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 with respect to the acquisition, holding or disposal of such securities or such

interest or under which they undertake to act together in exercising their voting power, as rights arising out of the holding of such securities or such interest, 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 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.

(2) In this subsection and sections 274 to 277 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 depository 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 dealt in or listed on a recognized stock market and regardless of who issued or made them;

"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 on a recognized stock market;

"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 on a recognized stock market;
- (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 on a recognized stock market, but which, at that time, it is reasonably foreseeable will be and which, in fact, are subsequently so listed; or
- (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 on a recognized stock market, 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 369 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) A person shall not be regarded as a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act by reason only that the directors of the corporation act on advice given by him in a professional capacity.

274. Interest in securities (insider dealing offence)

For the purposes of sections 273(2) and 275 to 277 and Division 2, a reference to an interest in securities shall be construed as including an interest of any kind 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.

**275. 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 of any kind in the relevant share capital of the corporation, the nominal value of which is equal to or more than 5% of the relevant share capital of the corporation.

276. 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 this section, 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 or a recognized clearing house;
- (e) an officer or employee of a body corporate incorporated by an Ordinance; or

(f) an officer or employee of a body corporate specified by the Financial Secretary for the purposes of this subsection by notice published in the Gazette,

whether 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.

**277. Dealing in securities or their derivatives
(insider dealing offence)**

For the purposes of section 273(2) and Division 2, a person shall be regarded as dealing in securities or their derivatives if, whether as principal or agent, he buys, sells, exchanges or subscribes for, or agrees to buy, sell, exchange or subscribe for, any securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for, any securities or their derivatives.

**278. 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 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 has 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 - Insider dealing offence

279. Offence of insider dealing

(1) A person connected with a listed corporation and possessing 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 would 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 possesses 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 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 280, 281 and 282, a person who contravenes subsection (1), (2), (3), (4), (5), (6) or (7) commits an offence.

280. Insider dealing offence - general defences

(1) Where a person is charged with an offence under section 279(8) in respect of a contravention of section 279, it is a defence to the charge for the person to prove that the act which constituted the contravention was carried out -

- (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 securities to which the transaction relates; or
- (c) in the exercise 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 279(8) in respect of a contravention of section 279 by reason of having entered into a transaction in the listed

securities of a listed corporation or their derivatives, it is a defence to the charge for the corporation to prove that -

(a) a person other than that in possession of the relevant information in relation to the listed corporation took the decision to enter into the transaction for it;

(b) arrangements then existed to secure that -

(i) the information was not communicated to the person who took the decision; and

(ii) a person in possession of the information did not give advice concerning the transaction to the person who took the decision; and

(c) the information was not in fact so communicated and a person in possession of the information did not in fact so give the advice.

(3) Where a person is charged with an offence under section 279(8) in respect of a contravention of section 279 by reason of having entered into a transaction in listed securities or their derivatives, it is a defence to the charge for the person to prove that the purpose for which he entered into the transaction was not, or, where there was more than one purpose, the purposes for which he entered into the transaction 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 279(8) in respect of a contravention of section 279 by reason of

having entered into a transaction in listed securities or their derivatives, it is a defence to the charge for the person to prove that -

- (a) he entered into the transaction as agent for another person;
- (b) he did not select or advise on the selection of the listed securities or the derivatives (as the case may be);
- (c) he had no knowledge or reasonable cause to suspect that the other person possessed the relevant information in question; and
- (d) he did not counsel or procure the other person in relation to the transaction.

(5) Where a person is charged with an offence under section 279(8) in respect of a contravention of section 279 by reason of having entered into a transaction in listed securities or their derivatives, it is a defence to the charge for the person to prove that -

- (a) he and the other party to the transaction entered into the transaction directly with each other; and
- (b) at the time he entered into the transaction -
 - (i) the other party to the transaction knew, or ought reasonably to have known, of the relevant information in question; and
 - (ii) the transaction was not required to be recorded on a recognized stock market or to be notified to a recognized stock

market under the rules of the recognized exchange company by which the recognized stock market is operated.

(6) Where a person is charged with an offence under section 279(8) in respect of a contravention of section 279 by reason of having entered into a transaction in listed securities of a corporation or their derivatives, it is a defence to the charge for the person to prove that -

- (a) he entered into the transaction, other than as a person who has counselled or procured the other party to the transaction to deal in listed securities or their derivatives; and
- (b) at the time he entered into the transaction, the other party to the transaction knew, or ought reasonably to have known, that he was a person connected with the corporation.

(7) Where a person is charged with an offence under section 279(8) by reason of having contravened section 279 as a person who has counselled or procured another person to deal in listed securities of a corporation or their derivatives, it is a defence to the charge for the person to prove that -

- (a) the other person entered into the transaction, other than as a person who has counselled or procured the other party to the transaction to deal in listed securities or their derivatives; and
- (b) at the time the other person entered into the transaction, the other party to the transaction

knew, or ought reasonably to have known, that the other person was a person connected with the corporation.

(8) Where a person is charged with an offence under section 279(8) in respect of a contravention of section 279 by reason of having entered into a transaction in listed securities or their derivatives, it is a defence to the charge for the person to prove that the transaction is a market contract.

281. Insider dealing offence - defences for certain trustees and personal representatives

Where a person is charged with an offence under section 279(8) in respect of a contravention of section 279 by reason of having entered into a transaction in listed securities or their derivatives and he entered into the transaction as a trustee or personal representative, it is a defence to the charge for the person to prove that he acted on advice obtained in good faith from another person, and -

- (a) that other person appeared to him to be an appropriate person from whom to seek the advice; and
- (b) it did not appear to him that, had that other person entered into the transaction, that other person would contravene section 279.

282. 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 279(8) in respect of a contravention of section 279 through his exercise of a right to subscribe for or otherwise acquire the listed securities of a corporation or their derivatives, it is a defence to the charge for the person to prove that 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.

Division 3 - Other market misconduct offences

283. Offence of false trading in securities

(1) A person shall not, in Hong Kong or elsewhere, intentionally or recklessly create, cause to be created, or do anything that is likely to create, a false or misleading appearance -

- (a) of active trading in securities traded on a recognized stock market or by means of authorized automated trading services; or
- (b) with respect to the market for, or the price for dealings in, securities traded on a recognized stock market or by means of authorized automated trading services.

(2) A person shall not, in Hong Kong, intentionally or recklessly create, cause to be created, or do anything that is likely to create, a false or misleading appearance -

(a) of active trading in securities traded on a stock market outside Hong Kong; or

(b) with respect to the market for, or the price for dealings in, securities traded on a stock market outside Hong Kong.

(3) A person shall not, in Hong Kong or elsewhere, intentionally or recklessly take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether any of them is a dealing in securities or not) that has or have, 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 traded on a recognized stock market or by means of authorized automated trading services.

(4) A person shall not, in Hong Kong, intentionally or recklessly take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether any of them is a dealing in securities or not) that has or have, 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 traded on a stock market outside Hong Kong.

(5) Without limiting the generality of subsection (1) or (2), a person who -

(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 buy the same or substantially the same, number of them; or

(c) offers to buy 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,

shall, for the purposes of subsection (1) or (2), be regarded as having created, or done something that is likely to create, a false or misleading appearance of active trading in securities or with respect to the market for, or the price for dealings in, securities.

(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) by reason of having committed 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 within the meaning of subsection (1) or (2).

(8) In this section -

- (a) a reference to a transaction of sale or purchase, in relation to securities, includes an offer to sell or buy securities and an invitation (however expressed) that expressly or impliedly invites a person to offer to sell or buy 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).

284. Offence of price rigging in securities markets

(1) A person shall not -

- (a) in Hong Kong or elsewhere, maintain, increase, reduce, stabilize, or cause fluctuations in, the price of securities traded on a recognized stock market or by means of authorized automated trading services, through the sale or purchase of securities that does not involve a change in the

beneficial ownership of those securities or by any fictitious or artificial transaction or device; or

(b) in Hong Kong, maintain, increase, reduce, stabilize, or cause fluctuations in, the price of securities traded on a stock market outside Hong Kong, through the sale or purchase of securities that does not involve a change in the beneficial ownership of those securities or by any fictitious or artificial transaction or device.

(2) For the purposes of subsection (1), the fact that a transaction is, or at any time was, intended by the parties who entered into it to have effect according to its terms is not conclusive in determining whether a transaction is or was fictitious or artificial.

(3) Subject to subsection (4), a person who contravenes subsection (1) commits an offence.

(4) Where a person is charged with an offence under subsection (3) in respect of a contravention of subsection (1) taking place through any sale or purchase of securities that does not involve a change in the beneficial ownership of those 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.

285. Offence of disclosure of information about prohibited transactions in securities

(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 traded on a recognized stock 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, if he, or an associate of his -

- (a) has entered into 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 as a result of any disclosure, circulation or dissemination of information, 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 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 the prohibited transaction in question, or an associate of such person, but up to 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 act 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 the prohibited transaction shall be construed accordingly.

286. Offence of stock market manipulation

(1) A person shall not, in Hong Kong or elsewhere -

- (a) enter into or carry out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction increases, or is likely to increase, the price of any securities traded on a recognized stock 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 issued by the corporation or by a related corporation of the corporation;
- (b) enter into or carry out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction reduces, or is likely to reduce, the price of any securities traded on a recognized stock market or by means of authorized automated trading services, with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the corporation or by a related corporation of the corporation; or
- (c) enter into or carry out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction maintains or stabilizes, or is likely to maintain or stabilize, the price of any securities traded on a recognized stock 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 issued by the corporation or by a related corporation of the corporation.

- (2) A person shall not, in Hong Kong -

- (a) enter into or carry out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction increases, or is likely to increase, the price of any securities traded on a stock market outside Hong Kong, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities issued by the corporation or by a related corporation of the corporation;
- (b) enter into or carry out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction reduces, or is likely to reduce, the price of any securities traded on a stock market outside Hong Kong, with the intention of inducing another person to sell, or to refrain from purchasing, securities issued by the corporation or by a related corporation of the corporation; or
- (c) enter into or carry out, directly or indirectly, a transaction in securities of a corporation that by itself or in conjunction with another transaction maintains or stabilizes, or is likely to maintain or stabilize, the price of any securities traded on a stock market outside Hong Kong, with the intention of inducing another person to sell, purchase or subscribe for, or to refrain from selling, purchasing or subscribing for, securities

issued by the corporation or by 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).

287. Offence of disclosure of false or misleading information inducing transactions in securities

(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 false or misleading as to a material fact, or is false or misleading through the omission of a material fact, and is likely -

(a) to induce another person to subscribe for securities 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 in Hong Kong.

(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 in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that -

- (a) he carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;
- (b) the information was issued or reproduced by him in the ordinary course of that business;
- (c) the content of the information was wholly devised by a customer of his or by a person acting on behalf of a customer of his;
- (d) the nature of the service which he provided in relation to the information was such that he did not select, modify or otherwise exercise control over the content of the information prior to its issue or reproduction; and
- (e) at the time he issued or reproduced the information, he did not know that it 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 in relation to any disclosure, circulation or

dissemination of information, it is a defence to the charge for the person to prove that -

- (a) he was a broadcaster;
- (b) the information was broadcast live by him as a broadcaster;
- (c) he did not modify the content of the information prior to its broadcast; and
- (d) he has, in relation to its broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast and with any code of practice or guidelines (however described) issued under or pursuant to the Television Ordinance (Cap. 52) or the Telecommunication Ordinance (Cap. 106) and applicable to him as a broadcaster.

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that up to the time of the disclosure, circulation or dissemination of the information he -

- (a) acted in good faith; and
- (b)
 - (i) did not know; and
 - (ii) could not in the circumstances of the case reasonably have known or could not in the circumstances of the case reasonably have been expected to 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.

(6) In this section -

"broadcast live" (直播), in relation to any information, means having the information broadcast without its being recorded in advance;

"issue" (發出), in relation to any material (including any information), includes publishing, circulating, distributing or otherwise disseminating the material, 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 cinematography films;
- (f) by way of sound broadcasting or television;
- (g) by computer 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.

288. Offence of false trading in futures contracts

(1) A person shall not, in Hong Kong or elsewhere, intentionally or recklessly create, cause to be created, or do anything that is likely to create, a false or misleading appearance -

- (a) of active trading in futures contracts traded on a recognized futures market or by means of authorized automated trading services; or
- (b) with respect to the market for, or the price for dealings in, futures contracts traded on a recognized futures market or by means of authorized automated trading services.

(2) A person shall not, in Hong Kong, intentionally or recklessly create, cause to be created, or do anything that is likely to create, a false or misleading appearance -

- (a) of active trading in futures contracts traded on a futures market outside Hong Kong; or
- (b) with respect to the market for, or the price for dealings in, futures contracts traded on a futures market outside Hong Kong.

(3) A person shall not, in Hong Kong or elsewhere, intentionally or recklessly take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether any of them is a dealing in a futures contract or not)

that has or have, 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 futures contracts traded on a recognized futures market or by means of authorized automated trading services.

(4) A person shall not, in Hong Kong, intentionally or recklessly take part in, be concerned in, or carry out, directly or indirectly, one or more transactions (whether any of them is a dealing in a futures contract or not) that has or have, 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 futures contracts traded on a futures market outside Hong Kong.

(5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence.

289. Offence of price rigging in futures markets

(1) A person shall not -

- (a) in Hong Kong or elsewhere, maintain, increase, reduce, stabilize, or cause fluctuations in, the price for dealings in futures contracts traded on a recognized futures market or by means of authorized automated trading services, by any fictitious or artificial transaction or device; or
- (b) in Hong Kong, maintain, increase, reduce, stabilize, or cause fluctuations in, the price for dealings in futures contracts traded on a futures

market outside Hong Kong, by any fictitious or artificial transaction or device.

(2) For the purposes of subsection (1), the fact that a transaction is, or at any time was, intended by the parties who entered into it to have effect according to its terms is not conclusive in determining whether a transaction is or was fictitious or artificial.

(3) Subject to subsection (4), a person who contravenes subsection (1) commits an offence.

(4) Where a person is charged with an offence under subsection (3) in respect of a contravention of subsection (1) taking place in relation to any dealing in futures contracts, it is a defence to the charge for the person to prove that the purpose of the dealing was not, or, where there was more than one purpose, the purposes of the dealing did not include, the purpose of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price for dealings in futures contracts.

290. Offence of disclosure of information about prohibited transactions in futures contracts

(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 for dealings in futures contracts traded on a recognized futures 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 the futures contracts, if he, or an associate of his -

- (a) has entered into 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 as a result of any disclosure, circulation or dissemination of information, 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 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 the prohibited transaction in question, or an associate of such person, but up to 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 act 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 the prohibited transaction shall be construed accordingly.

291. Offence of disclosure of false or misleading information inducing transactions in futures 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 false or misleading as to a material fact, or is false or misleading through the omission of a material fact, and is likely -

- (a) to induce another person to deal in futures contracts in Hong Kong; or
- (b) to maintain, increase, reduce or stabilize the price for dealings in futures contracts in Hong Kong.

(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 in relation to any disclosure, circulation or

dissemination of information, it is a defence to the charge for the person to prove that -

- (a) he carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;
- (b) the information was issued or reproduced by him in the ordinary course of that business;
- (c) the content of the information was wholly devised by a customer of his or by a person acting on behalf of a customer of his;
- (d) the nature of the service which he provided in relation to the information was such that he did not select, modify or otherwise exercise control over the content of the information prior to its issue or reproduction; and
- (e) at the time he issued or reproduced the information, he did not know that it 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 in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that -

- (a) he was a broadcaster;
- (b) the information was broadcast live by him as a broadcaster;

(c) he did not modify the content of the information prior to its broadcast; and

(d) he has, in relation to its broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast and with any code of practice or guidelines (however described) issued under or pursuant to the Television Ordinance (Cap. 52) or the Telecommunication Ordinance (Cap. 106) and applicable to him as a broadcaster.

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1) taking place in relation to any disclosure, circulation or dissemination of information, it is a defence to the charge for the person to prove that up to the time of the disclosure, circulation or dissemination of the information he -

(a) acted in good faith; and

(b) (i) did not know; and

(ii) could not in the circumstances of the case reasonably have known or could not

in the circumstances of the case

reasonably have been expected to 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.

(6) In this section -

"broadcast live" (直播), in relation to any information, means

having the information broadcast without its being recorded
in advance;

"issue" (發出), in relation to any material (including any
information), includes publishing, circulating, distributing
or otherwise disseminating the material, 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 cinematography
films;
- (f) by way of sound broadcasting or television;
- (g) by computer 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.

Division 4 - Fraudulent or deceptive conduct offences

**292. 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;
- (b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception; or
- (c) make a statement which 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)(c) by reason of the making of a statement, it is a defence to the charge for the person to prove that -

- (a) he carried on a business the principal purpose of which was to provide the service of issuing or reproducing materials provided to him by others;
- (b) the statement was issued or reproduced by him in the ordinary course of that business;

- (c) the content of the statement was wholly devised by a customer of his or by a person acting on behalf of a customer of his;
- (d) the nature of the service which he provided in relation to the statement was such that he did not select, modify or otherwise exercise control over the content of the statement prior to its issue or reproduction; and
- (e) at the time he issued or reproduced the statement, he did not know that it 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)(c) by reason of the making of a statement, it is a defence to the charge for the person to prove that -

- (a) he was a broadcaster;
- (b) the statement was broadcast live by him as a broadcaster;
- (c) he did not modify the content of the statement prior to its broadcast; and
- (d) he has, in relation to its broadcast, acted in accordance with the terms and conditions of the licence (if any) by which he became entitled to broadcast and with any code of practice or guidelines (however described) issued under or pursuant to the Television Ordinance (Cap. 52) or

the Telecommunication Ordinance (Cap. 106) and applicable to him as a broadcaster.

(5) Where a person is charged with an offence under subsection (2) in respect of a contravention of subsection (1)(c) by reason of the making of a statement, it is a defence to the charge for the person to prove that up to the time of the making of the statement he -

(a) acted in good faith; and

(b) (i) did not know; and

(ii) could not in the circumstances of the case reasonably have known or could not in the circumstances of the case reasonably have been expected to know,

that the statement was false or misleading as to a material fact or was false or misleading through the omission of a material fact.

(6) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

(7) In this section -

"broadcast live" (直播), in relation to any statement, means having the statement broadcast without its being recorded in advance;

"issue" (發出), in relation to any material (including any statement), includes publishing, circulating, distributing or otherwise disseminating the material, 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 cinematography films;
- (f) by way of sound broadcasting or television;
- (g) by computer 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.

293. 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, when 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, when in fact he has not so dealt in, or facilitated or arranged for the dealing in, the contract or other instrument.

(3) Subject to subsection (4), a person who contravenes subsection (1) or (2) commits an offence.

(4) Where a person is charged with an offence under subsection (3) in respect of a contravention of subsection (1) or (2) by reason of the making of a representation, it is a defence to the charge for the person to prove that up to the time of the making of the representation he acted in good faith and did not know, and could not in the circumstances of the case reasonably have known, that in fact he has not -

- (a) in the case of a contravention of subsection (1), dealt in, or facilitated or arranged for the dealing in, the futures contract referred to in that subsection in the manner described in that subsection;
- (b) in the case of a contravention of subsection (2), dealt in, or facilitated or arranged for the dealing in, the contract or other instrument referred to in that subsection in the manner described in that subsection.

294. Penalties

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; and
- (b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.

295. Civil liability for contravention of this Part

(1) Subject to the other provisions of this section, a person who contravenes any of the provisions of Divisions 2 to 4 shall, in addition to any other penalty to which he may be liable under section 294, be liable to pay compensation by way of damages to any other person who has sustained pecuniary loss as a result of the contravention, whether the loss arises from the other person having entered into a transaction or dealing at a price affected by the contravention, or otherwise.

(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 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 do so, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

(4) 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.

(5) 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.

(6) Without prejudice to section 62 of the Evidence Ordinance (Cap. 8), in an action brought under subsection (1) -

(a) a determination by the Market Misconduct Tribunal pursuant to section 236(3)(a) that market misconduct has taken place; or

(b) a determination by the Market Misconduct Tribunal pursuant to section 236(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;

(ii) in the case of a determination referred to in paragraph (b), that the person has engaged in market misconduct.

(7) For the purposes of subsection (6) -

(a) where there is a determination referred to in subsection (6)(a) or (b) -

(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;

(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 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 246(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 that purpose.

(8) Where in an action brought under subsection (1) -

(a) 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 246(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 that subsection; and
- (ii) the contents of the report shall be admissible for the purpose specified in that subsection.

(9) In this section, a reference to a transaction includes an offer and an invitation (however expressed).

(10) Nothing in this section limits or diminishes any liability which a person may incur under the common law.

296. Transactions not to constitute offences

(1) Subject to subsections (2) and (3), the Commission may, where it considers it is in the public interest to do so, make rules to prescribe the circumstances in which acts that would otherwise constitute an offence under section 283, 284, 286, 288 or 289 shall not be regarded as constituting such an offence.

(2) Where the Commission proposes to make rules under subsection (1), it shall prepare and publish a draft of the rules,

in such manner as it considers appropriate, for the purpose of inviting representations on the rules by the public.

(3) After a draft of the rules which the Commission proposes to make under subsection (1) is published under subsection (2), the Commission may, after consultation with the Financial Secretary, modify the rules, taking into consideration any representation on the rules received as a result of the publication, in such manner as it considers appropriate, for the purpose of having the rules made under subsection (1).

(4) Notwithstanding anything in this Part, where a person is charged with an offence under section 283, 284, 286, 288 or 289 by reason of an act, it is a defence to the charge for the person to prove -

- (a) that the act is, according to the rules made under subsection (1), not to be regarded as constituting an offence; or
- (b) where the person is charged on the basis that the conduct is carried out not in respect of securities or futures contracts traded on a recognized stock market or a recognized futures market or by means of authorized automated trading services, but in respect of securities or futures contracts traded on a stock market or a futures market outside Hong Kong, that in each of the place in which such stock market or futures market outside Hong Kong is situated the conduct would not have constituted a criminal offence had it been carried out there.

**297. No further proceedings after Part XIII
market misconduct proceedings**

No proceedings may be instituted under this Part in respect of any conduct as an offence under this Part, if no proceedings may be instituted at that time under section 236 in respect of the same conduct by reason of prior institution of proceedings in respect of such conduct under that section.

PART XV

DISCLOSURE OF INTERESTS

Division 1 - Preliminary

298. 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 any class comprised in its share capital exceeding in nominal value one-fifth of the nominal value of the issued shares of that class;

"chief executive" (主要行政人員) 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;

"deliver" (交付), in relation to any shares, debentures or equity derivatives, means deliver the shares, debentures or equity

derivatives 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;

"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, the 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) the 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);
- (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 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;

"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 338 or

339;

"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 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 302(1);

"notifiable percentage level" (須具報百分率水平) has the meaning assigned to it by section 306(1);

"register of directors' and chief executives' interests and short positions" (董事及主要行政人員權益及淡倉登記冊) means the register kept in pursuance of section 336;

"register of interests in shares and short positions" (股份權益及淡倉登記冊) means the register kept in pursuance of section 323 including, except where the context otherwise requires, that part of the register kept in pursuance of section 324;

"regulations" (規例) means regulations made under section 357;

"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 listed corporation; and
- (b) includes unissued shares in the listed corporation's share capital of any class which, if issued, would carry rights to vote in all circumstances at general meetings of the corporation;

"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 a party to a stock borrowing and lending agreement, by virtue of which the person is under an obligation to deliver shares to another person, 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 the shares or otherwise;

"specified percentage level" (指明百分率水平) has the meaning assigned to it by section 306(2);

"stock borrowing and lending agreement" (證券借用及借出協議) means a stock borrowing and lending agreement within the meaning of section 19 of the Stamp Duty Ordinance (Cap. 117);

"target corporation" (目標法團), in relation to an agreement to which section 310 applies, means a listed corporation which is the target corporation for that agreement;

"underlying shares" (相關股份), in relation to any equity derivatives, means -

(a) for the purposes of, and otherwise in relation to,
Divisions 2 and 3 -

(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; and

(b) for the purposes of, and otherwise in relation to,
Divisions 4 to 7 -

(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.

(2) Where a listed corporation's share capital is divided into different classes of shares, references in this Part to a percentage of the nominal value of the listed corporation's issued equity share capital shall be construed as references to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately.

(3) The temporary suspension of voting rights in respect of shares comprised in any class of the issued share capital of a listed corporation does not affect the application of this Part and Schedule 9 in relation to interests in those or any other shares comprised in that class.

(4) In section 310, 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 references in that section to provisions of an agreement -

(a) accordingly include references to undertakings, expectations or understandings operative under any arrangement; and

(b) (without limiting paragraph (a)) also include references to any provisions, whether express or implied and whether absolute or not.

(5) 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" (其每名失責的高級人員) means every officer of the corporation who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that provision.

299. Exemptions

(1) The Commission may, after consultation with the Financial Secretary, publish guidelines for the exemption of any corporation from all or any of the provisions of this Part or Schedule 9.

(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 or Schedule 9.

(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 a 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 or Schedule 9.

(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) vary any condition imposed under subsection (2) or (3).

(5) Any guidelines published under subsection (1) are not subsidiary legislation.

**Division 2 - Disclosure of notifiable interests
and short positions**

**300. Duty of disclosure: cases in
which it may arise and
relevant time**

(1) Where a person either -

- (a) to his knowledge 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 retaining an interest in other shares so comprised); or
- (b) becomes aware that he has acquired an interest in shares so comprised or that he has ceased to be interested in shares so comprised in which he was previously interested,

then in the circumstances specified in section 304(1), he comes under a duty of disclosure.

(2) Where, otherwise than in a case under subsection (1)(a) or (b), a person -

- (a) is aware of any change, at the time when it occurs, of circumstances affecting facts relevant to the application of section 304 to his existing interest in shares comprised in a listed corporation's share capital of any description; or
- (b) otherwise becomes aware of any facts relevant to the application of section 304 (whether or not arising from any such change of circumstances),

then in the circumstances specified in section 304(1), he comes under the duty of disclosure.

(3) 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 within the meaning of the repealed Securities (Disclosure of Interests) Ordinance (Cap. 396) pursuant to the provisions of that Ordinance before its repeal,

then in the circumstances specified in section 304(1)(a), he comes under the duty of disclosure.

(4) 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 304(1)(a), he comes under the duty of disclosure.

(5) Where a person either -

- (a) to his knowledge comes to have, or ceases to have, a short position in shares comprised in the relevant

share capital of a listed corporation, or is aware of the change, at the time when it occurs, of the short position which he has in shares so comprised; or

- (b) becomes aware that he has, or has ceased to have, a short position in shares so comprised, or that the short position he has in shares so comprised has changed,

then in the circumstances specified in section 304(3), 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 304(3)(a), 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.

(8) For the purposes of subsection (7) and sections 304 and 305, the relevant time is -

- (a) in a case under subsection (1)(a), (2)(a) or (5)(a), the time of the event or change referred therein;
- (b) in a case under subsection (1)(b), (2)(b) or (5)(b), the time at which the person concerned becomes aware of the facts in question;
- (c) in a case under subsection (3)(a), (b) or (c) -

- (i) the time of the event referred thereto; or
- (ii) where at that time the person concerned is not aware -
 - (A) that he has an interest in shares comprised in the relevant share capital of the listed corporation concerned; or
 - (B) that he has an interest in shares comprised in the relevant share capital of the listed corporation of an aggregate nominal value equal to or more than the nominal value of a percentage of that relevant share capital which is the notifiable percentage level for the time being, the time when he becomes aware that he has such an interest;
- (d) in a case under subsection (4), the time when the regulations providing for the reduction of the notifiable percentage level take effect; and
- (e) in a case under subsection (6), the time when the regulations providing for the reduction of the specified percentage level take effect.

301. Interests to be disclosed

(1) Subject to subsections (2) and (3), the interests to be taken into account for the purposes of the duty of disclosure arising under section 300 are those in shares comprised in the relevant share capital of the listed corporation concerned.

(2) In subsection (1), the 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 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) Parts 2 and 3 of Schedule 9 shall, together with any relevant provisions of this Division, apply for the interpretation of, and otherwise in relation to, this Division in determining whether a person has, or ceases to have, an interest referred to in subsection (1).

302. Notifiable interests

(1) 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 a percentage of the issued equity share capital which is the notifiable percentage level for the time being.

(2) All facts relevant to determining whether a person has a notifiable interest at any time (or the percentage level of his interest) are taken to be what he knows the facts to be at that time.

303. Short positions to be disclosed

(1) Subject to subsection (2), the short positions to be taken into account for the purposes of the duty of disclosure arising under section 300 are those in shares comprised in the relevant share capital of the listed corporation concerned.

(2) Parts 2 and 3 of Schedule 9 shall, together with any relevant provisions of this Division, apply for the interpretation of, and otherwise in relation to, this Division in determining whether a person has, or ceases to have, a short position referred to in subsection (1).

(3) All facts relevant to determining whether a person has a short position at any time that is notifiable (or the percentage level of his short position) are taken to be what he knows the facts to be at that time.

304. Circumstances in which duty of disclosure arises

(1) The circumstances referred to in section 300(1) and (2) 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 immediately before and immediately after the relevant time is not the same.

(2) The circumstances referred to in section 300(3) and (4) are those specified in subsection (1)(a).

(3) The circumstances referred to in section 300(5) 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 such a short position immediately after the relevant time; 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.

(4) The circumstances referred to in section 300(6) are those specified in subsection (3)(a).

(5) 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 305(1), immediately after the relevant time is the same as or less than the percentage level of his interest in shares so comprised disclosed in the last notification required to be 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 (8)(a) immediately after the relevant time; and

(ii) the percentage figure of his interest in shares so comprised disclosed in the last notification required to be given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),

is less than 0.5%.

(6) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (3)(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 305(4), immediately after the relevant time is the same as or less than the percentage level of his short position in shares so comprised disclosed in the last notification required to be given by him where the duty of disclosure arose in the circumstances specified in subsection (3)(c); and

(b) the difference between -

(i) the percentage figure of his short position in shares so comprised calculated in accordance with subsection (8)(b) immediately after the relevant time; and

(ii) the percentage figure of his short position in shares so comprised disclosed in the last notification required to be given by him where the duty of disclosure arose in the circumstances specified in subsection (3)(c),

is less than 0.5%.

(7) In subsection (1)(d), the 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; or
- (b) any of the person's interest whether legal or equitable in shares so comprised,

but does not include a reference to a change in -

- (i) the nature of the person's interest in shares so comprised on delivery of the shares to him, if his equitable interest in those shares has previously been notified to the listed corporation concerned and the relevant exchange company under this Division; or
- (ii) 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.

(8) For the purposes of -

(a) subsection (5)(b), "percentage figure" (百分率數字) means the percentage figure referred to in section 305(1) before rounding down, if applicable, to the next whole number; and

(b) subsection (6)(b), "percentage figure" (百分率數字) means the percentage figure referred to in section 305(4) before rounding down, if applicable, to the next whole number.

**305. Percentage level in relation to
notifiable interests and
short positions**

(1) Subject to subsections (2) and (3), "percentage level" (百分率水平), in sections 302(2) and 304(1)(c) and (5), 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) Where the nominal value of the issued equity share capital of the listed corporation is greater immediately after the relevant time than it was immediately before that time, the percentage level

of the person's interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.

(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), 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 (2), "percentage level" (百分率水平), in sections 303(3) and 304(3) and (6), 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.

306. Notifiable percentage level and specified percentage level

(1) The references in sections 300(4) and (8) and 302(1) to the notifiable percentage level shall be construed as references to -

(a) subject to paragraph (b), 5%; or

(b) where any other percentage is prescribed by regulations, such other percentage, and different percentages may be prescribed in relation to corporations of different classes or descriptions.

(2) The references in sections 300(6) and (8) and 304(3) to specified percentage level shall be construed as references to -

(a) subject to paragraph (b), 1%; or

(b) where any other percentage is prescribed by regulations, such other percentage.

307. Notification to be given and particulars to be contained

(1) Where a person comes under a duty of disclosure under section 300, he shall give notification to the listed corporation concerned and to the relevant exchange company of -

(a) the interests which he has, or had, in shares comprised in the relevant share capital of the listed corporation; and

(b) the short position (if any) which he has, or had, in shares so comprised.

(2) The notification shall be given in such manner so as to ensure that it is received by the listed corporation concerned and the relevant exchange company at the same time or, if it is not practicable to do so, that it is received by the listed corporation and the relevant exchange company one immediately after the other.

- (3) The notification shall -
- (a) be given in the relevant form specified for that purpose under section 377; and
 - (b) contain the particulars set out in the relevant provisions of Part 4 of Schedule 9.

(4) A duty of disclosure that arises under section 300 is not performed unless the notification given is in compliance with subsection (3).

308. Time of notification

(1) The notification required by section 307 shall be given, where the duty of disclosure arises under section 300(1), (2), (3) or (5), within 3 business days after the day on which that duty arises.

(2) The notification required by section 307 shall be given, where the duty of disclosure arises under section 300(4) or (6), within 10 business days after the day on which that duty arises.

309. Notification of family and corporate interests and short positions

- (1) For the purposes of this Division, a person is taken -
- (a) to be interested in any shares comprised in the relevant share capital of a listed corporation 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 so comprised in which his spouse, or any minor child (natural or adopted) of his, has a short position.

(2) For the purposes of this Division, a person is taken -

(a) to be interested in any shares comprised in the relevant share capital of a listed corporation in which a corporation is interested; and

(b) to have a short position in shares so comprised in which a corporation has a short position,

if -

(i) that corporation or its directors are accustomed 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 subsection (2)(ii), a person is not taken -

- (a) to be interested in any shares comprised in the relevant share capital of a listed corporation in which a corporation is interested; or
- (b) to have a short position in shares so comprised 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 with 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; and
- (iii) when performing its functions as an investment manager, custodian or trustee, the power of that corporation to invest in, manage, deal with or hold interests in those shares is exercised by that corporation independently without any reference to the person.

(6) For the purposes of this section, a spouse or minor child (natural or adopted) of a person, or a corporation at the general meetings of which a person is entitled to exercise or control the exercise of one-third or more of the voting power, is taken -

- (a) to be interested in shares comprised in the relevant share capital of a listed corporation; or

- (b) to have a short position in shares so comprised, in the same circumstances in which the person is taken -

- (i) to be interested in shares so comprised; or

- (ii) to have a short position in shares so comprised,

(as the case may be) by virtue of Part 2 of Schedule 9.

(7) In subsection (5) -

"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;

"investment manager" (投資經理) means a corporation which -

(a) is licensed or exempt under Part V for Type 1

regulated activity or Type 4 regulated activity; or

(b) is licensed or exempt in another jurisdiction for an

activity which is equivalent to the regulated activity

referred to in paragraph (a),

and is authorized to manage investments in securities for

another person under a written agreement;

"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.

310. Agreement to acquire interests in particular listed corporation

(1) This section applies in relation to an agreement between 2 or more persons which includes provision for the acquisition by any one or more of them of interests in shares comprised in the relevant share capital of 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 any 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) The reference in subsection (1)(a) 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) The references in subsection (3) to the agreement include references to any agreement having effect (whether directly or indirectly) in substitution for an earlier agreement.

(5) The references in subsection (1) to an agreement, in so far as subsection (1)(a) applies, shall not include -

- (a) references 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) references 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) The references in subsection (1) to an agreement, in so far as subsection (1)(b) applies, shall not include references 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) an authorized financial institution;
- (b) a licensed money lender within the meaning of the Money Lenders Ordinance (Cap. 163); or
- (c) an exchange participant of a recognized exchange company, a licensed securities dealer or an exempt securities dealer.

(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, is -

- (a) entitled to exercise or control the exercise of not less than -
 - (i) subject to subparagraph (ii), 35%; or
 - (ii) where any other percentage is prescribed by rules made by the Commission 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) vary, modify, limit or add conditions to any resolution,

at general meetings of the corporation.

(8) In subsection (6) -

"exempt securities dealer" (獲豁免證券交易商) means a person exempt under Part V for Type 1 regulated activity;

"licensed securities dealer" (持牌證券交易商) means a person licensed under Part V for Type 1 regulated activity.

311. Notification of interests of parties to agreement

(1) In the case of an agreement to which section 310 applies, each party to the agreement is taken, for the purposes of this Division, 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 also for those of section 312, 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 section 310 and this section 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), any interest which he is taken to have under section 309 or by the application of section 310 and this section 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.

312. 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 310 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 310 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 300(1), (2), (3) or (4) (as it applies to his case otherwise than by reference to interests which he is taken to have under section 311 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 310 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.

313. Circumstances in which persons have interests in shares or short positions by attribution

(1) In sections 300 to 304 -

- (a) references 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 include references to his becoming or ceasing to be interested in those shares by virtue of another person's interest;
- (b) references 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 include references 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) references 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 include references 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 his interest in shares so comprised changes; or

(c) he comes to have or ceases to have a short position in shares so comprised,

under section 309 or 311 (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 309 or 311;

(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 310 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 310 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 309 or 311.

(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 312 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 309 or 311 fall or fell to be so taken.

314. 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 this Division or Division 3 with respect to his interests or short positions in those shares.

**315. Duty to publish and notify Monetary
Authority of information
given under section 307**

(1) Upon receipt of any information under section 307, 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 section 307, and that information relates to shares comprised in the relevant share capital of the listed corporation, 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.

**316. Offences for non-compliance with
notification requirements**

(1) A person who -

(a) fails to perform, within the specified period, a duty of disclosure under this Division in accordance with

the provisions of this Division applicable to that duty;

- (b) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which he knows to be false, or recklessly makes to a listed corporation or to the relevant exchange company a statement which is false;
- (c) fails to perform, within the specified period, a duty to give another person a notification required by section 312 in accordance with the provisions of this Division applicable to that duty; or
- (d) fails, without reasonable excuse, to comply with section 314 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; and
- (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(2) To the extent that an offence under subsection (1)(a) consists of a failure to comply with section 307(2) in that the notification referred to in that section was received by the listed corporation concerned and the relevant exchange company not at the same time or not one immediately after the other, it is a defence for

a person charged with that offence to prove that he took all reasonably practicable steps to comply with that section.

(3) It is a defence for a person charged with an offence under subsection (1)(c) to prove that it was not possible for him to give the notification to the other person required by section 312 within the specified period, and either -

(a) that it has not since become possible for him to give the notification so required; or

(b) that he gave the notification as soon after the end of that period as it became possible for him to do so.

(4) Where a person is convicted of an offence under this section, the Financial Secretary may by order direct that -

(a) the shares in relation to which the offence was committed which are registered on the Hong Kong register; or

(b) in the case that the shares in relation to which the offence was committed are unissued shares, those shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under Division 7.

(5) Without derogating from subsection (4), where a person is convicted of an offence under this section 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 Division 7.

(6) An order under subsection (4) or (5) may be made notwithstanding any power in a corporation's memorandum or articles enabling the corporation to impose similar restrictions on those shares or equity derivatives.

**Division 3 - Listed corporation's powers to
investigate ownership**

**317. 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 any interest in shares comprised in its relevant share capital by requiring, by notification, a person whom the listed corporation knows or has reasonable cause to believe to be 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 -

- (a) to confirm that fact or to indicate whether or not it is the case (as the case may be); and
- (b) where he has, or has during that time had, an interest 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 his own present interest in those shares or his own past interest in those shares (which he had at any time during the 3-year period referred to in subsection (1));

(b) where the person's interest in those shares is a present interest and -

(i) any other person has an interest in those shares; or

(ii) in any case, where any other person had an interest in those shares during that 3-year period at any time when he himself had an interest in those shares,

to give (so far as known to him) such particulars with respect to the other person's interest as may be required by the notification; or

(c) where his interest in those shares was a past interest, to give (so far as known to him) particulars of the identity of the person who had that interest immediately upon his ceasing to have it.

(3) The particulars referred to in subsection (2)(a) and (b) include -

(a) particulars of the identity of persons interested 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 310 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) Sections 309 to 311 and Part 2 of Schedule 9 (with the omission of the reference in that Part to Part 3 of that Schedule) apply for the purpose of construing references in this section to persons interested in shares and to interests in shares respectively, as they apply for the purposes of Division 2.

(6) 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 references in this section to an interest in shares and to shares shall be construed accordingly in any such case as including references respectively to any such right and shares which would on issue be so comprised.

(7) This section applies in relation to interests in equity derivatives as it applies in relation to interests in shares, where the underlying shares of those equity derivatives are shares

comprised in the relevant share capital of the listed corporation concerned.

**318. Duty to notify relevant exchange company,
Commission and Monetary Authority of
information given under
section 317**

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 317 the listed corporation receives information to which this section applies, 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 317 the listed corporation receives information to which this section applies, 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) This section applies to any information received in pursuance of a requirement imposed by section 317 which relates to the present interest or short position which any person has in shares comprised in the relevant share capital of the corporation concerned.

(5) 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.

(6) If default is made in complying with subsection (1), (3) or (5), 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.

(7) This section applies in relation to interests in equity derivatives as it applies in relation to interests in shares, where the underlying shares of those equity derivatives are shares comprised in the relevant share capital of the listed corporation concerned.

319. 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 317 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 317;
- (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 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 317 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; and
- (b) on summary conviction to a fine at level 3.

(6) In this section and in sections 320 and 321, 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.

320. 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 319, 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 319; and
- (b) the investigation is not concluded before the end of 3 months beginning with the date 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 made available at the listed corporation's registered office within 10 business days after the end of the period to which it relates.

(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 319 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 elapsed.

(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 available there in accordance with subsection (2) or (4) until the expiration of 6 years beginning with the day next following that day; and
- (b) shall be made available for inspection in accordance with section 327 so long as it is so kept.

(9) If default is made in complying with subsection (1), (2), (3), (4), (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; and
- (b) on summary conviction to a fine at level 3.

321. Duty to deliver report prepared under section 320 to relevant exchange company, Commission and Monetary Authority

(1) Whenever a report is prepared under section 320, 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 320 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.

322. Penalty for failure to provide information required by listed corporation and power to impose restrictions

(1) Where -

- (a) a notification is given by a listed corporation under section 317 to a person who is or was interested in shares comprised in the relevant share capital of the corporation which 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 Division 7.

(2) Where -

- (a) a notification is given by a listed corporation under section 317 to a person who is or was interested in equity derivatives the underlying shares of which are shares comprised in the relevant share capital of the corporation; 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 Division 7.

(3) An order under subsection (1) or (2) (as the case may be) may be made by the Court of First Instance 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.

(4) Subject to subsections (5) and (6), a person who -

- (a) fails to comply with a notification under section 317;
- or

- (b) in purported compliance with such a notification, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false 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; and
- (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(5) A person is not guilty of an offence for failing to comply with a notification under section 317 if he proves that the requirement to give the information was frivolous or vexatious.

(6) A person is not obliged to comply with a notification under section 317 if he is for the time being exempted by the Financial Secretary by notice published in the Gazette from the operation of that section.

(7) Any notice given under subsection (6) is not subsidiary legislation.

**323. Register of interests in shares
and short positions**

(1) Every listed corporation shall keep a register for the purposes of Division 2.

(2) Whenever a listed corporation receives information from a person in consequence of the performance of a duty imposed on him by any provision of Division 2, 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 limiting 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 310 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) subject to subsection (11), shall be made available for inspection in accordance with section 327.

(11) Neither the register nor any index shall be made available for inspection in accordance with section 327 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) 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.

(13) In this section and sections 324 to 327, "register" (登記冊), unless the context otherwise requires, means the register a corporation is required to keep under subsection (1).

(14) For the purposes of this section, references to books and papers in section 283 of the Companies Ordinance (Cap. 32) shall be construed as including references to the register and index required to be kept by a corporation under this section.

324. Registration of interests and short positions disclosed under section 317

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 317 the listed corporation receives information to which this section applies relating to shares comprised in its relevant share capital, 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 to which this section applies received in pursuance of the requirement.

(2) This section applies to any information received in pursuance of a requirement imposed by section 317 which relates to

the present interest or short position which any person has in shares comprised in relevant share capital of the corporation concerned.

(3) Section 323(4) to (12) 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.

(4) A duty imposed on a listed corporation by this section shall be performed before the end of the business day after the day on which it receives the information.

(5) 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.

(6) This section applies in relation to interests in equity derivatives as it applies in relation to interests in shares, where the underlying shares of those equity derivatives are shares comprised in the relevant share capital of the listed corporation concerned.

325. 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 elapsed 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 Division 2 in shares comprised in the relevant share capital of the corporation; or

- (b) it has been superseded by a later entry made under section 323 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 Division 2 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 listed 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 310 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.

326. Otherwise, entries not to be removed

(1) Entries in a corporation's register of interests in shares and short positions shall not be removed except in accordance with section 325.

(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.

327. Inspection of register and reports

(1) Any register of interests in shares and short positions and any report which is required by section 320(8) 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 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 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 required under this section is refused or a copy so required is not sent within the specified period, 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 required under this section of any register or report, 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 specified period 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 4 - Disclosure of interests and
short positions of directors
and chief executives**

**328. Duty of disclosure by director and
chief executive**

(1) A person who -

(a) 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; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation,

and that interest or short position (as the case may be) has not previously been disclosed to the listed corporation and the Exchange Company within the

meaning of the repealed Securities (Disclosure of Interests) Ordinance (Cap. 396) pursuant to the provisions of that Ordinance before its repeal; or

(b) 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,

comes under a duty of disclosure.

(2) 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;

(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 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 a corporation becomes an associated corporation where he is immediately after the event interested in shares in or debentures of the associated corporation;
- (f) any 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, 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), (d) or (e) or subsection (1), changes; and
- (g) an 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, or the short position he has in those shares changes.

(3) Subsections (1) and (2) are subject to any exceptions for which provision may be made by regulations.

(4) A person who would otherwise come under a duty of disclosure under subsection (2) is not under such a duty where the occurrence of an event comes to his knowledge after he has ceased to be a director or chief executive.

(5) 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).

(6) In subsection (2)(f), the 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; or
- (b) any of his interest whether legal or equitable in the shares or debentures,

but does not include a reference to a change in -

- (i) the nature of his interest in the shares or debentures on delivery of the shares or debentures to him, if his equitable interest in those shares or debentures has previously been notified to the listed corporation concerned and the relevant exchange company under this Division; or
- (ii) 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.

**329. Interests to be disclosed by
director and chief executive**

(1) Subject to subsections (2) and (3), the interests to be taken into account for the purposes of the duty of disclosure arising under section 328 are those in shares in and debentures of the listed corporation concerned or any associated corporation of the listed corporation.

(2) In subsection (1), the 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 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) Parts 5 and 6 of Schedule 9 shall, together with any relevant provisions of this Division, apply for the interpretation of, and otherwise in relation to, this Division in determining whether a person has, or ceases to have, an interest referred to in subsection (1).

**330. Short positions to be disclosed by
director and chief executive**

(1) Subject to subsection (2), the short positions to be taken into account for the purposes of the duty of disclosure arising under section 328 are those in shares in the listed corporation concerned or any associated corporation of the listed corporation.

(2) Parts 5 and 6 of Schedule 9 shall, together with any relevant provisions of this Division, apply for the interpretation of, and otherwise in relation to, this Division in determining whether a person has, or ceases to have, a short position referred to in subsection (1).

**331. Notification to be given by director
and chief executive and particulars
to be contained**

(1) Where a person comes under a duty of disclosure under section 328, he shall give notification to the listed corporation concerned and to the relevant exchange company of -

- (a) the interests which he has, or had, 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 had, in shares in the listed corporation or any associated corporation of the listed corporation.

(2) The notification shall be given in such manner so as to ensure that it is received by the listed corporation concerned and the relevant exchange company at the same time or, if it is not

practicable to do so, that it is received by the listed corporation and the relevant exchange company one immediately after the other.

(3) The notification shall -

(a) be given in the relevant form specified for that purpose under section 377; and

(b) contain the particulars set out in the relevant provisions of Part 7 of Schedule 9.

(4) A duty of disclosure that arises under section 328 is not performed unless the notification given is in compliance with subsection (3).

332. Time of notification by director and chief executive

(1) The notification required by section 331 shall be given, where the duty of disclosure arises under section 328(1)(a) -

(a) in the case that a person knows of the existence of an interest or short position (as the case may be) at the commencement of this Part, within 3 business days after the commencement; or

(b) otherwise, within 3 business days after the day on which the existence of the interest or short position (as the case may be) comes to his knowledge.

(2) The notification required by section 331 shall be given, where the duty of disclosure arises under section 328(1)(b) -

(a) in the case that a person knows of the existence of an interest or short position (as the case may be) on the day on which he becomes a director or chief executive (as the case may be), within 3 business days after that day; or

(b) otherwise, within 3 business days after the day on which the existence of the interest or short position (as the case may be) comes to his knowledge.

(3) The notification required by section 331 shall be given, where the duty of disclosure arises under section 328(2) -

(a) in the case that at the time at which an event occurs he knows of its occurrence and of the fact that its occurrence gives rise to that duty, within 3 business days after the day on which the event occurs; or

(b) otherwise, within 3 business days after the day on which the fact that the occurrence of the event gives rise to that duty comes to his knowledge.

333. Notification of family and corporate interests and short positions by director and chief executive

(1) For the purposes of this Division -

(a) a director or chief executive of a listed corporation is taken -

- (i) to be interested in any shares in or debentures of the listed corporation or any associated corporation of the listed corporation 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 the listed corporation or any associated corporation of the listed corporation 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 in or debentures of the listed corporation or any associated corporation of the listed corporation; 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 in the listed corporation or any associated corporation of the listed corporation.

(2) For the purposes of this Division -

- (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) A director or chief executive of a listed corporation is under a duty to give notification to the listed corporation and the

relevant exchange company on the occurrence, while he is a director or chief executive, of any of the following events -

- (a) the grant by the corporation to his spouse, or to any minor child (natural or adopted) of his, of a right to subscribe for shares in or debentures of the corporation;
 - (b) the exercise by his spouse, or by any minor child (natural or adopted) of his, of such a right granted by the corporation to the spouse or the child; and
 - (c) any event in consequence of which his spouse, or any minor child (natural or adopted) of his, come to have or ceases to have a short position in shares in the listed corporation or any associated corporation of the listed corporation.
- (4) A notification given under subsection (3) shall provide -
- (a) in the case of the grant of a right, the like information as is required by section 331 to be notified by the director or chief executive on the grant to him by another corporation, being an associated corporation, of a right to subscribe for shares in or debentures of that associated corporation;
 - (b) in the case of the exercise of a right, the like information as is required by section 331 to be notified by the director or chief executive on the

exercise of a right granted to him by another corporation, being an associated corporation, to subscribe for shares in or debentures of that associated corporation; and

- (c) in the case of the occurrence of an event referred to in subsection (3)(c), the like information as is required by section 331 to be notified by the director or chief executive on the occurrence of an event in consequence of which he has a short position in shares in the listed corporation concerned or any associated corporation of the listed corporation.

(5) If a director or chief executive is under a duty to give any notification required by subsection (3), the notification shall be given -

- (a) within 3 business days after the day on which the occurrence of the event giving rise to that duty comes to his knowledge; and
- (b) in the manner specified in section 331(2).

(6) For the purposes of this Division, 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 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.

(7) 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 (6)(b)(ii), the effective voting power is taken as exercisable by that person.

(8) Parts 5 and 6 of Schedule 9 shall, together with any relevant provisions of this Division, apply for the interpretation of, and otherwise in relation to, determining whether a person has, or ceases to have, an interest or a short position that is notifiable.

(9) For the purposes of this Division and Division 5, a duty to give any notification imposed on a director or chief executive by this section shall be deemed to be a duty of disclosure arising under section 328.

334. Duty to publish and notify Monetary Authority of information given under this Division

(1) Upon receipt of any information under any provision 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 in consequence of the performance of a duty of disclosure arising under section 328, and that information relates to shares in or debentures of the listed corporation, 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.

335. Offences for non-compliance with notification requirements by director and chief executive

(1) A person who -

(a) fails to perform, within the specified period, a duty of disclosure under this Division in accordance with the provisions of this Division applicable to that duty; or

(b) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which he knows to be false, or recklessly makes to a listed corporation or to the relevant exchange company a statement which is false,

commits an offence and is liable -

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; and

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(2) To the extent that an offence under subsection (1)(a) consists of a failure to comply with section 331(2) in that the notification referred to in that section was received by the listed corporation concerned and the relevant exchange company not at the

same time or not one immediately after the other, it is a defence for a person charged with that offence to prove that he took all reasonably practicable steps to comply with that section.

**Division 5 - Listed corporation's duties upon
receiving information from directors
and chief executives**

**336. Register of directors' and chief
executives' interests and
short positions**

(1) Every listed corporation shall keep a register for the purposes of Division 4.

(2) Whenever a listed corporation receives information from a director or chief executive given in performance of a duty of disclosure arising under section 328, 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 and the number or amount of them, 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 or amount of shares or 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 or amount of the shares or 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) The nature and extent of an interest of a director or chief executive in any shares or debentures, or of any short position which a director or chief executive has in any shares, recorded in the register shall, if he so requires, be recorded in the register.

(7) 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.

(8) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(9) 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.

(10) 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.

(11) 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.

(12) 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 be made available for inspection in accordance with section 337.

(13) Neither the register nor any index shall be made available for inspection in accordance with section 337 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).

(14) The corporation shall send notice in the form specified by the Commission under section 377 to the Registrar of Companies of -

(a) the place where the register is kept; and

(b) any change in that place,

except in a case in which the register has at all times been kept at the corporation's registered office.

(15) A duty imposed by subsection (14) 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).

(16) 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.

(17) 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.

(18) In this section and section 337, "register" (登記冊), unless the context otherwise requires, means the register a corporation is required to keep under subsection (1).

**337. Inspection of register of directors'
and chief executives' interests
and short positions**

(1) Any register of directors' and chief executives' interests and short positions which is required by section 336(12) 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 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 specified period, 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 specified period 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 - Power to investigate listed
corporation's ownership**

**338. Power to investigate ownership
of listed corporation**

(1) If it appears to the Financial Secretary that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of and persons having an

interest in shares in any listed corporation, and otherwise with respect to the corporation, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the corporation or able to control or materially to influence its policy.

(2) The Financial Secretary may, on appointing an inspector under this section, define the scope of the investigation (whether as respects 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.

(3) If application for an investigation under this section with respect to particular shares in or debentures of 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 is a reasonable ground 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) The Financial Secretary may, before appointing an inspector, require an applicant to give security in such amount as he may require for payment of the costs of the investigation.

(6) This section applies in relation to interests in equity derivatives as it applies in relation to membership of a listed corporation and interests in shares in a listed corporation, where the underlying shares of those equity derivatives are shares in that listed corporation.

**339. Investigation of contraventions
of sections 328 to 333**

(1) If it appears to the Financial Secretary that there are circumstances suggesting that contraventions of any provision of sections 328 to 333 (taken with Schedule 9) may have occurred in relation to the shares in or debentures of a listed corporation, he may appoint one or more competent 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 of a particular class, or both.

(3) This section applies in relation to equity derivatives as it applies in relation to shares, where the underlying shares of those equity derivatives are shares in the listed corporation concerned.

340. Inspector's powers during investigation

(1) If an inspector considers it necessary for the purposes of his investigation to investigate also the ownership of and persons having an interest in any shares in or debentures of another corporation which is or at any relevant time has been an associated corporation of the listed corporation concerned, he shall have power to do so, and shall report on the ownership of and persons having an interest in the shares in or debentures of the other corporation so far as he considers that the results of his investigation of those shares or debentures are relevant to the investigation of the ownership of and persons having an interest in the shares in or debentures of the listed corporation.

(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.

(3) This section applies in relation to equity derivatives as it applies in relation to shares, where the underlying shares of those equity derivatives are shares in the listed corporation concerned.

341. Production of records and evidence to inspectors

(1) When an inspector has been appointed under section 338 or 339, it is the duty of all officers and agents of the listed corporation concerned, and of all officers and agents of any other corporation the ownership of and persons having an interest in shares in or debentures of which are investigated under section 340(1) -

- (a) to 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 custody or power;
- (b) to attend before the inspector when required to do so; and
- (c) otherwise to 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, he may require that person -

- (a) to 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 custody or power;
- (b) to attend before him; and
- (c) otherwise to 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), in relation to the shares in or debentures of 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 on the ground that the answer might tend to incriminate the person, but if the answer might tend to incriminate the person, and he so claims before answering the question, the question and the answer are not admissible in evidence

against him in criminal proceedings in a court of law other than those for perjury in respect of the answer.

(5) In this section and sections 342 and 343 -

(a) references to officers or to agents include references 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.

(6) This section applies in relation to interests in equity derivatives as it applies in relation to interests in shares, where the underlying shares of those equity derivatives are shares in the listed corporation concerned.

342. Delegation of powers by inspectors

(1) An inspector may, by instrument in writing, delegate to any person the powers conferred by section 341 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 as aforesaid in respect of the same investigation, the power conferred by this section may be exercised by any of them.

343. Obstruction of inspectors

(1) When an inspector is appointed under section 338 or 339, this section applies in relation to -

- (a) any officer or agent of the listed corporation concerned;
- (b) any officer or agent of the other corporation the shares in or debentures of which are investigated under section 340; and
- (c) any such person referred to in section 341(2).

(2) If that officer, agent or person (as the case may be) -

- (a) refuses to produce to an inspector any records which it is his duty under section 341 to produce;
- (b) refuses to attend before an inspector when required to do so; or
- (c) refuses to 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 (as the case may be),

the inspector may certify the refusal in writing to the Court of First Instance.

(3) The Court of First Instance may -

- (a) thereupon enquire into the case; and
- (b) after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence,

punish the offender in like manner as if he had been guilty of contempt of the Court.

(4) References in this section to an inspector include references to any person to whom the powers of an inspector are delegated under section 342.

344. 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 the fee prescribed by rules made by the Commission, 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 printed and published.

345. 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 extent referred to hereinafter, 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 Division 2 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 338(3), shall be liable to such extent (if any) as the Financial Secretary may direct.

(2) An inspector appointed under section 338(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) Any liability to repay the Government imposed by subsection (1)(a), shall, subject to the satisfaction of the right of the

Government to repayment, be a liability also to indemnify all persons against liability under subsection (1)(b), (c), (d) and (e).

(4) 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.

346. Power to impose restrictions on shares, etc. in connection with investigation

(1) If, in connection with an investigation under either section 338, 339 or 340, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), 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 Division 7.

(2) This section, and Division 7 in its application to orders under this section, apply in relation to equity derivatives as they apply in relation to shares, where the underlying shares of those equity derivatives are shares which are the subject of the investigation.

**347. Power to obtain information
as to those interested
in shares, etc.**

(1) If it appears to the Financial Secretary that there is good reason to investigate the ownership of and persons having an interest in any shares in or debentures of a listed corporation and that 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 -

(a) the present and past interests in those shares or debentures; and

(b) 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,

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 them or any interest in them; or

(ii) to vote in respect of them;

(b) his consent is necessary for the exercise of any of the rights of other persons interested in them; or

(c) other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who -

(a) fails to give information required of him under this section; or

(b) in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false 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; and

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(4) This section applies in relation to interests in equity derivatives as it applies in relation to interests in shares, where the underlying shares of those equity derivatives are shares in the listed corporation concerned.

348. Privileged information

Without derogating from section 359(4), nothing in sections 338 to 347 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 7 - Orders imposing restrictions
on shares, etc. under section
316, 322 or 346**

349. 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 351(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 that may be exercised under those equity derivatives;
- (b) the exercise of any rights under those equity derivatives, except the exercise of rights on the last day permitted under the terms of the equity derivatives for the exercise of such rights; and
- (c) any removal of the registration of those equity derivatives to a register of holders of those equity derivatives other than the Hong Kong register,

are void.

(4) Where equity derivatives are subject to the restrictions of subsection (3) -

- (a) any agreement to transfer or assign -
 - (i) those equity derivatives; or
 - (ii) any rights that may be exercised under those equity derivatives; and
- (b) the exercise of any rights under those equity derivatives, except the exercise of rights on the last day permitted under the terms of the equity derivatives for the exercise of such rights,

are void (except an agreement to sell those equity derivatives on the making of an order under section 351(4)).

350. Punishment 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 which, to his knowledge, are for the time being subject to the restrictions under this Division; or

(ii) any right to be issued with any such shares or any right under any such equity derivatives; or

(b) having an interest in any such shares or being the holder of any such equity derivatives, 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 349(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 are 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 that may be exercised under those 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 are removed to a register of holders of equity derivatives other than the Hong Kong register,

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.

351. 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 316 or 346) 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 322, 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 316 or 346, the application under subsection (1) may be made by any person aggrieved.

(3) The Financial Secretary shall have the 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 316 or 346) approves the sale.

(5) Where shares or equity derivatives are subject to the restrictions, the Court of First Instance may on application order the shares or equity derivatives to be sold, subject to the Court's approval as to the sale, and may also direct 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 322); or
- (b) by the corporation concerned.

(7) If an application under subsection (5) is made by the corporation concerned, the Financial Secretary shall have the right to be heard, and to call evidence, at the hearing of the application.

(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 322);
- (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) If an application under subsection (8) is made by a corporation or person referred to in subsection (9)(b), (c) or (d), the Financial Secretary shall have the right to be heard, and to call evidence, at the hearing of the application.

352. Further provisions on sale by court order of restricted shares, etc.

(1) Where shares or equity derivatives are sold in pursuance of an order of the Court of First Instance under section 351, the proceeds of sale, less the costs of the sale, shall be paid into court.

(2) Any person who had an interest in the shares or equity derivatives from which the proceeds of sale, which have been paid into court under subsection (1), were derived may apply to the Court of First Instance for the whole or part of those proceeds to be paid to him.

(3) The Financial Secretary shall have the right to be heard, and to call evidence, at the hearing of the application under subsection (2).

(4) The Court of First Instance may on application under subsection (2) -

(a) if it is satisfied that -

(i) the applicant was interested in the shares or equity derivatives at the time of the sale, and no other person had an interest in the shares or equity derivatives at that time; and

(ii) 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),

order the payment to the applicant of the whole of the proceeds of sale, 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, 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 interests 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 such part of the proceeds of sale as is equal to the proportion which the value of the applicant's interests 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.

(5) On making an order under section 351(5) or (8), the Court of First Instance may further order that the applicant's costs be paid out of the proceeds of sale.

Division 8 - Miscellaneous

353. Offences by corporations

(1) Without derogating from section 367(3), where a corporation is guilty of an offence under section 316(1), 322(4), 335(1), 347(3) or 350(1) and it is proved that the offence was committed with the consent or connivance of, or attributable to any neglect 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 affairs of a corporation are managed by its members, subsection (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.

354. Method of giving notification

Any notification required to be given under this Part shall be given -

- (a) in the case that it is given to a listed corporation -
 - (i) by leaving it at, or sending it by post or by facsimile or electronic mail transmission to, the registered office of the listed corporation;
 - (ii) where the listed corporation does not have a registered office in Hong Kong, by leaving it at, or sending it by post or by facsimile or electronic mail transmission to, the listed corporation's principal place of business in Hong Kong; or
 - (iii) by such other method as may be prescribed by rules made by the Commission under section 373;

- (b) in the case that it is given to the relevant exchange company -
 - (i) by leaving it at, or sending it by post or by facsimile or electronic mail transmission to, the registered office of the relevant exchange company; or
 - (ii) by such other method as may be prescribed by rules made by the Commission under section 373;
- (c) in the case that it is given to the Commission, in the manner specified in section 377;
- (d) in the case that it is given to the Monetary Authority -
 - (i) by leaving it at, or sending it by post or by facsimile or electronic mail transmission to, the registered office of the Monetary Authority; or
 - (ii) by such other method as may be prescribed by rules made by the Commission under section 373; and
- (e) in the case that it is given to any other person, in the manner (as appropriate) specified in section 375.

355. Immunity

Without derogating from section 359, no liability shall be incurred by the relevant exchange company, or any employee of the relevant exchange company, in respect of anything done, or omitted to be done, by the relevant exchange company or such employee in good faith in the performance or purported performance of any duty imposed on the relevant exchange company by this Part.

356. 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) Where 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.

357. Regulations

(1) The Chief Executive in Council may make regulations -

- (a) prescribing anything required or permitted by this Part or Schedule 9 to be prescribed by regulations; or
- (b) generally for the better and more effectual carrying into effect of any provision of this Part or Schedule 9.

(2) Without limiting the generality of the regulations which may be made under subsection (1), such regulations may -

- (a) impose requirements in relation to any of the methods of giving notification specified in section 354; and
- (b) include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any principal

legislation or provisions of any subsidiary
legislation).

PART XVI

MISCELLANEOUS

358. 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,

at any time (whether or not the appointment continues, or he may again so perform any such function under or carry into effect any such provisions, or so assist any other person in the performance of any such function under or in carrying into effect any such provisions).

(2) Notwithstanding anything in subsection (1), nothing in that subsection applies to -

- (a) the disclosure of information which has already been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section;
- (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 communication of any information or opinion to which section 360(1) applies (whether with or without reference to section 360(2)) -
 - (i) to the Commission in the manner described in section 360(1);
 - (ii) where section 360(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 360(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) in connection with any judicial or other proceedings (other than criminal proceedings) to which the Commission is a party;
- (c) to a person who is a liquidator or provisional liquidator appointed under the Companies Ordinance (Cap. 32);
- (d) to the Market Misconduct Tribunal;
- (e) to the Securities and Futures Appeals Tribunal;
- (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 Monetary Authority;
 - (vi) the Insurance Authority;
 - (vii) the Registrar of Companies;

- (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 (14);
 - (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;
- (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 such professional or semi-professional bodies in Hong Kong as may be specified for the purposes of this paragraph by the

Commission by notice published in the
Gazette;

- (iii) without prejudice to subparagraph (ii),
to the Hong Kong Society of Accountants
with a view to the institution of, or
otherwise for the purposes of, any
disciplinary proceedings relating to the
performance or non-performance of the
professional duties of an auditor or a
former auditor appointed under any of the
relevant provisions;
- (h) to an auditor or a former auditor appointed under
this Ordinance for the purpose of enabling or
assisting the Commission to discharge its functions
under any of the relevant provisions;
- (i) where the information is obtained by an
investigator under section 169, to -
 - (i) the Financial Secretary;
 - (ii) the Secretary for Justice;
 - (iii) the police;
 - (iv) 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 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 under section 152 or 153, and a person who is or was an employee or agent of such auditor, may disclose information that comes to his knowledge 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)(f) and (g) is that -

- (a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(f) or (g)(i),(ii) or (iii) (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) For the purposes of subsection (3)(g)(i), where the Commission is satisfied 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), (b) and (k) and (4)(b)) -

(a) the person to whom that information is so disclosed; or

(b) any 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 otherwise consents to the disclosure; or
- (ii) the information or the part thereof (as the case may be) has already been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

(8) Where information is disclosed to an auditor in any of the circumstances described in subsection (4)(b) -

- (a) the auditor; or
- (b) any 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 otherwise consents to the disclosure; or
- (iii) the information or the part thereof (as the case may be) has already been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

(9) Subject to subsection (10), any executive director or non-executive director of the Commission or any person performing any function under or carrying into effect 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 of the provisions of this Ordinance; or
- (b) which transaction he knows is otherwise being considered by the Commission.

(10) Subsection (9) does not apply to any right of the holder of securities by virtue of being 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 referred to in paragraph (d); or

(f) to realize the securities in the course of performing a duty imposed by law.

(11) Any executive director or non-executive director of the Commission or any person performing any function under or carrying into effect any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under or carrying into effect any such provisions, he is required to consider any matter relating to -

(a) any securities, futures contract, leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme -

(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 that in which he has an interest;

(B) in the case of futures contract, is interests, rights or property based upon securities of, or issued by, the same issuer and of the same class as that 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.

(12) A person who -

- (a) contravenes subsection (1), (7) or (8); or
- (b) without reasonable excuse, contravenes subsection (9) or (11),

commits an offence and is liable -

- (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; and
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(13) For the purposes of this section, a person shall be regarded as assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions if he is subject to any requirement imposed by an authorized person under section 165 or 167, or by an investigator under section 169, or is a counsel or solicitor or other professional adviser, acting for such person in connection with the requirement.

(14) The Financial Secretary may authorize a public officer for the purposes of subsection (3)(f)(xi).

(15) A notice published pursuant to subsection (3)(g)(ii) is not subsidiary legislation.

(16) In this section -

"companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions and duties 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 an executive director or non-executive director, an employee, or a consultant, agent or adviser, of the Commission;
and

(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.

359. Immunity

(1) A person shall not incur any liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of any act done or any omission made by him in good faith -

- (a) in the performance or purported performance of any function under, or for the purpose of doing anything required or authorized under, any of the relevant provisions;
- (b) in the furtherance or purported furtherance of a regulatory objective, or in the performance or purported performance of a function, pursuant to or consequent upon any written direction given by the Chief Executive under section 11.

(2) Notwithstanding anything in subsection (1), nothing in that subsection applies to -

- (a) anything done or omitted to be done in the discharge, or purported discharge, of the obligation or obligations within the meaning of section 23(1), 40(1) or (3), 64(1) or 80(1);
- (b) a person appointed as an auditor under section 146.

(3) A person who complies with a requirement made under this Ordinance shall not incur any liability, whether arising in contract, tort, defamation, equity or otherwise, to any person by reason only of that compliance.

(4) A person who is a legal practitioner (whether or not he is qualified in Hong Kong to practise as a counsel or to act as a solicitor) shall not be required under this Ordinance to disclose any information (other than the name and address of a client) or

produce any record or document (whether an original or a copy) which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Court of First Instance.

(5) A person who is not a legal practitioner shall not be required under this Ordinance to disclose any information or produce any record or document (whether an original or a copy) if the requirement to do so would not apply in the case of a legal practitioner by virtue of subsection (4).

360. Immunity in respect of communication by auditors of listed corporations, etc. with Commission

(1) Without prejudice to section 359, a person who is or was an auditor of a listed corporation, or of any associated corporation of a listed corporation, shall not incur any liability, whether arising in contract, tort, defamation, equity or otherwise, by reason 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 the business of the listed corporation is being or 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 listed corporation was formed for any fraudulent or unlawful purpose;
- (c) that persons concerned in the process by which the listed 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 persons involved in the management of the affairs of the listed corporation are or 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) that members of the listed 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 listed corporation, or of any associated corporation of a listed corporation, subsection (1) also applies to -

- (a) a person who is or was an auditor of a corporation that was formerly a listed corporation, 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 first-mentioned corporation was a listed corporation; and
 - (ii) the circumstances required to be suggested by the matter under paragraphs (a), (b) and (c) of that subsection relate, instead of to the listed corporation referred to in those paragraphs, to the first-mentioned corporation when it was a listed corporation; and
- (b) a person who is or was an auditor of a corporation that was formerly an associated corporation of a listed 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 first-mentioned corporation was an associated corporation of the listed corporation; and
- (ii) the circumstances required to be suggested by the matter under paragraphs (a), (b) and (c) of that subsection

relate, instead of to the listed corporation referred to in those paragraphs, to the listed corporation of which the first-mentioned corporation was formerly an associated corporation.

(3) For the avoidance of doubt, 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;

(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 listed corporation, means -

- (a) a subsidiary of that listed corporation;
- (b) a corporation in which that listed corporation has an interest (whether held by that listed corporation directly or indirectly through any other corporation or corporations), which is properly accounted for by that listed 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 listed corporation;

"auditor" (核數師), in relation to a corporation, means a person appointed -

- (a) 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) 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).

361. Obstruction

A person who obstructs any other person in the performance of a function under or in carrying into effect any of the provisions 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; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

362. 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 powers or 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, an 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.).

363. 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) prevents a court of competent jurisdiction from ordering that any proceedings or action under this Ordinance shall be stayed or deferred.

364. Standard of proof

For the avoidance of doubt, where it is necessary for a court or 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 under any provision of any Ordinance; or

- (iii) any of the terms and conditions of a licence or an exemption under 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 court or the Commission (as the case may be) 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 balance of probabilities.

365. 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.

366. 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 365(1) affects or limits the meaning of indictable offence referred to in subsection (1).

367. Liability of executive officers, directors, etc.

(1) Subject to subsection (2), in any proceedings under section 123(4), 139(6) or (8), 144(5), 149(5) or 157(4) or (7), or

such provisions of any rules as are made under section 139(9), 141(5), 142(5), 144(8), 145(3) or 161(2), against a person as an executive officer of a corporation (however described) in respect of a failure of the corporation to comply with any specified provision or requirement, it is a defence for the person to prove that -

- (a) at the time of the occurrence of the failure he honestly and reasonably believed that the failure would not occur; or
- (b) in the case of a continuing failure, he discovered the failure otherwise than through notification by the Commission, and he has notified the Commission of the failure as soon as reasonably practicable after he discovered the failure, and up to the time of discovery of the failure he honestly and reasonably believed that the failure would not occur.

(2) A person shall not be entitled to rely on the defence provided by subsection (1) by reason of his reliance on information given by another person, unless he shows that it was reasonable in all the circumstances for him to have relied on the information.

(3) Except in a case in which subsection (1) applies, where 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 neglect 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.

368. Liability of corporations for act of directors, employees, agents, etc.

For the purposes of this Ordinance, an act, omission or failure of a director, employee, agent or other person acting, or purporting to act, for or on behalf of a corporation within, or apparently within, the scope of his office or employment shall be deemed to be the act, omission or failure of the corporation as well as of the director, employee, agent or other person (as the case may be).

369. 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, is to be regarded as securities or futures contracts;
- (b) any interests, rights or property, whether in the form of an instrument or otherwise, 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 referred to in the notice is to be regarded, or not to be regarded, as securities or futures contracts (as the case may be).

370. 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 as defined in section 18;
- (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; and

(b) specify different rates for different classes of securities or futures contracts.

(3) Subject to subsection (4), 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) A recognized exchange company shall retain such proportion of the levy (if any) collected under subsection (3) as is specified by the Chief Executive in Council by order published in the Gazette.

(5) The Commission may recover the amount of any levy payable under this section as a civil debt due to it.

(6) 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; and

(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, retention, and payment to the Commission, of such levies.

(7) 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.

**371. 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 for a licence, authorization, approval, exemption, waiver, variation or modification under any of the relevant provisions;
- (ii) for anything done by the Commission or a committee of the Commission 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 of the Commission 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; and

(b) provide for the payment to the Commission of, and prescribe, fees specified as being payable under any of the provisions of this Ordinance.

(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 in providing the services or performing the functions to which the fees relate, but in fixing the level of the fees the Commission shall not take account of appropriations under section 14.

(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 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 of the provisions of this Ordinance; and

(d) for the payment of fees at annual or other intervals.

(5) The Commission may recover the amount of any fees payable under the rules made under this section as a civil debt due to it.

(6) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).

372. Reduction of levy

(1) If during a financial year of the Commission -

(a) the Commission's liquid assets, after deducting current liabilities 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 370.

(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 370.

373. Rules by Commission

- (1) The Commission may make rules to -
- (a) provide for applications for licences and exemptions, the issue of licences and exemptions, and incidental matters;
 - (b) require the display of licences and exemptions in a specified manner, in specified circumstances and at specified places, and provide for the circumstances in which licences and exemptions are to be returned to the Commission for any purpose, and the issue, on payment of a fee (if any) specified in the rules, of duplicates of licences and exemptions;
 - (c) prescribe the class of persons in relation to whom, and the manner and circumstances in which, intermediaries may carry on business;
 - (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 licences or exemptions may be required to take, and the circumstances in which they may be exempted from such requirements;
 - (e) provide for the particulars to be recorded in the register maintained by the Commission under Part V, and the correction of errors in the register;

- (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) prescribe electronic or other methods for documents and information to be lodged, filed, submitted or retained for the purposes of any of the provisions of this Ordinance;
- (h) provide for the manner of completion, signature, execution and authentication of documents and information lodged, filed, submitted or retained for the purposes of any of the provisions of this Ordinance by any person by electronic or other means;
- (i) specify whether, when and the circumstances in which records compiled in any specified form or manner, or documents or information completed, executed or authenticated in any specified form or manner, are acceptable or required for the purposes of any of the provisions of this Ordinance;
- (j) provide for the remuneration of any auditor appointed, and the costs of an audit carried out, under this Ordinance;
- (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 requiring 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 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;
- (m) require a form or return required to be submitted under this Ordinance is to be received by the Commission by or within a specified time;
- (n) prescribe, specify or provide for any matter which this Ordinance provides is, or may be, prescribed, specified or provided for by rules made by the Commission;

(o) provide for any other matters for the better carrying out of the objects and purposes of this Ordinance.

(2) Subject to subsections (3) and (4), 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 its regulatory objectives and the performance of its functions.

(3) Where the Commission proposes to make rules under subsection (2), it shall, before consulting the Financial Secretary for the purpose, prepare and publish a draft of the rules, in such manner as it considers appropriate, for the purpose of inviting representations on the rules by the public.

(4) After a draft of the rules which the Commission proposes to make under subsection (2) is published under subsection (3), the Commission may modify the rules, taking into consideration any representation on the rules received as a result of the publication, in such manner as it considers appropriate, for the purpose of having the rules made under subsection (2).

(5) 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.

(6) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding rules it proposes to make under this section or any other provision of this Ordinance in so far as such rules apply to

authorized financial institutions by reason of their being exempt persons.

(7) Where rules are made by the Commission under this section or any other provision of this Ordinance and it has not been provided in this Ordinance that the rules may provide that failure to comply with any specified provision of the rules constitutes an offence, the Chief Executive in Council may make regulations to provide that a person who fails to comply with any specified provision of the rules that apply to him commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) Except as otherwise provided in this Ordinance, rules made by the Commission under this section or any other 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.

(9) Except as otherwise provided in this Ordinance, rules made by the Commission under this section or any other 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 of the provisions 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).

374. 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 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 of the provisions of this Ordinance.

(2) Without limiting the generality of subsection (1), the Commission may publish under that subsection -

(a) a code to be known as the "Code on Takeovers and Mergers" to provide for matters concerning takeovers and mergers and matters incidental thereto; and

(b) a code to be known as the "Code on Share Repurchases" to provide for matters concerning share repurchases and matters incidental thereto.

(3) 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.

(4) The Commission may from time to time amend the whole or any part of any code or guideline published under this section, and -

(a) the other provisions of this section apply, with the 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 a reference to the code or guideline as so amended.

(5) A failure on the part of any person to comply with the provisions set out in a 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.

(6) 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; and

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(7) Any code or guideline published under this section is not subsidiary legislation.

(8) 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 in so far as such codes or guidelines apply to authorized financial institutions by reason of their being exempt persons.

375. Service of notices

(1) Any notice, direction or other document (however described) required to be issued or served under this Ordinance shall for all purposes be regarded as duly issued or served if -

(a) in the case of an individual, it has been -

(i) delivered to him by hand; or

- (ii) where it cannot conveniently be so delivered, left at, or sent by post or by facsimile or electronic mail transmission to, the address at which he ordinarily resides or carries on business or, if such an address is unknown, his last known address;
- (b) in the case of a company, it has been -
 - (i) delivered to an officer of the company by hand; or
 - (ii) where it cannot conveniently be so delivered, left at, or sent by post or by facsimile or electronic mail transmission to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 32);
- (c) in the case of an oversea company within the meaning of the Companies Ordinance (Cap. 32), it has been left with, or sent by post or by facsimile or electronic mail transmission 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 that Ordinance;
- (d) in the case of a partnership, it has been -
 - (i) delivered to any partner of the partnership by hand; or

- (ii) where it cannot conveniently be so delivered, left at, or sent by post or by facsimile or electronic mail transmission to, the address at which the partnership carries on business;
- (e) in the case of a body corporate (other than a company, or an oversea company within the meaning of the Companies Ordinance (Cap. 32)), or an unincorporated body of persons (other than a partnership), it has been -
 - (i) delivered to an officer of the body by hand; or
 - (ii) where it cannot conveniently be so delivered, left at, or sent by post or by facsimile or electronic mail transmission to, the address at which the body carries on business.

(2) For the purposes of subsection (1)(e), a body corporate or an unincorporated body of persons to which that subsection applies shall be regarded as carrying on business at its principal office or place of business.

376. 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, executed, signed or issued by or on behalf of the Commission and purporting to be signed or

initialled by any executive director or non-executive director of the Commission or any person performing any function under or carrying into effect 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.

**377. General requirements for documents
lodged with Commission**

(1) Subject to subsections (2) to (4), any requirement for any application, statement, notice or other document (however described) to be lodged, filed or submitted for the purposes of any of the provisions of this Ordinance shall not be regarded as having been complied with unless it is -

- (a) in such form as the Commission may from time to time specify for the purposes of this section by notice published in the Gazette;
- (b) completed, signed, executed and authenticated in accordance with such directions and instructions as are specified in the form;
- (c) accompanied by such documents as are specified in the form; and
- (d) lodged with the Commission in such manner, whether by electronic or other means, as is specified in the form.

(2) In a notice published under subsection (1), the Commission may specify that different forms are to be used in different circumstances.

(3) An application, statement, notice or other document referred to in subsection (1) shall not by reason of any deviation from a form specified by notice published under that subsection cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(4) Where the Commission is satisfied that a person has substantial practical difficulties in complying with any of the requirements referred to in subsection (1), it may in its discretion dispense with the requirements in the case of the person to such extent as it considers necessary.

(5) A notice published under subsection (1) is not subsidiary legislation.

378. False representations in applications to Commission

(1) A person who, in support of any application made to the Commission under or pursuant to any of the provisions of this Ordinance, whether for himself or for another person, makes a representation, whether in writing, orally or otherwise, which he knows to be false or misleading as to a material particular, 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

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

(2) 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.

379. General provisions for approvals by Commission

Where under this Ordinance, an act cannot be done, or an omission cannot be made, except with the approval in writing 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 impose by having the same specified in 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 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 made (as the case may be) otherwise than in accordance with any such conditions.

380. Exclusions of provisions of Gambling Ordinance

The Gambling Ordinance (Cap. 148) shall not apply to any transaction which is authorized by or under, or which is carried out in compliance with, this Ordinance.

381. 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

382. 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 (12 of 2000).

(2) Any repeal under this section is subject to -

- (a) the other provisions of this Part; and
- (b) Schedule 10.

(3) Notwithstanding section 36 of the Interpretation and General Clauses Ordinance (Cap. 1), section 7 of Part 1 of Schedule 1 to this Ordinance applies to this section as it applies to the other provisions of this Ordinance.

383. 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.

384. Provisions of Part XVII, etc. not to derogate from section 23 of Interpretation and General Clauses Ordinance

Subject 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).

385. Amendment of Schedule 10

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 10.

SCHEDULE 1

[ss. 2, 108,
162 & 382]

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) has the same meaning as in Part V 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 the person is accustomed or obliged to act;
- (f) another person accustomed or obliged to act in accordance with the directions of the person;
- (g) a corporation in accordance with the directions of which, or the directions 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 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;

(1) 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 with respect to the acquisition, holding or disposal of such securities or such interest or under which they undertake to act together in exercising their voting power, as rights arising out of the holding of such securities or such interest, at general meetings of the corporation;

"associated entity" (有聯繫實體) has the same meaning as in Part VI of this Ordinance;

"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 by the Commission 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 94(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 same meaning as in Schedule 6 to this Ordinance;

"bank" (銀行) means any institution carrying on business similar to that 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 and not holding a valid banking licence under the Banking Ordinance (Cap. 155);

"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;
- (d) any material in which information is recorded and which is used in the ordinary course of business of a bank (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);

"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;

"broadcaster" (廣播業者) means -

- (a) a person holding a valid licence granted under the Television Ordinance (Cap. 52);
- (b) a person holding a valid licence granted under Part IIIA of the Telecommunication Ordinance (Cap. 106);
- (c) a person holding a valid licence granted under sections 7 and 34 of the Telecommunication Ordinance (Cap. 106) that has the title "Satellite Television Uplink and Downlink Licence"; or
- (d) Radio Television Hong Kong;

"business day" (營業日) means any day (other than Saturday) on

which banks in Hong Kong are generally open for business;

"charge" (押記) includes any form of security, including a mortgage;

"clearing participant" (結算所參與者) has the same meaning as in Part III of this Ordinance;

"client" (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service 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;

"collective investment scheme" (集體投資計劃) has the same meaning as in Part IV of this Ordinance;

"Commission" (證監會) means the Securities and Futures Commission referred to in section 3(1) of this Ordinance;

"commodity" (商品) has the same meaning as in Part III of this Ordinance;

"company" (公司) means a company as defined in section 2(1) of the Companies Ordinance (Cap. 32);

"compensation fund" (賠償基金) has the same meaning as in Part XII of this Ordinance;

"computer" (電腦) means any device for storing, processing, retrieving or transmitting information;

"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;

"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 by the Commission 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 by the Commission as being exempted from any of the provisions of this Ordinance;

"court" (法庭) includes a magistrate and a tribunal;

"data equipment" (數據設備) means equipment which -

- (a) automatically processes information;
- (b) automatically records or stores information;
- (c) can be used to cause information to be automatically recorded, stored or otherwise processed in or on other equipment (wherever situated);
- (d) can be used to retrieve information, whether the information is recorded or stored in or on the equipment itself or other equipment (wherever situated);

"data material" (數據材料) means a document or other material used with or produced by data equipment;

"dealing in futures contracts" (期貨合約交易) has the same meaning as in Schedule 6 to this Ordinance;

"dealing in securities" (證券交易) has the same meaning as in Schedule 6 to this Ordinance;

"debenture" (債權證) includes debenture stock, 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 computer input or output, 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) has the same meaning as in Part III of this Ordinance;

"executive director" (執行董事), in relation to the Commission, means a person who is appointed as an executive director of the Commission under section 2 of Part 1 of Schedule 2 to this Ordinance;

"exempt" (獲豁免), in relation to an authorized financial institution, means having been granted an exemption;

"exempt person" (獲豁免人士) means an authorized financial institution which is granted an exemption;

"exemption" (豁免) means a declaration of exemption granted under section 118 of this Ordinance;

"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 debt that in substance is a loan, and also includes an agreement to secure the payment or repayment of 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>>) has the same meaning as in Part VI 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;
- (b) in relation to a licensed corporation, or an associated entity of a licensed corporation, means -
 - (i) where any period has been notified to or approved by the Commission as such under section 148 of this Ordinance, such period;

- (ii) 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; or
- (b) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 369 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, whether in the form of an instrument or otherwise, prescribed by notice under section 369 of this Ordinance as not being regarded as futures contracts in accordance with the terms of the notice;

"Futures Exchange Company" (期交所) has the same meaning as in Part XII of this Ordinance;

"futures market" (期貨市場) has the same meaning as in Part III of this Ordinance;

"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, whether physically, electronically or by any other means, as having title to or being entitled to receive, the property;
- (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, equitable or beneficial 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;

"Independent Commission Against Corruption" (廉政專員公署) means the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);

"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 an exempt person;

"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 same meaning as in Schedule 6 to this Ordinance;

"leveraged foreign exchange trading" (槓桿式外匯交易) has the same meaning as in Schedule 6 to this Ordinance;

"licence" (牌、牌照) means a licence granted under section 115, 116, 119, 120 or 121 of this Ordinance;

"licensed" (獲發牌、持牌) means having been granted a licence;

"licensed corporation" (持牌法團) means a corporation which holds a licence granted under section 115 or 116 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 holds a licence granted under section 119, 120 or 121 of this Ordinance;

"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;

"Mandatory Provident Fund Schemes Authority" (強積金管理局) 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) has the same meaning as in Part III of this Ordinance;

"market misconduct" (市場失當行為) has the same meaning as in Part XIII of this Ordinance;

"Market Misconduct Tribunal" (市場失當行為審裁處) means the Market Misconduct Tribunal established by section 235 of this Ordinance;

"member" (成員), in relation to the Commission, means any executive director 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, which in whole or in part, directly or indirectly, represents 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, not

to appear to so represent such proceeds;

"mutual fund" (互惠基金) has the same meaning as in Part IV of this Ordinance;

"mutual fund corporation" (互惠基金法團) has the same meaning as in Part IV of this Ordinance;

"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 2 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;

(b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body;

"Ombudsman" (申訴專員) means The Ombudsman appointed under section 3 of The Ombudsman Ordinance (Cap. 397);

"opportunity of being heard" (陳詞機會), when required to be given by the Commission, means an opportunity of being heard through the medium of written representations;

"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);

"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;

"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 4; or
- (b) any credit rating which, in the opinion of the Commission, is equivalent to a credit rating specified in Part 4;

"recognized clearing house" (認可結算所) has the same meaning as in Part III 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 but which is not a related corporation of the first-mentioned corporation; or
- (c) an institution specified by rules made by the Commission for the purposes of this definition as a recognized counterparty;

"recognized exchange company" (認可交易所) has the same meaning as in Part III of this Ordinance;

"recognized exchange controller" (認可控制人) has the same meaning as in Part III 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) has the same meaning as in Part III 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, recorded 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;

- (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 a 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;

"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 Type 1 regulated activity, Type 2 regulated activity, Type 3 regulated activity, Type 4 regulated activity, Type 5 regulated activity, Type 6 regulated activity, Type 7 regulated activity, Type 8 regulated activity, or Type 9 regulated activity;

"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 providing 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 26 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;

"responsible officer" (負責人員) has the same meaning as in Part V of this Ordinance;

"rules" (規章), in relation to a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company, has the same meaning as in Part III of this Ordinance;

"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, 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 369 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 which is a private company within the meaning of section 29 of the Companies Ordinance (Cap. 32);
- (ii) an 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);

- (iii) a 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;
- (iv) a bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) and a promissory note within the meaning of section 89 of that Ordinance;
- (v) a debenture that specifically provides that it is not negotiable or transferable;
- (vi) interests, rights or property, whether in the form of an instrument or otherwise, prescribed by notice under section 369 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 202 of this Ordinance;

"securities and futures industry" (證券期貨業) means the securities and futures market and participants therein, and any activities related to financial products;

"securities and futures market" (證券期貨市場) means any market,

exchange, place or service which provides for bringing together on a regular basis persons who are parties to transactions related to financial products;

"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 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;

"specified debt securities" (指明債務證券) means debenture stock, loan stock, 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) has the same meaning as in Part III of this Ordinance;

"stock market" (證券市場) has the same meaning as in Part III of this Ordinance;

"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;

"Type 1 regulated activity" (第1類受規管活動) means the regulated activity specified in paragraph (a) in Part 1 of Schedule 6 to this Ordinance;

"Type 2 regulated activity" (第2類受規管活動) means the regulated activity specified in paragraph (b) in Part 1 of Schedule 6 to this Ordinance;

"Type 3 regulated activity" (第3類受規管活動) means the regulated activity specified in paragraph (c) in Part 1 of Schedule 6 to this Ordinance;

"Type 4 regulated activity" (第4類受規管活動) means the regulated activity specified in paragraph (d) in Part 1 of Schedule 6 to this Ordinance;

"Type 5 regulated activity" (第5類受規管活動) means the regulated activity specified in paragraph (e) in Part 1 of Schedule 6 to this Ordinance;

"Type 6 regulated activity" (第6類受規管活動) means the regulated activity specified in paragraph (f) in Part 1 of Schedule 6 to this Ordinance;

"Type 7 regulated activity" (第7類受規管活動) means the regulated activity specified in paragraph (g) in Part 1 of Schedule 6 to this Ordinance;

"Type 8 regulated activity" (第8類受規管活動) means the regulated activity specified in paragraph (h) in Part 1 of Schedule 6 to this Ordinance;

"Type 9 regulated activity" (第9類受規管活動) means the regulated activity specified in paragraph (i) in Part 1 of Schedule 6 to this Ordinance.

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) 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 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 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.

6. References to securities of a corporation

In this Ordinance, a reference to securities of a corporation shall, unless the context otherwise requires, be regarded 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 formed.

7. References to Ordinance

In this Ordinance, a reference to any 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 a reference to its subsidiary legislation.

8. 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.

PART 2

SPECIFIED FUTURES EXCHANGES

1. Australian Options Market
2. Chicago Board of Trade

3. Chicago Board Options Exchange
4. Chicago Mercantile Exchange
5. Commodity Exchange, Inc. (New York)
6. DTB Deutsche Terminbourse
7. European Options Exchange (Amsterdam)
8. Hong Kong Futures Exchange Limited
9. Korea Stock Exchange
10. London International Financial Futures and Options Exchange
11. London Metal Exchange
12. Marche a Terme International de France
13. Marche des Options Negociables de la Bourse de Paris
14. New York Cotton Exchange, Inc.
15. New York Futures Exchange
16. New York Mercantile Exchange
17. New Zealand Futures and Options Exchange
18. Osaka Securities Exchange
19. Pacific Stock Exchange
20. Philadelphia Stock Exchange
21. Singapore International Monetary Exchange
22. Stockholm Options Market
23. Swiss Options and Financial Futures Exchange AG
24. Sydney Futures Exchange, Ltd.
25. Tokyo Grain Exchange
26. Tokyo International Financial Futures Exchange
27. Tokyo Stock Exchange
28. Toronto Futures Exchange
29. Winnipeg Commodities Exchange

PART 3

SPECIFIED STOCK EXCHANGES

1. American Stock Exchange
2. Amsterdam Stock Exchange
3. Australian Stock Exchange
4. Brussels Stock Exchange
5. Copenhagen Stock Exchange
6. Frankfurt Stock Exchange
7. Helsinki Stock Exchange
8. Japanese Association of Securities Dealers Automated
Quotations
9. Korea Stock Exchange
10. Kuala Lumpur Stock Exchange
11. London Stock Exchange
12. Luxembourg Stock Exchange
13. Madrid Stock Exchange
14. Makati Stock Exchange
15. Manila Stock Exchange
16. Milan Stock Exchange
17. Montreal Stock Exchange
18. Nagoya Stock Exchange
19. National Association of Securities Dealers Automated
Quotations
20. New York Stock Exchange
21. New Zealand Stock Exchange

22. Osaka Securities Exchange
23. Oslo Stock Exchange
24. Paris Bourse
25. Stock Exchange of Hong Kong Limited
26. Stock Exchange of Singapore
27. Stock Exchange of Thailand
28. Stockholm Stock Exchange
29. Tokyo Stock Exchange
30. Toronto Stock Exchange
31. Vienna Stock Exchange
32. Zurich Stock Exchange

PART 4

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 &
Sch. 1]

SECURITIES AND FUTURES COMMISSION

PART 1

CONSTITUTION AND PROCEEDINGS
OF COMMISSION, ETC.

Chairman and members of Commission

1. The Commission consists of a chairman and an uneven number (as the Chief Executive may determine but not being less than 7) of other members all of whom shall be appointed by the Chief Executive; and when the membership of the Commission ceases to comply with the requirement of this section, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirement is complied with.

2. Half of the members, including the chairman, of the Commission shall be appointed to be executive directors of the Commission and the remainder shall be appointed to be non-executive directors of the Commission.

**Deputy chairman and vacancies in office of
chairman or deputy chairman**

3. The Chief Executive may appoint an executive director of the Commission to be the deputy chairman of the Commission.

4. 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 3 shall act as chairman in his place.

5. Notwithstanding that a deputy chairman has been appointed under section 3, the chairman of the Commission may, where no designation under section 6 is in effect, 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.

6. If -

(a) no deputy chairman has been appointed under section 3 or the office of deputy chairman of the Commission is vacant; or

(b) a deputy chairman appointed under section 3 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and no designation is made under section 5,

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.

7. A designation under section 6 ceases to have effect when -
- (a) it is revoked by the Financial Secretary; or
 - (b) an appointment is made under section 3,
- whichever is the earlier.

Members

8. The terms and conditions of the office of a member of the Commission shall be determined by the Chief Executive.

9. A member of the Commission may at any time resign his office by notice in writing to the Chief Executive.

10. A member of the Commission shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine.

11. The Chief Executive may by notice in writing remove from office any member of the Commission whose removal appears to him to be desirable for the effective performance by the Commission of its functions.

Meetings

12. 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.

13. Without prejudice to sections 4 to 6, at a meeting of the Commission -

- (a) subject to paragraphs (b) and (c), the chairman of the Commission 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.

14. The quorum for a meeting of the Commission is 4 members of the Commission, of whom 2 are executive directors and 2 are non-executive directors. Each of the members present at the meeting has a vote.

15. 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.

16. 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 17, have a casting vote.

17. 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

18. A resolution of the Commission 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 if it -

- (a) is in writing; and
- (b) is signed by not less than 2 executive directors and not less than 2 non-executive directors of the Commission, including all of the executive directors and non-executive directors of the Commission who are for the time being present in Hong Kong and capable of signing the resolution.

19. For the purposes of section 18, 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 executive directors or non-executive directors of the Commission.

20. Where a resolution is in the form of more than one document as described in section 19(b), the requirement under section 18(b) shall

be regarded as having been satisfied if the documents together bear the signatures of not less than 2 executive directors and not less than 2 non-executive directors of the Commission, including all of the executive directors and non-executive directors of the Commission who are for the time being present in Hong Kong and capable of signing the resolution.

21. For the purposes of sections 18 to 20 -

- (a) a document shall be regarded as having been signed by an executive director or a non-executive director of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the executive director or non-executive director; and
- (b) a resolution to which section 18 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as an executive director or non-executive director of the Commission for the purposes of that section.

Seal, and regulation of administration, etc.

22. The Commission has a seal, the affixing of which shall be authenticated by the signature of the chairman or 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.

23. 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 and the proper exercise of its powers.

Advisory Committee

24. The Advisory Committee shall consist of -

- (a) the chairman of the Commission;
- (b) not more than 2 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.

25. 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.

26. At a meeting of the Advisory Committee -

- (a) subject to paragraph (b), the chairman of the Commission shall be the chairman of the meeting;
- (b) if the chairman of the Commission is not present, the members present shall choose one of their number to be the chairman of the meeting.

27. Where a member of the Advisory Committee appointed under section 24(b) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.

28. A member of the Advisory Committee appointed under section 24(b) or (c) may at any time resign his office by notice in writing to -

- (a) where he has been appointed under section 24(b), the Commission;
- (b) where he has been appointed under section 24(c), the Chief Executive.

29. The Chief Executive may by notice in writing remove a person as a member of the Advisory Committee.

PART 2

NON-DELEGABLE FUNCTIONS OF COMMISSION

1. Any power 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 declare a person or body of persons to be a person or body of persons to which paragraph (c) of the definition of "rules" shall apply, under section 18(6) of this Ordinance;
- (13) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;
- (14) to add, vary or repeal conditions, under section 19(3) of this Ordinance;
- (15) to request a recognized exchange company to make or amend rules, under section 24(3) of this Ordinance;

- (16) to refuse to give its approval to any rules or amendment of any rules, or any part thereof, under section 25(3) of this Ordinance;
- (17) to advise the Financial Secretary to extend time, pursuant to section 25(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 25(7) of this Ordinance;
- (19) to request the Chief Executive in Council to transfer any function of the Commission, under section 26(1) of this Ordinance;
- (20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 26(7) of this Ordinance;
- (21) to approve the appointment of the chief executive of a recognized exchange company, pursuant to section 27 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 38(1) of this Ordinance;
- (27) to add, vary or repeal conditions, under section 38(2) of this Ordinance;
- (28) to request a recognized clearing house to make or amend rules, under section 41(4) of this Ordinance;
- (29) to refuse to give its approval to any rules or amendment of any rules, or any part thereof, under section 42(3) of this Ordinance;
- (30) to advise the Financial Secretary to extend time, pursuant to section 42(6) of this Ordinance;
- (31) to declare any class of rules to be a class of rules which are not required to be approved, under section 42(7) of this Ordinance;
- (32) to withdraw recognition of a recognized clearing house, under section 43(1)(a) of this Ordinance;
- (33) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(b) of this Ordinance;
- (34) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;
- (35) to add, vary or repeal conditions, under section 59(3) of this Ordinance;
- (36) to direct a person to take specified steps, under section 59(9)(b) of this Ordinance;

- (37) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;
- (38) 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;
- (39) 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(2) of this Ordinance;
- (40) to refuse to give approval to the rules, or amendment of the rules, of a recognized exchange controller, or any part thereof, under section 67(3) of this Ordinance;
- (41) to advise the Financial Secretary to extend time, pursuant to section 67(5) of this Ordinance;
- (42) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(6) of this Ordinance;
- (43) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 69(1) of this Ordinance;
- (44) to remove a person from the office of a chief executive or chief operating officer, under section 69(2) of this Ordinance;
- (45) to withdraw recognition of a recognized exchange controller, under section 70(1)(i) of this Ordinance;

- (46) to direct a company to take specified steps, under section 70(1)(ii) of this Ordinance;
- (47) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 70(2) of this Ordinance;
- (48) to make statement in writing, pursuant to section 72(1) of this Ordinance;
- (49) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 73(1) of this Ordinance;
- (50) to approve a fee, pursuant to section 74(1) of this Ordinance;
- (51) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 77(1) of this Ordinance;
- (52) to request the Chief Executive in Council to transfer any function of the Commission, under section 78(1) of this Ordinance;
- (53) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 78(7) of this Ordinance;
- (54) to refuse to give its approval to any rules or amendments of any rules, or any part thereof, under section 82(3) of this Ordinance;
- (55) to advise the Financial Secretary to extend time, pursuant to section 82(6) of this Ordinance;

- (56) to declare any class of rules to be a class of rules which are not required to be approved, under section 82(7) of this Ordinance;
- (57) to withdraw recognition of a recognized investor compensation company, under section 83(1) of this Ordinance;
- (58) to approve the investment of money, pursuant to section 88 of this Ordinance;
- (59) to approve the conduct of activities or businesses, pursuant to section 89(1) of this Ordinance;
- (60) to issue a notice, under section 91(1) of this Ordinance;
- (61) to extend the period during which a restriction notice is to remain in force, under section 91(6) of this Ordinance;
- (62) to apply to the Court of First Instance, pursuant to section 91(8) of this Ordinance;
- (63) to issue a suspension order, under section 92(1) of this Ordinance;
- (64) to extend the period during which a suspension order is to remain in force, under section 92(7) of this Ordinance;
- (65) to authorize a person to provide automated trading services under, or to impose conditions pursuant to, section 94(2)(a) of this Ordinance;
- (66) to add, vary or repeal conditions, under section 96(1) of this Ordinance;

- (67) to withdraw authorization, under section 97(1) of this Ordinance;
- (68) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 168(1)(a) to (f) of this Ordinance, under section 168(1) of this Ordinance;
- (69) to cause a report to be published, under section 169(6) of this Ordinance;
- (70) to impose a prohibition or requirement, under section 189(1), 190, 191(1) or 192(1) of this Ordinance;
- (71) to withdraw, substitute or vary a prohibition or requirement, under section 194(1) of this Ordinance;
- (72) to present a petition, under section 197(1) of this Ordinance;
- (73) to apply to the Court of First Instance, pursuant to section 198(1) of this Ordinance;
- (74) to apply to the Court of First Instance, under section 199(1) of this Ordinance;
- (75) to establish a compensation fund, under section 221 of this Ordinance;
- (76) to borrow, or to charge any investments by way of security, under section 222(3) of this Ordinance;
- (77) to appoint an auditor, under section 224(3) of this Ordinance;
- (78) to invest money, under section 225(1) of this Ordinance;
- (79) to make report to the Financial Secretary, under section 236(8) of this Ordinance;

- (80) to publish guidelines, under section 299(1) of this Ordinance;
- (81) to make an application, pursuant to section 362(1) of this Ordinance;
- (82) to consult the Financial Secretary, under section 372(1) of this Ordinance;
- (83) to make recommendation to the Chief Executive in Council, under section 372(2) of this Ordinance;
- (84) to appoint members of the Advisory Committee, under section 24(b) of Part 1;
- (85) to direct any specified shares to be subject to restrictions, under section 1(2) of Part 7 of Schedule 3 to this Ordinance;
- (86) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 7 of Schedule 3 to this Ordinance;
- (87) to apply to the Court of First Instance, pursuant to section 1(7) of Part 7 of Schedule 3 to this Ordinance.

SCHEDULE 3

[ss. 18, 37, 41,
58, 59, 61, 62,
70 & 76 & Sch. 2]

EXCHANGE COMPANIES, CLEARING HOUSES
AND EXCHANGE CONTROLLERS

PART 1

SPECIFICATION OF PERSONS WHO ARE ASSOCIATED PERSONS

PART 2

SPECIFICATION OF PERSONS WHO ARE NOT ASSOCIATED PERSONS

1. A person ("first person") is not an associated person of another person ("second person") for all the provisions of Division 3 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 the 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 3

SPECIFIED COMMODITIES

1. Hang Seng Index futures contracts.
2. Three month Hong Kong Interbank Offered Rate futures contracts.
3. Hang Seng Finance Sub-Index futures contracts.
4. Hang Seng Utilities Sub-Index futures contracts.
5. Hang Seng Properties Sub-Index futures contracts.
6. Hang Seng Commerce and Industry Sub-Index futures contracts.
7. Stock Indices.
8. Cash-settled stock futures contracts for differences.

PART 4

SPECIFICATION OF PERSONS WHO ARE NOT
INDIRECT CONTROLLERS

A person is not an indirect controller for all the provisions 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 to act by reason only that they act on advice given by the person in the person's professional capacity.

PART 5

PROPERTY WHICH MAY BE SUBJECT TO MARKET CHARGE
OR PROVIDED AS MARKET COLLATERAL

1. Money, letters of credit, bankers' drafts, certified cheques, and any similar instruments.
2. Securities, including securities which are not securities within the meaning of Part 1 of Schedule 1.
3. Futures contracts, options and any similar financial contracts.

PART 6

REQUIREMENTS FOR DEFAULT RULES
OF RECOGNIZED CLEARING HOUSES

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 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 participant under or in respect of the contract concerned;
- (c) enable all sums of money payable by or to the 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 participant;
- (d) if any net sum referred to in paragraph (c) is payable by the participant, provide for that net sum to be set-off against all property of the 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 participant;

- (e) if any net sum referred to in paragraph (c) is payable to the participant, provide that all property of the 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 participant, or of any further net sum referred to in paragraph (d) payable by or to the participant (as the case may be) or, if there is no such sum, the certification by the clearing house of that fact.

PART 7

PROVISIONS APPLICABLE WHERE THERE IS CONTRAVENTION OF NOTICE UNDER SECTION 59(9)(b), 61(10)(b) or 70(1) OF THIS ORDINANCE

1. **Restrictions on and sale of shares or securities**

(1) The powers conferred by this section shall be exercisable where a person has contravened a notice under section 59(9)(b), 61(10)(b) or 70(1) of this Ordinance.

(2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares or 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 shares or securities or, in the case of unissued shares or securities, any transfer of the right to be issued with them, and any issue of such shares or securities, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares or securities;
- (c) no further shares or 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 shares or securities, whether in respect of capital or otherwise;
- (e) that the holder of the shares or 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 shares or securities are subject to the restrictions under subsection (2)(a), any agreement to transfer them or, in the case of unissued shares or securities, the right to be issued with them, shall be void.

(4) Where shares or securities are subject to the restrictions under subsection (2)(c) or (d), any agreement to transfer any right to be issued with other shares or securities in right of those shares or securities, or to receive any payment on them (otherwise than in a liquidation), shall be void.

(5) Where shares or 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 shares or 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 shares or 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 shares or 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 shares or securities as it considers appropriate.

(8) Where shares or 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 shares or securities in 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 shares or securities in another corporation, to all the shares or securities in 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 shares or securities it relates and, if it relates to shares or 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(2).

2. Punishment for attempted evasion of restrictions

(1) Any person who -

(a) exercises or purports to exercise any right to dispose of any shares or securities, or of any right to be issued with any such shares or securities, knowing that to do so contravenes any restrictions under section 1(2) to which the shares or securities are subject;

- (b) votes in respect of any such shares or 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 shares or securities knowing that to vote in respect of any such shares or securities would contravene any such restrictions;
 - (d) being the holder of any such shares or 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 shares or securities whether as a holder or as a proxy;
 - (e) being the holder of any such shares or securities, or being entitled to any right to be issued with other shares or 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 shares or 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; and

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

(2) Where shares or securities in 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 shares or 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; and
- (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 contravened a notice under section 59(9)(b) or 70(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)(b) or 70(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; and
- (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; and

(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 (1) or (3), and notwithstanding that any period (however expressed) specified in that subsection for complying with it has expired.

PART 8

SPECIFICATION OF PERSONS WHO ARE NOT MINORITY CONTROLLERS FOR THE PURPOSES OF DIVISION 3 OF PART III OF THIS ORDINANCE

1. A person is not a minority controller for the purposes of Division 3 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 3 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 9

EXEMPTION FROM SECTION 59(1) OF THIS ORDINANCE

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. 100, 102,
110 & 111]

OFFERS OF INVESTMENTS

PART 1

SUM SPECIFIED FOR PURPOSES OF SECTION
102(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 102(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 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

MULTILATERAL AGENCIES

1. The African Development Bank.
2. The Asian Development Bank.
3. The European Investment Bank.
4. The Inter-American Development Bank.
5. The International Bank for Reconstruction and Development (commonly known as the World Bank).
6. The International Finance Corporation (an affiliate of the World Bank).
7. The European Bank for Reconstruction and Development.

PART 4

EXEMPTED BODIES

1. The Government.
2. Any District Council.
3. Hong Kong Housing Authority.
4. Airport Authority.
5. Kowloon-Canton Railway Corporation.
6. MTR Corporation Limited.
7. Land Development Corporation.
8. Hong Kong Export Credit Insurance Corporation.

9. The Hong Kong Industrial Estates Corporation.
10. Hong Kong Industrial Technology Centre Corporation.
11. Hong Kong Productivity Council.
12. Hong Kong Tourist Association.
13. Hong Kong Trade Development Council.
14. Vocational Training Council.
15. Any other corporation which has any of its shares listed on a recognized stock market and any wholly owned subsidiary (within the meaning of Part IV of this Ordinance) of such a corporation, whether incorporated in Hong Kong or elsewhere.

PART 5

SUM SPECIFIED FOR PURPOSES OF DEFINITION OF "RELEVANT
CONDITION" IN SECTION 102(12) OF THIS ORDINANCE

\$100 million or its equivalent in any foreign currency.

OFFERS BY SECURITIES DEALERS OR ADVISERS
UNDER SECTION 108 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 or, where the offeror has no such information, a statement to that effect; 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, the following bilingual notice printed, in the case of the English text, in type of a size not smaller than the type known as 8 point Times and, in the case of the Chinese text, in type the face of which is not less than 2.5 mm in depth -

"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.

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 same meaning as in section 108 of this Ordinance.

(2) Section 108(8) of this Ordinance applies to a reference to securities of a body in this Part as it applies to such a reference in section 108 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 its securities 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 its securities 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 in question 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 the authorized capital of the corporation 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 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 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 or, where the offeror has no such information, a statement to that effect; 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, the following bilingual notice printed, in the case of the English text, in type of a size not smaller than the type known as 8 point Times and, in the case of the Chinese text, in type the face of which is not less than 2.5 mm in depth -

"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.

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 same meaning as in section 108 of this Ordinance;

"multilateral agency" (多邊機構) has the same meaning as in Part IV of this Ordinance.

(2) Section 108(8) of this Ordinance applies to a reference to securities of a body in this Part as it applies to such a reference in section 108 of this Ordinance.

SCHEDULE 6

[ss. 118 & 136
& Sch. 1]

REGULATED ACTIVITIES

PART 1

The following are regulated activities for the purposes of Part V of this Ordinance -

- (a) dealing in securities;
- (b) dealing in futures contracts;
- (c) trading in leveraged foreign exchange contracts;
- (d) advising on securities;
- (e) advising on futures contracts;
- (f) advising on corporate finance;
- (g) providing automated trading services;
- (h) providing securities margin financing;
- (i) providing 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 regulations including the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited, the Rules Governing the Listing of

Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited, and the code published under and in accordance with section 374(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; and

(iii) acceptance of any offer referred to in subparagraph (i) or (ii); or

(c) to a listed corporation or public company or a subsidiary thereof, or to the officers or shareholders thereof, concerning the restructuring of any corporation or any of its assets or liabilities,

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 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);

- (iii) a counsel who gives such advice wholly incidental to his practice as such;
- (iv) 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);
- (v) 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
- (vi) 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 or a section of 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 exempt 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) who is employed by an authorized financial institution referred to in paragraph (iii);
and

(B) whose name is entered in a register kept by the Monetary Authority for the purpose of section 114 of this Ordinance under the Banking Ordinance (Cap. 155) as employed by the exempt person in respect of Type 2 regulated activity,

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 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) a counsel who gives such advice or issues such analyses or reports wholly incidental to his practice as such;

(vii) a professional accountant who gives such advice or issues such analyses or reports 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 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 or a section of 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 exempt 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) who is employed by an authorized financial institution referred to in paragraph (iii);
and
 - (B) whose name is entered in a register kept by the Monetary Authority for the purpose of section 114 of this Ordinance under the Banking Ordinance (Cap. 155) as employed by the exempt person in respect of Type 1 regulated activity,

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 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) a counsel who gives such advice or issues such analyses or reports wholly incidental to his practice as such;
- (vii) a professional accountant who gives such advice or issues such analyses or reports 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 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 or a section of the public, whether on subscription or otherwise;

"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;

"automated trading services" (自動化交易服務) means services provided by means of electronic facilities provided by a person other than a recognized exchange company or a recognized clearing house by which -

- (a) offers to purchase or sell of securities or futures contracts are regularly made, communicated or accepted;
- (b) people regularly communicate with other people for the purposes of negotiating or concluding amongst themselves purchases and sales of securities or futures contracts; or
- (c) transactions resulting from the activities referred to in paragraph (a) or (b), or transactions effected on, or subject to the rules of, a stock market or futures market are novated, cleared, settled or guaranteed;

"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 principal") -
 - (A) who is licensed or exempt for Type 2 regulated activity; or
 - (B) who is employed by an exempt person exempt for Type 2 regulated activity and whose name is entered in a register kept by the Monetary Authority for the purpose of section 114 of this Ordinance under the Banking Ordinance (Cap. 155) as employed by the exempt person in respect of 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 principal;
 - (II) effects an introduction between the principal 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 principal;
 - (III) effects an acquisition or disposal of a futures contract for a third person through the principal;
 - (IV) makes an offer for the principal to a third person to acquire or dispose of a futures contract; or
 - (V) accepts for the principal 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 an 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; or
- (vi) is licensed or exempt 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;

"dealing in securities" (證券交易), in relation to a person,

means -

- (a) 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 for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
- (b) providing a facility for bringing together on a regular basis sellers and purchasers of securities, or for negotiating or concluding sales and purchases 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 94 of this Ordinance;

(iv) performs the act referred to in paragraph (a) through another person ("the principal") -

(A) who is licensed or exempt for Type 1 regulated activity; or

(B) who is employed by an exempt person exempt for Type 1 regulated activity and whose name is entered in a register kept by the Monetary Authority for the purpose of section 114 of this Ordinance under the Banking Ordinance (Cap. 155) as employed by the exempt person in respect of 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), and communicates it, either in his name or in the name of the third person, to the principal;

(II) effects an introduction between the principal 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) with the principal;

(III) effects an agreement referred to in paragraph (a) for a third person through the principal;

(IV) makes an offer for the principal to a third person to acquire or dispose of securities; or

(V) accepts for the principal an offer by a third person to enter into an agreement referred to in paragraph (a);

(v) as principal -

(A) acquires, disposes of, subscribes for or underwrites securities; or

(B) performs the act referred to in paragraph (a) with a person whose business involves the acquisition, disposal or holding of securities, either as principal or agent;

(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 securities of a corporation incorporated in Hong Kong that is not a company, being a document which -

(A) would, if the corporation was 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 was a prospectus issued by the corporation;

(ix) issues a form of application for 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 mutual fund corporation, or issues together with prospectus a form of application for shares in the mutual fund corporation;
- (xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 104 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 referred to in paragraph (a), 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 exempt for Type 4 regulated activity or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 108(1)(a)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 108(1)(b) and (c) of this Ordinance; or

- (xiv) is licensed or exempt for Type 9 regulated activity and performs the act referred to in paragraph (a) solely for the purposes of carrying on that regulated activity;

"foreign exchange trading" (外匯交易), subject to the definition of "leveraged foreign exchange trading", 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;

"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 company -

- (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 company;
- (iii) that is an exchange transaction within the meaning of the Money Changers Ordinance (Cap. 34);
 - (iv) arranged by a member of the Hong Kong Foreign Exchange and Deposit Brokers Association and every party to it 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 exempt 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 exempt 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 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 103 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, prescribed by rules made by the Commission under section 373 of this Ordinance for the purposes of this paragraph; or
- (xiv) by an individual through a trader, but it 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 arrangement; 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 or arrangement 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 arrangement; or

(C) effects the entering into a leveraged foreign exchange contract or arrangement 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;

"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 a stock market; and

(b) (where applicable) the continued holding of those securities,

whether or not those securities are pledged as security for the accommodation, but does not include -

(i) an activity referred to in paragraph (a) which is or forms part of a stock borrowing or stock return as defined by section 19(16) of the Stamp Duty Ordinance (Cap. 117); or

(ii) the provision of financial accommodation -

- (A) that forms part of an arrangement to underwrite or sub-underwrite securities;
- (B) to facilitate an acquisition of securities in accordance with the terms of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;
- (C) to a corporation licensed for Type 1 regulated activity or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;
- (D) by a person who is licensed or exempt for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;
- (E) by a mutual fund corporation in order to finance investment in any of the corporation's mutual funds;
- (F) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;
- (G) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities;
- (H) 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; or

- (I) 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.

SECURITIES AND FUTURES APPEALS TRIBUNAL

PART 1

APPOINTMENT OF MEMBERS AND PROCEEDINGS OF TRIBUNAL, ETC.

1. In this Schedule, unless the context otherwise requires -
- "application for review" (覆核申請), "judge" (法官), "parties" (各方) and "Tribunal" (審裁處) have the same meanings respectively as in Part XI of this Ordinance;
- "chairman" (主席) means the chairman of the Tribunal appointed in accordance with section 202 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;
- "temporary member" (暫委成員) means a person appointed to act as a temporary member of the Tribunal under section 7.

Appointment of members

2. Subject to sections 4 to 6, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified application for review, but may from time to time, so long as he remains qualified under section 202(3) of this Ordinance, be reappointed.

3. Subject to sections 4 to 6, an ordinary member shall be appointed to act in relation to any specified application for review and may be so appointed more than once.

4. A member may at any time resign his office by notice in writing to the Chief Executive.

5. A member may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

6. If the hearing of an application for review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office or before the resignation from or vacation of office by a member takes effect, the Chief Executive may authorize the chairman or the member (as the case may be) to continue to act as the chairman or a member of the Tribunal for the purpose of completing the hearing.

Temporary members

7. The Chief Executive may appoint a person to act as a temporary member of the Tribunal in the place of any member who is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, or who considers it improper or undesirable that he should exercise his functions in relation to any specified matter.

8. A temporary member who is appointed to act in the place of the chairman shall be a judge, and a temporary member who is appointed to act in the place of an ordinary member shall not be a person who would be disqualified under section 202(3) of this Ordinance from appointment as a member.

9. A temporary member who acts in the place of the chairman or an ordinary member shall be deemed for all purposes to be the chairman or the ordinary member (as the case may be) of the Tribunal.

Hearings

10. The chairman shall convene such hearings of the Tribunal as are necessary to hear and determine an application for review.

11. Before convening a hearing under section 10 in respect of an application for review, the Tribunal may give directions to the parties to the application concerning procedural matters to be observed or complied with by the parties and the time within which the parties are required to observe or comply with such matters.

12. Subject to section 13, at any hearing 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.

13. At any hearing 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 22, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

14. Every hearing 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 application, determines that in the interests of justice a hearing or any part thereof shall not be held in public in which case it may hold the hearing or the part thereof (as the case may be) in private.

15. The hearing of an application to the Tribunal pursuant to section 14 that a hearing or any part thereof shall not be held in public shall be held in private.

16. The parties to an application for review shall, at any hearing of the application, be entitled -

- (a) to be present in person or, in the case of the Commission or a corporation, through an officer of the Commission or the corporation (as the case may be); and

- (b) to be represented by a counsel or a solicitor or, with the leave of the Tribunal, by any other person.

17. The chairman shall prepare or cause to be prepared a record of the proceedings at any hearing of an application for review, which shall contain such particulars relating to the proceedings as he considers appropriate.

18. The order of proceedings at any hearing of an application for review shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

Preliminary conferences and consent orders

19. At any time after an application for review has been made, the chairman may -

- (a) 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 by the parties to the application; and
- (b) if the parties agree,

direct that a conference, to be attended by the parties or their representatives and presided over by the chairman or such ordinary member or other person as he shall specify, shall be held.

20. 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, apart from this section, to make under any provision of this Ordinance, if, and only if -

- (a) the parties to the application request, and agree to, the making of the order by the Tribunal or the chairman (as the case may be); and
- (b) the parties consent to all of the terms of the order.

21. Notwithstanding any other provisions of Part XI of this Ordinance or this Schedule, where under section 20 the Tribunal or the chairman makes any order which it or he is entitled, apart from section 20, to make under any provision of this Ordinance, 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 compliance with the requirements of this Ordinance.

Chairman as sole member of Tribunal

22. Where, at any time after an application for review has been made but before any hearing of the Tribunal is held to hear and determine the application, the parties to the application have, by notice served on the Tribunal, informed the Tribunal that they have agreed that the application may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the application as the sole member of the Tribunal.

23. Where an application is made to the Tribunal under section 212(1) of this Ordinance for a stay of a specified decision, the chairman may determine the application as the sole member of the Tribunal.

24. Where section 22 or 23 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.

25. Where -

- (a) there is an application described in section 23;
- (b) the chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, or considers it improper or undesirable that he should exercise his functions in relation to the application; and
- (c) no temporary member is appointed under section 7 to act in the place of the chairman in relation to the application,

a judge within the meaning of paragraph (a) of the definition of "judge" in section 201 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application described in section 23 as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

Disclosure of interest

26. Where a person who is, or is to be, an ordinary member of the Tribunal for the purposes of an application for review has or acquires any interest, contingent or otherwise, that may conflict with the proper performance of his functions as such member, he shall immediately or as soon as reasonably practicable after the acquisition disclose his interest to the chairman.

27. On a disclosure of interest by a person under section 26, the chairman shall, subject to sections 28 and 29, decide, having regard to the interests of justice, whether to issue a direction to the person that he shall forthwith cease to be qualified as an ordinary member of the Tribunal for the purposes of the application for review in question.

28. For the purposes of section 27 -

- (a) where the chairman considers that it is against the interests of justice for the person whose interest has been disclosed under section 26 to remain, or to be, an ordinary member of the Tribunal for the purposes of the application for review in question, the chairman shall issue a direction to the person under section 27;

(b) in any other case, the chairman shall, for the purpose of deciding whether to issue a direction to the person under section 27 -

- (i) disclose the interest of the person to the parties to the application;
- (ii) give the parties an opportunity of being heard in relation to the interest of the person; and
- (iii) take into consideration any representation made by the parties in relation to the interest of the person.

29. Where a direction is issued to any person under section 27 -

- (a) the person shall cease to be qualified as an ordinary member of the Tribunal for the purposes of the application for review in question; and
- (b) any proceedings of the Tribunal relating to the application shall, if necessary, be adjourned until a temporary member is appointed under section 7 to act in the place of the person.

30. Subject to section 31, where, in relation to an application for review -

- (a) a person knowingly fails to comply with section 26; and
- (b) any proceedings of the Tribunal relating to the application have been stayed, delayed or otherwise

become invalid, or any finding or determination of the Tribunal relating to the application (whether or not it is a determination in respect of the application or an order made under section 208 or 212 of this Ordinance) has been set aside or otherwise become invalid, by reason of the failure, the person shall be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by such other person as a result of any of the matters referred to in paragraph (b).

31. No person shall be liable to pay compensation under section 30 unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

32. For the avoidance of doubt, where a court has jurisdiction to determine an action brought under section 30, it may, where it is, apart from that section, within its jurisdiction to do so, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

33. Nothing in sections 30 to 32 limits or diminishes any liability which a person may incur under the common law.

34. For the avoidance of doubt, a decision of the chairman under section 27 -

- (a) shall not be regarded as a decision of the Tribunal; and
- (b) shall be final and shall not be subject to appeal.

Failure to preserve secrecy

35. Subject to section 36, where a person knowingly fails to comply with the provisions of section 358 of this Ordinance that apply to him as an ordinary member, the person shall, apart from any liability he may incur under that section, be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by such other person as a result of the failure.

36. No person shall be liable to pay compensation under section 35 unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

37. For the avoidance of doubt, where a court has jurisdiction to determine an action brought under section 35, it may, where it is, apart from that section, within its jurisdiction to do so, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

38. A person may bring an action under section 35 even though the person against whom the action is brought has not been charged

with or convicted of an offence by reason of the failure referred to in that section.

39. Nothing in sections 35 to 38 limits or diminishes any liability which a person may incur under the common law.

40. Without limiting the generality of sections 207 and 359 of this Ordinance, the Tribunal and its members, and any witness, counsel, solicitor, party or person who otherwise has an interest in an application for review, shall have the same privileges and immunities in respect of the hearing of the application as they would have if the hearing were civil proceedings before the Court of First Instance.

PART 2

SPECIFIED DECISIONS

Item	Section	Decision subject to review
1.	Section 92(10) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 94(2)(a) of this Ordinance	Refusal to grant an authorization.
3.	Section 96(1) of this Ordinance	Addition, variation or repeal of conditions.
4.	Section 97 of this Ordinance	Withdrawal of an authorization.
5.	Section 103(1) of this Ordinance	Refusal to authorize a collective investment scheme, and imposition of conditions.
6.	Section 103(3) of this Ordinance	Withdrawal of approval of a person nominated in respect of a collective investment scheme.
7.	Section 103(3) of this Ordinance	Refusal to approve a person nominated in respect of a collective investment scheme.
8.	Section 103(4) of this Ordinance	Amendment or cancellation of conditions, and imposition of new conditions.
9.	Section 104(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, and imposition of conditions.
10.	Section 104(3) of this Ordinance	Withdrawal of approval of a person nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 104(3) of this Ordinance	Refusal to approve a person nominated in respect of the issue of any advertisement, invitation or document.

Item	Section	Decision subject to review
12.	Section 104(4) of this Ordinance	Amendment or cancellation of conditions, and imposition of new conditions.
13.	Section 105(2) of this Ordinance	Withdrawal of an authorization.
14.	Section 105(6) of this Ordinance	Refusal to withdraw an authorization upon request.
15.	Section 105(7)(a) of this Ordinance	Imposition of conditions.
16.	Section 115(1) of this Ordinance	Refusal to grant a licence.
17.	Section 115(6) of this Ordinance	Imposition, amendment or revocation of conditions, and imposition of new conditions.
18.	Section 116(1) of this Ordinance	Grant of or refusal to grant a licence for a period not exceeding 3 months.
19.	Section 116(3) of this Ordinance	Imposition, amendment or revocation of conditions, and imposition of new conditions.
20.	Section 119(1) of this Ordinance	Refusal to grant a licence.
21.	Section 119(2) of this Ordinance	Refusal to approve an accreditation.
22.	Section 119(4) of this Ordinance	Imposition, amendment or revocation of conditions, and imposition of new conditions.
23.	Section 119(6) of this Ordinance	Refusal to approve transfer of an accreditation.
24.	Section 121(1) of this Ordinance	Refusal to grant a licence.

Item	Section	Decision subject to review
25.	Section 121(2) of this Ordinance	Refusal to approve an accreditation.
26.	Section 121(4) of this Ordinance	Imposition, amendment or revocation of conditions, and imposition of new conditions.
27.	Section 123(1) of this Ordinance	Refusal to approve a responsible officer.
28.	Section 123(6) of this Ordinance	Imposition, amendment or revocation of conditions, and imposition of new conditions.
29.	Section 124(1) of this Ordinance	Refusal to vary a type or types of regulated activity.
30.	Section 127(1) of this Ordinance	Refusal to approve premises.
31.	Section 128(2) of this Ordinance	Refusal to approve a person as a substantial shareholder.
32.	Section 128(5) of this Ordinance	Imposition, amendment or revocation of conditions, and imposition of new conditions.
33.	Section 129(1)(a), (c), (e) or (f) of this Ordinance	Refusal to grant a modification or waiver.
34.	Section 129(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of conditions, and imposition of new conditions.
35.	Section 139(1)(b)(ii), (5)(a) or (b) or 140(3)(a) or (b) of this Ordinance	Suspension of a licence, and imposition of conditions.

Item	Section	Decision subject to review
36.	Section 152(1) of this Ordinance	Appointment of an auditor.
37.	Section 152(3) of this Ordinance	Direction to any person to pay any of the costs and expenses of an auditor.
38.	Section 153(1) of this Ordinance	Appointment of an auditor.
39.	Section 153(7) of this Ordinance	Direction to any person to pay any of the costs and expenses of an auditor.
40.	Section 180(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 prohibit a person from applying to be licensed or to be approved as a responsible officer.
41.	Section 180(2) of this Ordinance	Order requiring payment of a pecuniary penalty.
42.	Section 181(1)(a), (b), (c) or (d) of this Ordinance	Revocation or suspension of a licence.
43.	Section 181(2) of this Ordinance	Revocation of a licence.
44.	Section 181(6) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
45.	Section 187(1) of this Ordinance	Requirement to transfer records.
46.	Section 189(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.

Item	Section	Decision subject to review
47.	Section 190(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning property.
48.	Section 191(1) of this Ordinance	Requirement imposed on a licensed corporation to maintain property.
49.	Section 194(1)(b) of this Ordinance	Substitution or variation of a prohibition or requirement under section 189, 190 or 191 of this Ordinance.
50.	Section 194(1) of this Ordinance	Refusal to withdraw, substitute or vary a prohibition or requirement under section 189, 190 or 191 of this Ordinance.
51.	Section 299(2) of this Ordinance	Refusal to grant an exemption, and imposition of conditions.
52.	Section 299(3) of this Ordinance	Refusal to grant an exemption, and imposition of conditions.
53.	Section 299(4)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, and variation of conditions.
54.	Section 379 of this Ordinance	Imposition of conditions.
55.	Section 38A(1) or 342A(1) of the Companies Ordinance (Cap. 32)	Refusal to issue a certificate of exemption, and imposition of conditions.

PART 3

EXCLUDED DECISIONS

Item	Section	Decision subject to appeal
1.	Section 118(1) of this Ordinance	Refusal to exempt an authorized financial institution from the requirement to hold a licence.
2.	Section 118(5) of this Ordinance	Imposition, amendment or revocation of conditions, and imposition of new conditions.
3.	Section 124(1) of this Ordinance	Refusal to vary a type or types of regulated activity.
4.	Section 129(1)(b) or (d) of this Ordinance	Refusal to grant a modification or waiver.
5.	Section 129(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of conditions, and imposition of new conditions.
6.	Section 152(1) of this Ordinance	Appointment of an auditor.
7.	Section 152(3) of this Ordinance	Direction to any person to pay any of the costs and expenses of an auditor.
8.	Section 153(1) of this Ordinance	Appointment of an auditor.
9.	Section 153(7) of this Ordinance	Direction to any person to pay any of the costs and expenses of an auditor.
10.	Section 183(1)(a), (b), (c), (d), (e) or (f) of this Ordinance	Revocation of an exemption.

MARKET MISCONDUCT TRIBUNAL

1. In this Schedule, unless the context otherwise requires -
- "chairman" (主席) means the chairman of the Tribunal appointed in accordance with section 235 of this Ordinance;
- "judge" (法官), "market misconduct" (市場失當行為), "Presenting Officer" (提控官) and "Tribunal" (審裁處) have the same meanings respectively as in Part XIII 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;
- "proceedings" (研訊程序) means proceedings instituted under section 236 of this Ordinance;
- "temporary member" (暫委成員) means a person appointed to act as a temporary member of the Tribunal under section 7.

Appointment of members

2. Subject to sections 4 to 6, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified proceedings, but may from time to time, so long as he remains qualified under section 235(3) of this Ordinance, be reappointed.

3. Subject to sections 4 to 6, an ordinary member shall be appointed to act in relation to any specified proceedings and may be so appointed more than once.

4. A member may at any time resign his office by notice in writing to the Chief Executive.

5. A member may be removed from office by the Chief Executive for incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct proved to the satisfaction of the Chief Executive.

6. If any proceedings have been commenced by the Tribunal but not completed before the expiry of the chairman's term of office or before the resignation from or vacation of office by a member takes effect, the Chief Executive may authorize the chairman or the member (as the case may be) to continue to act as the chairman or a member of the Tribunal for the purpose of completing the proceedings.

Temporary members

7. The Chief Executive may appoint a person to act as a temporary member of the Tribunal in the place of any member who is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, or who considers it improper or undesirable that he should exercise his functions in relation to any specified matter.

8. A temporary member who is appointed to act in the place of the chairman shall be a judge, and a temporary member who is appointed to act in the place of an ordinary member shall not be a person who would be disqualified under section 235(3) of this Ordinance from appointment as a member.

9. A temporary member who acts in the place of the chairman or an ordinary member shall be deemed for all purposes to be the chairman or the ordinary member (as the case may be) of the Tribunal.

Proceedings

10. The written statement required to be contained in a notice given by the Financial Secretary to the chairman under section 236(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 act which constitutes market misconduct; and
- (b) such brief particulars as are sufficient to disclose reasonable information concerning the nature and essential elements of the market misconduct.

11. Where it appears to the Financial Secretary that a person may have perpetrated any act which constitutes market misconduct by reference to more than one provision of Part XIII of this Ordinance, the written statement referred to in section 10 may specify separately or in the alternative the market misconduct by reference to those provisions.

12. Where during the course of any proceedings it appears to the Tribunal that a person, other than a person who appears to have perpetrated any act which constitutes market misconduct according to the written statement referred to in section 10, may have perpetrated any act which constitutes market misconduct by reference to any provision or provisions of Part XIII of this Ordinance, the Tribunal may, on its own motion or on the application of the Presenting Officer appointed for the proceedings -

- (a) order the Presenting Officer to provide the Tribunal with a written statement concerning such market misconduct specifying, in relation to the person, the matters referred to in section 10(a) and (b) and, where applicable, the matters referred to in section 11; and
- (b) make such additional order as it considers appropriate.

13. Any person in relation to whom a written statement referred to in section 10 or 12 specifies the matters required under such

section shall be provided with a copy of the written statement in such manner as the Tribunal may direct.

14. Without prejudice to section 236(3) of this Ordinance, after considering the evidence presented to it, the Tribunal may identify pursuant to section 236(3)(b) of this Ordinance a person as having engaged in market misconduct by reason of any act other than that referred to in a written statement referred to in section 10 or 12, if, but only if, the person has been given an opportunity of being heard in respect of the act.

Presenting Officer

15. 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.

16. The Secretary for Justice may at any time replace a Presenting Officer or any person appointed to assist a Presenting Officer.

Sittings

17. 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 instituted under section 236 of this Ordinance.

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 29, 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 the Presenting Officer appointed for the proceedings or of any person whose conduct is the subject of the proceedings, or who is implicated or concerned in the subject matter of 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.

21. The hearing of an application to the Tribunal pursuant to section 20 that a sitting or any part thereof shall not be held in public shall be held in private.

22. A person whose conduct is the subject of any proceedings, or who is implicated or concerned in the subject matter of any proceedings, shall, at any sitting of the Tribunal relating to the proceedings, be entitled -

- (a) to be present in person or, in the case of a corporation, through an officer of the corporation; and
- (b) to be represented by a counsel or a solicitor or, with the leave of the Tribunal, by any other person.

23. For the purposes of sections 20 to 22, the Tribunal shall determine whether the conduct of any person is the subject of any proceedings or whether a person is implicated or concerned in the subject matter of any proceedings.

24. In section 22, "sitting" (聆訊) does not include any meeting of the Tribunal which is held solely for the purpose of deliberating on any question before the Tribunal.

25. 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

26. At any time after any proceedings have been instituted under section 236 of this Ordinance, the chairman may -

- (a) 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 the parties to the proceedings; and
- (b) if the parties agree,

direct that a conference, to be attended by the parties or their representatives and presided over by the chairman or such ordinary member or other person as he shall specify, shall be held.

27. At any time after any proceedings have been instituted under section 236 of this Ordinance, the Tribunal or the chairman may make any order which it or he is entitled, apart from this section, to make under any provision of this Ordinance, if, and only if -

- (a) the parties to the proceedings request, and agree to, the making of the order by the Tribunal or the chairman (as the case may be); and

(b) the parties consent to all of the terms of the order.

28. Notwithstanding any other provisions of Part XIII of this Ordinance or this Schedule, where under section 27 the Tribunal or the chairman makes any order which it or he is entitled, apart from section 27, to make under any provision of this Ordinance, 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 compliance with the requirements of this Ordinance.

Chairman as sole member of Tribunal

29. Where, at any time after any proceedings have been instituted under section 236 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 served on 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.

30. Where section 29 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.

Disclosure of interest

31. Where a person who is, or is to be, an ordinary member of the Tribunal for the purposes of any proceedings has or acquires any interest, contingent or otherwise, that may conflict with the proper performance of his functions as such member, he shall immediately or as soon as reasonably practicable after the acquisition disclose his interest to the chairman.

32. On a disclosure of interest by a person under section 31, the chairman shall, subject to sections 33 and 34, decide, having regard to the interests of justice, whether to issue a direction to the person that he shall forthwith cease to be qualified as an ordinary member of the Tribunal for the purposes of the proceedings in question.

33. For the purposes of section 32 -

- (a) where the chairman considers that it is against the interests of justice for the person whose interest has been disclosed under section 31 to remain, or to be, an ordinary member of the Tribunal for the purposes of the proceedings in question, the chairman shall issue a direction to the person under section 32;

(b) in any other case, the chairman shall, for the purpose of deciding whether to issue a direction to the person under section 32 -

- (i) disclose the interest of the person to the parties to the proceedings;
- (ii) give the parties an opportunity of being heard in relation to the interest of the person; and
- (iii) take into consideration any representation made by the parties in relation to the interest of the person.

34. Where a direction is issued to any person under section 32 -

- (a) the person shall cease to be qualified as an ordinary member of the Tribunal for the purposes of the proceedings in question; and
- (b) any proceedings of the Tribunal in question shall, if necessary, be adjourned until a temporary member is appointed under section 7 to act in the place of the person.

35. Subject to section 36, where -

- (a) a person knowingly fails to comply with section 31; and
- (b) any proceedings of the Tribunal have been stayed, delayed or otherwise become invalid, or any finding or determination or any order of the Tribunal

relating to the proceedings has been set aside or otherwise become invalid, by reason of the failure, the person shall be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by such other person as a result of any of the matters referred to in paragraph (b).

36. No person shall be liable to pay compensation under section 35 unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

37. For the avoidance of doubt, where a court has jurisdiction to determine an action brought under section 35, it may, where it is, apart from that section, within its jurisdiction to do so, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

38. Nothing in sections 35 to 37 limits or diminishes any liability which a person may incur under the common law.

39. For the avoidance of doubt, a decision of the chairman under section 32 -

- (a) shall not be regarded as a decision of the Tribunal; and
- (b) shall be final and shall not be subject to appeal.

Failure to preserve secrecy

40. Subject to section 41, where a person knowingly fails to comply with the provisions of section 358 of this Ordinance that apply to him as an ordinary member, the person shall, apart from any liability he may incur under that section, be liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by such other person as a result of the failure.

41. No person shall be liable to pay compensation under section 40 unless it is fair, just and reasonable in the circumstances of the case that he should be so liable.

42. For the avoidance of doubt, where a court has jurisdiction to determine an action brought under section 40, it may, where it is, apart from that section, within its jurisdiction to do so, grant an injunction in addition to, or in substitution for, damages, on such terms and conditions as it considers appropriate.

43. A person may bring an action under section 40 even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the failure referred to in that section.

44. Nothing in sections 40 to 43 limits or diminishes any liability which a person may incur under the common law.

45. Without limiting the generality of sections 240 and 359 of this Ordinance, the Tribunal and its members, any Presenting Officer, and any witness, counsel, solicitor, party or person who otherwise has an interest in the 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 9

[ss. 298, 299, 301, 303,
307, 309, 317, 329,
330, 331, 333,
339 & 357]

PROVISIONS SUPPLEMENTING AND
INTERPRETING PART XV OF
THIS ORDINANCE

Rules for interpretation of this Schedule

PART 1

DEFINITIONS

1. In this Schedule, unless the context otherwise requires -
- "associated corporation" (相聯法團), "chief executive" (主要行政人員), "deliver" (交付), "equity derivatives" (股本衍生工具), "listed corporation" (上市法團), "notifiable interest" (須具報權益), "regulations" (規例), "relevant exchange company" (有關交易所公司), "relevant share capital" (有關股本), "short position" (淡倉) and "stock borrowing and lending agreement" (證券借用及借出協議) have the same meanings respectively as in Part XV of this Ordinance;
- "cash settled equity derivatives" (現金結算股本衍生工具) means equity derivatives which are settled otherwise than by delivery of the underlying shares;
- "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;

"off-exchange transaction" (場外交易) means any transaction, arrangement or occurrence of any event (other than an on-exchange transaction) under which a person becomes, or ceases to be, interested in shares;

"on-exchange transaction" (場内交易) 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;

"settlor" (財産授与人), 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;

"stock futures contract" (股票期貨合約) means a contract which is approved by the Commission as a stock futures contract for trading on a recognized futures market.

2. In this Schedule -

(a) in the references to an agreement to which section 310 of this Ordinance applies, "agreement" (協議) has the same meaning as in section 298(4) of this Ordinance;

(b) in section 21, "exempt securities dealer" (獲豁免證券交易商) and "licensed securities dealer" (持牌證券交易商) have the same meanings respectively as in section 310(8) of this Ordinance;

(c) in Part 4 -

(i) "percentage figure" (百分率數字) -

(A) in relation to any interest in shares, has the same meaning as in section 304(8)(a) of this Ordinance; and

(B) in relation to any short position, has the same meaning as in section 304(8)(b) of this Ordinance; and

(ii) "percentage level" (百分率水平) -

- (A) in relation to any interest in shares, has the same meaning as in section 305(1) of this Ordinance; and
 - (B) in relation to any short position, has the same meaning as in section 305(4) of this Ordinance;
- (d) "specified percentage level" (指明百分率水平) has the same meaning as in section 306(2) of this Ordinance as if the reference in that section to sections 300(6) and (8) and 304(3) of this Ordinance was a reference to section 24(1); and
- (e) "underlying shares" (相關股份) -
- (i) in Parts 2 to 4, has the same meaning as in paragraph (a) of the definition of the same term in section 298(1) of this Ordinance; and
 - (ii) in Parts 5 to 7, has the same meaning as in paragraph (b) of the definition of the same term in section 298(1) of this Ordinance.

**Rules for interpretation of Division 2
of Part XV of this Ordinance**

PART 2

INTERESTS AND SHORT POSITIONS TO BE NOTIFIED

3. This Part applies, subject to Part 3, in determining for the purposes of Division 2 of Part XV of this Ordinance whether a person has an interest or short position that is notifiable.

4. (1) A reference to an interest in shares is to be read as including a reference to an interest of any kind whatsoever in the shares.

(2) Accordingly, there shall be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

5. Where property is held on trust and an interest in shares is comprised in the property -

(a) a beneficiary of the trust who apart from this section does not have an interest in the shares is taken to have such an interest; and

(b) in the case of a discretionary trust, a settlor of the trust is taken to have an interest in the shares.

6. 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.

7. For the purposes of section 6(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares if he -

- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
- (b) is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

8. 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 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.

9. 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, he -

- (a) has a right to require another person to deliver the underlying shares to him;
- (b) is under an obligation to take delivery of the underlying shares;
- (c) has a right to receive from another person an amount if the price of the underlying shares increases; or
- (d) 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.

10. The number of shares in which a person is taken to be interested under section 9 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 each 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.

11. A person shall be regarded as having ceased to be interested in shares when -

- (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; or

- (ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares;

- (b) another person fails to deliver the shares to him in breach of -

- (i) a contract under which he agreed to purchase the shares from the other person; or

- (ii) an obligation upon the other person to do so when called upon by him to deliver the shares;
- (c) his right to call for delivery of the shares lapses or he assigns such a right to another person;
- (d) his obligation to take delivery of the shares lapses or he assigns such an obligation to another person;
- (e) he receives from another person an amount, or avoids or reduces a loss, on settlement of any cash settled equity derivatives; or
- (f) he assigns his rights under a stock futures contract to another person.

12. The number of shares in which a person is regarded as having ceased to be interested under section 11(e) 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 each stock futures contract,

and the aggregate nominal value of the shares in which the person is regarded as having ceased to be interested under section 11(e) shall be calculated accordingly.

13. The number of shares in which a person is regarded as having ceased to be interested under section 11(f) is the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of each stock futures contract, and the aggregate nominal value of the shares in which the person is regarded as having ceased to be interested under section 11(f) shall be calculated accordingly.

14. 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 each 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.

15. The number of shares in which a person is regarded as having a short position under a stock borrowing and lending agreement is the number of shares which he is obliged to deliver under the stock 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 settled by delivery of the shares, and the aggregate nominal value of the shares in which the person is regarded as so having a short position shall be calculated accordingly.

16. Persons having a joint interest or short position are taken each of them to have that interest or short position.

17. It is immaterial that shares in which a person has an interest or short position are unidentifiable.

PART 3

INTERESTS TO BE DISREGARDED FOR THE PURPOSE OF NOTIFICATION

18. The following interests shall be disregarded for the purposes of Division 2 of Part XV of this Ordinance -

- (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 interest of or held by a holder, trustee or custodian in a collective investment scheme authorized under section 103 of this Ordinance, except where the holder, trustee or custodian is also the manager appointed to manage the interest in the collective investment scheme in which case the interest of or held by the holder, trustee or custodian shall not be disregarded;
- (c) 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;
- (d) 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 conditions referred to in section 20 are satisfied;

- (e) an exempt security interest;
- (f) an interest in shares held by a recognized clearing house;
- (g) an interest in shares held by the Registrar of the High Court in his official capacity; and
- (h) such interests, or interests of such a class, as may be prescribed for the purposes of this section by regulations.

19. A person is not taken to be interested in shares under section 6(b) by reason only that he -

- (a) has been appointed as a proxy to vote at a specified meeting of a 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 a listed corporation or of any class of its members.

20. The conditions referred to in section 18(d) are, in relation to a settlement -

- (a) that it is irrevocable; and
- (b) that the settlor has no interest in any income arising under, or property comprised in, the settlement.

21. An interest in shares is an exempt security interest for the purposes of section 18(e) if it is held -

(a) by a person who is -

(i) an authorized financial institution;

(ii) an insurer who is authorized within the meaning of the Insurance Companies Ordinance (Cap. 41); or

(iii) an exchange participant of a recognized exchange company, a licensed securities dealer or an exempt securities dealer; and

(b) by way of security only for the purposes of a transaction entered into in the ordinary course of his business as such a person.

22. An interest in shares shall cease to be an exempt security interest for the purposes of section 18(e), and the person holding the interest in shares by way of security referred to in section 21 ("the chargee") shall be taken to have acquired that interest in shares for the purposes of Division 2 of Part XV of this Ordinance, when -

(a) the chargee is entitled to exercise voting rights in respect of the shares held as security as a result of, or following, a default by the person charging the shares;

- (b) the power of sale under the charge over the shares held as security is exercisable, and the chargee or its agent offers the interest in shares held as security, or any part thereof, for sale.

23. For the purposes of section 18, a person shall not be held 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.

PART 4

PARTICULARS TO BE CONTAINED IN NOTIFICATIONS REQUIRED BY SECTION 307 OF THIS ORDINANCE

24. (1) Where a duty of disclosure arises under section 300 of this Ordinance, a person shall, in performing the duty of disclosure, specify in the notification to the listed corporation concerned and to the relevant exchange company his name and address, and (so far as he is aware) -

- (a) the date on which the duty of disclosure arises;
- (b) the number, aggregate nominal value and class of shares comprised in the relevant share capital of the listed corporation in which he is interested or has ceased to be interested, and if any of those shares are unissued, identifying separately the number and class of the unissued shares;
- (c) where the shares in which he is interested or has ceased to be interested are, or include, the underlying shares of equity derivatives -
 - (i) the number and nature of the equity derivatives;
 - (ii) the number, aggregate nominal value and class of the underlying shares of the equity derivatives;
 - (iii) the period within which rights under the equity derivatives may be exercised ("exercise period"); and
 - (iv) the expiry date of the exercise period;
- (d) the circumstances in which he comes under the duty of disclosure, specifying -
 - (i) in respect of shares in which he has become interested or has ceased to be interested -
 - (A) the number, aggregate nominal value and class of the shares in which he has

become interested or has ceased to be interested; and

(B) the percentage levels and the percentage figures of his interest in the shares immediately before and immediately after the time of the event or change giving rise to the duty of disclosure; and

(ii) in respect of shares in which he has or has ceased to have a short position equal to or more than the specified percentage level -

(A) the number, aggregate nominal value and class of the shares in which he has or has ceased to have such a short position; and

(B) the percentage levels and the percentage figures of his short positions in the shares immediately before and immediately after the time of the event or change giving rise to the duty of disclosure;

(e) where his interest in the shares which are the subject of the disclosure is acquired or disposed of -

(i) through an on-exchange transaction, the highest price and the average price paid or

received for the interest in the shares acquired or disposed of on the day on which the event giving rise to the duty of disclosure occurs; or

(ii) through an off-exchange transaction, the amount and nature of the consideration given or received for the interest in the shares acquired or disposed of on the day on which the event giving rise to the duty of disclosure occurs;

- (f) the nature of his interest in the shares which are the subject of the disclosure and, if the interest in the shares is held in more than one capacity, the number of shares held in each capacity;
- (g) where the duty of disclosure arises in the circumstances in which the nature of his interest in the shares is not the same immediately before and immediately after the time of the event or change giving rise to that duty, the nature of his interest immediately before and immediately after that time;
- (h) where he is taken to be interested or have a short position in shares under section 309 of this Ordinance or section 16 -

(i) the number, aggregate nominal value and class of the shares which are the subject of

the disclosure in which he is so interested or has such a short position; and

(ii) the name and address of each of the other persons having an interest or short position in the shares;

(i) where he no longer has an interest or short position in the shares, the fact that he no longer has such an interest or short position; and

(j) such other information as may be required in the form prescribed for the purpose.

(2) Where a duty of disclosure arises under section 300 of this Ordinance in the circumstances specified in section 304(1)(a) of this Ordinance, a person shall, in performing the duty of disclosure, specify also in the notification to the listed corporation concerned and to the relevant exchange company -

(a) in respect of his interest in shares which are the subject of the disclosure acquired through an on-exchange transaction, the highest price and the average price paid for the interest in the shares that were acquired within 4 months immediately before the time of the event or change giving rise to the duty of disclosure; and

(b) in respect of his interest in shares which are the subject of the disclosure acquired through an off-exchange transaction, the amount and nature of the

consideration paid for the interest in the shares that were acquired within 4 months immediately before the time of the event or change giving rise to the duty of disclosure.

(3) In determining the aggregate nominal value 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 aggregate nominal value of the shares in which the person is interested, would reduce the aggregate nominal value of the shares in which the person is interested; and
- (b) particulars of the shares in which that person has a short position shall be specified separately in the notification.

25. Where a duty of disclosure arises under section 300 of this Ordinance in the circumstances specified in section 304(1)(a) of this Ordinance, a person shall, in performing the duty of disclosure, specify also in the notification to the listed corporation concerned and to the relevant exchange company any short position which he has in shares comprised in the relevant share capital of the listed corporation immediately after the time of the event or change giving rise to the duty of disclosure.

26. Where a duty of disclosure arises under section 300(5) of this Ordinance in the circumstances specified in section 304(3) of this Ordinance, a person shall, in performing the duty of disclosure, specify also in the notification to the listed corporation concerned and to the relevant exchange company the short positions which he has immediately before and immediately after the time of the event or change giving rise to the duty of disclosure.

27. Unless a corporation is a listed corporation or a wholly owned subsidiary of a listed corporation, it shall, in performing a duty of disclosure arising under section 300 of this Ordinance, specify also in the notification to the listed corporation in which it has a notifiable interest and to the relevant exchange company the name and address of any person in accordance with whose directions it, or its directors, are accustomed to act.

28. A notification given to a listed corporation and to the relevant exchange company under section 307 of this Ordinance by a person who is for the time being a party to an agreement to which section 310 of this Ordinance applies shall also -

- (a) state that the person giving the notification is a party to such an agreement;
- (b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such;

- (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 310 and 311 of this Ordinance and, if so, the number, aggregate nominal value 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 310 of this Ordinance 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 310 of this Ordinance 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.

29. A notification given to a listed corporation and to the relevant exchange company under section 307 of this Ordinance 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 310 of this Ordinance 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 known to him) the address of that other person.

30. Nothing in section 24(1) or (2) shall require details of the consideration which may be payable 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 to the listed corporation concerned and to the relevant exchange company.

**Rules for interpretation of Division 4
of Part XV of this Ordinance**

PART 5

INTERESTS AND SHORT POSITIONS TO BE NOTIFIED
BY DIRECTORS AND CHIEF EXECUTIVES

31. This Part applies, subject to Part 6, in determining for the purposes of Division 4 of Part XV of this Ordinance whether a person has an interest or short position that is notifiable.

32. (1) A reference to an interest in shares or debentures is to be read as including a reference to an interest of any kind whatsoever in the shares or debentures.

(2) Accordingly, there shall be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

33. Where property is held on trust and an interest in shares or debentures is comprised in the property -

- (a) a beneficiary of the trust who apart from this section does not have an interest in the shares or debentures is taken to have such an interest; and
- (b) in the case of a discretionary trust, a settlor of the trust is taken to have an interest in the shares or debentures.

34. 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.

35. For the purposes of section 34(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 he -

- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
- (b) is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

36. 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 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.

37. 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, he -

- (a) has a right to require another person to deliver the underlying shares to him;
- (b) is under an obligation to take delivery of the underlying shares;
- (c) has a right to receive from another person an amount if the price of the underlying shares increases; or
- (d) 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.

38. The number of shares in which a person is taken to be interested under section 37 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 each stock futures contract,

whether in any case the right or obligation is conditional or absolute.

39. A person shall be regarded as having ceased to be interested in shares or debentures when -

- (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; or
 - (ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares or debentures;
- (b) another person fails to deliver the shares or debentures to him in breach of -
 - (i) a contract under which he agreed to purchase the shares or debentures from the other person; or
 - (ii) an obligation upon the other person to do so when called upon by him to deliver the shares or debentures;

- (c) his right to call for delivery of the shares or debentures lapses or he assigns such a right to another person;
- (d) his obligation to take delivery of the shares or debentures lapses or he assigns such an obligation to another person;
- (e) he receives from another person an amount, or avoids or reduces a loss, on settlement of any cash settled equity derivatives; or
- (f) he assigns his rights under a stock futures contract to another person.

40. The number of shares in which a person is regarded as having ceased to be interested under section 39(e) 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 each stock futures contract.

41. The number of shares in which a person is regarded as having ceased to be interested under section 39(f) is the contract

multiplier which is to be used in calculating the amount he may receive in respect of his holding of each stock futures contract.

42. 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 each stock futures contract.

43. The number of shares in which a person is regarded as having a short position under a stock borrowing and lending agreement is the number of shares which he is obliged to deliver under the stock 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 settled by delivery of the shares.

44. Persons having a joint interest or short position are taken each of them to have that interest or short position.

45. It is immaterial that shares or debentures in which a person has an interest, or shares in which a person has a short position, are unidentifiable.

PART 6

INTERESTS TO BE DISREGARDED FOR THE PURPOSE OF NOTIFICATION BY DIRECTORS AND CHIEF EXECUTIVES

46. The following interests shall be disregarded for the purposes of Division 4 of Part XV of this Ordinance -

- (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) an interest of or held by a holder, trustee or custodian in a collective investment scheme authorized under section 103 of this Ordinance, except where the holder, trustee or custodian is also the manager appointed to manage the interest in the collective

investment scheme in which case the interest of or held by the holder, trustee or custodian shall not be disregarded; and

- (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.

47. A person is not taken to be interested in shares or debentures under section 34(b) by reason only that he -

- (a) has been appointed as a proxy to vote at a specified meeting of a 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 a listed corporation or of any class of its members.

48. For the purposes of section 46, a person shall not be held 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.

PART 7

PARTICULARS TO BE CONTAINED IN NOTIFICATIONS BY
DIRECTORS AND CHIEF EXECUTIVES REQUIRED BY
SECTION 331 OF THIS ORDINANCE

49. (1) Where a duty of disclosure arises under section 328 of this Ordinance, a person shall, in performing the duty of disclosure, specify in the notification to the listed corporation concerned and to the relevant exchange company 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 duty of disclosure arises;
- (b) the total number and class of shares in and amount of debentures of the listed corporation and any associated corporation of the listed corporation in which he is interested or has ceased to be interested, and if any of those shares are unissued, identifying separately the number and class of the unissued shares;

- (c) where the shares in which he is interested or has ceased to be interested are, or include, the underlying shares of equity derivatives -
- (i) the number and nature of the equity derivatives;
 - (ii) the number, aggregate nominal value and class of the underlying shares of the equity derivatives;
 - (iii) the period within which rights under the equity derivatives may be exercised ("exercise period"); and
 - (iv) the expiry date of the exercise period;
- (d) the circumstances in which he comes under the duty of disclosure, specifying -
- (i) in respect of shares or debentures in which he has become interested or has ceased to be interested -
 - (A) the number and class of the shares or the amount of the debentures in which he has become interested or has ceased to be interested; and
 - (B) the percentage levels and the percentage figures of his interest in the shares immediately before and immediately after the time of the

occurrence of the event giving rise to
the duty of disclosure; and

(ii) in respect of shares in which he has a short
position -

(A) the number and class of the shares in
which he has or has ceased to have such
a short position; and

(B) the percentage levels and the
percentage figures of his short
positions in the shares immediately
before and immediately after the time
of the occurrence of the event giving
rise to the duty of disclosure;

(e) the nature of his interest in the shares or debentures
which are the subject of the disclosure and, if the
interest in the shares or debentures is held in more
than one capacity, the number of shares or amount of
debentures held in each capacity;

(f) where the duty of disclosure arises on the occurrence
of an event in consequence of which the nature of his
interest in the shares or debentures changes, the
nature of his interest immediately before and
immediately after the time of the occurrence of the
event;

(g) where he is taken to be interested in shares or debentures, or have a short position in shares, under section 333 of this Ordinance or section 44 -

(i) the number and class of shares or amount of debentures which are the subject of the disclosure in which he is so interested or has such a short position; and

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

(h) 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

(i) such other information as may be required in the form prescribed for the purpose.

(2) Where a duty of disclosure arises under section 328(1)(a)(i) or (b)(i) of this Ordinance, a person shall, in performing the duty of disclosure, specify also in the notification to the listed corporation concerned and to the relevant exchange company -

(a) in respect of his interest in shares which are the subject of the disclosure acquired through an on-

exchange transaction, the highest price and the average price paid for the interest in the shares that were acquired within 4 months immediately before the time of the occurrence of the event giving rise to the duty of disclosure; and

- (b) in respect of his interest in shares which are the subject of the disclosure acquired through an off-exchange transaction, the amount and nature of the consideration paid for the interest in the shares that were acquired within 4 months immediately before the time of the occurrence of the event giving rise to the duty of disclosure.

(3) Subject to subsections (4) and (5), "percentage level" (百分率水平), in subsection (1)(d)(i)(B), means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or any associated corporation of the listed corporation in which the person is interested immediately before or immediately after (as the case may be) the time of the occurrence of the event giving rise to the duty of disclosure as a percentage of the number of the issued shares of the same class in the listed corporation or associated corporation (as the case may be) and rounding that figure down, if it is not a whole number, to the next whole number.

(4) Where the number of the issued shares of the same class in the listed corporation or associated corporation (as the case may be) is greater immediately after the time of the occurrence of the event giving rise to the duty of disclosure than it was immediately before that time, the percentage level of the interest of the person immediately before (as well as immediately after) that time is determined by reference to the larger number.

(5) 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 shares in which the person is interested; and

(b) particulars of the shares in which that person has a short position shall be specified separately in the notification.

(6) Subject to subsection (4), "percentage level" (百分率水平), in subsection (1)(d)(ii)(B), means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or any 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 time of the occurrence of the event giving rise to the duty of disclosure as a percentage of the number of the issued shares of the same class in the listed

corporation or associated corporation (as the case may be) and rounding that figure down, if it is not a whole number, to the next whole number.

(7) For the purposes of -

- (a) subsection (1)(d)(i)(B), "percentage figure" (百分率數字) means the percentage figure referred to in subsection (3) before rounding down, if applicable, to the next whole number; and
- (b) subsection (1)(d)(ii)(B), "percentage figure" (百分率數字) means the percentage figure referred to in subsection (6) before rounding down, if applicable, to the next whole number.

50. Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 328(2)(a) of this Ordinance arises from his entering into a contract for the purchase by him of shares in or debentures of the listed corporation concerned or any associated corporation of the listed corporation, the notification shall also contain a statement of the price to be paid by him under the contract.

51. Where a director or chief executive comes under a duty of disclosure under section 328(2)(b) of this Ordinance, the

notification shall also contain a statement of the price to be received by him under the contract.

52. Where a director or chief executive comes under a duty of disclosure under section 328(2)(c) of this Ordinance, the notification shall also contain a statement of the consideration for the assignment (or, in the case that there is no consideration, that fact).

53. Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 328(2)(d) of this Ordinance arises from -

(a) the grant to him of a right to subscribe for shares or debentures, the notification shall also -

(i) state the date on which the right was granted;

(ii) state the period during which or the time at which the right is exercisable; and

(iii) contain a statement of -

(A) the consideration for the grant (or, in the case that there is no consideration, that fact); and

(B) the price to be paid for the shares or debentures;

- (b) the exercise of a right granted to him to subscribe for shares or debentures, the notification shall also state the number and class of shares or amount of debentures in respect of which the right was exercised; or
- (c) his assigning a right to subscribe for shares or debentures, the notification shall also contain a statement of the consideration for the assignment (or, in the case that there is no consideration, that fact).

54. In this Part -

- (a) references to price paid or received include references to money paid or received and any consideration other than money; and
- (b) if the shares which are the subject of the disclosure were acquired or disposed of -
 - (i) through an on-exchange transaction, a statement of the price paid shall, subject to section 55, include details of the highest price and the average price paid or received for the interest in the shares acquired or disposed of on the day on which the event giving rise to the duty of disclosure occurs; or

(ii) through an off-exchange transaction, a statement of the price paid shall, subject to section 55, include details of the amount and nature of the consideration given or received for the interest in the shares acquired or disposed of on the day on which the event giving rise to the duty of disclosure occurs.

55. Nothing in section 49(1) or (2), 50 or 51 shall require details of the consideration which may be payable 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 to the listed corporation concerned and to the relevant exchange company.

SCHEDULE 10 [ss. 220, 222, 226,
382, 383, 384 & 385]

SAVINGS, TRANSITIONAL, CONSEQUENTIAL AND
RELATED PROVISIONS, ETC.

PART 1

SAVINGS, TRANSITIONAL AND SUPPLEMENTAL ARRANGEMENTS

Interpretation of Part 1

1. In this Part -

- (a) a reference to a corresponding provision, in relation to a provision of an Ordinance repealed under section 382 of this Ordinance, means a reference to a provision of this Ordinance which in the opinion of the Commission corresponds to that provision;
- (b) 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 Securities and Futures Commission Ordinance (Cap. 24) before the commencement of Part II of this Ordinance by or

in relation to the Commission shall, in so far as it could have been done under or by virtue of a corresponding provision in that Part, continue to have effect upon such commencement as if it had been done under or by virtue of that corresponding 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 Securities and Futures Commission Ordinance (Cap. 24) by or in relation to the Commission may, in so far as it could have been done under or by virtue of a corresponding provision in that Part, be continued upon such commencement under or by virtue of that corresponding provision;
- (c) any person holding office as the 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, on the same terms and conditions as were applicable had this Ordinance not been enacted, the corresponding office under this Ordinance as if he had been appointed on such terms and conditions in accordance with the provisions regarding appointment to such corresponding office under that Part and Schedule 2 to this Ordinance;

- (d) the Advisory Committee constituted under section 10 of the Securities and Futures Commission Ordinance (Cap. 24) immediately before the commencement of Part II of this Ordinance shall, upon such commencement, continue in existence as if it had been constituted under section 7 of and Schedule 2 to this Ordinance;
- (e) any committee which has been established under section 6 of the Securities and Futures Commission Ordinance (Cap. 24) and which is in existence immediately before the commencement of Part II of this Ordinance shall, upon such commencement, continue in existence as if it had 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, on the same terms and conditions as were applicable had this Ordinance not been enacted, the corresponding office under this Ordinance as if he had been appointed on such terms and conditions in accordance with the provisions regarding appointment to such 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), (d), (e) or (f), by the Commission under or pursuant to any provision of the Securities and Futures Commission Ordinance (Cap. 24) immediately before the commencement of Part II of this Ordinance shall upon such commencement continue to be so employed or engaged in the same office, on the same terms and conditions as were applicable had this Ordinance not been enacted, as if he had been employed or engaged under that Part on such terms and conditions.

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

3. In sections 4 and 5 -

"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. On the commencement of section 19 of this Ordinance -

(a) the Stock Exchange Company and the Futures Exchange Company shall each be deemed to be a recognized exchange company as if, upon such commencement, each of them had been served a notice under section 19(2) of this Ordinance recognizing it as an exchange company, and the other provisions of this Ordinance (including sections 19(3) and 28) shall apply accordingly with all necessary modifications; and

(b) the rules of the Stock Exchange Company and the Futures Exchange Company which are in effect immediately before the commencement of section 19 of this Ordinance shall be deemed to have been made under section 24 of this Ordinance and approved under section 25 of this Ordinance, and the other provisions of this Ordinance shall apply accordingly with all necessary modifications.

5. On the commencement of section 38 of this Ordinance -

(a) the HKSCC, HKFECC and SEOCH shall each be deemed to be a recognized clearing house as if, upon such commencement, each of them had been served a notice under section 38(1) of this Ordinance recognizing it as a clearing house, and the other provisions of this Ordinance (including sections 38(2) and 43) shall apply accordingly with all necessary modifications; and

(b) the rules of the HKSCC, HKFECC and SEOCH which are in effect immediately before the commencement of section 38 of this Ordinance shall be deemed to have been made under section 41 of this Ordinance and approved under section 42 of this Ordinance, and the other provisions of this Ordinance shall apply accordingly with all necessary modifications.

6. Anything done under or by virtue of the Exchanges and Clearing Houses (Merger) Ordinance (12 of 2000) before the commencement of Part III of this Ordinance shall, in so far as it could have been done under or by virtue of a corresponding provision in that Part, continue to have effect upon such commencement as if it had been done under or by virtue of that corresponding provision.

7. Anything which immediately before the commencement of Part III of this Ordinance is in the process of being done under or by virtue of the Exchanges and Clearing Houses (Merger) Ordinance (12 of 2000) may, in so far as it could have been done under or by virtue of a corresponding provision in that Part, be continued upon such commencement under or by virtue of that corresponding provision.

8. Without limiting the generality of section 6 -

(a) any approval which is given under section 6(2) of the Exchanges and Clearing Houses (Merger) Ordinance (12 of 2000) and which has effect immediately before the commencement of Part III of this Ordinance shall continue to have effect as if

the approval had been given under section 61(2) of this Ordinance;

- (b) any appointment of a person as chief executive or chief operating officer of a recognized exchange controller which has effect immediately before the commencement of Part III of this Ordinance shall, upon such commencement, continue to have effect as if the appointment had been approved under section 69 of this Ordinance; and
- (c) the Risk Management Committee established under section 9 of the Exchanges and Clearing Houses (Merger) Ordinance (12 of 2000) shall, upon the commencement of Part III of this Ordinance, continue in existence as if it had been established under section 65 of this Ordinance.

Part IV of this Ordinance (Offers of investments)

9. Subject to sections 11 and 12 -

- (a) a mutual fund corporation or unit trust that is immediately before the commencement of Part IV of this Ordinance authorized under section 15 of the Securities Ordinance (Cap. 333); 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 Protection

of Investors Ordinance (Cap. 335), 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 regarded as authorized under section 103 of this Ordinance as a collective investment scheme, subject to the same conditions as were applicable had this Ordinance not been enacted.

10. Subject to sections 11 and 12, 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 Protection of Investors Ordinance (Cap. 335) shall upon such commencement be regarded as authorized under section 104 of this Ordinance, subject to the same conditions as were applicable had this Ordinance not been enacted.

11. Where no person has been nominated pursuant to section 103(3) or 104(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 9 or 10 shall thereupon cease to have effect.

12. Where a person has been nominated pursuant to section 103(3) or 104(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 9 or 10 shall continue to have effect until the Commission decides otherwise.

13. Where an application for -

- (a) authorization of any mutual fund corporation or unit trust under section 15 of the Securities Ordinance (Cap. 333); or
- (b) authorization of the issue of an advertisement, invitation or document pursuant to section 4(2)(g) of the Protection of Investors Ordinance (Cap. 335),

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 regarded as -

- (i) in the case of paragraph (a), an application for authorization of a collective investment scheme under section 103 of this Ordinance;
- (ii) in the case of paragraph (b), an application for authorization of a collective investment scheme under section 103 of this Ordinance, or an application for authorization of the issue of an advertisement, invitation or document under section 104 of this Ordinance, as the Commission considers appropriate.

**Part V of this Ordinance (Licensing and Exemption)
Corporations other than exempt dealers
and exempt investment advisers**

14. Subject to sections 25 and 26, a corporation which immediately before the commencement of Part V of this Ordinance is -

- (a) registered under the Securities Ordinance (Cap. 333) as a dealer shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity;
- (b) registered under the Securities Ordinance (Cap. 333) as an investment adviser shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity;
- (c) registered under the Securities Ordinance (Cap. 333) as a securities margin financier shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 8 regulated activity;
- (d) registered under the Commodities Trading Ordinance (Cap. 250) as a dealer shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 2 regulated

activity, Type 5 regulated activity and Type 9 regulated activity;

- (e) registered under the Commodities Trading Ordinance (Cap. 250) as a commodity trading adviser shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity;
- (f) licensed under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) as a leveraged foreign exchange trader shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 3 regulated activity.

15. Subject to sections 25 and 26, where a corporation is regarded under section 14 as 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 Securities Ordinance (Cap. 333) as a dealer shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that corporation;
- (b) registered under the Securities Ordinance (Cap. 333) as an investment adviser shall, upon such commencement, be regarded as licensed as a licensed

- representative under section 119 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that corporation;
- (c) registered under the Securities Ordinance (Cap. 333) as a securities margin financier's representative shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 8 regulated activity and as accredited to that corporation;
- (d) registered under the Commodities Trading Ordinance (Cap. 250) as a dealer shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity and as accredited to that corporation;
- (e) registered under the Commodities Trading Ordinance (Cap. 250) as a commodity trading adviser shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity and as accredited to that corporation;
- (f) licensed under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) as a representative

shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 3 regulated activity and as accredited to that corporation, and as approved under section 123(1) of this Ordinance as a responsible officer of that corporation.

16. Subject to sections 25 and 26, where a corporation is regarded under section 14 as 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 Securities Ordinance (Cap. 333) as a dealer's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that corporation;
- (b) registered under the Securities Ordinance (Cap. 333) as an investment representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that corporation;

- (c) registered under the Securities Ordinance (Cap. 333) as a securities margin financier's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 8 regulated activity and as accredited to that corporation;
- (d) registered under the Commodities Trading Ordinance (Cap. 250) as a dealer's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity and as accredited to that corporation;
- (e) registered under the Commodities Trading Ordinance (Cap. 250) as a commodity trading adviser's representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity and as accredited to that corporation;
- (f) licensed under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) as a representative of that corporation shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 3

regulated activity and as accredited to that corporation.

Persons who are exempt dealers or
exempt investment advisers

17. Subject to sections 25 and 26 -

(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 Securities Ordinance (Cap. 333) shall, upon such commencement, be regarded as -

(A) exempt under section 118 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity; and

(B) having complied with the requirement of section 123(3)(a) and (b) of this Ordinance;

(ii) an exempt investment adviser within the meaning of the Securities Ordinance (Cap. 333) shall, upon such commencement, be regarded as -

(A) exempt under section 118 of this Ordinance for Type 4 regulated

activity, Type 6 regulated activity
and Type 9 regulated activity; and

(B) having complied with the requirement
of section 123(3)(a) and (b) of this
Ordinance;

(b) a person not being an authorized financial
institution who immediately before the commencement
of Part V of this Ordinance is -

(i) an exempt dealer within the meaning of
the Securities Ordinance (Cap. 333)
shall, upon such commencement, be
regarded as -

(A) licensed under section 115 of this
Ordinance for Type 1 regulated
activity, Type 4 regulated activity,
Type 6 regulated activity and Type 9
regulated activity; and
(B) having complied with the requirement
of section 123(2)(a), (b) and (c) of
this Ordinance;

(ii) an exempt investment adviser within the
meaning of the Securities Ordinance (Cap.
333) shall, upon such commencement, be
regarded as -

(A) licensed under section 115 of this
Ordinance for Type 4 regulated
activity, Type 6 regulated activity

- and Type 9 regulated activity; and
- (B) having complied with the requirement of section 123(2)(a), (b) and (c) of this Ordinance.

18. Subject to sections 25 and 26, an individual who immediately before the commencement of Part V of this Ordinance is employed by an exempt dealer or exempt investment adviser within the meaning of the Securities Ordinance (Cap. 333) to perform any act which, if performed after such commencement, would constitute a regulated activity shall, upon such commencement, be regarded as -

- (a) where the employer is an authorized financial institution and is regarded under section 118 of this Ordinance as exempt for that regulated activity, a person whose name is entered in a register kept by the Monetary Authority for the purposes of section 114 of this Ordinance under the Banking Ordinance (Cap. 155) as employed by the employer in respect of that regulated activity;
- (b) where the employer is not an authorized financial institution and is regarded under section 16 as licensed for that regulated activity, licensed as a licensed representative under section 119 of this Ordinance for that regulated activity and as accredited to the employer.

19. Subject to sections 25 and 26, a partnership which immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the Securities Ordinance (Cap. 333) as a dealer shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity;
- (b) under the Securities Ordinance (Cap. 333) as an investment adviser shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity;
- (c) under the Commodities Trading Ordinance (Cap. 250) as a dealer shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity;
- (d) under the Commodities Trading Ordinance (Cap. 250) as a commodity trading adviser shall, upon such commencement, be regarded as licensed under section 115 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity.

20. Subject to sections 25 and 26, where a partnership is

regarded under section 19 as licensed as a licensed corporation, any partner of that partnership who immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the Securities Ordinance (Cap. 333) as a dealer shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;
- (b) under the Securities Ordinance (Cap. 333) as an investment adviser shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;
- (c) under the Commodities Trading Ordinance (Cap. 250) as a dealer shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;
- (d) under the Commodities Trading Ordinance (Cap. 250) as a commodity trading adviser shall, upon such commencement, be regarded as licensed as a licensed

representative under section 119 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation,

and as approved under section 123(1) of this Ordinance as a responsible officer of that licensed corporation.

21. Subject to sections 25 and 26, where a partnership is regarded under section 19 as licensed as a licensed corporation, any individual who immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the Securities Ordinance (Cap. 333) as a dealer's representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;
- (b) under the Securities Ordinance (Cap. 333) as an investment representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;

- (c) under the Commodities Trading Ordinance (Cap. 250) as a dealer's representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;
- (d) under the Commodities Trading Ordinance (Cap. 250) as a commodity trading adviser's representative of that partnership shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation.

Sole-proprietorships

22. Subject to sections 25 and 26, an individual who immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the Securities Ordinance (Cap. 333) as a dealer shall, upon such commencement, be regarded as -
 - (i) licensed under section 115 of this Ordinance as a licensed corporation for Type 1 regulated activity, Type 4

regulated activity, Type 6 regulated activity and Type 9 regulated activity;

(ii) approved under section 123(1) of this Ordinance as a responsible officer of that licensed corporation; and

(iii) having complied with the requirement of section 123(2)(a), (b) and (c) of this Ordinance;

(b) under the Securities Ordinance (Cap. 333) as an investment adviser shall, upon such commencement, be regarded as -

(i) licensed under section 115 of this Ordinance as a licensed corporation for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity;

(ii) approved under section 123(1) of this Ordinance as a responsible officer of that licensed corporation; and

(iii) having complied with the requirement of section 123(2)(a), (b) and (c) of this Ordinance;

(c) under the Commodities Trading Ordinance (Cap. 250) as a dealer shall, upon such commencement, be regarded as -

(i) licensed under section 115 of this Ordinance as a licensed corporation for

Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity;

(ii) approved under section 123(1) of this Ordinance as a responsible officer of that licensed corporation; and

(iii) having complied with the requirement of section 123(2)(a), (b) and (c) of this Ordinance;

(d) under the Commodities Trading Ordinance (Cap. 250) as a commodity trading adviser shall, upon such commencement, be regarded as -

(i) licensed under section 115 of this Ordinance as a licensed corporation for Type 5 regulated activity and Type 9 regulated activity;

(ii) approved under section 123(1) of this Ordinance as a responsible officer of that licensed corporation; and

(iii) having complied with the requirement of section 123(2)(a), (b) and (c) of this Ordinance.

23. Subject to sections 25 and 26, where an individual is regarded under section 22 as licensed as a licensed corporation, any individual who immediately before the commencement of Part V of this Ordinance is registered -

- (a) under the Securities Ordinance (Cap. 333) as a dealer's representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 1 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;
- (b) under the Securities Ordinance (Cap. 333) as an investment representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;
- (c) under the Commodities Trading Ordinance (Cap. 250) as a dealer's representative of the first-mentioned individual shall, upon such commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation;
- (d) under the Commodities Trading Ordinance (Cap. 250) as a commodity trading adviser's representative of the first-mentioned individual shall, upon such

commencement, be regarded as licensed as a licensed representative under section 119 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity and as accredited to that licensed corporation.

Licensed banks

24. Subject to section 25, where immediately before the commencement of Part V of this Ordinance, a licensed bank would have, but for paragraph (i) of the definition of "investment adviser" in section 2(1) of the Securities Ordinance (Cap. 333), fallen within that definition, it shall, upon such commencement, be regarded as -

- (a) exempt under section 118 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity; and
- (b) having complied with the requirement of section 123(3)(a) and (b) of this Ordinance.

Transitional period

25. (1) Subject to subsection (2), where -
- (a) a corporation is regarded under section 14 as licensed;
 - (b) a corporation, partnership or individual not being an authorized financial institution is regarded

under section 17(b) as -

- (i) licensed; and
 - (ii) having complied with the requirement referred to in section 17(b)(i)(B) or (ii)(B);
- (c) an individual is regarded under section 18 as -
- (i) a person whose name is entered in the register referred to in section 18(a); or
 - (ii) licensed;
- (d) a partnership is regarded under section 19 as licensed;
- (e) an individual is regarded under section 22 as -
- (i) licensed;
 - (ii) approved as a responsible officer; and
 - (iii) having complied with the requirement referred to in section 22(a)(iii), (b)(iii), (c)(iii) or (d)(iii);
- (f) a director is regarded under section 15 as -
- (i) licensed; and
 - (ii) approved as a responsible officer;
- (g) a partner is regarded under section 20 as -
- (i) licensed; and
 - (ii) approved as a responsible officer;
- (h) an individual is regarded under section 16, 21 or 23 as licensed,

the period during which it or he (as the case may be) shall be so regarded shall, subject to subsection (7) in the case of a person

referred to in paragraph (e), (f), (g) or (h) be 2 years from the date of commencement of Part V of this Ordinance.

(2) Subject to subsection (5), where, within 2 years from the date of commencement of Part V of this Ordinance -

(a) a corporation referred to in subsection (1)(a) or (b) applies to be licensed under section 117 of this Ordinance for a regulated activity for which it is regarded under section 14 or 17(b) (as the case may be) as licensed, it shall continue to be so regarded as licensed for that regulated activity pending the determination of that application;

(b) a company or an overseas company incorporated outside Hong Kong to which Part XI of the Companies Ordinance (Cap. 32) applies and which has complied with the provisions of that Part for the registration of documents applies to be licensed under section 115 of this Ordinance for a regulated activity and -

(i) all the partners of a partnership referred to in subsection (1)(b) or (d) which is regarded under section 17(b) or 19 (as the case may be) as 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;

(iii) the applicant satisfies the Commission that -

(A) it is formed 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,

that partnership shall continue to be regarded under section 17(b) or 19 (as the case may be) as licensed for that regulated activity pending the determination of that application;

(c) a company or an overseas company incorporated outside Hong Kong to which Part XI of the Companies Ordinance (Cap. 32) applies and which has complied with the provisions of that Part for the registration of documents applies to be licensed under section 115 of this Ordinance for a regulated activity and -

(i) an individual referred to in subsection (1)(b) or (e) who is regarded under section 17(b) or 22 (as the case may be) as licensed for that regulated activity is a majority shareholder of the

applicant;

(ii) the applicant satisfies the Commission that -

(A) it is formed 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,

that individual shall continue to be regarded under section 17(b) or 22 (as the case may be) as licensed for that regulated activity pending the determination of that application;

(d) an individual referred to in subsection (1)(f), (g) or (h) applies to be licensed under section 119 of this Ordinance for a regulated activity for which he is regarded under section 15, 16, 20, 21 or 23 (as the case may be) as licensed, he shall continue to be so regarded as licensed for that regulated activity pending the determination of that application.

(3) Subject to subsections (4) and (5), an authorized financial institution or a licensed bank regarded under section 17(a) or 24 (as the case may be) as exempt shall be so regarded within 2 years from the date of commencement of Part V of this

Ordinance.

(4) Where, within 2 years from the date of commencement of Part V of this Ordinance, an authorized financial institution or a licensed bank referred to in subsection (3) applies to be exempt under section 118 of this Ordinance for a regulated activity for which it is regarded under section 17(a) or 24 (as the case may be) as exempt, it shall continue to be so regarded for that regulated activity pending the determination of that application.

(5) Where -

- (a) an application referred to in subsection (2) or (4) in relation to a regulated activity is refused; and
- (b) the applicant does not make an application for review in respect of such refusal under section 203 of this Ordinance,

the -

- (i) in the case of an application referred to in subsection (2)(a) or (4), applicant;
- (ii) in the case of an application referred to in subsection (2)(b), partnership from which the applicant intends to take over the business in that regulated activity;
- (iii) in the case of an application referred to in subsection (2)(c), 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 14

days of such refusal; and

- (B) comply with such reasonable conditions as the Commission may impose for such cessation,

and may be subject to the exercise of the power of the Commission under section 187 of this Ordinance.

(6) Where a person is regarded under section 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 or 24 as licensed or exempt for a regulated activity, he shall, in the carrying on of that regulated activity, comply with the provisions of this Ordinance that apply to a person who is licensed or exempt (as the case may be) for that regulated activity with such modifications under section 129 of this Ordinance as may be necessary in case he is a partnership or an individual carrying on a business in that regulated activity (as the case may be).

(7) If -

- (a) a director of a corporation who is regarded under section 15 as licensed as a licensed representative accredited to that corporation ceases to be a director of that corporation, he shall upon such cessation cease to be so regarded;
- (b) a partner of a partnership who is regarded under section 20 as licensed as a licensed representative accredited to that partnership ceases to be a partner of that partnership, he shall upon such cessation cease to be so regarded;
- (c) an individual who is regarded under section 16, 21 or 23 as licensed as a licensed representative

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 regarded, he shall upon such cessation cease to be so regarded.

Miscellaneous

26. Where a person is -

(a) immediately before the commencement of Part V of this Ordinance -

(i) registered or declared exempt under the Securities Ordinance (Cap. 333) as a dealer, investment adviser, securities margin financier, dealer's representative, investment representative or securities margin financier's representative;

(ii) registered under the Commodities Trading Ordinance (Cap. 250) as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative; or

(iii) licensed under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) as a leveraged foreign exchange trader or representative; and

(b) regarded under section 14, 15, 16, 17, 18, 19, 20,

21, 22, 23 or 24 as licensed or exempt 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 regarded as being imposed to the
licence or exemption referred to in paragraph (b).

27. Where -

- (a) approval for premises to be used for keeping
records or documents has been given by the
Commission under the Securities and Futures
Commission Ordinance (Cap. 24); and
- (b) the approval subsists immediately before the
commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be regarded as given
under section 127 of this Ordinance.

28. Where -

- (a) approval for a subordinated loan has been given by
the Commission under the Financial Resources Rules
(Cap. 24 sub. leg.) or the Leveraged Foreign
Exchange Trading (Financial Resources) Rules (Cap.
451 sub. leg.); and
- (b) the approval subsists immediately before the
commencement of Part V of this Ordinance,

the approval shall, upon such commencement, be regarded as given

under this Ordinance.

29. 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 Securities and Futures Commission Ordinance (Cap. 24); 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 128 of this Ordinance.

30. Where the Commission has commenced action (including the making of any inquiry) before the commencement of Part V of this Ordinance under -

- (a) section 55 or 56 of the Securities Ordinance (Cap. 333);
- (b) section 35 or 36 of the Commodities Trading Ordinance (Cap. 250); or
- (c) section 11 or 12 of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451),

and the action is pending immediately before such commencement, the action shall, upon such commencement, be regarded as having been commenced under this Ordinance and may be continued in

accordance with section 168 or 180 of this Ordinance.

31. (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 Securities Ordinance (Cap. 333), by -	
	(a) a corporation	(a) Under section 115 of this Ordinance for Type 1

regulated activity, Type
4 regulated activity,
Type 6 regulated activity
and Type 9 regulated
activity

(b) an individual

(b) Under section 119 of this
Ordinance for Type 1
regulated activity, Type
4 regulated activity,
Type 6 regulated activity
and Type 9 regulated
activity

2. For registration as an
investment adviser under the
Securities Ordinance (Cap.
333), by -

(a) a corporation

(a) Under section 115 of this
Ordinance for Type 4
regulated activity, Type
6 regulated activity and
Type 9 regulated activity
or any one or 2 of them,
as may be applicable

(b) an individual

(b) Under section 119 of this
Ordinance for Type 4

regulated activity, Type 6 regulated activity and Type 9 regulated activity or any one or 2 of them, as may be applicable

3. For registration as a dealer's representative under the Securities Ordinance (Cap. 333)

Under section 119 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity
4. For registration as an investment representative under the Securities Ordinance (Cap. 333)

Under section 119 of this Ordinance for Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity or any one or 2 of them, as may be applicable
5. For registration as a dealer under the Commodities Trading Ordinance (Cap. 250), by -

 - (a) a corporation

(a) Under section 115 of this Ordinance for Type 2 regulated activity, Type

(b) an individual

(b) Under section 119 of this Ordinance for Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity

6. For registration as a commodity trading adviser under the Commodities Trading Ordinance (Cap. 250), by -

(a) a corporation

(a) Under section 115 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity or any one of them, as may be applicable

(b) an individual

(b) Under section 119 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity or any one of them, as may be applicable

7. For registration as a

Under section 119 of this

dealer's representative under the Commodities Trading Ordinance (Cap. 250) Ordinance for Type 2 regulated activity, Type 5 regulated activity and Type 9 regulated activity

8. For registration as a commodity trading adviser's representative under the Commodities Trading Ordinance (Cap. 250) Under section 119 of this Ordinance for Type 5 regulated activity and Type 9 regulated activity or any one of them, as may be applicable

9. For a licence as a leveraged foreign exchange trader under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) Under section 119 of this Ordinance for Type 3 regulated activity

10. For a licence as a representative under the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) Under section 119 of this Ordinance for Type 3 regulated activity

(2) Where -

(a) an application is made before the commencement of Part V of this Ordinance for declaration of exemption as an exempt dealer under the Securities Ordinance (Cap. 333); 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 118 of this Ordinance for an exemption for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity;
- (ii) where the applicant is not an authorized financial institution, be treated as an application under section 115 of this Ordinance for Type 1 regulated activity, Type 4 regulated activity, Type 6 regulated activity and Type 9 regulated activity.

(3) Where -

- (a) an application is made before the commencement of Part V of this Ordinance for declaration of exemption as an investment adviser under the Securities Ordinance (Cap. 333); 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 118 of this Ordinance for an exemption for

Type 4 regulated activity;

- (ii) where the applicant is not an authorized financial institution, be treated as an application under section 115 of this Ordinance for Type 4 regulated activity.

**Part VI of this Ordinance (Capital requirements,
client assets, records and audit)**

32. Where -

- (a) immediately before the commencement of Part VI of this Ordinance -
 - (i) the appointment of an auditor under section 52 of the Commodities Trading Ordinance (Cap. 250) in relation to a dealer within the meaning of that section is still in force;
 - (ii) the appointment of an auditor under section 90 of the Securities Ordinance (Cap. 333) in relation to a dealer within the meaning of that section is still in force; or
 - (iii) the appointment of an auditor under section 33 of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) in relation to a licensed leveraged foreign exchange trader within the meaning of that section is still in force; and
- (b) the dealer or the licensed leveraged foreign

exchange trader (as the case may be) is under this Ordinance a licensed corporation,

the auditor shall upon such commencement be deemed to have been appointed under section 152 of this Ordinance, and section 152(3) and (4) and other provisions of this Ordinance shall apply accordingly.

33. Where -

(a) immediately before the commencement of Part VI of this Ordinance -

(i) the appointment of an auditor under section 53 of the Commodities Trading Ordinance (Cap. 250) in relation to a dealer within the meaning of that section is still in force;

(ii) the appointment of an auditor under section 91 of the Securities Ordinance (Cap. 333) in relation to a dealer within the meaning of that section is still in force; or

(iii) the appointment of an auditor under section 34 of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) in relation to a licensed leveraged foreign exchange trader within the meaning of that section is still in force; and

(b) the dealer or the licensed leveraged foreign exchange trader (as the case may be) is under this

Ordinance a licensed corporation,
the auditor shall upon such commencement be deemed to have been
appointed under section 153 of this Ordinance, and section 153(7)
and (8) and other provisions of this Ordinance shall apply
accordingly.

Part VIII of this Ordinance (Supervision and investigations)

34. Where -

(a) any power has before the commencement of Part VIII
of this Ordinance been exercised with reference to
certain matters taking place before such
commencement under -

(i) section 29A, 30, 31, 33 or 36 of the
Securities and Futures Commission Ordinance
(Cap. 24); or

(ii) section 12, 41, 44 or 47 of the Leveraged
Foreign Exchange Trading Ordinance (Cap.
451); and

(b) 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) 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 Securities and Futures

Commission Ordinance (Cap. 24) or the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) (as the case may be) 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.

Part IX of this Ordinance (Discipline, etc.)

35. Where -

(a) a person has before the commencement of Part IX of this Ordinance committed any conduct which can be the subject of -

(i) the exercise of any power under section 35 or 36 of the Commodities Trading Ordinance (Cap. 250);

(ii) the exercise of any power under section 55 or 56 of the Securities Ordinance (Cap. 333); or

(iii) the exercise of any power under section 11 or 12 of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451); and

(b) no such power has been exercised before such commencement,

then -

(i) the power may be exercised as if this Ordinance had not been enacted; and

- (ii) subject to section 37, the provisions of the Commodities Trading Ordinance (Cap. 250), the Securities Ordinance (Cap. 333) or the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) (as the case may be) and the Securities and Futures Commission Ordinance (Cap. 24) (where applicable) shall continue to apply to the exercise of the power and to any appeals and other matters relating thereto as if this Ordinance had not been enacted.

36. Where -

- (a) the exercise of any power under section 35 results in the revocation or suspension of any registration or licence; and
- (b) the registration or licence has, by virtue of sections 14 to 24, been regarded as a licence under this Ordinance,

the licence shall be regarded as having been revoked or suspended (as the case may be) on the same terms and conditions on which the registration or licence referred to in paragraph (a) is revoked or suspended.

37. Where any power is exercised under section 35, an appeal may be made to the Securities and Futures Appeals Tribunal and disposed of in all respects in respect of the exercise of the power as if the power had been exercised under Part IX of this Ordinance.

**Part X of this Ordinance (Powers of intervention
and proceedings)**

38. Where -

(a) before the commencement of Part X of this Ordinance, there has been served on any person a notice under -

(i) section 39(1), 40, 41(1), 42(4) or 43(1) of the Securities and Futures Commission Ordinance (Cap. 24); or

(ii) section 50, 51, 52(1), 53(4) or 54(1) of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451); and

(b) the prohibition or requirement to which the notice relates would, but for the enactment of this Ordinance, continue to have force and effect on or after such commencement,

then -

(i) the prohibition or requirement shall continue to have force and effect as if this Ordinance had not been enacted; and

(ii) subject to section 39, the provisions of the Securities and Futures Commission Ordinance (Cap. 24) or both the Securities and Futures Commission Ordinance (Cap. 24) and the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) (as the case may be) shall continue to apply to the prohibition

or requirement and to any appeals and other matters relating thereto as if this Ordinance had not been enacted.

39. Where -

(a) before the commencement of Part X of this Ordinance an appeal has not been made in respect of a prohibition or requirement referred to in section 38 -

(i) under section 44 of the Securities and Futures Commission Ordinance (Cap. 24), whether by virtue of the application of section 38(ii) or not; or

(ii) under section 56 of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451), whether by virtue of the application of section 38(ii) or not; and

(b) the time within which the appeal may be made under such section is current and has not expired or, in a case where section 38 applies, is current and has not expired or has not begun to run, upon such commencement,

an appeal may be made to the Securities and Futures Appeals Tribunal and disposed of in all respects in respect of the prohibition or requirement as if the prohibition or requirement had been imposed under that Part as a result of the exercise of any of the powers under section 189, 190, 191, 192 and 194 of this

Ordinance.

**Part XI of this Ordinance (Securities and
Futures Appeals Tribunal)**

40. 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 Securities and Futures Commission Ordinance (Cap. 24); or
- (b) Part IX of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451),

and the appeal has not been finally determined before such commencement, the appeal may be continued and disposed of in all respects as if this Ordinance had not been enacted.

41. Subject to sections 37 and 39, where -

- (a) before the commencement of Part XI of this Ordinance an appeal has not been made under -
 - (i) Part III of the Securities and Futures Commission Ordinance (Cap. 24); or
 - (ii) Part IX of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451); and
- (b) the time within which the appeal may be made under such Part is current 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 as if this Ordinance had not been

enacted.

42. Where, by virtue of sections 35, 38, 40 and 41, any appeal is or is to be made or continued, and disposed of, under -

- (a) Part III of the Securities and Futures Commission Ordinance (Cap. 24); or
- (b) Part IX of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451),

then, without limiting the generality of sections 35, 38, 40 and 41 -

- (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 established by section 18 of the Securities and Futures Commission Ordinance (Cap. 24) or as a member of a tribunal appointed under that Ordinance 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)

43. (1) In sections 44 to 46 -

"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;

"repealed Commodities Trading Ordinance" (已廢除的《商品交易條例》) means the Commodities Trading Ordinance (Cap. 250) repealed by 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 by 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 by this Ordinance;

"repealed Securities Ordinance" (已廢除的《證券條例》) means the Securities Ordinance (Cap. 333) repealed by this Ordinance;

"repealed Securities Rules" (已廢除的《證券規則》) means the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) repealed by this 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.

(2) For the avoidance of doubt, it is declared that nothing in sections 44 to 46 shall be construed as enabling a claim to be made which was barred under any enactment or rule of law.

Unified Exchange Compensation Fund

44. (1) Subject to this section, the provisions of Part X of the repealed Securities Ordinance shall continue to apply until such time as any balance referred to in subsection (9) has been paid under subsection (10), subject to the following modifications -

- (a) those provisions shall not apply in relation to a default occurring on or after the appointed day;
- (b) section 112 of that Part X shall cease to apply as from the appointed day;
- (c) for any reference to the Unified Exchange, there were substituted a reference to a recognized stock market within the meaning of this Ordinance;
- (d) for any reference to the Exchange Company, there were substituted a reference to the Stock Exchange Company within the meaning of this Ordinance; and
- (e) any reference to dealing in securities, listed or securities shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay such sum of money from the Unified Exchange Compensation Fund as it considers appropriate into the compensation fund, 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;

(b) the amounts (if any) which the Commission has paid into the Unified Exchange Compensation Fund under section 99(2) of the repealed Securities Ordinance; and

(c) the amounts deposited in cash under section 104 of that Ordinance.

(3) A claim for compensation from the Unified Exchange Compensation Fund, made before the appointed day that has not been disposed of may, subject to subsection (7), be continued and disposed of under subsection (1).

(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 or continued by any person.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to claim 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) Where, in respect of a default occurring prior to the appointed day which is the subject of an existing claim lodged with the Commission prior to the appointed day, a person wishes to continue with the claim, he shall notify the Commission in writing on or before the date specified in the notice published under subsection (4) that he wishes to continue with the claim.

(8) Any claim that is not made within the time limited by subsection (5) or continued by a notification under subsection (7) shall, unless the Stock Exchange Company otherwise determines, be barred.

(9) 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 the balance remaining in accordance with subsection (10).

(10) Any balance mentioned in subsection (9) shall -

(a) firstly, be used to repay the Commission any amounts which the Commission has paid to the Unified Exchange Compensation Fund under section 99(2) of the repealed Securities Ordinance;

- (b) secondly, be used to repay the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, the amounts deposited in cash under section 104 of the repealed Securities Ordinance, to the extent that the balance is sufficient for this purpose and provided such deposits have not previously been repaid; and on any such payment being made those amounts 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); and
- (c) if there is any remaining balance, be paid into the compensation fund.

(11) Where a claim made or continued under this section is allowed (whether in full or in part) and the claimant cannot be located, the Commission shall hold for the claimant the amount allowed for 3 years after which time the Commission shall apply the amount in accordance with subsection (10).

(12) Except as provided in this section, no claim for compensation from the Unified Exchange Compensation Fund may be made or continued after the appointed day.

(13) In this section -
"appointed day" (指定日期) means a date to be appointed by the Secretary for Financial Services by notice published in the Gazette for the purposes of this section;

"default" (失責) means a default referred to in section 109(1) of the repealed Securities Ordinance.

Futures Exchange Compensation Fund

45. (1) Subject to this section, the provisions of Part VIII of the repealed Commodities Trading Ordinance and the repealed Contract Levy Rules shall continue to apply until such time as any balance referred to in subsection (9) has been paid under subsection (10), subject to the following modifications -

- (a) those provisions shall not apply in relation to a default occurring on or after the appointed day;
- (b) section 89 of that Part VIII shall cease to apply as from the appointed day;
- (c) for any reference to the Commodity Exchange, there were substituted a reference to a recognized futures market within the meaning of this Ordinance;
- (d) for any reference to the Exchange Company, there were substituted a reference to the Futures Exchange Company within the meaning of this Ordinance; and
- (e) any reference to futures contracts shall be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay such sum of money from the Futures Exchange Compensation Fund as it

considers appropriate into the compensation fund, 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.

(3) A claim for compensation from the Futures Exchange Compensation Fund, made before the appointed day that has not been disposed of may, subject to subsection (7), be continued and disposed of under subsection (1).

(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 or continued by any person.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to claim 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) Where, in respect of a default occurring prior to the appointed day which is the subject of an existing claim lodged with the Commission prior to the appointed day, a person wishes to continue with the claim, he shall notify the Commission in writing on or before the date specified in the notice published under subsection (4) that he wishes to continue with the claim.

(8) Any claim that is not made within the time limited by subsection (5) or continued by a notification under subsection (7) shall, unless the Futures Exchange Company otherwise determines, be barred.

(9) 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 the balance remaining in accordance with subsection (10).

(10) Any balance mentioned in subsection (9) shall -

(a) be used to repay the Futures Exchange Company or, if the Futures Exchange Company is in liquidation,

the liquidator of the Futures Exchange Company, the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, to the extent that the balance is sufficient for this purpose and provided such deposits have not previously been repaid; and on any such payment being made those amounts 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); and

(b) if there is any remaining balance, be paid into the compensation fund.

(11) Where a claim made or continued under this section is allowed (whether in full or in part) and the claimant cannot be located, the Commission shall hold for the claimant the amount allowed for 3 years after which time the Commission shall apply the amount in accordance with subsection (10).

(12) Except as provided in this section, no claim for compensation from the Futures Exchange Compensation Fund may be made or continued after the appointed day.

(13) In this section -

"appointed day" (指定日期) means a date to be appointed by the

Secretary for Financial Services by notice published in the Gazette for the purposes of this section;

"default" (失責) means a default referred to in section 87(1) of

the repealed Commodities Trading Ordinance.

Dealers Deposit Scheme

46. (1) The provisions of -

- (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 and the Schedule to the repealed Securities Rules;
- (c) section 33 of the repealed Commodities Trading Ordinance; and
- (d) Parts I and III (other than rule 15(5)) of and Schedule 2 to the repealed Commodities Trading Rules,

shall, subject to this section, continue to apply for the purposes of this section.

(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 or from 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 continue to be

made under the applicable provisions specified in subsection (1).

(3) 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.

(4) Where, in respect of a default occurring prior to the appointed day, a person wishes to make a claim for compensation against any deposit referred to in subsection (3), he shall lodge his claim in writing with the Commission -

(a) if a notice under subsection (3) 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.

(5) A claim made under subsection (4) shall be regarded as a claim made under rule 6(5) of the repealed Securities Rules or (as the case may be) rule 15(6) of the repealed Commodities Trading Rules, and other provisions of the Rules shall apply accordingly.

(6) Where, in respect of a default occurring prior to the appointed day which is the subject of an existing claim lodged with the Commission prior to the appointed day, a person wishes to

continue with the claim, he shall notify the Commission in writing on or before the date specified in the notice published under subsection (3) that he wishes to continue with the claim.

(7) Any claim that is not made within the time limited by subsection (4) or continued by a notification under subsection (6) shall, unless the Commission otherwise determines, be barred.

(8) Where -

(a) a claim is barred under subsection (7); or

(b) 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 deposit, the Commission shall repay the deposit to which the claim relates or (as the case may be) the balance remaining 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) and the claimant cannot be located, the Commission shall hold for the claimant the amount allowed for 3 years after which time the Commission shall repay

the amount to the dealer concerned.

(11) Where -

- (a) a deposit or any balance remaining 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); and
- (b) the dealer cannot be located within 3 years of -
 - (i) in the case of subsection (8)(a), the claim being barred;
 - (ii) in the case of subsection (8)(b), the determination of the claim;
 - (iii) in the case of subsection (9), the appointed day; or
 - (iv) 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 balance remaining 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) In this section -

"appointed day" (指定日期) means a date to be appointed by the

Secretary for Financial Services by notice published in the Gazette for the purposes of this section;

"default" (失責) 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)

47. Where -

- (a) the Securities (Insider Dealing) Ordinance (Cap. 395) would but for the enactment of this Ordinance have effect with respect to an insider dealing; and
- (b) the insider dealing does not take place on or after the commencement of Part XIII of this Ordinance,

then -

- (i) that Ordinance shall continue to have application in connection with the insider dealing or with any inquiry, appeal, or other matters related thereto as if this Ordinance had not been enacted; and
- (ii) without limiting the generality of paragraph (i), section 16(1) of that Ordinance shall have application accordingly.

48. Where by virtue of section 47, any inquiry is or is to be instituted or disposed of under the Securities (Insider Dealing) Ordinance (Cap. 395), then, without limiting the generality of section 47 -

- (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) of the Insider Dealing Tribunal referred to in section 15 of that Ordinance 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)

49. 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 any such duty shall be performed in accordance with that Ordinance as if this Ordinance had not been enacted.

50. Any exemption that is granted under section 2A of the Securities (Disclosure of Interests) Ordinance (Cap. 396) and has effect immediately before the commencement of Part XV of this Ordinance shall, upon such commencement, be regarded as granted, subject to the same conditions, under section 299 of this Ordinance.

51. Where any application has been made under the Securities (Disclosure of Interests) Ordinance (Cap. 396) and the application

has not been finally determined before the commencement of Part XV of this Ordinance, the application shall, upon such commencement, be dealt with in accordance with that Ordinance as if this Ordinance had not been enacted.

52. Any restrictions imposed, or any orders made, by the court or the Financial Secretary (as the case may be) under the Securities (Disclosure of Interests) Ordinance (Cap. 396), and have effect immediately before the commencement of Part XV of this Ordinance, shall continue to have effect as if this Ordinance had not been enacted.

53. Where any investigation is carried out under the Securities (Disclosure of Interests) Ordinance (Cap. 396) and such investigation has not been concluded before the commencement of Part XV of this Ordinance, any power that is exercisable under that Ordinance for the purposes of the investigation shall remain exercisable as if this Ordinance had not been enacted.

54. Any register (including any part of it and any index) or any report that is kept or maintained under the Securities (Disclosure of Interests) Ordinance (Cap. 396) 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 55, 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.

55. Where any register (including any part of it and any index) or any report has been kept or maintained under the Securities (Disclosure of Interests) Ordinance (Cap. 396) 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

56. For the purposes of section 374 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 respectively published under and in accordance with section 374(2)(a) and (b) of this Ordinance, and the provisions of this Ordinance shall apply to the codes accordingly.

57. Where -

- (a) any provision of an Ordinance repealed under section 382 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 corresponding 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 the corresponding provision.

58. Subject as otherwise provided in this Part, any judicial proceedings commenced under, or by virtue of the exercise of any function conferred by, any provision of an Ordinance repealed under section 382 of this Ordinance, and pending or otherwise not finally determined at the time of the repeal of the provision may be continued and disposed of in all respects after the repeal as if this Ordinance had not been enacted.

59. Where -

- (a) any period of time specified in any provision of an Ordinance repealed under section 382 of this

Ordinance is current at the time of the repeal of the provision; and

(b) there is, in relation to the provision, a corresponding provision in this Ordinance,

then, for the purpose of reckoning the period of time for the purposes of the corresponding provision, this Ordinance shall have effect as if the corresponding provision had come into operation when that period of time began to run.

PART 2

CONSEQUENTIAL AND SUPPLEMENTAL AMENDMENTS

Item

Enactment

Amendment