

## **LEGISLATIVE COUNCIL BRIEF**

### **Securities and Futures Ordinance (Chapter 571)**

## **SECURITIES AND FUTURES (AMENDMENT) BILL 2015**

### **INTRODUCTION**

A At the meeting of the Executive Council on 2 June 2015, the Council **ADVISED** and the Chief Executive **ORDERED** that the Securities and Futures (Amendment) Bill 2015 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to enable the Securities and Futures Commission (“the SFC”) to provide supervisory assistance to regulators outside Hong Kong and to refine certain provisions in the Securities and Futures Ordinance (Cap. 571) (“the Ordinance”).

### **JUSTIFICATIONS**

#### **(I) Allowing the SFC to provide supervisory assistance to regulators outside Hong Kong**

2. There are currently no provisions that explicitly enable the SFC to exercise its supervisory powers under section 180 of the Ordinance<sup>1</sup> to obtain information for the purposes of assisting regulators outside Hong Kong in non-enforcement related matters. We need to enable the SFC to exercise its supervisory powers to provide supervisory assistance to regulators outside Hong Kong in certain circumstances upon request for the reasons set out below –

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<sup>1</sup> The SFC may exercise its supervisory powers to enter the premises of licensed corporations, inspect record or document and make enquiries of licensed corporations under section 180 of the Ordinance without the need for it to have reasonable cause to believe that some form of misconduct has taken place as is required before exercising its investigatory powers. However, the supervisory powers under section 180 may only be exercised to ascertain compliance by an intermediary or an associated entity of an intermediary with the specified requirements under the Ordinance.

- (a) *Enabling the SFC to engage regulators outside Hong Kong to negotiate more supervisory MOUs to enhance its monitoring of the financial stability in Hong Kong*

International supervisory cooperation is built on mutual trust, mutual assistance and reciprocity. It is important for the SFC to be empowered to provide assistance in a manner consistent with international norms to regulators outside Hong Kong on supervisory matters so that it could be in a position to enter into reciprocal supervisory cooperation arrangements with such regulators and obtain information concerning entities they regulate when this is necessary for supervisory purposes here. This is particularly important given the environment in which the SFC needs to perform its supervisory functions, including Hong Kong's open market architecture and the fact that many Hong Kong licensed corporations are part of international financial groups whose activities outside Hong Kong may have significant effect on Hong Kong licensed corporations and the financial stability of Hong Kong.

- (b) *Better adherence to international standards*

The proposal will allow the SFC to comply with the General Principles Relating to Cooperation in the International Organisation of Securities Commissions Report under which authorities should share information to assist each other in fulfilling their respective supervisory and oversight responsibilities for regulated entities operating across borders (such as intermediaries) and information regarding entities of systemic significance or whose activities could have a systemic impact on markets.

- (c) *Enabling licensed corporations to have access to overseas markets*

The proposal would facilitate, in certain cases, Hong Kong regulated entities gaining access to overseas markets which otherwise could be denied. For example, supervisory cooperation arrangements are required under the Alternative Investment Fund Managers Directive ("AIFMD") for SFC-licensed asset managers to access the European Union market. The SFC is unable to meet its full obligations under

the AIFMD Memorandum of Understanding without amending the existing law.

## **The Proposal**

### Scope

3. We need to amend section 186 of the Ordinance (which provides for assistance to regulators outside Hong Kong)<sup>2</sup> to enable the SFC to provide a narrow form of supervisory assistance to regulators outside Hong Kong upon request. The request for supervisory assistance to obtain new information<sup>3</sup> made by a regulator outside Hong Kong must be in relation to -

- (a) a licensed corporation in Hong Kong that is regulated by the SFC and is also regulated by the regulator outside Hong Kong; or
- (b) a related corporation of a licensed corporation (that may be its holding company, its subsidiary or a subsidiary of its holding company) where the related corporation is regulated by the regulator outside Hong Kong.

The proposal will not affect Hong Kong licensed corporations where neither they nor their related corporations are regulated by regulators outside Hong Kong. Also, the information requested to be obtained must be in relation to the regulated activities supervised by the SFC.

4. In order to guard against requests for information that are excessive, we further propose that the SFC may only provide assistance if it receives a written statement confirming that the regulator outside Hong Kong has not been and will not be able to obtain the information (subject to paragraph 7 below) by any other reasonable means in order to fully ascertain the matters described below –

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<sup>2</sup> Under section 186 of the Ordinance, if the SFC receives an enforcement-related request from an regulator outside Hong Kong for assistance in investigating suspected contraventions of certain legal or regulatory requirements, the SFC may, amongst other things, investigate the matter by exercising its relevant investigatory powers (for instance by obtaining information and documents requested by the regulator for enforcement purposes) provided that certain conditions are met.

<sup>3</sup> If the requested information is already in the possession of the SFC at the time of the request, the SFC may disclose it to a regulator outside Hong Kong through the gateway under section 378(3)(g)(i) of the SFO.

- (a) whether the relevant corporation constitutes a risk to, or may affect, the financial stability of the jurisdiction of the regulator; or
- (b) compliance by the relevant corporation with legal or regulatory requirements that the regulator administers in relation to transactions or activities regarding securities, futures contracts, leveraged foreign exchange contracts, over-the-counter (“OTC”) derivative products, collective investment schemes, or other similar transactions or activities that it regulates.

### Safeguards

5. Under the proposal, the existing conditions for providing assistance to regulators outside Hong Kong<sup>4</sup> will also apply to the SFC’s provision of supervisory cooperation, which include the SFC being satisfied that providing assistance to the requesting regulator is in the “public interest”. In determining whether it would be in the “public interest”, the SFC is required under section 186(4) of the Ordinance to take into account, inter alia, whether the requesting regulator is able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong.

6. In addition to the above existing legal safeguards, in order to guard against onward disclosure or unauthorised use, the proposal further requires written undertakings from the regulator outside Hong Kong to the SFC to the effect that –

- (a) it will use the information obtained from the SFC because of the request for assistance solely for ascertaining the matters described in paragraph 4 above and will not use the information in any proceedings unless the regulator outside Hong Kong has made a separate request for investigation assistance and the SFC has agreed to provide such information;

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<sup>4</sup> The key conditions are - (a) The SFC is of the opinion that (i) it is desirable or expedient that the assistance should be provided in the interest of the investing public or in the public interest; or (ii) the assistance will enable or assist the regulator outside Hong Kong to perform its functions and it is not contrary to the interest of the investing public or to the public interest; and (b) the SFC is of the opinion that the regulator outside Hong Kong performs a similar function and is subject to adequate secrecy provisions.

- (b) it will treat the information as confidential and will not disclose it to any other person for any purpose without the consent of the SFC;
- (c) it will inform the SFC as soon as reasonably practicable in the event that it receives a legally enforceable demand for disclosure of any of the information and assist in preserving the confidentiality of the information by taking all appropriate measures; and
- (d) it will cooperate with the SFC in any action or proceedings which seek to safeguard the confidentiality of the information.

7. Subject to paragraphs 3-6 above, if the SFC decides to provide assistance to the regulator outside Hong Kong, it may require the licensed corporation or a related corporation of the licensed corporation to provide a copy of any record or document relating to any regulated activity carried on by the licensed corporation or any transaction or activity which was undertaken in the course of, or which may affect, any regulated activity carried on by the licensed corporation, and answer any question regarding any such record, document, transaction or activity. It should be noted that the SFC is not seeking the power to enter the premises of any corporation.

## **(II) Refining certain provisions in the Ordinance**

8. We propose to refine certain provisions in the Ordinance with a view to reflecting change of circumstances since the Ordinance commenced in 2003, correcting errors and addressing anomalies that have emerged in the administration of certain of its provisions (please see paragraphs 9-16 below).

### *(a) Dispensing with printed licences for licensed representatives*

9. Currently, where a licence is granted under sections 120 and 121 of the Ordinance, the SFC issues a certificate of licence (“printed licence”) to the representative concerned. Given that the SFC maintains an online public register of licensed persons, which is more accessible, up to date and easier and less costly to maintain than issuing and amending printed licences, the proposed amendments seek to dispense with the need for licensed representatives to have printed licences. This will reduce the

compliance burden and associated costs to the industry. The requirements that licensed corporations should maintain and exhibit their printed licences at their principal place of business will remain. The SFC has consulted several broker associations which all strongly support the proposal.

10. Separately, under the Securities and Futures (Amendment) Ordinance 2014 (“the 2014 Ordinance”), which was passed by LegCo in March 2014, intermediaries that engage in dealing in, advising on or providing clearing agency services in OTC derivatives as a business will be required to be licensed or registered by the SFC under the Ordinance. Two new regulated activities (“RA”) will be introduced under the Ordinance for this purpose. In addition, the existing Type 9 RA (asset management) and Type 7 RA (provision of automated trading services) will be expanded to cover OTC derivative portfolios and transactions respectively. To minimise disruption to the market, a new Schedule 11 (containing transitional arrangements for deemed licensing and deemed registration)<sup>5</sup> will be added to the Ordinance by the 2014 Ordinance for the new and expanded RAs. For the deemed licensing/registration period, the SFC plans to issue printed licences and certificates of registration to intermediaries in the OTC derivative market to indicate the new and expanded RAs for which they are deemed to be licensed or registered. This will allow the intermediaries to have a certificate in physical form for potential clients to see for better investor protection. The SFC will issue a Schedule 11 printed licence/certificate of registration specifying the RA for which the corporation/financial institution is deemed to be licensed or registered. The Schedule 11 printed licence/certificate of registration should be returned to the SFC when the deemed status ends as a result of withdrawal of the normal licence application, refusal of the normal licence application, or approval of the normal licence application. Amendments are proposed to the 2014 Ordinance to provide for the arrangements.

*(b) Enabling improved working of section 203 of the Ordinance upon revocation or suspension of licences or registrations*

11. Under the existing section 203 of the Ordinance, the SFC may give permission to a person whose licence or registration is revoked or suspended to carry on business operations for the purpose of closing

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<sup>5</sup> The new Schedule 11 of the Ordinance is to be added by section 55 of the 2014 Ordinance. That section is not yet in operation.

down the business connected with the revocation or protecting clients' interests. In applying section 203, the SFC found that it does not provide clearly that the licensed corporation or registered institution and the personnel involved are obliged to comply with the relevant provisions as defined in section 1 of Schedule 1 to the Ordinance when carrying on such business operations. The proposed amendments seek to clarify this and other aspects.

*(c) Enabling a recognized exchange company to grant consent to onward disclosure under section 378 of the Ordinance*

12. Currently, only the SFC may consent to onward disclosure of information that has been disclosed under section 378 of the Ordinance (Preservation of secrecy). However, the Stock Exchange of Hong Kong Limited ("SEHK"), being a recognized exchange company, needs to disclose information in the course of carrying out its functions. For example, listed corporations may request onward disclosure of information to their insurers or auditors that they are under investigation by the SEHK. This has resulted in the SEHK and their interlocutors frequently approaching the SFC for consent to disclose information relating to SEHK matters, although there is no regulatory need for the SFC otherwise to be involved in the process. The proposal seeks to amend section 378 of the Ordinance to provide that the recognized exchange company that made the initial disclosure of information may consent to onward disclosure of the information to improve administrative efficiency.

*(d) Enabling delegation of the function under section 5(4)(e) of the Ordinance*

13. Under the existing section 5(4)(e) of the Ordinance, the SFC may publish materials (e.g. circulars, frequently asked questions and answers) indicating to intermediaries the manner in which it proposes to perform any of its functions. According to Part 2 of Schedule 2 to the Ordinance, the function under section 5(4)(e) is currently non-delegable. Since the materials are technical and often temporary, we propose to amend the Ordinance to enable delegation of the function so that the SFC could carry out the function more effectively.

*(e) Minor amendments to levy provisions*

14. The Securities and Futures (Levy) Order (Cap. sub. leg. 571Z) (“Order”) prescribes the levy rates payable in respect of trading in securities and futures/options contracts. Certain percentages are specified in the Order for the calculation of levy, which may result in a fraction of a cent that cannot be collected. Currently, securities transactions are subject to a percentage levy (0.0027%) and the resulting amount is rounded to the nearest cent administratively. We consider it necessary to add a provision to the effect that a reference in the Order to the levy payable for a sale and purchase, whether expressed as a percentage or a dollar figure, means an amount rounded to the nearest cent. Similar provisions can be found in other Ordinances (e.g. Exchanges (Special Levy) Ordinance (Cap. 351)). We propose to also amend the Securities and Futures (Investor Compensation – Levy) Rules (Cap. 571 sub. leg. AB), which prescribe the levy rates payable in respect of sale and purchase of securities to fund the Investor Compensation Fund, for the same reasons.

15. In addition, the Order has been amended recently to reduce the levy payable for a sale and purchase of mini futures and options and stock futures contracts by 10% from \$0.12 to \$0.108 per contract, with effect from 1 November 2014. Prior to the implementation of the reduced levy of \$0.108 per contract, the SFC noted that the systems of the Hong Kong Exchanges and Clearing Limited (“HKEx”) and some brokers’ systems could only support the collection of levies up to 2 decimal places. In order to avoid any undue operational burden on the industry, the SFC decided to adopt a temporary arrangement to collect the levies for mini futures and options and stock futures contracts at \$0.10 per contract. The arrangement is to facilitate HKEx and brokers to collect the SFC levies. To rectify the problem, we propose to make amendments to the relevant provisions by substituting “\$0.10” for “\$0.108”.

*(f) Amendments to Part XV of the Ordinance relating to changes made by the new Companies Ordinance to voting shares*

16. The Companies Ordinance (Cap. 622) abolished the nominal value of shares. Part XV of the Ordinance (Disclosure of interests) used the nominal value of shares for the purposes of determining whether or not a person comes under a duty of disclosure. Amendments were then made by the Companies Ordinance to substitute the number of voting shares in Part XV of the Ordinance as the mechanism for calculating



whether a duty of disclosure has arisen in place of the term nominal value of the shares in which a person is interested. As a result, the new terminology “voting shares” is currently used in many provisions in Part XV of the Ordinance and the relevant subsidiary legislation. However, there are still a number of references to “shares” in existing provisions which are intended to mean “voting shares”. In order to add clarity to the legislative provisions, the proposal seeks to make further amendments to some existing provisions.

## **THE BILL**

17. The main provisions of the Bill are as follows -

- (a) **Part 2** amends the Ordinance and relevant subsidiary legislation to dispense with issuing printed licences to individuals licensed under section 120 or 121 of the Ordinance. It also amends the new Schedule 11 of the Ordinance, which is not yet in operation, to provide for Schedule 11 printed licences and certificates of registration for deemed licensing of corporations and deemed registration of authorized financial institutions under that Schedule;
- (b) **Part 3** amends relevant provisions in Part VIII of the Ordinance to enable the SFC to provide supervisory assistance to regulators outside Hong Kong;
- (c) **Part 4** amends section 203 of the Ordinance to empower the SFC to permit an intermediary and an individual named by the SFC in the permission to carry on essential business operations after the revocation/suspension of the intermediary’s licence or registration;
- (d) **Part 5** amends section 378 of the Ordinance so that if a specified person is a recognized exchange company, the SFC and the company may consent to onward disclosure of the information which is disclosed by the company;
- (e) **Part 6** amends section 2 of Part 2 of Schedule 2 to the Ordinance to remove the SFC’s function under section 5(4)(e) of the Ordinance from the list of non-delegable functions;

- (f) **Part 7** adds new provisions to the relevant subsidiary legislation to provide for the rounding of levy amounts to the nearest cent, and amends the fixed levy amount for a sale and purchase of certain futures contracts;
- (g) **Part 8** amends section 307(1) of the Ordinance and section 11(6) of the Securities and Futures (Contract Notes, Statements of Account and Receipts and Rules) (Cap. 571 sub. leg. Q) to correct minor errors; and
- (h) **The Schedule** amends certain references to “shares” in Part XV of the Ordinance and the Securities and Futures (Disclosure of Interests-Exclusions) Regulation (Cap. 571 sub. leg. AG). Those references are intended to be references to “voting shares” as defined by section 308 of the Ordinance.

B

The existing provisions being amended are at **Annex B**.

## LEGISLATIVE TIMETABLE

18. The legislative timetable will be as follows –

Publication in the Gazette	12 June 2015
First Reading and commencement of Second Reading debate	24 June 2015
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## COMMENCEMENT

19. The Bill will come into operation on the day on which the enacted Securities and Futures (Amendment) Ordinance 2015 is published in the Gazette.

## **IMPLICATIONS OF THE PROPOSAL**

20. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the Ordinance. There are no significant sustainability implications, and no productivity, environmental or family implications.

21. Regarding the proposal to enable the SFC to provide supervisory assistance to regulators outside Hong Kong, as the SFC will be responsible for handling requests from regulators outside Hong Kong, there are no financial and civil service implications to the Government. On economic implications, the proposed amendments would ensure that the SFC can cooperate with its counterparts outside Hong Kong in respect of supervision. This would reinforce Hong Kong's role as an international financial centre and help maintain Hong Kong's financial stability, bringing about a positive impact on the further development of Hong Kong's financial services industry. On the other hand, the proposed amendments might entail increased compliance costs to the relevant market participants (mainly multinational financial institutions), though the magnitude of the impact would vary among different participants. There are no financial and civil service implications to the Government regarding the refinement of certain provisions in the Ordinance.

## **PUBLIC CONSULTATION**

22. The SFC launched a public consultation in December 2014 on the legislative proposal to empower the SFC to provide supervisory assistance to regulators outside Hong Kong, and published the consultation conclusions in June 2015. The SFC has received a total of eight written submissions. The majority of the respondents agree with the proposal, with some comments on the details of the proposal.

23. Together with the SFC, we briefed the LegCo Panel on Financial Affairs on 13 April 2015 on the legislative proposals. While Members supported the introduction of a Bill into LegCo to implement the proposals, some Members suggested that, with reference to the current mechanism under the bilateral exchange of tax information, a mechanism should be put in place to allow licensed corporations to be notified of and seek a review, if necessary, of the SFC's decision to provide information relevant to them to regulators outside Hong Kong. Under the current

proposal, when exercising its new power to obtain information from the licensed corporations/related corporations direct and transmit that information to the regulator outside Hong Kong, the SFC would notify the licensed corporations/related corporations and make clear that they are required under the new section 186 of the Ordinance to provide the requested information. The licensed corporations/related corporations would have ample opportunity to satisfy themselves that the information they are providing to the SFC is correct. There is in fact no such review procedure in the securities laws of other major comparable jurisdictions, such as Australia, Singapore and the United Kingdom. The licensed corporations/related corporations may also challenge the request for information by the SFC for transfer to regulators outside Hong Kong by way of judicial review.

## **PUBLICITY**

24. We will issue a press release upon the gazettal of the Bill on 12 June 2015, and arrange a spokesperson to answer media enquiries.

## **ENQUIRIES**

25. Enquiries relating to this brief can be directed to Ms Joyce Ho, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2810 2054.

**Financial Services Branch**

**Financial Services and the Treasury Bureau**

**10 June 2015**

# Securities and Futures (Amendment) Bill 2015

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# A BILL

## To

Amend the Securities and Futures Ordinance and its subsidiary legislation to adjust provisions regarding printed licences and certificates of registration; to provide for supervisory assistance to regulators outside Hong Kong; to adjust provisions regarding business operations that may be carried on upon revocation or suspension of licences or registrations; to provide for onward disclosure of information disclosed by a recognized exchange company; to enable the delegation of a function of the Securities and Futures Commission; to provide for the rounding of certain levy amounts; to make minor amendments; to describe voting shares clearly in certain provisions; and to make consequential and related amendments.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

#### 1. Short title

This Ordinance may be cited as the Securities and Futures (Amendment) Ordinance 2015.

#### 2. Enactments amended

- (1) The enactments specified in Parts 2 to 8 are amended as set out in those Parts.

- (2) A provision of an enactment specified in Part 1 or 2 of the Schedule, that is set out in column 2 of an item in that Schedule, is amended by repealing the words set out in column 3 of that item (wherever appearing in that provision) and substituting the words set out in column 4 of that item.
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## Part 2

### Amendments Relating to Printed Licences and Certificates of Registration

#### Division 1—Amendments to Securities and Futures Ordinance (Cap. 571)

3. **Section 116 amended (corporations to be licensed for carrying on regulated activities)**
- (1) Section 116(1)—  
**Repeal**  
“as the Commission may specify in the licence”.
- (2) After section 116(1)—  
**Add**  
“(1A) The Commission must, on granting a licence under subsection (1), issue to the applicant a printed licence specifying the regulated activity for which the applicant is licensed.”.
- (3) Section 116(8)—  
**Repeal**  
“licence”  
**Substitute**  
“printed licence”.
4. **Section 117 amended (grant of temporary licences to corporations for carrying on regulated activities)**
- (1) Section 117(1)—  
**Repeal**



“as the Commission may specify in the licence”.

- (2) After section 117(1)—

**Add**

“(1A) The Commission must, on granting a licence under subsection (1), issue to the applicant a printed licence specifying the regulated activity for which the applicant is licensed.”.

- (3) Section 117(6)—

**Repeal**

“licence”

**Substitute**

“printed licence”.

**5. Section 120 amended (representatives to be licensed)**

- (1) Section 120(1)—

**Repeal**

“as the Commission may specify in the licence”.

- (2) After section 120(2)—

**Add**

“(2A) On granting a licence under subsection (1) or (2), the Commission must, by notice in writing served on the applicant, inform the applicant of—

- (a) the grant of the licence; and
- (b) the regulated activity for which the applicant is licensed.

- (2B) Beginning on the day on which Part 2 of the Securities and Futures (Amendment) Ordinance 2015 ( of 2015) comes into operation—

- (a) no printed licence is to be issued on granting a licence under subsection (1) or (2); and

- (b) a printed licence issued by the Commission to a licensed representative before that day ceases to be effective for indicating that an individual is licensed under subsection (1) or (2).”.

- (3) Section 120—

**Repeal subsections (11) and (12).**

- (4) Section 120(13)—

**Repeal**

everything after “for which”

**Substitute**

“the representative is licensed under subsection (1) or (2), use a name other than the name under which the representative is licensed.”.

**6. Section 121 amended (temporary licences for representatives)**

- (1) Section 121(1)—

**Repeal**

“as the Commission may specify in the licence”.

- (2) After section 121(1)—

**Add**

“(1A) On granting a licence under subsection (1), the Commission must, by notice in writing served on the applicant, inform the applicant of—

- (a) the grant of the licence; and
- (b) the regulated activity for which the applicant is licensed.

(1B) Beginning on the day on which Part 2 of the Securities and Futures (Amendment) Ordinance 2015 ( of 2015) comes into operation—

(a) no printed licence is to be issued on granting a licence under subsection (1); and

(b) a printed licence issued by the Commission to a licensed representative before that day ceases to be effective for indicating that an individual is licensed under subsection (1)."

(3) Section 121(7)—

**Repeal**

everything after "for which"

**Substitute**

"the representative is licensed under subsection (1), use a name other than the name under which the representative is licensed."

**7. Section 122 amended (approval and transfer of accreditation)**

(1) Section 122(1)—

**Repeal**

"and shall specify in the licence, upon such approval, the corporation as his principal"

**Substitute**

"and on the Commission's approving the accreditation, the corporation becomes the representative's principal".

(2) Section 122(2)—

**Repeal**

everything after "(as the case may be),"

**Substitute**

"and on the Commission's approving the transfer, the corporation becomes the representative's principal."

(3) After section 122(2)—

**Add**

"(2A) On granting an approval under subsection (1) or (2), the Commission must, by notice in writing served on the applicant, inform the applicant of the approval."

**8. Section 123 amended (Commission to be notified, etc. if licensed representative ceases to act for principal)**

(1) Section 123(1)(a)—

**Repeal**

"cessation;"

**Substitute**

"cessation; and".

(2) Section 123(1)—

**Repeal paragraph (b).**

(3) Section 123—

**Repeal subsection (3).**

**9. Section 124 amended (duplicate licence, etc.)**

(1) Section 124, heading—

**Repeal**

"licence"

**Substitute**

"printed licence".

(2) Section 124(1)—

**Repeal**

“licensed person” (wherever appearing)

**Substitute**

“licensed corporation”.

- (3) Section 124(1)—

**Repeal**

“his licence”

**Substitute**

“its printed licence”.

- (4) Section 124(1)—

**Repeal**

“the licence”

**Substitute**

“the printed licence”.

- (5) Section 124(2)—

**Repeal**

“licensed person” (wherever appearing)

**Substitute**

“licensed corporation”.

- (6) Section 124(2)(a)—

**Repeal**

“licence”

**Substitute**

“printed licence”.

**10. Section 127 amended (variation of regulated activity specified in licence or certificate of registration)**

- (1) Section 127, heading—

**Repeal**

“specified in licence or certificate of registration”

**Substitute**

“for which licensed person or registered institution is licensed or registered”.

- (2) Section 127(1)—

**Repeal**

“specified in the applicant’s licence or certificate of registration”

**Substitute**

“for which a licensed person or registered institution is licensed or registered”.

- (3) Section 127(1), English text—

**Repeal**

“so specified”.

- (4) Section 127—

**Repeal subsection (2)**

**Substitute**

- “(2) If a person applies for variation under subsection (1) by adding a regulated activity, the application is, for the purposes of this Part, to be regarded as an application for a licence or registration (as the case may be) in relation to that regulated activity.”.

**11. Section 397 amended (rules by Commission)**

- (1) Section 397(1)(a)—

**Repeal**

“licences”

**Substitute**

“printed licences”.

- (2) Section 397(1)(b)—

**Repeal**

“licences” (wherever appearing)

**Substitute**

“printed licences”.

**12. Schedule 1 amended (interpretation and general provisions)**

Schedule 1, Part 1, section 1—

**Add in alphabetical order**

“*printed licence* (印刷本牌照) means a certificate printed on paper or in any other physical form certifying the grant of a licence (whether issued before, on or after the commencement date of Part 2 of the Securities and Futures (Amendment) Ordinance 2015 ( of 2015));”.

**13. Schedule 8 amended (Securities and Futures Appeals Tribunal)**

Schedule 8, Part 2, Division 1, item 30—

**Repeal**

“licence”

**Substitute**

“printed licence”.

**Division 2—Amendments to Securities and Futures  
(Licensing and Registration) (Information) Rules (Cap. 571  
sub. leg. S)**

**14. Section 3 amended (information to be provided with applications to Commission)**

- (1) Section 3(1)(a)(iii)—

**Repeal**

“specified in its licence or certificate of registration”

**Substitute**

“for which the intermediary is licensed or registered”.

- (2) Section 3(1)(b)(iv)—

**Repeal**

“specified in his licence by adding to or reducing the regulated activity so specified”

**Substitute**

“for which the representative is licensed”.

**15. Schedule 4 amended (particulars to be contained in register)**

- (1) Schedule 4, Part 1, paragraph (c)(iii)—

**Repeal**

“holds a licence granted”

**Substitute**

“is licensed”.

- (2) Schedule 4, Part 1, paragraph (d)(i)—

**Repeal**

“holds a provisional licence granted”

**Substitute**

“is licensed”.

- (3) Schedule 4, Part 1, paragraph (d)(ii)—

**Repeal**

“holds a licence granted”

**Substitute**

“is licensed”.

**Division 3—Amendments to Securities and Futures  
(Miscellaneous) Rules (Cap. 571 sub. leg. U)**

- 16. Section 3 amended (licence or certificate of registration to be exhibited)**

- (1) Section 3, heading—

**Repeal**

“Licence”

**Substitute**

“Printed licence”.

- (2) Section 3(1)—

**Repeal**

“licence” (wherever appearing)

**Substitute**

“printed licence”.

- (3) Section 3(2)—

**Repeal**

“licence” (wherever appearing)

**Substitute**

“printed licence”.

- 17. Section 4 amended (return of licence or certificate of registration)**

- (1) Section 4, heading—

**Repeal**

“licence or certificate of registration”

**Substitute**

“printed licence or certificate of registration by intermediary”.

- (2) Section 4(1)—

**Repeal**

“or licensed representative”.

- (3) Section 4(1)—

**Repeal**

“he is”

**Substitute**

“it is”.

- (4) Section 4(1)—

**Repeal**

“he shall return his licence”

**Substitute**

“it must return its printed licence”.

- (5) Section 4(2)—

**Repeal**

everything after “any regulated activity” and before “to the Commission”

**Substitute**

“for which an intermediary is licensed or registered is varied under section 127 of the Ordinance, the intermediary must return its printed licence or certificate of registration (as the case may be)”.

(6) Section 4(3)—

**Repeal**

“in a licence or certificate of registration”

**Substitute**

“in the printed licence or certificate of registration of an intermediary”.

(7) Section 4(3)—

**Repeal**

“possession of the licence”

**Substitute**

“possession of the printed licence”.

(8) Section 4(3)—

**Repeal**

“shall return the licence”

**Substitute**

“must return the printed licence”.

**Division 4—Amendments to Securities and Futures (Fees)  
Rules (Cap. 571 sub. leg. AF)**

**18. Schedule 1 amended (fees prescribed for purposes of section 395(1)(a)(i), (iii) and (iv) of Ordinance)**

Schedule 1—

**Repeal item 9**

**Substitute**

**“9. Fee payable—**

- |     |   |         |
|-----|---|---------|
| (a) | for the issue of a printed licence under section 116 or 117 of the Ordinance if the particulars of a licensed corporation have changed since the issue of the existing printed licence                    | \$200   |
| (b) | for the grant of a certificate of registration under section 119 of the Ordinance if the particulars of a registered institution have changed since the grant of the existing certificate of registration | \$200”. |

**19. Schedule 3 amended (fees prescribed for purposes of section 395(1)(b) of Ordinance)**

(1) Schedule 3, item 11—

**Repeal**

“licence”

**Substitute**

“printed licence”.

(2) Schedule 3, item 13(a)(iii)—

**Repeal**

“specified in the licence”.

(3) Schedule 3, item 13(b)(iii)—

**Repeal**

“specified in the licence”.

(4) Schedule 3, item 13(c)(iii)—

**Repeal**

“specified in the certificate of registration”.

**Division 5—Amendments to Securities and Futures  
(Amendment) Ordinance 2014 (6 of 2014)**

**20. Section 55 amended (Schedule 11 added)**

- (1) Section 55, new Schedule 11, section 3(2)—

**Repeal**

“specified in the person’s licence”

**Substitute**

“for which the person is licensed”.

- (2) Section 55, new Schedule 11, section 4(2)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (3) Section 55, new Schedule 11, section 6(2)(b)—

**Repeal**

“specified in the licence”

**Substitute**

“for which the corporate applicant is licensed”.

- (4) Section 55, new Schedule 11, section 6(2)(c)—

**Repeal**

“specified in the licence”

**Substitute**

“for which the corporate applicant is licensed”.

- (5) Section 55, new Schedule 11, section 8(1)(c)(iii)—

**Repeal**

“specified in the principal’s licence”

**Substitute**

“for which the principal is licensed”.

- (6) Section 55, new Schedule 11, section 8(2)(b)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (7) Section 55, new Schedule 11, section 8(2)(c)(i)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (8) Section 55, new Schedule 11, section 8(2)(c)(iii)—

**Repeal**

“specified in the principal’s licence”

**Substitute**

“for which the principal is licensed”.

- (9) Section 55, new Schedule 11, section 10(c)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (10) Section 55, new Schedule 11, section 10(j)—

**Repeal**

“specified in the principal’s licence”

**Substitute**

“for which the principal is licensed”.

- (11) Section 55, new Schedule 11, section 13(3)—

**Repeal**

“specified in the person’s licence”

**Substitute**

“for which the person is licensed”.

- (12) Section 55, new Schedule 11, section 14(3)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (13) Section 55, new Schedule 11, section 16(2)(b)—

**Repeal**

“specified in the licence”

**Substitute**

“for which the corporate applicant is licensed”.

- (14) Section 55, new Schedule 11, section 16(2)(c)—

**Repeal**

“specified in the licence”

**Substitute**

“for which the corporate applicant is licensed”.

- (15) Section 55, new Schedule 11, section 18(1)(c)(iii)—

**Repeal**

“specified in the principal’s licence”

**Substitute**

“for which the principal is licensed”.

- (16) Section 55, new Schedule 11, section 18(2)(b)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (17) Section 55, new Schedule 11, section 18(2)(c)(i)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (18) Section 55, new Schedule 11, section 18(2)(c)(iii)—

**Repeal**

“specified in the principal’s licence”

**Substitute**

“for which the principal is licensed”.

- (19) Section 55, new Schedule 11, section 20(c)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (20) Section 55, new Schedule 11, section 20(j)—

**Repeal**

“specified in the principal’s licence”



**Substitute**

“for which the principal is licensed”.

- (21) Section 55, new Schedule 11, section 22(3)—

**Repeal**

“specified in its certificate of registration”

**Substitute**

“for which it is registered”.

- (22) Section 55, new Schedule 11, section 24(2)(b)—

**Repeal**

“specified in the certificate of registration”

**Substitute**

“for which the authorized financial institution is registered”.

- (23) Section 55, new Schedule 11, section 24(2)(c)—

**Repeal**

“specified in the certificate of registration”

**Substitute**

“for which the authorized financial institution is registered”.

- (24) Section 55, new Schedule 11, section 26(f)—

**Repeal**

“specified in the certificate of registration of the authorized financial institution”

**Substitute**

“for which the authorized financial institution is registered”.

- (25) Section 55, new Schedule 11, section 33(3)—

**Repeal**

“specified in the person’s licence”

**Substitute**

“for which the person is licensed”.

- (26) Section 55, new Schedule 11, section 34(3)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

“for which the individual is licensed”.

- (27) Section 55, new Schedule 11, section 36(2)(b)—

**Repeal**

“specified in the licence”

**Substitute**

“for which the corporate applicant is licensed”.

- (28) Section 55, new Schedule 11, section 36(2)(c)—

**Repeal**

“specified in the licence”

**Substitute**

“for which the corporate applicant is licensed”.

- (29) Section 55, new Schedule 11, section 38(1)(c)(iii)—

**Repeal**

“specified in the principal’s licence”

**Substitute**

“for which the principal is licensed”.

- (30) Section 55, new Schedule 11, section 38(2)(b)—

**Repeal**

“specified in the individual’s licence”

**Substitute**

- “for which the individual is licensed”.
- (31) Section 55, new Schedule 11, section 38(2)(c)(i)—  
**Repeal**  
“specified in the individual’s licence”  
**Substitute**  
“for which the individual is licensed”.
- (32) Section 55, new Schedule 11, section 38(2)(c)(iii)—  
**Repeal**  
“specified in the principal’s licence”  
**Substitute**  
“for which the principal is licensed”.
- (33) Section 55, new Schedule 11, section 40(c)—  
**Repeal**  
“specified in the individual’s licence”  
**Substitute**  
“for which the individual is licensed”.
- (34) Section 55, new Schedule 11, section 40(j)—  
**Repeal**  
“specified in the principal’s licence”  
**Substitute**  
“for which the principal is licensed”.
- (35) Section 55, new Schedule 11, section 42(3)(a)(iii)—  
**Repeal**  
“specified in the licence or certificate of registration”  
**Substitute**

- “for which the person or the authorized financial institution is licensed or registered”.
- (36) Section 55, new Schedule 11, section 42(4)(c)—  
**Repeal**  
“specified in the licence or certificate of registration”  
**Substitute**  
“for which the person or the authorized financial institution is licensed or registered”.
- (37) Section 55, new Schedule 11, after Part 5—  
**Add**

## “Part 5A

### Schedule 11 Printed Licences and Schedule 11 Certificates of Registration

#### 47A. Interpretation of Part 5A of this Schedule

In this Part—

*Schedule 11 certificate of registration* (附表 11 註冊證明書) means a certificate printed on paper or in any other physical form certifying that an authorized financial institution is deemed to be registered under section 22(2) or (3) of this Schedule;

*Schedule 11 printed licence* (附表 11 印刷本牌照) means a certificate printed on paper or in any other physical form certifying that a person is deemed to be licensed under section 3(1) or (2), 13(2) or (3) or 33(2) or (3) of this Schedule.

**47B. Schedule 11 printed licences and Schedule 11 certificates of registration**

- (1) On the taking effect of a deeming in relation to an applicant under section 3(1) or (2), 13(2) or (3) or 33(2) or (3) of this Schedule, the Commission must issue to the applicant a Schedule 11 printed licence—
  - (a) for a deeming under section 3(1) or (2) of this Schedule, specifying the specified regulated activity which the applicant is deemed to be licensed under section 116(1) to carry on;
  - (b) for a deeming under section 13(2) or (3) of this Schedule, specifying that the applicant is deemed to be licensed under section 116(1) to carry on the expanded Type 9 RA;
  - (c) for a deeming under section 33(2) or (3) of this Schedule, specifying that the applicant is deemed to be licensed under section 116(1) to carry on the expanded Type 7 RA.
- (2) On the taking effect of a deeming in relation to an applicant under section 22(2) or (3) of this Schedule, the Commission must issue to the applicant a Schedule 11 certificate of registration specifying that the applicant is deemed to be registered under section 119(1) to carry on the expanded Type 9 RA.

**47C. Application of Ordinance and return of Schedule 11 printed licences and Schedule 11 certificates of registration**

- (1) Other than section 4(1) and (2) of the Securities and Futures (Miscellaneous) Rules (Cap. 571 sub. leg. U)—
  - (a) the provisions of this Ordinance that apply to or in relation to a printed licence apply to or in relation

- to a Schedule 11 printed licence as if it were a printed licence; and
  - (b) the provisions of this Ordinance that apply to or in relation to a certificate of registration granted under section 119(1) apply to or in relation to a Schedule 11 certificate of registration as if it were a certificate of registration granted under that section.
- (2) If a person ceases to be deemed to be licensed for all or any new regulated activities by the operation of section 6(1) or (2), 16(1) or (2) or 36(1) or (2) of this Schedule, the person must return the Schedule 11 printed licence issued for the deeming to the Commission for cancellation or amendment (as the case may be)—
    - (a) within 7 days after the date on which the person ceases to be so deemed; or
    - (b) within a longer period that the Commission may approve in writing.
  - (3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6.
  - (4) If an authorized financial institution ceases to be deemed to be registered for the expanded Type 9 RA by the operation of section 24(1) or (2) of this Schedule, the authorized financial institution must return the Schedule 11 certificate of registration issued for the deeming to the Commission for cancellation—
    - (a) within 7 days after the date on which the authorized financial institution ceases to be so deemed; or

- (b) within a longer period that the Commission may approve in writing.
- (5) An authorized financial institution which, without reasonable excuse, contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 6.”
- 

### Part 3

#### Amendments to Securities and Futures Ordinance (Cap. 571) Relating to Supervisory Assistance to Regulators outside Hong Kong

21. Section 179 amended (power to require production of records and documents concerning listed corporations, etc.)
- (1) Section 179(1)(f)—  
**Repeal**  
 “section 186”  
**Substitute**  
 “section 186(1) or (2)”.
- (2) Section 179(6)(b)(ii)(B)—  
**Repeal**  
 “section 186”  
**Substitute**  
 “section 186(1) or (2)”.
- (3) Section 179(7)(b)(ii)(B)—  
**Repeal**  
 “section 186”  
**Substitute**  
 “section 186(1) or (2)”.
- (4) Section 179(8)(b)(ii)(B)—  
**Repeal**  
 “section 186”  
**Substitute**

“section 186(1) or (2)”.

- (5) Section 179(9)(b)—

**Repeal**

“section 186”

**Substitute**

“section 186(1) or (2)”.

- (6) Section 179(17), definition of *material time*, paragraph (b)—

**Repeal**

“section 186”

**Substitute**

“section 186(1) or (2)”.

22. **Section 180 amended (supervision of intermediaries and their associated entities)**

After section 180(4)—

**Add**

“(4A) Subject to subsection (10), if the Commission decides to provide assistance in relation to a licensed corporation under section 186(2A), an authorized person may require the licensed corporation or a related corporation of the licensed corporation to—

- (a) provide to the authorized person, within the time and at the place specified by the authorized person, a copy of any record or document relating to—
  - (i) any regulated activity carried on by the licensed corporation; or
  - (ii) any transaction or activity which was undertaken in the course of, or which may

affect, any regulated activity carried on by the licensed corporation; and

- (b) answer any question raised by the authorized person regarding any record, document, regulated activity, transaction or activity referred to in paragraph (a).”.

23. **Section 182 amended (investigations by Commission)**

Section 182(1)(g)—

**Repeal**

“section 186”

**Substitute**

“section 186(1) or (2)”.

24. **Section 186 amended (Commission’s assistance to regulators outside Hong Kong)**

- (1) Section 186(1)—

**Repeal**

“by exercising any of its powers under sections 179, 181, 182 and 183”

**Substitute**

“by directing that any of the powers under sections 179, 181, 182 and 183 be exercised”.

- (2) Section 186(2)—

**Repeal**

“by exercising any of its powers under sections 179, 181, 182 and 183”

**Substitute**

“by directing that any of the powers under sections 179, 181, 182 and 183 be exercised”.

(3) After section 186(2)—

**Add**

“(2A) Where the Commission receives, from an authority or regulatory organization outside Hong Kong, a request for assistance in relation to a licensed corporation, the Commission may provide the assistance by directing that the power under section 180(4A) be exercised if—

(a) in the opinion of the Commission—

(i) the authority or regulatory organization satisfies the requirements referred to in subsection (5)(a) and (b); and

(ii) the condition specified in subsection (3) is satisfied; and

(b) the authority or regulatory organization has provided to the Commission a written statement that conforms with subsection (2D) and a written undertaking that conforms with subsection (2E).

(2B) In subsection (2A), a reference to assistance in relation to a licensed corporation is a reference to assistance to ascertain whether a corporation specified in subsection (2C)—

(a) constitutes a risk to, or may affect, the financial stability of the jurisdiction of the authority or regulatory organization; or

(b) is complying or has complied with, or is likely to be able to comply with, legal or regulatory requirements that—

(i) are administered by the authority or regulatory organization; and

(ii) relate to transactions or activities regarding any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, collective investment scheme, or other similar transactions or activities, that are regulated by the authority or regulatory organization.

(2C) The corporation specified for the purposes of subsection (2B) is one that—

(a) is regulated by the authority or regulatory organization; and

(b) is a licensed corporation or a related corporation of a licensed corporation.

(2D) The written statement referred to in subsection (2A)(b) must be to the effect of confirming that the authority or regulatory organization has not been and will not be able to—

(a) obtain the information referred to in section 180(4A)(a) or (b) by any other reasonable means; and

(b) fully ascertain the matters described in subsection (2B) without the information.

(2E) The written undertaking referred to in subsection (2A)(b) must be to the effect that the authority or regulatory organization—

(a) will use the information obtained from the Commission because of the request for assistance solely for ascertaining the matters described in subsection (2B);

- (b) will not use any of the information in any proceedings, in the jurisdiction of the authority or regulatory organization or elsewhere, unless—
  - (i) the authority or regulatory organization has made a separate request under subsection (1) (*investigation request*), and the Commission has decided to provide assistance under that subsection; and
  - (ii) the authority or regulatory organization has obtained the same information from the Commission because of the investigation request;
- (c) will treat the information as confidential and will not disclose it to any other person, in the jurisdiction of the authority or regulatory organization or elsewhere, for any purpose without the consent of the Commission;
- (d) will, on receiving a demand legally enforceable under the laws of the jurisdiction of the authority or regulatory organization, for the disclosure of any of the information—
  - (i) inform the Commission as soon as reasonably practicable; and
  - (ii) assist in preserving the confidentiality of the information by taking all appropriate measures as may be available (including but not limited to asserting legal exemptions or privileges under the laws of the jurisdiction of the authority or regulatory organization); and
- (e) will cooperate with the Commission in any action or proceedings, in the jurisdiction of the authority or regulatory organization or elsewhere, that seek

to safeguard the confidentiality of any of the information.”.

- (4) Section 186(3)—

**Repeal**

“subsections (1) and (2)”

**Substitute**

“subsections (1), (2) and (2A)(a)(ii)”.

- (5) Section 186(3)(a)—

**Repeal**

“subsection (1) or (2)”

**Substitute**

“subsection (1), (2) or (2A)”.

- (6) Section 186(4)(a), after “subsection (1)”—

**Add**

“or (2A)”.

- (7) Section 186(5)—

**Repeal**

“subsection (1) or (2)”

**Substitute**

“subsection (1), (2) or (2A)(a)(i)”.

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**Part 4****Amendments to Securities and Futures Ordinance  
(Cap. 571) Relating to Carrying on Business Operations  
upon Revocation or Suspension of Licence or  
Registration****25. Section 203 amended (permission to carry on business  
operations upon revocation or suspension of licence or  
registration)****(1) Section 203—****Repeal subsection (1)****Substitute**

- “(1) If the licence or registration of an intermediary is revoked, the Commission may by notice in writing permit the intermediary to carry on business operations connected with a revoked activity that are essential for closing down the business of the revoked activity.
- (1A) An individual named by the Commission in the notice given under subsection (1) may carry on the business operations referred to in that subsection for and on behalf of the intermediary.
- (1B) For the purpose of subsection (1A), the Commission may name in the notice only an individual who is or, immediately before the revocation, was—
- (a) for the revocation of the licence of a licensed corporation—
- (i) a responsible officer of the licensed corporation; or

- (ii) a licensed representative accredited to the licensed corporation;
- (b) for the revocation of the registration of a registered institution—
- (i) an executive officer of the registered institution to whom the Monetary Authority has or had given consent under section 71C(1) of the Banking Ordinance (Cap. 155); or
- (ii) a registered individual engaged by the registered institution.

- (1C) If the licence or registration of an intermediary is suspended, the Commission may by notice in writing permit the intermediary to carry on business operations connected with a suspended activity that are essential for protecting the interests of the clients of the intermediary.
- (1D) An individual named by the Commission in the notice given under subsection (1C) may carry on the business operations referred to in that subsection for and on behalf of the intermediary.
- (1E) For the purpose of subsection (1D), the Commission may name in the notice only an individual who is—
- (a) for the suspension of the licence of a licensed corporation—
- (i) a responsible officer of the licensed corporation; or
- (ii) a licensed representative accredited to the licensed corporation;
- (b) for the suspension of the registration of a registered institution—



- (i) an executive officer of the registered institution to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155); or
  - (ii) a registered individual engaged by the registered institution.
- (1F) The Commission may, on granting a permission under subsection (1) or (1C), impose any condition that the Commission thinks fit by specifying the condition in the notice given under that subsection.”.
- (2) Section 203(2)—
  - Repeal**
  - everything after “a permission to” and before “regarded”
  - Substitute**
  - “an intermediary under subsection (1) or (1C), the intermediary and the individuals named in the notice given under that subsection are not, because of their carrying on business operations in accordance with the permission,”.
- (3) After section 203(2)—
  - Add**
  - “(2A) When carrying on business operations in accordance with a permission granted under subsection (1)—
    - (a) despite the revocation of the licence or registration of the intermediary—
      - (i) it is deemed that the licence or registration of the intermediary in relation to the revoked activity is not revoked;
      - (ii) an individual referred to in subsection (1B)(a)(i) is deemed to be a responsible

- officer of the intermediary approved in relation to the revoked activity;
  - (iii) an individual referred to in subsection (1B)(a)(ii) is deemed to be a licensed representative accredited to, and licensed to carry on the revoked activity for, the intermediary;
  - (iv) an individual referred to in subsection (1B)(b)(i) is deemed to be an executive officer of the intermediary to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the revoked activity; and
  - (v) an individual referred to in subsection (1B)(b)(ii) is deemed to be a registered individual engaged by the intermediary in relation to the revoked activity; and
- (b) any of the relevant provisions that apply to or in relation to an intermediary, responsible officer, licensed representative, executive officer or registered individual (as the case may be) apply accordingly to or in relation to the intermediary and individuals.
- (2B) When carrying on business operations in accordance with a permission granted under subsection (1C)—
  - (a) despite the suspension of the licence or registration of the intermediary—
    - (i) it is deemed that the licence or registration of the intermediary in relation to the suspended activity is not suspended;

- (ii) an individual referred to in subsection (1E)(a)(i) continues to act in the capacity of or is deemed to be (as the case requires) a responsible officer of the intermediary approved in relation to the suspended activity;
  - (iii) an individual referred to in subsection (1E)(a)(ii) continues to act in the capacity of or is deemed to be (as the case requires) a licensed representative accredited to, and licensed to carry on the suspended activity for, the intermediary;
  - (iv) an individual referred to in subsection (1E)(b)(i) continues to act in the capacity of or is deemed to be (as the case requires) an executive officer of the intermediary to whom the Monetary Authority has given consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the suspended activity; and
  - (v) an individual referred to in subsection (1E)(b)(ii) continues to act in the capacity of or is deemed to be (as the case requires) a registered individual engaged by the intermediary in relation to the suspended activity; and
- (b) any of the relevant provisions that apply to or in relation to an intermediary, responsible officer, licensed representative, executive officer or registered individual (as the case may be) apply accordingly to or in relation to the intermediary and individuals.”.
- (4) Section 203(3)—

**Repeal**

“(1)”

**Substitute**

“(1) or (1C)”.

- (5) Section 203(3)—

**Repeal**

“that subsection”

**Substitute**

“subsection (1F)”.

- (6) After section 203(3)—

**Add**

“(4) In this section—

*intermediary* (中介人) includes—

- (a) a corporation the licence of which has been revoked or suspended; and
- (b) an authorized financial institution the registration of which has been revoked or suspended;

*registered individual* (登記個人), in relation to a registered institution, means an individual whose name is entered in the register maintained by the Monetary Authority under section 20(1)(ea) of the Banking Ordinance (Cap. 155) as that of a person engaged by the registered institution;

*revoke* (撤銷), in relation to the licence or registration of an intermediary, means revoke under Division 2 or 3, whether in relation to all or any, or any part of all or any, of the regulated activities for which the intermediary is licensed or registered;

**revoked activity** (撤銷活動), in relation to the revocation of a licence or registration, means any of the regulated activities, or any part of any of the regulated activities, in relation to which the licence or registration has been revoked;

**suspend** (暫時吊銷、暫時撤銷), in relation to the licence or registration of an intermediary, means suspend under Division 2 or 3, whether in relation to all or any, or any part of all or any, of the regulated activities for which the intermediary is licensed or registered;

**suspended activity** (暫時吊銷活動、暫時撤銷活動), in relation to the suspension of a licence or registration, means any of the regulated activities, or any part of any of the regulated activities, in relation to which the licence or registration has been suspended.”.

**26. Schedule 8 amended (Securities and Futures Appeals Tribunal)**  
Schedule 8, Part 2, Division 1, item 61—

**Repeal**

“203(1)”

**Substitute**

“203(1F)”.

**Part 5**

**Amendments to Securities and Futures Ordinance  
(Cap. 571) Relating to Disclosure of Information by  
Recognized Exchange Company**

**27. Section 378 amended (preservation of secrecy, etc.)**

- (1) Section 378(7), before “pursuant to subsection (1)”—

**Add**

“by a specified person”.

- (2) After section 378(7)(i)—

**Add**

“(ia) if the specified person is a recognized exchange company, the Commission or the recognized exchange company consents to the disclosure;”.

- (3) Section 378(9), after “(7)(i)”—

**Add**

“or (ia)”.

- (4) After section 378(9)—

**Add**

“(9A) A recognized exchange company, in granting a consent pursuant to subsection (7)(ia), may impose any condition that it considers appropriate.”.

- (5) Section 378(11)(a), after “(7)(i),”—

**Add**

“(ia),”.

## Part 6

### Amendment to Securities and Futures Ordinance (Cap. 571) Relating to Delegation of Function

28. Schedule 2 amended (Securities and Futures Commission)  
Schedule 2, Part 2, section 2—  
Repeal paragraph (2).
- 

## Part 7

### Amendments Relating to Rounding of Levy Amounts

#### Division 1—Amendments to Securities and Futures (Levy) Order (Cap. 571 sub. leg. Z)

29. Section 2A added  
Part 1, after section 2—  
Add  
“2A. Rounding of levy amounts  
If, in accordance with any other provision of this Order, the amount of a levy payable under section 394(1) of the Ordinance would, but for this section, include a fraction of a cent, the amount is to be rounded to the nearest cent.”.
30. Section 10 amended (Mini-Hang Seng Index Futures Contracts, Mini-Hang Seng Index Options Contracts and Mini-Hang Seng China Enterprises Index Futures Contracts)  
(1) Section 10(b)(i)—  
Repeal  
“\$0.108”  
Substitute  
“\$0.10”.  
(2) Section 10(b)(ii)—  
Repeal  
“\$0.108”  
Substitute

“\$0.10”.

**31. Section 13 amended (stock futures contracts)**

**(1) Section 13(b)(i)—**

**Repeal**

“\$0.108”

**Substitute**

“\$0.10”.

**(2) Section 13(b)(ii)—**

**Repeal**

“\$0.108”

**Substitute**

“\$0.10”.

**Division 2—Amendment to Securities and Futures (Investor Compensation—Levy) Rules (Cap. 571 sub. leg. AB)**

**32. Section 2A added**

Part 1, after section 2—

**Add**

**“2A. Rounding of levy amounts**

If, in accordance with any other provision of these Rules, the amount of a levy would, but for this section, include a fraction of a cent, the amount is to be rounded to the nearest cent.”.

**Part 8**

**Minor Amendments**

**Division 1—Amendment to Securities and Futures Ordinance (Cap. 571)**

**33. Section 307 amended (no further proceedings after Part XIII market misconduct proceedings)**

Section 307(1), Chinese text, after “，不得”——

**Add**

“根據本部”.

**Division 2—Amendment to Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Cap. 571 sub. leg. Q)**

**34. Section 11 amended (preparation and provision of monthly statements of account)**

Section 11(6)—

**Repeal**

“(5)”

**Substitute**

“(4)”.

**Schedule** [s. 2(2)]

**Amendments Relating to Voting Shares**

**Part 1**

**Amendments to Securities and Futures Ordinance  
(Cap. 571)**

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
1.	Section 308(1), Chinese text, definition of <b>相關股份</b> , paragraph (a)(i) and (ii)	該等股份	該等有投票權股份
2.	Section 313(10)(a)(i) and (ii)	shares	voting shares
3.	Section 313(11)	shares	voting shares
4.	Section 313(13)(i), English text	shares	voting shares
5.	Section 313(13)(iii)(A) and (B)	shares	voting shares

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
6.	Section 313(13)(iv)	his shares	those voting shares
7.	Section 313(13)(v), English text	shares	voting shares
8.	Section 316(1)(a) and (b)	shares	voting shares
9.	Section 316(2)(a) and (b)	shares	voting shares
10.	Section 316(5)(a), (b), (i), (ii) and (iii)	shares	voting shares
11.	Section 316(6)	shares	voting shares
12.	Section 317(5)(b)	shares	voting shares
13.	Section 318(2), English text	those shares	those voting shares
14.	Section 319(3), Chinese text	該等股份	該等有投票權股份
15.	Section 319(3), Chinese text	該股份	該有投票權股份

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
16.	Section 320, heading	<b>interests in shares or short positions</b>	<b>interests or short positions in voting shares</b>
17.	Section 320(1)(a), (b) and (c)	those shares	those voting shares
18.	Section 320(2)(i), (ii) and (iii)	shares	voting shares
19.	Section 320(3)	those shares	those voting shares
20.	Section 320(4)(a) and (b)	shares	voting shares
21.	Section 320(5)	shares	voting shares
22.	Section 321, English text	those shares	those voting shares
23.	Section 322(2)	shares	voting shares
24.	Section 322(3)	shares	voting shares
25.	Section 322(4)	shares	voting shares

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
26.	Section 322(5)	shares	voting shares
27.	Section 322(6)	shares	voting shares
28.	Section 322(7)	shares	voting shares
29.	Section 322(8)	in shares	in voting shares
30.	Section 322(9)	of shares	of voting shares
31.	Section 322(10)	shares	voting shares
32.	Section 322(11)	of shares	of voting shares
33.	Section 322(12)	of shares	of voting shares
34.	Section 322(13)	shares	voting shares
35.	Section 322(15)	shares	voting shares
36.	Section 323(1)(a), (c), (e), (g), (h) and (i)	shares	voting shares
37.	Section 323(2)	shares	voting shares

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
38.	Section 323(3)	shares	voting shares
39.	Section 323(4)	shares	voting shares
40.	Section 323(6)	shares	voting shares
41.	Section 323(7)	shares	voting shares
42.	Section 326(1)(a)(ii), Chinese text	該等股份	該等有投票權股份
43.	Section 326(1)(b), Chinese text	以下股份	以下有投票權股份
44.	Section 326(1)(b)(i) and (ii)	the shares	the voting shares
45.	Section 326(1)(c), Chinese text	以下股份	以下有投票權股份
46.	Section 326(1)(c)(i) and (ii)	the shares	the voting shares
47.	Section 326(1)(e)(i), (ii) and (iii), Chinese text	該等股份	該等有投票權股份
48.	Section 326(1)(f)(i) and (ii)	share	voting share

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
49.	Section 326(1)(g)	the shares	the voting shares
50.	Section 326(1)(g)	of shares	of voting shares
51.	Section 326(1)(i)(i) and (ii)	shares	voting shares
52.	Section 326(2)	any shares	any voting shares
53.	Section 326(2), Chinese text	以下股份	以下有投票權股份
54.	Section 326(2)(a), (b), (c) and (d)	shares which	voting shares which
55.	Section 326(2)(a), (b), (c) and (d), Chinese text	該等股份	該等有投票權股份
56.	Section 326(3)	shares	voting shares
57.	Section 326(6)(b)(ii) and (c)	shares	voting shares
58.	Section 326(7)	shares	voting shares



Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
59.	Section 326(8)	shares which	voting shares which
60.	Section 329, heading	<b>shares</b>	<b>voting shares</b>
61.	Section 329(1), English text	those shares	those voting shares
62.	Section 329(2)(a)(i)	shares	voting shares
63.	Section 329(2)(a)(ii), English text	shares	voting shares
64.	Section 329(2)(b)(i) and (ii), (c), (d)(i) and (ii) and (e)	shares	voting shares
65.	Section 329(3)(a) and (b)	shares	voting shares
66.	Section 329(7)(a)(i) and (ii)	shares	voting shares
67.	Section 329(7)(b)	in shares	in voting shares
68.	Section 329(7)(b)	those shares	those voting shares

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
69.	Section 329(8)	in shares	in voting shares
70.	Section 329(8)	to shares	to voting shares
71.	Section 331, heading	<b>shares</b>	<b>voting shares</b>
72.	Section 336(10)(b)(i)(A), Chinese text	該等股份	該等有投票權股份
73.	Section 337(1)	those shares	those voting shares
74.	Section 337(1), Chinese text	有關股本中的股份	有投票權股份
75.	Section 363(1)(d), Chinese text	該等股份	該等有投票權股份
76.	Section 366, heading	<b>shares</b>	<b>voting shares</b>
77.	Section 366(1)(a), Chinese text	該等股份	該等有投票權股份

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal (wherever appearing)	Substitution
78.	Section 366(1)	the shares	the voting shares
79.	Section 366(3)	shares	voting shares

## Part 2

### Amendment to Securities and Futures (Disclosure of Interests—Exclusions) Regulation (Cap. 571 sub. leg. AG)

Column 1	Column 2	Column 3	Column 4
Item	Provision	Repeal	Substitution
1.	Section 5	the shares	the voting shares

## Explanatory Memorandum

This Bill amends the Securities and Futures Ordinance (Cap. 571) (*SFO*) and its subsidiary legislation to make miscellaneous amendments.

### Part 1—Preliminary

- Part 1 of the Bill sets out the short title.

### Part 2—Amendments relating to printed licences and certificates of registration

- Division 1 of Part 2 of the Bill amends the SFO to dispense with issuing printed licences to individuals licensed under section 120 or 121 of the SFO. Divisions 2 to 5 of Part 2 of the Bill contain consequential and related amendments to—
  - the Securities and Futures (Licensing and Registration) (Information) Rules (Cap. 571 sub. leg. S);
  - the Securities and Futures (Miscellaneous) Rules (Cap. 571 sub. leg. U);
  - the Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF); and
  - the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) (*2014 Ordinance*).
- Division 5 of Part 2 of the Bill also contains amendments to the new Schedule 11 to the SFO to be added by section 55 of the 2014 Ordinance. That section is not yet in operation. For deemed licensing of corporations and deemed registration of authorized financial institutions under that Schedule, the amendments add provisions to provide for Schedule 11 printed licences and Schedule 11 certificates of registration.

**Part 3—Amendments to SFO relating to supervisory assistance to regulators outside Hong Kong**

5. Part 3 of the Bill amends relevant provisions in Part VIII of the SFO to enable the Securities and Futures Commission (*SFC*) to provide certain supervisory assistance to regulators outside Hong Kong.
6. Section 180 of the SFO provides for powers for the supervision of intermediaries and their associated entities. Clause 22 adds a new subsection (4A) to that section to confer powers on authorized persons, in the context of providing assistance to regulators outside Hong Kong, to require licensed corporations or related corporations of licensed corporations to produce certain records or documents and answer certain questions.
7. Clause 24 adds new subsections (2A), (2B), (2C), (2D) and (2E) to section 186 of the SFO to enable the SFC to provide assistance to regulators outside Hong Kong by directing that the power under the new section 180(4A) of the SFO (added by clause 22) be exercised if certain conditions are met. The clause also makes minor textual amendments to section 186(1) and (2) of the SFO.
8. Clauses 21 and 23 contain consequential amendments to sections 179 and 182(1)(g) of the SFO.

**Part 4—Amendments to SFO relating to carrying on business operations upon revocation or suspension of licence or registration**

9. Clause 25 amends section 203 of the SFO. The provisions empower the SFC to permit an intermediary and an individual named by the SFC to—
  - (a) carry on, after the revocation (under Division 2 or 3 of Part IX of the SFO) of the licence or registration of the

intermediary, business operations that are essential for closing down the relevant business; or

- (b) carry on, after the suspension (under Division 2 or 3 of Part IX of the SFO) of the licence or registration of the intermediary, business operations that are essential for protecting the interests of the clients of the intermediary.
10. The amendments make clear that any of the relevant provisions (as defined by section 1 of Part 1 of Schedule 1 to the SFO) that apply to or in relation to an intermediary, responsible officer, licensed representative, executive officer or registered individual (as the case may be) apply accordingly to or in relation to the persons mentioned in the new section 203(2A) and (2B) of the SFO when they carry on the essential business operations.
11. Clause 26 makes a consequential amendment to item 61 in Division 1 of Part 2 of Schedule 8 to the SFO.

**Part 5—Amendments to SFO relating to disclosure of information by recognized exchange company**

12. Section 378 of the SFO provides for preservation of secrecy, etc.
13. Where information is disclosed by a specified person pursuant to section 378(1) of the SFO, or in any of the circumstances described in section 378(2), (3) or (4) (other than section 378(2)(a), (3)(a), (g)(i) and (k) and (4)(b)) of the SFO, onward disclosure of the information is prohibited unless excepted by section 378(7) of the SFO. Clause 27 amends that section so that if the specified person is a recognized exchange company, the SFC or the company may consent to onward disclosure of the information.

**Part 6—Amendment to SFO relating to delegation of function**

14. The SFC may, under section 5(4)(e) of the SFO, publish or otherwise make available materials indicating the manner in which it proposes to perform its functions.
15. Currently, the SFC's function under section 5(4)(e) of the SFO is listed as non-delegable in section 2 of Part 2 of Schedule 2 to the SFO. To enable the function to be carried out more effectively, Part 6 of the Bill amends that Schedule to remove the function from the list of non-delegable functions.

**Part 7—Amendments relating to rounding of levy amounts**

16. Clauses 29 and 32 add new provisions to the following subsidiary legislation to provide for the rounding of levy amounts to the nearest cent—
  - (a) the Securities and Futures (Levy) Order (Cap. 571 sub. leg. Z) (*Order*);
  - (b) the Securities and Futures (Investor Compensation—Levy) Rules (Cap. 571 sub. leg. AB).
17. A fixed levy amount of \$0.108 for a sale and purchase of certain futures contracts is specified in sections 10(b)(i) and (ii) and 13(b)(i) and (ii) of the Order. Clauses 30 and 31 amend the amount to \$0.10.

**Part 8—Minor amendments**

18. Part 8 of the Bill amends the following provisions to correct minor errors—
  - (a) section 307(1) of the SFO;
  - (b) section 11(6) of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Cap. 571 sub. leg. Q).

**Schedule—Amendments relating to voting shares**

19. The Schedule to the Bill amends certain references to shares in Part XV of the SFO and the Securities and Futures (Disclosure of Interests—Exclusions) Regulation (Cap. 571 sub. leg. AG). Those references are intended to be references to voting shares as defined by section 308(1) of the SFO.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	116	Corporations to be licensed for carrying on regulated activities	L.N. 163 of 2013	03/03/2014
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- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence.
- (2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless-
  - (a) the applicant is-
    - (i) a company;
    - (ii) a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622); or (Replaced 28 of 2012 ss. 912 & 920)
    - (iii) a corporation (other than a company or a non-Hong Kong company)- (Amended 30 of 2004 s. 3)
      - (A) which carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;
      - (B) to which section 114(1) would not apply but for the provisions of section 115(1)(i) and (ii); and
      - (C) to which Part 16 of the Companies Ordinance (Cap 622) would apply if it established a place of business in Hong Kong; (Amended 28 of 2012 ss. 912 & 920)
  - (b) applications have been lodged under section 126 in respect of such persons as referred to in section 125(1)(a) and (b) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and
  - (c) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.
- (3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that-
  - (a) it is a fit and proper person to be licensed for the regulated activity;
  - (b) it will be able, if licensed, to comply with the financial resources rules; and
  - (c) it-
    - (i) has lodged and maintains with the Commission such security in accordance with rules made under subsection (4); or
    - (ii) is insured in accordance with rules made under subsection (5).
- (4) The Commission may make rules for the purposes of subsection (3)(c)(i) that provide for-
  - (a) any security to be lodged and maintained by a licensed corporation with the Commission;
  - (b) the manner in which the security is lodged;
  - (c) the terms on which the security is maintained;
  - (d) the Commission's power to apply a security lodged and maintained with the Commission in such circumstances, for such purposes and in such manner as may be prescribed in the rules;
  - (e) any other matter relating to the security.
- (5) The Commission may make rules for the purposes of subsection (3)(c)(ii) that provide for-
  - (a) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;
  - (b) the terms on which the insurance is to be taken out and maintained;
  - (c) any other matter relating to the insurance.
- (6) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (7) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (6), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (8) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.
- (9) Without prejudice to the Commission's powers under Part IX, a licence granted to a corporation to carry on Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the corporation's being granted an authorization under section 95(2) to provide automated trading services.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	117	Grant of temporary licences to corporations for carrying on regulated activities	E.R. 2 of 2012	02/08/2012
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- (1) The Commission may, upon application by a corporation in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities) as the Commission may specify in the licence.
- (2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that-
  - (a) it carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;
  - (b) it seeks to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity;
  - (c) it carries on such business in the activity in the place referred to in paragraph (a) under an authorization (however described) by an authority or regulatory organization in that place which-
    - (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;
    - (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
    - (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
  - (d) the granting of the licence would not result in its being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months;
  - (e) it is a fit and proper person to be so licensed for the regulated activity;
  - (f) it has nominated at least one individual for approval by the Commission for the purposes of subsection (5)(a); and
  - (g) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.
- (3) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (5) Without limiting the generality of subsection (3), it shall be a condition of a licence granted under subsection (1) for carrying on a regulated activity-
  - (a) that, in relation to the regulated activity, there is at least one individual who is-
    - (i) nominated by the licensed corporation and approved by the Commission for the purposes of this paragraph; and
    - (ii) available at all times to supervise the business of the regulated activity for which the corporation is licensed; and
  - (b) that the licensed corporation shall not hold any client assets in carrying on the regulated activity.
- (6) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	120	Representatives to be licensed	E.R. 2 of 2012	02/08/2012
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- (1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence for a corporation licensed under section 116 to which he is accredited.

- (2) The Commission in its absolute discretion may, upon request by the applicant in the prescribed manner and payment of the prescribed fee, grant to the applicant a provisional licence to carry on, for such corporation, the regulated activity in respect of which the application is made.
- (3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) or (2) unless the applicant satisfies the Commission that he is a fit and proper person to be so licensed for the regulated activity.
- (4) The Commission shall refuse to grant a licence under subsection (2) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interest of the investing public.
- (5) A licence granted under subsection (1) or (2) shall be subject to the condition specified in subsection (6) and to any other reasonable conditions as the Commission may impose.
- (6) It shall be a condition of a licence granted under subsection (1) or (2) that the licensed representative concerned shall-
  - (a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and
  - (b) inform the Commission of any change in the particulars within 14 days after the change takes place.
- (7) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (5) or impose new conditions as may be reasonable in the circumstances.
- (8) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (7), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (9) A provisional licence shall be deemed to be revoked-
  - (a) upon the Commission's refusal of the relevant application made under subsection (1); or
  - (b) upon the grant of the licence sought under the application,
 whichever first occurs.
- (10) Without prejudice to the Commission's powers under Part IX, the Commission may, after having regard to the interest of the investing public and in its absolute discretion, by notice in writing served on the licensed representative concerned, revoke a provisional licence granted under subsection (2).
- (11) On the revocation of a provisional licence under subsection (9) or (10), the person who was formerly the licensed representative under such licence shall return the licence to the Commission within 7 business days after the revocation.
- (12) A person who, without reasonable excuse, contravenes subsection (11) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2000 for every day during which the offence continues.
- (13) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1) or (2), use a name other than the name specified in the licence.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	121	Temporary licences for representatives	E.R. 2 of 2012	02/08/2012
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- (1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities) as the Commission may specify in the licence-
  - (a) for a corporation licensed under section 116 to which he is accredited; or
  - (b) for a corporation licensed under section 117 to which he is accredited.
- (2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission-
  - (a) that he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity, under an authorization (however described) by an authority or regulatory organization in that place which-
    - (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;

- (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
- (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
- (b) where the application is for a licence under subsection (1)(a), that-
  - (i) he carries on the activity referred to in paragraph (a) for or on behalf of a corporation which carries on the activity as a business principally in a place outside Hong Kong under an authorization (however described) by an authority or regulatory organization in that place which-
    - (A) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part; and
    - (B) confirms to the satisfaction of the Commission that the corporation has been so authorized; and
  - (ii) the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in subparagraph (i);
- (c) where the application is for a licence under subsection (1)(b), that he seeks to be so licensed solely for the conduct of his principal's business in the activity referred to in section 117(2)(a);
- (d) that the granting of the licence would not result in his being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months; and
- (e) that he is a fit and proper person to be so licensed for the regulated activity.
- (3) A licence granted under subsection (1) shall be subject to the condition specified in subsection (4) and to any other reasonable conditions as the Commission may impose.
- (4) It shall be a condition of a licence granted under subsection (1) that the licensed representative concerned-
  - (a) shall at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address;
  - (b) shall inform the Commission of any change in the particulars within 14 days after the change takes place; and
  - (c) shall not hold any client assets in carrying on the regulated activity for which he is so licensed.
- (5) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (3) or impose new conditions as may be reasonable in the circumstances.
- (6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (7) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1), use a name other than the name specified in the licence.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	122	Approval and transfer of accreditation	E.R. 2 of 2012	02/08/2012
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- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the accreditation of a licensed representative-
  - (a) who is licensed under section 120(1) or (2) or 121(1)(a), to a corporation licensed under section 116; or
  - (b) who is licensed under section 121(1)(b), to a corporation licensed under section 117,
 and shall specify in the licence, upon such approval, the corporation as his principal.
- (2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative licensed under section 120(1) or (2) or 121(1), approve the transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be), and upon approving the transfer, the Commission shall re-issue the licence to the licensed representative with the name of the corporation specified in the licence as his principal.
- (3) The Commission shall refuse to-
  - (a) approve an accreditation under subsection (1); or
  - (b) approve a transfer of accreditation under subsection (2),
 unless the applicant satisfies the Commission that he will be competent to carry out his duties to the requisite standard as a licensed representative for or on behalf of the licensed corporation concerned.
- (4) Without limiting the generality of subsection (3), where a licensed representative who is licensed under section



121(1)(a) applies-

(a) under subsection (1)(a) for approval of an accreditation; or

(b) under subsection (2) for approval of a transfer of accreditation,

to a corporation licensed under section 116, the Commission shall refuse to grant the approval unless the applicant satisfies the Commission that the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in section 121(2)(b)(i).

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	123	Commission to be notified, etc. if licensed representative ceases to act for principal	E.R. 2 of 2012	02/08/2012

- (1) If an individual licensed under section 120(1) or (2) or 121(1) ceases to act for or on behalf of his principal as a licensed representative, he thereupon ceases to be accredited to the principal and-
  - (a) the principal shall, within 7 business days after such cessation, notify the Commission of the cessation;
  - (b) the individual shall, within 7 business days after such cessation, return the licence to the Commission; and
  - (c) where the individual has not applied for transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be) within 180 days after such cessation, the licence shall be deemed to have been revoked upon such cessation.
- (2) A person who contravenes subsection (1)(a) commits an offence and is liable on conviction to a fine at level 6.
- (3) A person who, without reasonable excuse, contravenes subsection (1)(b) commits an offence and is liable on conviction to a fine at level 6.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	124	Duplicate licence, etc.	E.R. 2 of 2012	02/08/2012

- (1) Subject to subsection (2), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed person or a registered institution on the ground that his licence or certificate of registration is lost, defaced or destroyed, issue to the licensed person or the registered institution a duplicate of the licence or certificate of registration (as the case may be).
- (2) In support of an application under subsection (1), the licensed person or the registered institution shall-
  - (a) submit to the Commission a statutory declaration made by the licensed person or the registered institution stating the ground of the application and such other particulars as the case may require in order to verify the loss, defacement or destruction (as the case may be) of the licence or certificate of registration; and
  - (b) furnish to the Commission such other information as the Commission may reasonably require in relation to the application.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	127	Variation of regulated activity specified in licence or certificate of registration	E.R. 2 of 2012	02/08/2012

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, vary the regulated activity specified in the applicant's licence or certificate of registration by adding to or reducing the regulated activity so specified.
- (2) Where a person applies for variation of the regulated activity specified in his licence or certificate of registration by adding any regulated activity, such application shall, for the purposes of this Part, be regarded as an application for a licence or registration (as the case may be) in respect of that regulated activity.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	397	Rules by Commission	E.R. 2 of 2012	02/08/2012

- (1) The Commission may make rules to-
- (a) provide for applications for licence and registration, the issue of licences and certificates of registration, and incidental matters;
  - (b) require the display of licences and certificates of registration in the specified manner and circumstances and at specified places, and require that licences and certificates of registration are in specified circumstances, other than those specified in any provision of this Ordinance, to be returned to the Commission for any specified purpose;
  - (c) require intermediaries to carry on business in relation to a specified class of persons, and in the specified manner and circumstances;
  - (d) prescribe the qualifications, experience and training required of any persons employed or engaged by intermediaries, and provide for the obligations imposed on the persons and the intermediaries in relation to such requirements, the examinations that applicants for licence or registration are required to take, and the circumstances in which they may be exempted from such requirements;
  - (e) provide for the correction of errors in the register maintained by the Commission under section 136;
  - (f) provide for the admissibility in evidence in judicial or other proceedings of specified records, and extracts from specified records, kept by the Commission;
  - (g) require documents and information required to be lodged, filed, submitted or retained for the purposes of any provision of this Ordinance to be so lodged, filed, submitted or retained in the specified manner, whether by electronic or other means;
  - (h) require documents and information lodged, filed, submitted or retained for the purposes of any provision of this Ordinance in any specified manner to be completed, signed, executed and authenticated in the specified form and manner;
  - (i) specify whether, when and the circumstances in which records compiled in any specified form or manner, or documents or information completed, signed, executed or authenticated in any specified form or manner, are acceptable or required for the purposes of any provision of this Ordinance;
  - (j) require the payment of remuneration to any auditor appointed, and the costs of an audit carried out, under any provision of this Ordinance, and provide for matters relating to such remuneration and costs;
  - (k) require a person of a specified description, when selling securities at or through a recognized stock market where his right to vest the securities in the purchaser (or, where he is acting as agent, his principal's right to do so) is derived from an arrangement of a specified kind, to notify the exchange participant through whom the sale is being effected of the fact that the right to vest the securities in the purchaser is derived from such an arrangement, and require the person who, having sold such securities pursuant to such an arrangement, purchases securities at or through a recognized stock market in satisfaction, in whole or in part, of his obligations under the arrangement to notify the exchange participant through whom the purchase or purchases is or are being effected of that fact;
  - (l) require a lender under a securities borrowing and lending agreement to-
    - (i) keep specified records or documents in the specified form and manner; and
    - (ii) give copies of such records or documents to the Commission at its request in the specified form and manner and within the specified time;
  - (m) require intermediaries to make returns at specified times (whether at regular intervals or otherwise) to the Commission, and provide for the particulars, or the nature of particulars, to be contained therein, the person by whom, and the manner and circumstances in which they are to be made, and other matters related to such returns;
  - (n) require a form or return required to be submitted under any provision of this Ordinance to be received by the Commission by or within the specified time;
  - (o) prescribe, specify or provide for any matter which this Ordinance provides is, or may be, prescribed, specified or provided for by rules made under this section;
  - (p) provide for any other matters for the better carrying out of the objects and purposes of this Ordinance.
- (2) In addition to the power to make rules under subsection (1), the Commission may, after consultation with the Financial Secretary, make such other rules as are necessary for the furtherance of any of its regulatory objectives and the performance of any of its functions.

- (3) Notwithstanding anything in this section-
- (a) the power of the Commission to make rules under this section in respect of any persons as intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to make rules in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;
  - (b) the power of the Commission to make rules under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to make rules in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.
- (4) For the avoidance of doubt, the powers of the Commission to make rules under this section are in addition to and not in derogation of any other power of the Commission to make rules under any provision of this or any other Ordinance.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Schedule:	1	Interpretation and General Provisions	5 of 2015	27/03/2015

[sections 2, 19, 66, 102, 164,  
171, 174, 175, 202 & 406  
& Schs. 9 & 10]  
(Amended 8 of 2011 s. 14)

## Part 1

### Interpretation

#### 1. Interpretation of this Ordinance

In this Ordinance, unless otherwise defined or excluded or the context otherwise requires-

**accredited** (隸屬) means accredited to a licensed corporation with the Commission's approval under section 122 of this Ordinance;

**Advisory Committee** (諮詢委員會) means the Advisory Committee referred to in section 7 of this Ordinance;

**associate** (有聯繫者), in relation to a person, means-

- (a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) the trustee of a trust of which the person, his spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object;
- (e) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;
- (f) another person accustomed or obliged to act in accordance with the directions or instructions of the person;
- (g) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;
- (h) a corporation which is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;
- (i) a corporation at general meetings of which the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;
- (j) a corporation of which the person controls the composition of the board of directors;
- (k) where the person is a corporation-
  - (i) each of its directors and its related corporations and each director or employee of any of its related corporations; and

- (ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation;
- (l) without limiting the circumstances in which paragraphs (a) to (k) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement-
  - (i) with respect to the acquisition, holding or disposal of such securities or such interest; or
  - (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

**associated entity** (有聯繫實體), in relation to an intermediary, means a company, or a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622), which- (Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

- (a) is in a controlling entity relationship with the intermediary; and
- (b) receives or holds in Hong Kong client assets of the intermediary;

**auditor** (核數師) means a certified public accountant (practising) as defined in the Professional Accountants Ordinance (Cap 50), or such other person as is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition; (Amended 23 of 2004 s. 56)

**authorized automated trading services** (認可自動化交易服務) means automated trading services which a person is authorized to provide under section 95(2) of this Ordinance;

**authorized financial institution** (認可財務機構) means an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap 155);

**automated trading services** (自動化交易服務) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

**bank** (銀行) means any institution carrying on business similar to-

- (a) the banking business within the meaning of the Banking Ordinance (Cap 155) as carried on by an authorized financial institution; or
- (b) the business of taking deposits within the meaning of that Ordinance as carried on by an authorized financial institution,

whether it is an authorized financial institution or not, and **banker** (銀行) shall be construed accordingly;

**bank incorporated outside Hong Kong** (在香港以外地方成立為法團的銀行) means a bank incorporated outside Hong Kong that is not an authorized financial institution;

**banker's books** (銀行簿冊) includes-

- (a) books of a banker;
- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession of a banker;
- (c) securities in the possession of a banker, whether as a pledge or otherwise; and
- (d) any material in which information is recorded (however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form) and which is used in the ordinary course of business of a bank;

**books** (簿冊) includes-

- (a) accounts and any accounting information; and
- (b) in the case of a banker, any banker's books, however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

**broadcast** (廣播), in relation to any material (however described), includes having the information contained in the material broadcast;

**broadcaster** (廣播業者) means a person who lawfully-

- (a) establishes and maintains a broadcasting service within the meaning of Part 3A of the

- Telecommunications Ordinance (Cap 106); or
- (b) provides a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (Cap 562);

**business day** (營業日) means a day other than-

- (a) a public holiday; (Amended 9 of 2012 s. 53)
- (ab) a Saturday; and (Added 9 of 2012 s. 53)
- (b) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1);

**certificate of deposit** (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable (and, in the case of any such document which is a prescribed instrument by virtue of paragraph (a) of the definition of **prescribed instrument** in section 137B(1) of the Banking Ordinance (Cap 155), such document includes any right or interest referred to in paragraph (b) of that definition in respect of such document);

**certified public accountant** (會計師) means a certified public accountant as defined in section 2 of the Professional Accountants Ordinance (Cap 50); (Replaced 23 of 2004 s. 56)

**charge** (押記) includes any form of security, including a mortgage;

**clearing house** (結算所) means a person-

- (a) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on a recognized stock market or subject to the rules of a recognized exchange company;
- (b) whose activities or objects include the provision of services for-
- (i) the clearing and settlement of transactions in futures contracts; or
- (ii) the day-to-day adjustment of the financial position of futures contracts, effected on a recognized futures market or subject to the rules of a recognized exchange company; or
- (c) who guarantees the settlement of any such transactions as are referred to in paragraph (a) or (b), but does not include a corporation operated by or on behalf of the Government;

**clearing participant** (結算所參與者) means a person-

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

**client** (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity, and-

- (a) includes another intermediary that-
- (i) deposits securities;
- (ii) deposits money; or
- (iii) deposits any property as collateral, with the first-mentioned intermediary;
- (b) in connection with a leveraged foreign exchange contract, does not include a recognized counterparty;

**client assets** (客戶資產) means-

- (a) client securities and collateral; and
- (b) client money;

**client collateral** (客戶抵押品) means-

- (a) securities collateral; and
- (b) other collateral;

**client money** (客戶款項)-

- (a) in relation to a licensed corporation, means any money-
  - (i) received or held by or on behalf of the licensed corporation; or
  - (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,
 which is so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest, and includes any accretions thereto whether as capital or income; or
- (b) in relation to a registered institution, means any money-
  - (i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or
  - (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,
 which is so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest, and includes any accretions thereto whether as capital or income;

***client securities (客戶證券)-***

- (a) in relation to a licensed corporation, means any securities (other than securities collateral)-
  - (i) received or held by or on behalf of the licensed corporation; or
  - (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,
 which are so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest; or
- (b) in relation to a registered institution, means any securities (other than securities collateral)-
  - (i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or
  - (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,
 which are so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest;

***client securities and collateral (客戶證券及抵押品) means-***

- (a) client securities; and
- (b) client collateral;

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

- (a) arrangements in respect of any property-
  - (i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;
  - (ii) under which-
    - (A) the property is managed as a whole by or on behalf of the person operating the arrangements;
    - (B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
    - (C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and
  - (iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive-
    - (A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or
    - (B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise

- of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or
- (b) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as being regarded as collective investment schemes in accordance with the terms of the notice,
- but does not include-
- (i) arrangements operated by a person otherwise than by way of business;
  - (ii) arrangements under which each of the participating persons is a corporation in the same group of companies as the person operating the arrangements;
  - (iii) arrangements under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;
  - (iv) franchise arrangements under which the franchisor or franchisee earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;
  - (v) arrangements under which money is taken by a solicitor from his client, or as a stakeholder, acting in his professional capacity in the ordinary course of his practice;
  - (vi) arrangements made for the purposes of any fund or scheme maintained by the Commission, or by a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, under any provision of this Ordinance for the purpose of providing compensation in the event of default by an exchange participant or a clearing participant;
  - (vii) arrangements made by any credit union in accordance with the objects thereof;
  - (viii) arrangements made for the purposes of any chit-fund permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap 262);
  - (ix) arrangements made for the purposes of the Exchange Fund established by the Exchange Fund Ordinance (Cap 66);
  - (x) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as not being regarded as collective investment schemes in accordance with the terms of the notice;

**Commission (證監會)** means the Securities and Futures Commission referred to in section 3(1) of this Ordinance;

**Commissioner of the Independent Commission Against Corruption (廉政專員)** means the person who holds the office of the Commissioner of the Independent Commission Against Corruption pursuant to section 5 of the Independent Commission Against Corruption Ordinance (Cap 204); (Amended 14 of 2003 s. 24)

**company (公司)** means a company as defined in section 2(1) of the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)

**compensation fund (賠償基金)** means the Investor Compensation Fund established under section 236 of this Ordinance;

**conduct (行為)** includes any act or omission, and any series of acts or omissions;

**constitution (章程)**, in relation to a corporation, including a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, means-

- (a) where the corporation is a company, the articles of association of the corporation; or (Amended 28 of 2012 ss. 912 & 920)
- (b) in any other case, any other instrument providing for the constitution of the corporation;

**controlling entity (控權實體)**, in relation to a corporation, means a person who, either alone or with any of his associates-

- (a) is entitled to exercise or control the exercise of not less than-
  - (i) subject to subparagraph (ii), 20%; or
  - (ii) where any other percentage is prescribed by rules made under section 397 of this Ordinance for

- the purposes of this definition, such other percentage,  
of the voting power at general meetings of the corporation;
- (b) has the right to nominate any of the directors of the corporation; or
- (c) has an interest in shares carrying the right to-
  - (i) veto any resolution; or
  - (ii) amend, modify, limit or add conditions to any resolution,  
at general meetings of the corporation;

**controlling entity relationship** (控權實體關係), in relation to a corporation, means its relationship with an intermediary by virtue of-

- (a) the intermediary being a controlling entity of the corporation;
- (b) the corporation being a controlling entity of the intermediary; or
- (c) another person, who is a controlling entity of the corporation, being also a controlling entity of the intermediary;

**corporation** (法團) means a company or other body corporate incorporated either in Hong Kong or elsewhere, but does not include a company or other body corporate which is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as being exempted from the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as being exempted from any provision of this Ordinance;

**court** (法庭、法院) includes a magistrate and a tribunal;

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

**currency and interest rate-linked instrument** (貨幣及利率掛鈎票據) means-

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to a combination of-
  - (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; and
  - (ii) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency and interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency and interest rate-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)

**currency-linked instrument** (貨幣掛鈎票據) means-

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
  - (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices; or
  - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)



**data material** (數據材料) means a document or other material used with or produced by any information system;

**dealing** (交易)-

- (a) in relation to securities, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement-
  - (i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
  - (ii) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (b) in relation to futures contracts, means, whether as principal or agent-
  - (i) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;
  - (ii) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or
  - (iii) inducing or attempting to induce another person to acquire or dispose of a futures contract;

**debenture** (債權證) includes debenture stocks, bonds, and other debt securities of a corporation, whether constituting a charge on the assets of the corporation or not; (Amended 8 of 2011 s. 14)

**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;

**disclosure proceedings** (關於披露的研訊程序) has the meaning given by section 307I(1) of this Ordinance; (Added 9 of 2012 s. 11)

**document** (文件) includes any register and books, any tape recording and any form of input or output into or from an information system, and any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

**exchange participant** (交易所參與者) means a person-

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

**executive director** (執行董事), in relation to the Commission, means the chief executive officer of the Commission or any other person who is appointed as an executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance (whether or not acting in any other capacity under that Part); (Amended 15 of 2006 s. 5)

**executive officer** (主管人員)-

- (a) in relation to a licensed corporation, means a responsible officer of the licensed corporation;
- (b) in relation to a registered institution, means a person who is an executive officer of the registered institution under the Banking Ordinance (Cap 155); or
- (c) in relation to an associated entity of an intermediary, means any director of the associated entity who is responsible for directly supervising the receiving or holding by the associated entity of client assets of the intermediary;

**fee** (費用) includes a charge;

**financial accommodation** (財務通融) means a loan or other arrangement under which a person is or is to be provided with credit, whether directly or through a third party, and in particular includes an overdraft, a discounted negotiable instrument, a guarantee, a forbearance from enforcing any debt that in substance is a

loan, and also includes an agreement to secure the payment or repayment of any such accommodation;

**financial product** (金融產品) means-

- (a) any securities;
- (b) any futures contract;
- (c) any collective investment scheme;
- (d) any leveraged foreign exchange contract;
- (e) any structured product; (Added 8 of 2011 s. 14)

**financial resources rules** (財政資源規則) means rules made under section 145 of this Ordinance;

**financial year** (財政年度)-

- (a) in relation to the Commission, means the financial year referred to in section 13(1) of this Ordinance; or
- (b) in relation to an intermediary, or an associated entity of an intermediary, means-
  - (i) the financial year in respect of which notification is given to the Commission under section 155(1) of this Ordinance or, where an approval is granted under section 155(3)(a) of this Ordinance, the financial year in respect of which the approval is granted;
  - (ii) the financial year in respect of which notification is given to the Monetary Authority under section 59B(1) of the Banking Ordinance (Cap 155) or, where an approval is granted under section 59B(3)(a) of that Ordinance, the financial year in respect of which the approval is granted; or
  - (iii) in any other case, a period of 12 consecutive months ending on 31 March in a calendar year;

**function** (職能) includes power and duty;

**futures contract** (期貨合約) means-

- (a) a contract or an option on a contract made under the rules or conventions of a futures market;
- (b) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as futures contracts in accordance with the terms of the notice, but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as futures contracts in accordance with the terms of the notice;

**Futures Exchange Company** (期交所) means the company incorporated, and registered by the name Hong Kong Futures Exchange Limited, under the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920)

**futures market** (期貨市場) means a place at which facilities are provided for persons to negotiate or conclude sales and purchases of, or for bringing together on a regular basis sellers and purchasers of-

- (a) contracts the effect of which is-
  - (i) that one party agrees to deliver to the other party at an agreed future time an agreed property, or an agreed quantity of a property, at an agreed price; or
  - (ii) that the parties will make an adjustment between them at an agreed future time according to whether at that time an agreed property is worth more or less or an index or other factor stands at a higher or lower level than a value or level agreed at the time of making of the contract; or
- (b) options on contracts of the kind described in paragraph (a), where-
  - (i) the contracts or options of the kind described in paragraph (a) or (b) are novated or guaranteed by a central counterparty under the rules or conventions of the market on which they are traded; or
  - (ii) the contractual obligations under the contracts or options of the kind described in paragraph (a) or (b) are normally discharged before the contractual expiry date under the rules or conventions of the market on which they are traded,but does not include the office of a recognized clearing house;

**group of companies** (公司集團) means any 2 or more corporations one of which is the holding company of the other or others (as the case may be);

**hold** (持有), in relation to any property, includes-

- (a) possession of the property;
- (b) being registered or otherwise recorded, as having title to or being entitled to receive the property, in any register or other record (however compiled or stored) which is established or created for the purpose of identifying persons having title to or being entitled to receive any property; and
- (c) in the case of a person carrying on business, the person being in a position to transfer the property to himself or otherwise receive the benefit of the property-
  - (i) where another person has a legal or equitable interest in the property;
  - (ii) where there is a connection between the property and the business which is carried on by the person; and
  - (iii) regardless of whether it would be lawful or unlawful for the person to transfer the property to himself or otherwise receive the benefit of the property,

but does not include, in the case of a cheque or other order made payable to any person, the possession of the cheque or other order during the course of dispatching or delivering it to that person or any other person on behalf of that person;

**holding company** (控股公司) means, in relation to a corporation, any other corporation of which it is a subsidiary; (Replaced 28 of 2012 ss. 912 & 920)

**incorporated** (成立、成立為法團) includes formed or established, by whatever means;

**information** (資訊、資料、消息) includes data, text, images, sound codes, computer programmes, software and databases, and any combination thereof;

**information system** (資訊系統) means an information system as defined in section 2(1) of the Electronic Transactions Ordinance (Cap 553);

**Insurance Authority** (保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap 41);

**insurer** (保險人) means an insurer as defined in section 2(1) of the Insurance Companies Ordinance (Cap 41);

**interest rate-linked instrument** (利率掛鈎票據) means-

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
  - (i) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices; or
  - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as interest rate-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)

**intermediary** (中介人) means a licensed corporation or a registered institution;

**judicial or other proceedings** (司法或其他法律程序) means any legal proceedings, whether in the nature of judicial proceedings or otherwise;

**legal officer** (律政人員) means a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap 87);

**leveraged foreign exchange contract** (槓桿式外匯交易合約) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

**leveraged foreign exchange trading** (槓桿式外匯交易) has the meaning assigned to it by Part 2 of Schedule 5

to this Ordinance;

**licence** (牌、牌照) means a licence granted under section 116, 117, 120 or 121 of this Ordinance, and **licensed** (獲發牌、持牌) shall be construed accordingly;

**licensed corporation** (持牌法團) means a corporation which is granted a licence under section 116 or 117 of this Ordinance;

**licensed person** (持牌人) means a licensed corporation or a licensed representative;

**licensed representative** (持牌代表) means an individual who is granted a licence under section 120 or 121 of this Ordinance;

**liquidator** (清盤人) includes a provisional liquidator;

**listed** (上市) means listed on a recognized stock market, and for the purposes of this definition-

- (a) a corporation shall be regarded as listed if any of its securities are listed;
- (b) securities shall be regarded as listed when a recognized exchange company has, on the application of the corporation which issued them, or on the application of a holder of them, agreed to allow, subject to the requirements of this Ordinance, dealings in those securities to take place on a recognized stock market, and shall continue to be so regarded during a period of suspension of dealings in those securities on the recognized stock market;

**listing** (上市), in relation to securities, means the process by which the securities are listed;

**live broadcast** (直播), in relation to any material (however described), means having the material broadcast without its being recorded in advance;

**Mandatory Provident Fund Schemes Authority** (積金局) means the Mandatory Provident Fund Schemes Authority established under section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485);

**market contract** (市場合約) means a contract subject to the rules of a recognized clearing house entered into by the clearing house with a clearing participant pursuant to a novation which is both in accordance with those rules and for the purposes of the clearing and settlement of transactions in securities or futures contracts effected on a recognized stock market or a recognized futures market or subject to the rules of a recognized exchange company;

**market misconduct** (市場失當行為) has the meaning assigned to it by section 245(1) of this Ordinance;

**Market Misconduct Tribunal** (市場失當行為審裁處) means the Market Misconduct Tribunal established by section 251 of this Ordinance;

**member** (成員), in relation to the Commission, means- (Amended 15 of 2006 s. 5)

- (a) the chairman of the Commission; or
- (b) the chief executive officer or any other executive director or non-executive director of the Commission (whether or not acting in any other capacity under Part 1 of Schedule 2 to this Ordinance); (Amended 15 of 2006 s. 5)

**minor** (未成年), in relation to a person, means not having attained the age of 18 years;

**misfeasance** (不當行為) means the performance of an otherwise lawful act in a wrongful manner;

**Monetary Authority** (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);

**money laundering activities** (洗錢活動) means activities intended to have the effect of making any property-

- (a) which is the proceeds obtained from the commission of an offence under the laws of Hong Kong, or of any conduct which if occurred in Hong Kong would constitute an offence under the laws of Hong Kong; or
- (b) which in whole or in part, directly or indirectly, represents such proceeds,

not to appear to be or so represent such proceeds;

**multilateral agency** (多邊機構) means a body specified in Part 4;

**non-executive director** (非執行董事), in relation to the Commission, means a person who is appointed as a non-executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance (whether or not acting in any other capacity under that Part); (Amended 15 of 2006 s. 5)

**non-Hong Kong company** (非香港公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap 622); (Added 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)

**number** (數目), in relation to shares which in the context can be construed to include stock, includes amount;

**officer** (高級人員)-

- (a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or
- (b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body;

**Official Receiver** (破產管理署署長) means the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap 6);

**Ombudsman** (申訴專員) means The Ombudsman referred to in section 3(1) of The Ombudsman Ordinance (Cap 397);

**other collateral** (其他抵押品)-

- (a) in relation to a licensed corporation, means any property (other than securities or money)-
  - (i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or
  - (ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person, which is so deposited or provided-
    - (A) as security for the provision by the licensed corporation of financial accommodation; or
    - (B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the property; or
- (b) in relation to a registered institution, means any property (other than securities or money)-
  - (i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or
  - (ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity, which is so deposited or provided-
    - (A) as security for the provision by the registered institution of financial accommodation; or
    - (B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the property;

**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 investor** (專業投資者) means-

- (a) any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, or any person authorized to provide automated trading services under section 95(2) of this Ordinance;
- (b) any intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;

- (c) any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
- (d) any insurer authorized under the Insurance Companies Ordinance (Cap 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong;
- (e) any scheme which-
  - (i) is a collective investment scheme authorized under section 104 of this Ordinance; or
  - (ii) is similarly constituted under the law of any place outside Hong Kong and, if it is regulated under the law of such place, is permitted to be operated under the law of such place, or any person by whom any such scheme is operated;
- (f) any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485 sub. leg. A), or any person who, in relation to any such registered scheme, is an approved trustee or service provider as defined in section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;
- (g) any scheme which-
  - (i) is a registered scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); or
  - (ii) is an offshore scheme as defined in section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is permitted to be operated under the law of such place, or any person who, in relation to any such scheme, is an administrator as defined in section 2(1) of that Ordinance;
- (h) any government (other than a municipal government authority), any institution which performs the functions of a central bank, or any multilateral agency;
- (i) except for the purposes of Schedule 5 to this Ordinance, any corporation which is-
  - (i) a wholly owned subsidiary of-
    - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
    - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
  - (ii) a holding company which holds all the issued share capital of-
    - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
    - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong; or
  - (iii) any other wholly owned subsidiary of a holding company referred to in subparagraph (ii); or
- (j) any person of a class which is prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph as within the meaning of this definition for the purposes of the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as within the meaning of this definition for the purposes of any provision of this Ordinance;

**property (財產)** includes-

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

**prospectus (招股章程)** means prospectus as defined in section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); (Replaced 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)

**public (公眾、大眾)** means the public of Hong Kong, and includes any class of that public;

**purchase (買、購買)**, in relation to securities, includes subscribing for or acquiring the securities, in whatever form the consideration may be;

**qualifying credit rating (合資格信貸評級)** means-

- (a) a credit rating specified in Part 5; or
- (b) any credit rating which, in the opinion of the Commission, is equivalent to a credit rating specified in

Part 5;

**recognized clearing house** (認可結算所) means a company recognized as a clearing house under section 37(1) of this Ordinance;

**recognized counterparty** (認可對手方) means-

- (a) an authorized financial institution;
- (b) in relation to a particular transaction conducted by a corporation licensed for Type 3 regulated activity, another corporation which is also so licensed; or
- (c) an institution prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as a recognized counterparty;

**recognized exchange company** (認可交易所) means a company recognized as an exchange company under section 19(2) of this Ordinance;

**recognized exchange controller** (認可控制人) means a company recognized as an exchange controller under section 59(2) of this Ordinance;

**recognized futures market** (認可期貨市場) means a futures market operated by a recognized exchange company;

**recognized investor compensation company** (認可投資者賠償公司) means a company recognized as an investor compensation company under section 79(1) of this Ordinance;

**recognized stock market** (認可證券市場) means a stock market operated by a recognized exchange company;

**record** (紀錄) means any record of information (however compiled or stored) and includes-

- (a) any books, deeds, contract or agreement, voucher, receipt or data material, or information which is recorded otherwise than in a legible form but is capable of being reproduced in a legible form; and
- (b) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced, and any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;

**registered** (註冊) means registered under section 119 of this Ordinance, and "registration" (註冊) shall be construed accordingly;

**registered institution** (註冊機構) means an authorized financial institution which is registered under section 119 of this Ordinance;

**Registrar of Companies** (公司註冊處處長) means the Registrar of Companies appointed under section 21(1) of the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)

**regulated activity** (受規管活動) means any of the regulated activities specified in Part 1 of Schedule 5 to this Ordinance, and a reference to a type of regulated activity by number shall be construed as a reference to the type of regulated activity of that number as specified in that Part;

**regulated investment agreement** (受規管投資協議) means an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to any party to the agreement a profit, income or other returns calculated by reference to changes in the value of any property, but does not include an interest in a collective investment scheme;

**relevant Ordinance** (《有關條例》) means the Companies Ordinance (Cap 32) as in force from time to time before the commencement date\* of section 2 of Schedule 9 to the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)

**relevant provisions** (有關條文) means the provisions of-

- (a) this Ordinance;
- (b) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), so far as those Parts relate, directly or indirectly, to the performance of functions relating to prospectuses,

whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance; (Added 15 of 2011 s. 91. Amended 28 of 2012 ss. 912 & 920)

- (ba) Part 5 of the Companies Ordinance (Cap 622), so far as that Part relates, directly or indirectly, to the performance of functions relating to-
  - (i) the buy-back by a corporation of its own shares; or
  - (ii) a corporation giving financial assistance for the acquisition of its own shares, whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance; (Added 28 of 2012 ss. 912 & 920)
- (c) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), for the purposes only of section 213 of this Ordinance, and so far as those Parts relate, directly or indirectly, to an advertisement mentioned in section 38B(1) of that Ordinance; (Added 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)
- (d) Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615); (Added 15 of 2011 s. 91)

**relevant share capital** (有關股本) means the issued share capital of a corporation which is of a class carrying rights to vote in all circumstances at general meetings of the corporation;

**remuneration** (報酬) includes money, any consideration, financial accommodation or benefit, whether paid, provided or supplied directly or indirectly;

**repealed Commodities Trading Ordinance** (已廢除的《商品交易條例》) means the Commodities Trading Ordinance (Cap 250) repealed under section 406 of this Ordinance;

**repealed Exchanges and Clearing Houses (Merger) Ordinance** (已廢除的《交易所及結算所(合併)條例》) means the Exchanges and Clearing Houses (Merger) Ordinance (Cap 555) repealed under section 406 of this Ordinance;

**repealed Leveraged Foreign Exchange Trading Ordinance** (已廢除的《槓桿式外匯買賣條例》) means the Leveraged Foreign Exchange Trading Ordinance (Cap 451) repealed under section 406 of this Ordinance;

**repealed Protection of Investors Ordinance** (已廢除的《保障投資者條例》) means the Protection of Investors Ordinance (Cap 335) repealed under section 406 of this Ordinance;

**repealed Securities and Futures (Clearing Houses) Ordinance** (已廢除的《證券及期貨(結算所)條例》) means the Securities and Futures (Clearing Houses) Ordinance (Cap 420) repealed under section 406 of this Ordinance;

**repealed Securities and Futures Commission Ordinance** (已廢除的《證券及期貨事務監察委員會條例》) means the Securities and Futures Commission Ordinance (Cap 24) repealed under section 406 of this Ordinance;

**repealed Securities (Disclosure of Interests) Ordinance** (已廢除的《證券(披露權益)條例》) means the Securities (Disclosure of Interests) Ordinance (Cap 396) repealed under section 406 of this Ordinance;

**repealed Securities (Insider Dealing) Ordinance** (已廢除的《證券(內幕交易)條例》) means the Securities (Insider Dealing) Ordinance (Cap 395) repealed under section 406 of this Ordinance;

**repealed Securities Ordinance** (已廢除的《證券條例》) means the Securities Ordinance (Cap 333) repealed under section 406 of this Ordinance;

**repealed Stock Exchanges Unification Ordinance** (已廢除的《證券交易所合併條例》) means the Stock Exchanges Unification Ordinance (Cap 361) repealed under section 406 of this Ordinance;

**responsible officer** (負責人員) means an individual who is approved by the Commission under section 126(1) of this Ordinance as a responsible officer of a licensed corporation;

**Risk Management Committee** (風險管理委員會), in relation to a recognized exchange controller, means the committee of that name established under section 65(1) of this Ordinance by the controller;



**rules (規章)-**

- (a) in relation to a recognized exchange company, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing-
  - (i) its exchange participants;
  - (ii) the persons who may participate in any of the services it provides;
  - (iii) the setting and levying of fees;
  - (iv) the listing of securities;
  - (v) the trading of securities or futures contracts;
  - (vi) the provision of other services; or
  - (vii) generally, its management, operations or procedures,and includes, in respect of sections 24 and 92 of this Ordinance, its constitution;
- (b) in relation to a recognized clearing house, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing-
  - (i) its clearing participants;
  - (ii) the persons who may participate in any of the services it provides;
  - (iii) the setting and levying of fees;
  - (iv) the provision of clearing and settlement services, and the suspension or withdrawal of such services;
  - (v) the provision of other services; or
  - (vi) generally, its management, operations or procedures,and includes, in respect of sections 41 and 92 of this Ordinance, its constitution;
- (c) in relation to a recognized exchange controller, means-
  - (i) its constitution; or
  - (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing the conduct or procedures of-
    - (A) the recognized exchange controller;
    - (B) the Risk Management Committee; or
    - (C) any person or body of persons declared in a notice under section 66(2) of this Ordinance to be a person or body of persons (as the case may be) to which this sub-subparagraph shall apply; or
- (d) in relation to a recognized investor compensation company, means-
  - (i) its constitution; or
  - (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing its management, operations or procedures, or its provision of services;

**securities (證券) means-**

- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- (d) interests in any collective investment scheme;
- (e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- (f) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as securities in accordance with the terms of the notice; (Amended 8 of 2011 s. 14)
- (g) a structured product that does not come within any of paragraphs (a) to (f) but in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance, (Added 8 of 2011 s. 14)

but does not include-

- (i) shares or debentures of a company that is a private company within the meaning of section 11 of the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)

- (ii) any interest in any collective investment scheme that is-
  - (A) a registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485 sub. leg. A);
  - (B) an occupational retirement scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); or
  - (C) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap 41);
- (iii) any interest arising under a general partnership agreement or proposed general partnership agreement unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts (whether or not that person is, or is to become, a party to the agreement or proposed agreement);
- (iv) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document;
- (v) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap 19) and any promissory note within the meaning of section 89 of that Ordinance;
- (vi) any debenture that specifically provides that it is not negotiable or transferable (excluding a debenture that is a structured product in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance); (Amended 8 of 2011 s. 14)
- (vii) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as securities in accordance with the terms of the notice;

***Securities and Futures Appeals Tribunal* (上訴審裁處)** means the Securities and Futures Appeals Tribunal established by section 216 of this Ordinance;

***securities and futures industry* (證券期貨業)** means the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants;

***securities and futures market* (證券期貨市場)** means any market, exchange, place or service which facilitates the bringing together on a regular basis persons who are parties to transactions related to financial products;

***securities borrowing and lending agreement* (證券借貸協議)** means an agreement whereby a person borrows or lends securities pursuant to an arrangement where the borrower undertakes to return securities of the same description, or pay the equivalent value of the securities, to the lender, and includes a stock borrowing within the meaning of section 19(16) of the Stamp Duty Ordinance (Cap 117);

***securities collateral* (證券抵押品)-**

- (a) in relation to a licensed corporation, means any securities-
  - (i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or
  - (ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person, which are so deposited or provided-
    - (A) as security for the provision by the licensed corporation of financial accommodation; or
    - (B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the securities; or
- (b) in relation to a registered institution, means any securities-
  - (i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

- (ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity, which are so deposited or provided-
- (A) as security for the provision by the registered institution of financial accommodation; or
- (B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the securities;

**securities margin financing** (證券保證金融資) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

**served** (送達) includes given;

**shadow director** (幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

**share** (股份) means any share in the share capital of a corporation, and, except where a distinction between stock and shares is express or implied, includes stock;

**short selling order** (賣空指示)-

- (a) subject to paragraph (b), means an order to sell securities in respect of which the seller, or the person for whose benefit or on whose behalf the order is made, has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having-
  - (i) under a securities borrowing and lending agreement-
    - (A) borrowed the securities; or
    - (B) obtained a confirmation from the counterparty to the agreement that the counterparty has the securities available to lend to him;
  - (ii) a title to other securities which are convertible into or exchangeable for the securities to which the order relates;
  - (iii) an option to acquire the securities to which the order relates;
  - (iv) rights or warrants to subscribe for and to receive the securities to which the order relates; or
  - (v) entered into with any other person an agreement or arrangement of a description prescribed by rules made under section 397 of this Ordinance for the purposes of this subparagraph;
- (b) in relation to paragraph (a)(ii), (iii), (iv) or (v), does not include an order where the seller, or the person for whose benefit or on whose behalf the order is made, has, at the time of placing the order, issued unconditional instructions to obtain the securities to which the order relates;

**specified debt securities** (指明債務證券) means debenture stocks, loan stocks, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities and other securities or instruments acknowledging, evidencing or creating indebtedness-

- (a) which are issued or guaranteed by the Government;
- (b) which are issued by an issuer that has a qualifying credit rating for any of its debt instruments; or
- (c) which are issued by any other issuer as may be approved by the Commission in writing in a particular case;

**specified futures exchange** (指明期貨交易所) means a futures exchange specified in Part 2;

**specified stock exchange** (指明證券交易所) means a stock exchange specified in Part 3;

**Stock Exchange Company** (聯交所) means the company incorporated, and registered by the name The Stock Exchange of Hong Kong Limited, under the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920)

**stock market** (證券市場) means a place where persons regularly meet together to negotiate sales and purchases of securities (including prices), or a place at which facilities are provided for bringing together sellers and purchasers of securities; but does not include the office of-

- (a) an exchange participant of a recognized exchange company which may operate a stock market; or
- (b) a recognized clearing house;

**structured product** (結構性產品) has the meaning given by section 1A of this Part; (Added 8 of 2011 s. 14)

**take-over offer (收購要約)**, in relation to a corporation, means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of the shares to acquire the shares of the class or a specified proportion of them;

**title (稱銜)** includes name or description;

**trading right (交易權)**, in relation to a recognized exchange company, means a right to be eligible to trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company and entered as such a right in a list, roll or register kept by that exchange company.  
(Amended 23 of 2004 s. 56; 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

## 1A. Meaning of *structured product*

- (1) In this Ordinance, subject to subsection (2), **structured product (結構性產品)** means-
- (a) an instrument under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
    - (i) changes in the price, value or level (or a range within the price, value or level) of any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;
    - (ii) changes in the price, value or level (or a range within the price, value or level) of any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; or
    - (iii) the occurrence or non-occurrence of any specified event or events (excluding an event or events relating only to the issuer or guarantor of the instrument or to both the issuer and the guarantor);
  - (b) a regulated investment agreement; or
  - (c) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as structured products in accordance with the notice.
- (2) A **structured product** does not include-
- (a) a debenture issued for capital fund raising purposes that is convertible into or exchangeable for shares (whether issued or unissued) of the issuer of the debenture or of a related corporation of the issuer;
  - (b) a subscription warrant issued for capital fund raising purposes that entitles the holder to subscribe for shares (whether issued or unissued) of the issuer of the warrant or of a related corporation of the issuer;
  - (c) a collective investment scheme;
  - (d) a depositary receipt;
  - (e) a debenture that would come within subsection (1)(a) only because it has a variable interest rate that is reset periodically to equate to a money market or interbank reference interest rate that is widely quoted (whether or not subject to a predetermined maximum or minimum rate) plus or minus a specified rate (if any);
  - (f) a product under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to securities of a corporation, or of a related corporation of the corporation, and that is issued by the corporation only to a person who is-
    - (i) a bona fide employee or former employee of the corporation or of a related corporation of the corporation; or
    - (ii) a spouse, widow, widower, minor child (natural or adopted) or minor step-child of a person referred to in subparagraph (i);
  - (g) a product that may be possessed, promoted, offered, sold, printed or published only-
    - (i) under a licence, permission or other authorization under the Betting Duty Ordinance (Cap 108) or the Gambling Ordinance (Cap 148); or
    - (ii) under the Government Lotteries Ordinance (Cap 334);
  - (h) an instrument issued in relation to-
    - (i) a contest authorized by section 37 of the Broadcasting Ordinance (Cap 562); or
    - (ii) a contest included in a service licensed under Part 3A of the Telecommunications Ordinance

(Cap 106);

- (i) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap 41); or
- (j) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as structured products in accordance with the notice.

(Added 8 of 2011 s. 14)

## **2. References to subsidiary**

- (1) For the purposes of this Ordinance, a corporation shall be regarded as a subsidiary of another corporation if-
  - (a) the other corporation-
    - (i) controls the composition of its board of directors;
    - (ii) controls more than half of its voting power at general meetings; or
    - (iii) holds more than half of its issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital); or
  - (b) it is a subsidiary of a corporation which is the other corporation's subsidiary.
- (2) For the purposes of subsection (1), in determining whether a corporation is a subsidiary of another corporation-
  - (a) any shares held or power exercisable by the other corporation in a fiduciary capacity shall be regarded as not held or exercisable by it;
  - (b) subject to paragraphs (c) and (d), any shares held or power exercisable-
    - (i) by a nominee for the other corporation (except where the other corporation is concerned only in a fiduciary capacity); or
    - (ii) by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,shall be regarded as held or exercisable by the other corporation;
  - (c) any shares held or power exercisable by a person under a debenture of the corporation or under a trust deed for securing the issue of the debenture shall be disregarded; and
  - (d) any shares held or power exercisable by, or by a nominee for, the other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (c), shall be regarded as not held or exercisable by the other corporation if the ordinary business of the other corporation or its subsidiary (as the case may be) includes the lending of money and the shares are held or power is exercisable by way of security only for a transaction entered into in the ordinary course of that business.

## **3. References to related corporation**

For the purposes of this Ordinance-

- (a) 2 or more corporations shall be regarded as related corporations of each other if one of them is-
  - (i) the holding company of the other;
  - (ii) a subsidiary of the other; or
  - (iii) a subsidiary of the holding company of the other;
- (b) when an individual-
  - (i) controls the composition of the board of directors of one or more corporations;
  - (ii) controls more than half of the voting power at general meetings of one or more corporations; or
  - (iii) holds more than half of the issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital) of one or more corporations,each of the corporations referred to in subparagraph (i), (ii) or (iii), and each of their subsidiaries, shall be regarded as related corporations of each other.

## **4. References to controlling the composition of a corporation's board of directors**

- (1) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded

as controlled by another corporation if the other corporation, by the exercise of some power exercisable by it, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.

- (2) For the purposes of subsection (1), a corporation shall be regarded as being able to appoint or remove a director of another corporation if-
  - (a) the appointment or removal cannot occur without the corporation exercising a power; or
  - (b) the appointment of a person as a director of the other corporation follows necessarily from his being a director or other officer of the corporation.
- (3) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by an individual if the individual, by the exercise of some power exercisable by him, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.
- (4) For the purposes of subsection (3), an individual shall be regarded as being able to appoint or remove a director of a corporation if-
  - (a) the appointment or removal cannot occur without the individual exercising a power; or
  - (b) the appointment of a person as a director of the corporation follows necessarily from his being a director or other officer of another corporation and his appointment as a director or other officer of the other corporation cannot occur without the individual exercising a power.

## **5. References to wholly owned subsidiary**

For the purposes of this Ordinance, a body corporate shall be regarded as the wholly owned subsidiary of another body corporate if it has no members except that other, that other's nominee, that other's wholly owned subsidiary (as construed in accordance with this section), such wholly owned subsidiary's nominee, or any combination thereof.

## **6. References to substantial shareholder**

- (1) For the purposes of this Ordinance, a person shall, in relation to a corporation, be regarded as a substantial shareholder of the corporation if he, either alone or with any of his associates-
  - (a) has an interest in shares in the corporation-
    - (i) the aggregate number of which shares is equal to more than 10% of the total number of issued shares of the corporation; or (Amended 28 of 2012 ss. 912 & 920)
    - (ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation; or
  - (b) holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation.
- (2) For the purposes of subsection (1), a person shall be regarded as being entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of a corporation indirectly if he, either alone or with any of his associates, has an interest in shares in a further corporation which entitles him, either alone or with any of his associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the further corporation which is itself entitled, either alone or with any of its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the first-mentioned corporation.

## **7. References to securities of a corporation**

In this Ordinance, a reference to securities (however described) as those of a corporation shall, unless the context otherwise requires, be construed as a reference to securities (having the applicable meaning, whether under section 1 or otherwise) which are-

- (a) issued, made available or granted by the corporation;

- (b) proposed to be issued, made available or granted by the corporation; or
- (c) proposed to be issued, made available or granted by the corporation when it is incorporated.

## **8. References to interest of investing public**

In this Ordinance, a reference to the interest of the investing public does not include any interest the taking into consideration of which is or is likely to be contrary to the public interest.

## **9. References to conditions**

In this Ordinance, unless the context otherwise requires, a reference to any condition imposed under or pursuant to any provision of this Ordinance shall, in any case where the condition has been amended (however described) under or pursuant to any provision of this Ordinance, be construed as a reference to the condition as so amended.

## **10. References relating to regulated activity**

In this Ordinance-

- (a) unless otherwise defined or excluded or the context otherwise requires, a person shall be regarded as carrying on a regulated activity if-
  - (i) he carries on a business in a regulated activity; or
  - (ii) he performs for or on behalf of or by arrangement with a person carrying on a business in a regulated activity, any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;
- (b) a person shall be regarded as carrying on a regulated activity for an intermediary if he performs for or on behalf of or by arrangement with the intermediary any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;
- (c)
  - (i) a corporation licensed under section 116 or 117 of this Ordinance to carry on a regulated activity shall be regarded as being licensed for that regulated activity;
  - (ii) an individual licensed under section 120 or 121 of this Ordinance to carry on a regulated activity for a licensed corporation shall be regarded as being licensed for that regulated activity.

## **11. References to contravention, etc.**

In this Ordinance, unless the context otherwise requires-

- (a) a reference to contravention shall-
  - (i) be construed as including a reference to failure to comply; and
  - (ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision;
- (b) a reference to failure to comply shall-
  - (i) be construed as including a reference to contravention; and
  - (ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision.

## **12. References to Ordinance**

For the avoidance of doubt, in this Ordinance, a reference to this or any other Ordinance, whether generally or specifically and whether by reference to the short title of the Ordinance or otherwise, shall, unless the context otherwise requires, be construed as including any subsidiary legislation made under this or that other Ordinance (as the case may be).

## **13. Notes in Ordinance**

A note located in the text of this Ordinance is provided for information only and has no legislative effect.

(Added 9 of 2012 s. 11)

## **14. Commencement of subsidiary legislation**

Without limiting section 28(5) of the Interpretation and General Clauses Ordinance (Cap 1), if any subsidiary legislation made under this Ordinance is to come into operation on a day to be notified in the Gazette-

- (a) the notice may fix different days for a provision of the subsidiary legislation to come into operation for different purposes; and
- (b) different notices may fix different days for the provision to come into operation for different purposes.

(Added 5 of 2015 s. 17)

### **Part 2**

#### **Specified Futures Exchanges**

1. ASX Limited
2. Australian Securities Exchange Limited
3. BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
4. Board of Trade of the City of Chicago, Inc.
5. Chicago Board Options Exchange, Incorporated
6. Chicago Mercantile Exchange Inc.
7. China Financial Futures Exchange
8. Commodity Exchange, Inc.
9. Dalian Commodity Exchange
10. Eurex Frankfurt AG
11. Eurex Zürich AG
12. Euronext Amsterdam N.V.
13. Euronext Paris S.A.
14. Hong Kong Futures Exchange Limited
15. ICE Futures Canada, Inc.
16. ICE Futures U.S., Inc.
17. Korea Exchange, Inc.
18. LIFFE Administration and Management
19. Montréal Exchange Inc.
20. Multi Commodity Exchange of India Limited
21. National Commodity & Derivatives Exchange Limited
22. NASDAQ OMX PHLX LLC
23. NASDAQ OMX Stockholm AB
24. New York Mercantile Exchange, Inc.
25. New Zealand Futures and Options Exchange Limited
26. NYSE Arca, Inc.
27. Osaka Securities Exchange Co., Ltd.
28. Shanghai Futures Exchange
29. Singapore Exchange Derivatives Trading Limited
30. The London Metal Exchange Limited
31. Tokyo Financial Exchange Inc.
32. Tokyo Grain Exchange Inc.
33. Tokyo Stock Exchange, Inc.
34. Zhengzhou Commodity Exchange

(Replaced L.N. 94 of 2012)

### **Part 3**

#### **Specified Stock Exchanges**

1. ASX Limited
2. BSE Limited



3. Borsa Italiana S.p.A.
4. Bursa Malaysia Securities Berhad
5. Deutsche Börse AG
6. Euronext Amsterdam N.V.
7. Euronext Brussels S.A./N.V.
8. Euronext Paris S.A.
9. Korea Exchange, Inc.
10. London Stock Exchange plc
11. Montréal Exchange Inc.
12. Nagoya Stock Exchange, Inc.
13. NASDAQ OMX Copenhagen A/S
14. NASDAQ OMX Helsinki Ltd
15. NASDAQ OMX Stockholm AB
16. National Stock Exchange of India Limited
17. New York Stock Exchange LLC
18. NYSE Amex LLC
19. NZX Limited
20. Osaka Securities Exchange Co., Ltd.
21. Oslo Børs ASA
22. Singapore Exchange Securities Trading Limited
23. SIX Swiss Exchange AG
24. Sociedad Rectora de la Bolsa de Valores de Madrid, S.A. (Sociedad Unipersonal)
25. Société de la Bourse de Luxembourg S.A.
26. The NASDAQ Stock Market LLC
27. The Philippine Stock Exchange, Inc.
28. The Stock Exchange of Hong Kong Limited
29. The Stock Exchange of Thailand
30. Tokyo Stock Exchange, Inc.
31. TSX Inc.
32. Wiener Börse AG

(Replaced L.N. 94 of 2012)

## **Part 4**

### **Multilateral Agencies**

1. The African Development Bank
2. The Asian Development Bank
3. The European Bank for Reconstruction and Development
4. The European Investment Bank
5. The Inter-American Development Bank
6. The International Bank for Reconstruction and Development (commonly known as the World Bank)
7. The International Finance Corporation (an affiliate of the World Bank)

## **Part 5**

### **Qualifying Credit Rating**

1. A Moody's Investors Service rating of-
  - (a) A3 or above for long term debt; or
  - (b) Prime-3 or above for short term debt.
2. A Standard & Poor's Corporation rating of-
  - (a) A or above for long term debt; or
  - (b) A-3 or above for short term debt.

(Amended E.R. 2 of 2012)

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**Note:**

\* **Commencement date : 3 March 2014.**

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Schedule:	8	Securities and Futures Appeals Tribunal	L.N. 163 of 2013	03/03/2014

[sections 215, 216, 217, 218,  
219, 222, 232, 233 &  
234 & Schedule 10]

## Part 1

### Appointment of Members and Proceedings of Tribunal, etc.

1. In this Schedule, unless the context otherwise requires-  
*appeal panel* (上訴委員會) means the panel of persons appointed under section 2;  
*application for review* (覆核申請) has the meaning assigned to it by section 215 of this Ordinance;  
*chairman* (主席) means the chairman of the Tribunal;  
*judge* (法官) has the meaning assigned to it by section 215 of this Ordinance;  
*member* (成員) means a member of the Tribunal;  
*ordinary member* (普通成員) means a member other than the chairman;  
*panel member* (上訴委員) means a member of the appeal panel;  
*parties* (各方) has the meaning assigned to it by section 215 of this Ordinance;  
*relevant authority* (有關當局) has the meaning assigned to it by section 215 of this Ordinance;  
*review* (覆核) has the meaning assigned to it by section 215 of this Ordinance;  
*Secretary* (局長) means the Secretary for Financial Services and the Treasury; (Amended L.N. 106 of 2002)  
*specified decision* (指明決定) has the meaning assigned to it by section 215 of this Ordinance;  
*Tribunal* (審裁處) has the meaning assigned to it by section 215 of this Ordinance.

### Appointment of appeal panel

2. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.
3. Subject to sections 4 and 5, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
4. A panel member may at any time resign his office by notice in writing to the Chief Executive.
5. The Chief Executive may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
6. For the avoidance of doubt, section 216(5) of this Ordinance does not require the appointment of persons to more than one panel under section 2.

### Appointment of chairman

7. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.
8. Subject to sections 9 to 11, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
9. The chairman may at any time resign his office by notice in writing to the Chief Executive.
10. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
11. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

### **Appointment of ordinary members**

12. For the purpose of determining a review, the Secretary on the recommendation of the chairman shall appoint 2 panel members as ordinary members in relation to the review.
13. Subject to sections 14 and 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
14. An ordinary member may at any time resign his office by notice in writing to the Secretary.
15. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

### **Sittings**

16. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.
17. Before convening a sitting under section 16 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.
18. Subject to section 19, at any sitting of the Tribunal-
  - (a) the chairman and 2 ordinary members shall be present;
  - (b) the chairman shall preside; and
  - (c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.
19. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 31 or 32, the chairman only shall be present, and every question before the Tribunal shall be determined by him.
20. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.
21. Where an application is made pursuant to section 20 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.
22. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard-
  - (a) in person or, in the case of the relevant authority or a corporation, through an officer or employee of the relevant authority or the corporation (as the case may be); and

- (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.
- 23. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.
- 24. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

#### **Preliminary conferences and consent orders**

- 25. At any time after an application for review has been made, the chairman may-
  - (a) on his own motion or on the application of any of the parties to the review;
  - (b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application for review by the parties to the review; and
  - (c) if the parties agree or, in the case of an application made by any party pursuant to paragraph (a), the other party agrees,direct that a conference, to be attended by the parties or their representatives and presided over by the chairman shall be held for the purposes of-
  - (i) enabling the parties to prepare for the conduct of the review;
  - (ii) assisting the Tribunal to determine issues for the purposes of the review; and
  - (iii) generally securing the just, expeditious and economical conduct of the review.
- 26. At a conference held in accordance with a direction of the chairman under section 25, the chairman may-
  - (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
  - (b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.
- 27. After a conference has been held in accordance with a direction of the chairman under section 25, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.
- 28. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if-
  - (a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and
  - (b) the parties consent to all of the terms of the order.
- 29. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 28 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.
- 30. In sections 28 and 29, **order** (命令) includes any finding, determination and any other decision.

#### **Chairman as sole member of Tribunal**

- 31. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.
- 32. Where-
  - (a) an application is made to the Tribunal pursuant to section 217(4) of this Ordinance for the grant of an

- extension of the time within which an application for review shall be made; or
- (b) an application is made to the Tribunal under section 227(2) of this Ordinance for a stay of execution of a specified decision,

the chairman may determine the application as the sole member of the Tribunal.

33. Where section 31 or 32 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.
34. After the chairman has made any determination under section 31, or made any determination in respect of an application described in section 32(b), the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.
35. Where-
  - (a) there is an application described in section 32(b); and
  - (b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application,
 a judge within the meaning of paragraph (a) of the definition of *judge* in section 215 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

### Miscellaneous

36. Except as otherwise provided in this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

## Part 2

### Specified Decisions

#### Division 1—Specified Decisions Made by Commission

Item	Provision	Description of decision
1.	Section 93(12) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2) of this Ordinance	Refusal to grant an authorization, or imposition of any condition.
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
5.	Section 104(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.
6.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.
7.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
8.	Section 104(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
8A.	Section 104A(1) of this Ordinance	Refusal to authorize a structured product, or imposition of any conditions. (Added 8 of 2011 s. 15)
8B.	Section 104A(3) of this Ordinance	Refusal to approve an individual nominated in respect of a structured product. (Added 8 of 2011 s. 15)
8C.	Section 104A(4)(a) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. (Added 8 of 2011 s. 15)

8D	Section 104A(4)(b) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a structured product. (Added 8 of 2011 s. 15)
9.	Section 105(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.
10.	Section 105(3) of this Ordinance	Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 105(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
12.	Section 105(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
13.	Section 106(1) of this Ordinance	Withdrawal of an authorization.
14.	Section 106(3) of this Ordinance	Refusal to withdraw an authorization.
15.	Section 106(4) of this Ordinance	Imposition of any condition.
16.	Section 116(1) of this Ordinance	Refusal to grant a licence.
17.	Section 116(6) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
18.	Section 117(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
19.	Section 117(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
20.	Section 119(1) of this Ordinance	Refusal to grant registration.
21.	Section 119(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
22.	Section 120(1) of this Ordinance	Refusal to grant a licence.
23.	Section 120(5) of this Ordinance	Imposition of any condition.
24.	Section 120(7) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
25.	Section 121(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
26.	Section 121(3) of this Ordinance	Imposition of any condition.
27.	Section 121(5) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
28.	Section 122(1) of this Ordinance	Refusal to approve an accreditation.
29.	Section 122(2) of this Ordinance	Refusal to approve a transfer of an accreditation.
30.	Section 124(1) of this Ordinance	Refusal to issue a duplicate licence or certificate of registration.
31.	Section 126(1) of this Ordinance	Refusal to approve a person as a responsible officer.
32.	Section 126(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
33.	Section 127(1) of this Ordinance	Refusal to vary any regulated activity.
34.	Section 130(1) of this Ordinance	Refusal to approve premises.
35.	Section 132(1) of this Ordinance	Refusal to approve a person to become or continue to be a substantial shareholder.
36.	Section 132(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
37.	Section 133(1) of this Ordinance	Direction to a licensed corporation.
38.	Section 133(2) of this Ordinance	Direction to a person.
39.	Section 134(1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of this Ordinance	Refusal to grant a modification or waiver.
40.	Section 134(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
41.	Section 146(2) or (5)(b) of this Ordinance	Imposition of any condition.
42.	Section 146(5)(a) of this Ordinance	Suspension of a licence.

43.	Section 146(6) or (7) of this Ordinance	Amendment of any condition.
44.	Section 147(3)(a) of this Ordinance	Suspension of a licence.
45.	Section 147(3)(b) of this Ordinance	Imposition of any condition.
46.	Section 147(4) or (5) of this Ordinance	Amendment of any condition.
47.	Section 159(1) of this Ordinance	Appointment of an auditor.
48.	Section 159(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
49.	Section 160(1) of this Ordinance	Appointment of an auditor.
50.	Section 160(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
51.	Section 194(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to impose a prohibition on a person.
52.	Section 194(2) of this Ordinance	Order to pay a pecuniary penalty.
53.	Section 195(1)(a), (b) or (c) of this Ordinance	Revocation or suspension of a licence.
54.	Section 195(2) of this Ordinance	Revocation of a licence.
55.	Section 195(7) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
56.	Section 196(1)(i), (ii) or (iii) of this Ordinance	Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person.
57.	Section 196(2) of this Ordinance	Order to pay a pecuniary penalty.
58.	Section 197(1)(a) or (b) of this Ordinance	Revocation or suspension of any registration.
59.	Section 197(2) of this Ordinance	Revocation of any registration.
60.	Section 202(1) of this Ordinance	Requirement to transfer records.
61.	Section 203(1) of this Ordinance	Imposition of any condition.
62.	Section 204(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.
63.	Section 205(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning relevant property.
64.	Section 206(1) of this Ordinance	Requirement imposed on a licensed corporation to maintain property.
65.	Section 208(1)(b) of this Ordinance	Substitution or variation of a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
66.	Section 208(1) of this Ordinance	Refusal to withdraw, substitute or vary a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
67.	Section 309(2) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
68.	Section 309(3) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
69.	Section 309(4)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition.
70.	Section 403 of this Ordinance	Imposition of any condition.
71.	Section 38A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)	Refusal to issue a certificate of exemption, or imposition of any condition. (Amended 28 of 2012 ss. 912 & 920)
72.	Section 342A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)	Refusal to issue a certificate of exemption, or imposition of any condition. (Amended 28 of 2012 ss. 912 & 920)
73.	Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)	Objection to a listing of securities. (Added L.N. 231 of 2002)



74.	Section 6(3)(b) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)	Imposition of any condition. (Added L.N. 231 of 2002)
75.	Section 8(3) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Refusal to approve a corporation as an approved lending agent. (Added L.N. 231 of 2002)
76.	Section 8(4) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Imposition of any condition. (Added L.N. 231 of 2002)
77.	Section 8(6) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Withdrawal of an approval. (Added L.N. 231 of 2002)
78.	Section 4(4)(c) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap 571 sub. leg. Y)	Refusal to give notice. (Added L.N. 231 of 2002)

### **Division 2—Specified Decisions Made by Monetary Authority**

Item	Provision	Description of decision
1.	Section 58A(1)(c) or (d) of the Banking Ordinance (Cap 155)	Removal or suspension of relevant particulars of a relevant individual from the register.
2.	Section 71C(1) of the Banking Ordinance (Cap 155)	Refusal to give consent.
3.	Section 71C(2)(b) of the Banking Ordinance (Cap 155)	Attachment of any condition.
4.	Section 71C(4)(c) or (d) of the Banking Ordinance (Cap 155)	Withdrawal or suspension of consent.
5.	Section 71C(9) of the Banking Ordinance (Cap 155)	Attachment or amendment of any condition.
6.	Section 71E(3) of the Banking Ordinance (Cap 155)	Attachment or amendment of any condition.

### **Division 3—Specified Decisions Made by Commission or Recognized Investor Compensation Company**

Item	Provision	Description of decision
1.	Section 4(4) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Refusal to determine that a claim which is not lodged within the time limit provided in section 4(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T) is not barred. (Added L.N. 231 of 2002)
2.	Section 7(1)(a), (b) or (c) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Determination as to whether there has been a default, as to the date of default, or as to whether a claimant is entitled to compensation. (Added L.N. 231 of 2002)
3.	Section 7(2) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Determination of a provisional amount of compensation. (Added L.N. 231 of 2002)
4.	Section 9(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Aggregation of separate claims or parts of those claims. (Added L.N. 231 of 2002)

### **Part 3**

#### **Division 1—Specified Decisions Referred to in Section 217(3)(b) of this Ordinance**

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

#### **Division 2—Specified Decisions Referred to in Section 218(4)(a) of this Ordinance**

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 56 or 57 of Division 1 of Part 2.	Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap 155).

#### **Division 3—Specified Decisions Referred to in Section 218(4)(b) of this Ordinance**

Item	Description of specified decision	Provision
1.	A specified decision set out in item 1 or 4 of Division 2 of Part 2.	Section 196(1) and (2) of this Ordinance.

#### **Division 4—Specified Decisions Referred to in Section 232(1) of this Ordinance**

Item	Description of specified decision	Provision
1.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

#### **Division 5—Specified Decisions Referred to in Section 232(2) of this Ordinance**

Item	Description of specified decision	Provision
1.	A specified decision set out in item 3 of Division 1 of Part 2.	Section 97(2) of this Ordinance.
2.	A specified decision set out in item 4 of Division 1 of Part 2.	Section 98(6) of this Ordinance.
3.	A specified decision set out in item 17 of Division 1 of Part 2.	Section 116(7) of this Ordinance.
4.	A specified decision set out in item 19 of Division 1 of Part 2.	Section 117(4) of this Ordinance.
5.	A specified decision set out in item 21 of Division 1 of Part 2.	Section 119(6) of this Ordinance.
6.	A specified decision set out in item 24 of Division 1 of Part 2.	Section 120(8) of this Ordinance.
7.	A specified decision set out in item 27 of Division 1 of Part 2.	Section 121(6) of this Ordinance.
8.	A specified decision set out in item 36 of Division 1 of Part 2.	Section 132(4) of this Ordinance.
9.	A specified decision set out in item 42 of Division 1 of	Section 146(9) of this Ordinance.

- Part 2.
10. A specified decision set out in item 41 or 43 of Division 1 of Part 2. Section 146(10) of this Ordinance.
  11. A specified decision set out in item 44 of Division 1 of Part 2. Section 147(7) of this Ordinance.
  12. A specified decision set out in item 45 or 46 of Division 1 of Part 2. Section 147(8) of this Ordinance.
  13. A specified decision set out in item 61 of Division 1 of Part 2. Section 203(3) of this Ordinance.
  14. A specified decision set out in item 62, 63, 64 or 65 of Division 1 of Part 2. Section 209(1) of this Ordinance.
  15. A specified decision set out in item 6 of Division 2 of Part 2. Section 71E(4) of the Banking Ordinance (Cap 155).
  16. A specified decision set out in item 73 of Division 1 of Part 2. Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V). (Added L.N. 231 of 2002)
  17. A specified decision set out in item 74 of Division 1 of Part 2. Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V). (Added L.N. 231 of 2002)
- (Format changes—E.R. 1 of 2013)

Chapter:	571S	SECURITIES AND FUTURES (LICENSING AND REGISTRATION) (INFORMATION) RULES	Gazette Number	Version Date
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Section:	3	Information to be provided with applications to Commission	L.N. 214 of 2002; L.N. 12 of 2003	01/04/2003
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(1) For the purposes of section 128(1) of the Ordinance, an application to the Commission under the provisions referred to in this subsection shall be made in the applicable form (if any) specified by the Commission in accordance with section 402(1) of the Ordinance, and shall-

- (a) in the case of an application-
  - (i) under section 116 or 117 of the Ordinance by a corporation for a licence;
  - (ii) under section 119 of the Ordinance by an authorized financial institution for registration as a registered institution;
  - (iii) under section 127 of the Ordinance by an intermediary for variation of the regulated activity specified in its licence or certificate of registration; or
  - (iv) under section 134 of the Ordinance by an intermediary for the grant of a modification or waiver, in relation to the intermediary, in respect of any condition specified in or imposed under, or any of the requirements of the provisions referred to in, subsection (1) of that section,
 contain, in so far as applicable, such information, statements, details or matters in respect of the applicant or other person in each item in Part 1 of Schedule 2 as are required to be specified by the form;
- (b) in the case of an application-
  - (i) under section 120(1) or (2) or 121(1) of the Ordinance by an individual for a licence;
  - (ii) under section 122(1) of the Ordinance by a licensed representative for approval of his accreditation, or under section 122(2) of the Ordinance for approval of the transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be) of the Ordinance;
  - (iii) under section 126 of the Ordinance by a licensed representative for approval as a responsible officer of a licensed corporation to which he is accredited;
  - (iv) under section 127 of the Ordinance by a licensed representative for variation of the regulated activity specified in his licence by adding to or reducing the regulated activity so specified; or
  - (v) under section 134 of the Ordinance by a licensed representative for the grant of a modification or waiver, in relation to the licensed representative, in respect of any condition specified in or

imposed under, or any of the requirements of the provisions referred to in, subsection (1) of that section,

contain, in so far as applicable, such information, statement, details or matters in respect of the applicant or other person in each item in Part 2 of Schedule 2 as are required to be specified by the form; or

(c) in the case of an application-

- (i) under section 130(1) of the Ordinance by a person for approval of premises to be used by a licensed corporation for keeping records or documents required under the Ordinance;
- (ii) under section 132 of the Ordinance by a person for approval to become or continue to be (as the case may be) a substantial shareholder of a corporation licensed under section 116 of the Ordinance;
- (iii) under section 134 of the Ordinance by a person (other than an intermediary or a licensed representative) for the grant of a modification or waiver, in relation to him, in respect of any condition specified in or imposed under, or any of the requirements of the provisions referred to in, subsection (1) of that section; or
- (iv) by a person for any other matter requiring the approval of the Commission under Part V of the Ordinance,

contain, in so far as applicable, such information, statements, details or matters in respect of the applicant or other person in each item in Part 3 of Schedule 2 as are required to be specified by the form.

(2) Nothing in item 8 of Part 1 of Schedule 2, item 8 of Part 2 of Schedule 2, or item 5 of Part 3 of Schedule 2 shall require disclosure of information concerning an ongoing criminal investigation by a regulatory body or criminal investigatory body if such disclosure is prohibited by any statutory provision in Hong Kong or elsewhere, but the applicant shall notify the Commission of the results of the investigation within 7 business days after he becomes aware of the completion of the investigation.

Chapter:	571S	SECURITIES AND FUTURES (LICENSING AND REGISTRATION) (INFORMATION) RULES	Gazette Number	Version Date
Schedule:	4	PARTICULARS TO BE CONTAINED IN REGISTER	L.N. 214 of 2002; L.N. 12 of 2003	01/04/2003

[section 6]

## PART 1

### PARTICULARS OF LICENSED PERSONS TO BE CONTAINED IN REGISTER

The following particulars in respect of a licensed person shall be contained in the register-

- (a) his CE number;
- (b) the date of grant of the licence under Part V of the Ordinance;
- (c) in the case of a licensed corporation-
  - (i) its electronic mail address (if any) and web site address (if any);
  - (ii) its contact details (including correspondence address, telephone and facsimile numbers and electronic mail address) of its complaints officer;
  - (iii) whether it holds a licence granted under section 117 of the Ordinance; and
  - (iv) a list of its accredited representatives;
- (d) in the case of a licensed representative-
  - (i) whether he holds a provisional licence granted under section 120(2) of the Ordinance;
  - (ii) whether he holds a licence granted under section 121 of the Ordinance;
  - (iii) whether he is approved as a responsible officer and, if so, the regulated activity for which he is responsible; and
  - (iv) the date of accreditation to his principal;
- (e) the effective date of such conditions (if any) of the licence as the Commission contains in the register

- under section 136(2)(b) of the Ordinance;
- (f) the regulated activity or activities for which the licensed person is licensed and the effective date of the approval for the person to carry on the regulated activity or activities;
- (g) whether or not the licence is suspended;
- (h) the modification or waiver granted (if any), together with such particulars as the Commission considers appropriate in relation to any condition imposed, and the corresponding effective date; and
- (i) a record of each public disciplinary action (if any) taken by the Commission against him in Hong Kong that is not the subject of a pending appeal, or a successful appeal, and the record of each disciplinary action is to be kept in the register for a period of 5 years from the date when the relevant disciplinary action takes effect.

## PART 2

### PARTICULARS OF REGISTERED INSTITUTIONS TO BE CONTAINED IN REGISTER

The following particulars in respect of a registered institution shall be contained in the register-

- (a) its CE number;
- (b) the date of grant of the registration under Part V of the Ordinance;
- (c) its electronic mail address (if any) and web site address (if any);
- (d) its contact details (including correspondence address, telephone and facsimile numbers and electronic mail address) of its complaints officer;
- (e) the effective date of such conditions (if any) of the registration as the Commission contains in the register under section 136(2)(b) of the Ordinance;
- (f) the regulated activity or activities for which the registered institution is registered and the effective date of the approval for the institution to carry on the regulated activity or activities;
- (g) whether or not the registration is suspended;
- (h) the modification or waiver granted (if any), together with such particulars as the Commission considers appropriate in relation to any condition imposed, and the corresponding effective date; and
- (i) a record of each public disciplinary action (if any) taken by the Commission against it in Hong Kong that is not the subject of a pending appeal, or a successful appeal, and the record of each disciplinary action is to be kept in the register for a period of 5 years from the date when the relevant disciplinary action takes effect.

Chapter:	571U	SECURITIES AND FUTURES (MISCELLANEOUS) RULES	Gazette Number	Version Date
Section:	3	Licence or certificate of registration to be exhibited	L.N. 216 of 2002; L.N. 12 of 2003	01/04/2003

(1) Subject to subsection (2), an intermediary shall exhibit its licence or certificate of registration (as the case may be) in a prominent place at its principal place of business and, if it has more than one place of business, a certified copy of such licence or certificate of registration (as the case may be) in lieu of its original copy shall be exhibited in a prominent place at each of its other places of business.

(2) At any time when the original copy of the licence or certificate of registration (as the case may be) of an intermediary is returned to the Commission for amendment under section 4, the requirement of subsection (1) shall be regarded as having been complied with if the intermediary exhibits a certified copy of such licence or certificate of registration (as the case may be) in lieu of its original copy until the original copy of its licence or certificate of registration (as the case may be) as amended is returned to it by the Commission.

Chapter:	571U	SECURITIES AND FUTURES (MISCELLANEOUS) RULES	Gazette Number	Version Date
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Section:	4	Return of licence or certificate of registration	L.N. 216 of 2002; L.N. 12 of 2003	01/04/2003
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(1) If an intermediary or licensed representative ceases to carry on all or any of the regulated activities for which he is licensed or registered for a period exceeding-

(a) subject to paragraph (b), one month after the date of such cessation; or

(b) such longer period as the Commission may approve in writing,

he shall return his licence or certificate of registration (as the case may be) to the Commission for cancellation or amendment (as the case may be)-

(c) in the case of paragraph (a), within 37 days after the date of the cessation; or

(d) in the case of paragraph (b), within 7 days after the end of the longer period referred to in that paragraph.

(2) If any regulated activity specified in the licence or certificate of registration (as the case may be) of an intermediary or licensed representative is varied under section 127 of the Ordinance, the intermediary or licensed representative shall return the licence or certificate of registration (as the case may be) to the Commission for amendment within 7 business days after the regulated activity is so varied.

(3) Where it appears to the Commission that an error exists in a licence or certificate of registration, it may by notice in writing require any person whom it reasonably believes to be in possession of the licence or certificate of registration (as the case may be) to return it to the Commission and the person shall return the licence or certificate of registration (as the case may be) to the Commission for amendment within 7 business days after the date of the notice.

Chapter:	571AF	SECURITIES AND FUTURES (FEES) RULES	Gazette Number	Version Date
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Schedule:	1	Fees Prescribed for Purposes of Section 395(1)(a)(i), (iii) and (iv) of Ordinance	L.N. 163 of 2013	03/03/2014
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[sections 2, 3 & 11]

Item	Description	Amount
<b>Fees relating to Part III of Ordinance</b>		
1.	Annual fee payable in respect of authorization of the provision of automated trading services under section 95(2) of the Ordinance	\$10000
<b>Fees relating to Part IV of Ordinance</b>		
2.	Fee payable on an application under section 104(1) of the Ordinance for-	
	(a) authorization of a collective investment scheme-	\$40000, plus \$5000 for each
	(i) within which there is, or could be, more than one fund; or	such fund (excluding any such
	(ii) which maintains, or is capable of maintaining, more than	fund which is already within or
	one fund	maintained by another collective
		investment scheme which has
		been authorized under section
		104 of the Ordinance)
	(b) authorization of any other collective investment scheme	\$20000
	(c) extension of authorization of a collective investment scheme to	\$5000 (excluding any such fund
	cover an additional fund	which is already within or
		maintained by another collective
		investment scheme which has
		been authorized under section
		104 of the Ordinance)
3.	Fee payable in respect of-	

	(a) authorization of a collective investment scheme under section 104 of the Ordinance-	\$20000, plus \$2500 for each such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)
	(i) within which there is, or could be, more than one fund; or	
	(ii) which maintains, or is capable of maintaining, more than one fund	
	(b) authorization of any other collective investment scheme under section 104 of the Ordinance	\$10000
	(c) extension of authorization of a collective investment scheme under section 104 of the Ordinance to cover an additional fund	\$2500 (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)
4.	Annual fee payable in respect of authorization of a collective investment scheme under section 104 of the Ordinance which is not limited to a period of less than 12 months-	
	(a) in the case of a collective investment scheme-	\$7500, plus \$4500 for each such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)
	(i) within which there is, or could be, more than one fund; or	
	(ii) which maintains, or is capable of maintaining, more than one fund	
	(b) in the case of any other collective investment scheme	\$6000
5.	Fee payable on an application for extension of the period of authorization of any collective investment scheme under section 104 of the Ordinance which authorization is limited to a period of less than 12 months	\$20000
5A.	Fee payable on an application under section 104A(1) of the Ordinance for authorization of a structured product (8 of 2011 s. 29)	\$2000
5B.	Fee payable in respect of authorization of a structured product under section 104A of the Ordinance (8 of 2011 s. 29)	\$1000
6.	Fee payable on an application under section 105(1) of the Ordinance for authorization of the issue of an advertisement, invitation or document other than that in respect of any collective investment scheme which is authorized under section 104 of the Ordinance	\$20000
7.	Fee payable in respect of authorization of the issue of an advertisement, invitation or document under section 105 of the Ordinance other than that in respect of any collective investment scheme which is authorized under section 104 of the Ordinance	\$10000
8.	Fee payable on an application to modify a previous authorization under section 105 of the Ordinance of the issue of an advertisement, invitation or document in respect of-	
	(a) any instrument specified in Part 2 of Schedule 4 to the Ordinance	\$3000
	(b) any certificate of deposit	\$3000
	(c) any securities other than interests in a collective investment scheme	\$3000
	(d) any structured product (8 of 2011 s. 29)	\$3000

#### **Fees relating to Part V of Ordinance**

9.	Fee payable on an application-	
	(a) for the grant of a licence under section 116, 117, 120 or 121 of the Ordinance where a licensed corporation or licensed representative has substantially changed its or his particulars since the grant of the existing licence	\$200
	(b) for the grant of a certificate of registration under section 119 of the Ordinance where a registered institution has substantially changed its particulars since the grant of the existing certificate of registration	\$200
10.	Fee payable for renewal of a modification or waiver referred to in item 16(e), (f), (g), (h), (i) or (j) of Schedule 3	\$4000
11.	Fee payable pursuant to section 136(6)(b) of the Ordinance for certification of a copy of a document as a true copy	\$200

#### **Fees relating to Part VI of Ordinance**

12.	Fee payable-	
	(a) (subject to paragraph (c)) on an application under section 155(3)(a) of the Ordinance for approval in respect of an alteration of date on which the financial year ends	\$2000
	(b) (subject to paragraph (c)) on an application under section 155(3)(b) of the Ordinance for approval in respect of the adoption of a period which exceeds 12 months as the financial year	\$2000
	(c) on an application for approval in respect of both of the matters referred to in paragraphs (a) and (b) respectively	\$2000
13.	Fee payable on an application under section 156(4) of the Ordinance for extension of the period within which financial statements and other documents, and any auditor's report, are required to be submitted under section 156(1) or (2) of the Ordinance	\$2000

#### **Fees relating to Part XIVA of Ordinance**

13A.	Fee payable on an application for a waiver under section 307E(1) of the Ordinance (9 of 2012 s. 16)	\$24000
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#### **Fees relating to Part XV of Ordinance**

14.	Fee payable on an application under section 309(2) or (3) of the Ordinance for exemption from all or any of the provisions of Part XV of the Ordinance	\$24000
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#### **Miscellaneous fees**

15.	Fee payable on submission of any information or document to the Commission requiring its consideration and advice (including any advice relating to the application of Part IV of the Ordinance and any advice relating to the authorization for registration of a prospectus under section 38D or 342C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)) (28 of 2012 ss. 912 & 920)	\$10000
16.	Fee payable on an application pursuant to section 11 of the Securities and Futures (Client Securities) Rules (Cap 571 sub. leg.	\$6000



	H) for any approval	
17.	Fee payable for renewal of an approval referred to in item 16	\$4000
18.	Fee payable on an application pursuant to section 4(2)(b) of the Securities and Futures (Client Money) Rules (Cap 571 sub. leg. I) for any approval	\$6000
19.	Fee payable for renewal of an approval referred to in item 18	\$4000
20.	Fee payable for renewal of an approval referred to in item 19 of Schedule 3	\$4000
21.	Fee payable on an application under section 38D or 342C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) for authorization for registration of a prospectus under that Ordinance- (28 of 2012 ss. 912 & 920)	
	(a) in the case of rights issue prospectus	\$15000
	(b) in the case of Eurobond issue prospectus	\$15000
	(c) in the case of warrant issue prospectus	\$10000
	(d) in the case of any prospectus relating to interests in a collective investment scheme	nil
	(e) in the case of any prospectus, not referred to in paragraph (a), (b), (c) or (d), which offers any shares in or debentures of a corporation that have been approved by a recognized exchange company for listing on a recognized stock market	\$30000
	(f) in the case of any other prospectus	\$30000
22.	Fee payable for a copy of a document provided by the Commission in the performance of a function under any of the relevant provisions for which no fee is otherwise prescribed in this Schedule	\$9 per page

(Format changes—E.R. 1 of 2013)

Chapter:	571AF	SECURITIES AND FUTURES (FEES) RULES	Gazette Number	Version Date
Schedule:	3	FEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(b) OF ORDINANCE	L.N. 228 of 2002; L.N. 12 of 2003	01/04/2003

[sections 10 & 11 & Schedule 1]

Item	Description	Amount
<b>Fees relating to Part III of Ordinance</b>		
1.	Prescribed application fee payable under section 96(1)(b) of the Ordinance on an application for authorization to provide automated trading services	\$10000
2.	Prescribed fee payable under section 99(5)(b) of the Ordinance for a copy of an entry in or extract of a register maintained under section 99 of the Ordinance	\$9 per page
<b>Fees relating to Part V of Ordinance</b>		
3.	Prescribed fee payable under section 116(1) of the Ordinance on an application for the grant of a licence for a licensed corporation	(A) \$4740 for each regulated activity other than Type 3 regulated activity; and (B) \$129730 for

		Type 3 regulated activity
4.	Prescribed fee payable under section 117(1) of the Ordinance on an application for the grant of a licence for a licensed corporation for a period not exceeding 3 months	\$4900 for each regulated activity
5.	Prescribed fee payable under section 119(1) of the Ordinance on an application for registration as a registered institution	\$23500 for each regulated activity
6.	Prescribed fee payable under section 120(1) of the Ordinance on an application for the grant of a licence for a licensed representative	(A) \$1790 for each regulated activity other than Type 3 regulated activity; and (B) \$2420 for Type 3 regulated activity
7.	Prescribed fee payable under section 120(2) of the Ordinance on an application for the grant of a provisional licence for a licensed representative	\$800
8.	Prescribed fee payable under section 121(1) of the Ordinance on an application for the grant of a licence for a licensed representative for a period not exceeding 3 months	\$1850 for each regulated activity
9.	Prescribed fee payable under section 122(1) of the Ordinance on an application for approval of an accreditation of a licensed representative	\$200
10.	Prescribed fee payable under section 122(2) of the Ordinance on an application for approval of a transfer of an accreditation of a licensed representative	\$200 for each regulated activity
11.	Prescribed fee payable under section 124(1) of the Ordinance on an application for issue of a duplicate of a licence or certificate of registration	\$200
12.	Prescribed fee payable under section 126(1) of the Ordinance on an application for approval of a person as a responsible officer	\$2950 for each regulated activity
13.	Prescribed fee payable under section 127(1) of the Ordinance on an application for variation of any regulated activity-	
	(a) in the case of a licensed corporation-	(A) \$4740 for each regulated activity other than Type 3 regulated activity; and
	(i) for adding any regulated activity	(B) \$129730 for Type 3 regulated activity
	(ii) (subject to subparagraph (iii)) for removing any regulated activity	\$200 for each regulated activity
	(iii) for removing all regulated activities specified in the licence	nil
(b)	in the case of a licensed representative-	
	(i) for adding any regulated activity	(A) \$1790 for each

		regulated activity other than Type 3 regulated activity; and
		(B) \$2420 for Type 3 regulated activity
	(ii) (subject to subparagraph (iii)) for removing any regulated activity	\$200 for each regulated activity
	(iii) for removing all regulated activities specified in the licence	nil
(c)	in the case of a registered institution-	
	(i) for adding any regulated activity	\$23500 for each regulated activity
	(ii) (subject to subparagraph (iii)) for removing any regulated activity	\$200 for each regulated activity
	(iii) for removing all regulated activities specified in the certificate of registration	nil
14.	Prescribed fee payable under section 130(1) of the Ordinance on an application for approval of premises	\$1000
15.	Prescribed fee payable under section 132(1) of the Ordinance on an application for approval to become or continue to be a substantial shareholder	\$3000
16.	Prescribed fee payable under section 134(1) of the Ordinance on an application for the grant of a modification or waiver in respect of-	
	(a) any condition specified in section 118 of the Ordinance or imposed under section 116, 117, 119, 120, 121, 126 or 132 of the Ordinance or any of the requirements of section 121(2)(a) of the Ordinance	\$2000
	(b) any of the requirements of sections 116(2)(b) and 125(1) and (2) of the Ordinance	\$2000
	(c) any of the requirements of sections 116(2)(c) and 130 of the Ordinance	\$2000
	(d) any of the requirements of section 129 of the Ordinance	\$4000
	(e) any of the requirements of the Securities and Futures (Financial Resources) Rules (Cap 571 sub. leg. N) (other than one relating to hedging or arbitrage programmes)	\$6000
	(f) any of the requirements of the Securities and Futures (Financial Resources) Rules (Cap 571 sub. leg. N), relating to hedging or arbitrage programmes-	
	(i) where at least one side of the portfolio is less than \$10000000	\$10000
	(ii) in any other case	\$20000
	(g) any of the requirements of the Securities and Futures (Client Securities) Rules (Cap 571 sub. leg. H)	\$6000
	(h) any of the requirements of the Securities and Futures (Client Money) Rules (Cap 571 sub. leg. I)	\$6000
	(i) any of the requirements of the Securities and Futures (Keeping of Records) Rules (Cap 571 sub. leg. O)	\$6000
	(j) any of the requirements of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Cap 571 sub. leg. Q)	\$6000
17.	Prescribed fee payable under section 136(5)(b) of the Ordinance for a copy of an entry in or extract of a register maintained under section 136 of the Ordinance	\$9 per page
18.	Prescribed annual fee payable under section 138(1) of the Ordinance-	
	(a) in the case of a corporation licensed under section 116 of the Ordinance	

(A) \$4740 for each regulated activity other than Type 3 regulated activity; and  
(B) \$129730 for Type 3 regulated activity

- (b) in the case of an individual licensed under section 120(1) of the Ordinance-  
(i) to the extent of any regulated activity for which the individual is not approved as a responsible officer under section 126(1) of the Ordinance

(A) \$1790 for each regulated activity other than Type 3 regulated activity; and  
(B) \$2420 for Type 3 regulated activity

- (ii) to the extent of any regulated activity for which the individual is approved as a responsible officer under section 126(1) of the Ordinance

(A) \$4740 for each regulated activity other than Type 3 regulated activity; and  
(B) \$5370 for Type 3 regulated activity

- (c) in the case of a registered institution

\$35000 for each regulated activity  
\$6000

19. Prescribed fee payable under section 58 of the Securities and Futures (Financial Resources) Rules (Cap 571 sub. leg. N) on an application for any approval  
20. Prescribed application fee payable under section 8(2)(b) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X) on an application for approval as an approved lending agent

\$24000

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	179	Power to require production of records and documents concerning listed corporations, etc.	E.R. 2 of 2012	02/08/2012

- (1) Where, in relation to a corporation which is or was listed-  
(a) it appears to the Commission that there are circumstances suggesting that at any relevant time the business of the corporation has been conducted-  
(i) with intent to defraud its creditors, or the creditors of any other person;  
(ii) for any fraudulent or unlawful purpose; or

- (iii) in a manner oppressive to its members or any part of its members;
  - (b) it appears to the Commission that there are circumstances suggesting that the corporation was formed for any fraudulent or unlawful purpose;
  - (c) it appears to the Commission that there are circumstances suggesting that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;
  - (d) it appears to the Commission that there are circumstances suggesting that at any relevant time persons involved in the management of the affairs of the corporation have engaged, in relation to such management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;
  - (e) it appears to the Commission that there are circumstances suggesting that at any relevant time members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect; or
  - (f) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186 relates to the corporation and is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d) or (e) as being suggested by the circumstances referred to in such paragraph,
- an authorized person may, subject to subsections (5) to (10), give a direction to-
- (i) the corporation;
  - (ii) a corporation that is, or was at the material time, a related corporation of the corporation;
  - (iii) an authorized financial institution, other than the corporation or a corporation described in paragraph (ii);
  - (iv) an auditor, other than the corporation or a corporation described in paragraph (ii);
  - (v) any other person,
- requiring the production, within the time and at the place specified in the direction, of any record and document specified in the direction.
- (2) A power under this section to require the production of any record or document by any person includes the power-
- (a) if the record or document is produced-
    - (i) to make copies or otherwise record details of the record or document; and
    - (ii) to require-
      - (A) the person;
      - (B) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,
 to provide or make any explanation or statement in respect of the record or document (including, in so far as applicable, a description of the circumstances under which it was prepared or created, details of all instructions given or received in connection with it, and an explanation of the reasons for the making of entries contained in it or the omission of entries from it); or
  - (b) if the record or document is not produced, to require-
    - (i) the person;
    - (ii) in the case of a corporation, any person who is a present or past officer of the corporation, or is or was at any time employed by the corporation,
 to state where it is.
- (3) An authorized person may in writing require the person providing or making an explanation or statement under this section to verify within a reasonable period specified in the requirement the explanation or statement by statutory declaration, which may be taken by the authorized person.
- (4) If a person does not provide or make an explanation or statement in accordance with a requirement under this section for the reason that the explanation or statement was not within his knowledge or in his possession, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.
- (5) An authorized person shall not give any direction under subsection (1)(i) or (ii) to require the production of any record or document unless the authorized person has reasonable cause to believe that the record or document relates to the affairs of the corporation to which the direction is to be given or a corporation of which such corporation is, or was at the material time, a related corporation.
- (6) An authorized person shall not give any direction to an authorized financial institution under subsection (1)(iii)

- to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that-
- (a) the authorized financial institution is in possession of any record or document relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and
  - (b) the record or document required to be produced under the direction-
    - (i) relates to the affairs of such corporation or to a transaction with such corporation; and
    - (ii) is relevant to the consideration of whether there has been the occurrence of-
      - (A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or
      - (B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186.
- (7) An authorized person shall not give any direction to an auditor under subsection (1)(iv) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that-
- (a) the auditor is in possession of any record or document, which is in the nature of audit working papers, relating to the affairs of a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and
  - (b) the record or document required to be produced under the direction-
    - (i) relates to the affairs of such corporation; and
    - (ii) is relevant to the consideration of whether there has been the occurrence of-
      - (A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or
      - (B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186.
- (8) An authorized person shall not give any direction to a person under subsection (1)(v) to require the production of any record or document unless the authorized person has reasonable cause to believe, and the Commission certifies in writing that the authorized person has reasonable cause to believe, that-
- (a) the person has dealt or has had dealings, directly or indirectly, with, or is otherwise in possession of any record or document relating to the affairs of, a corporation to which any direction has been or may be given under subsection (1)(i) or (ii); and
  - (b) the record or document required to be produced under the direction-
    - (i) relates to the affairs of such corporation or to a transaction with such corporation;
    - (ii) is relevant to the consideration of whether there has been the occurrence of-
      - (A) where subsection (1)(a), (b), (c), (d) or (e) applies, the matter described in such subsection as being suggested by the circumstances referred to in such subsection; or
      - (B) where subsection (1)(f) applies, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186; and
    - (iii) cannot be obtained by giving a direction to any other person under subsection (1)(i), (ii), (iii) or (iv).
- (9) The power of an authorized person to give any direction under subsection (1) (other than subsection (1)(iii)) to any corporation which is an authorized financial institution may be exercised only in respect of-
- (a) subsection (1)(e); or
  - (b) subsection (1)(f), if, and only if, the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 is, in the opinion of the Commission, of a nature similar to the matter described in subsection (1)(e) as being suggested by the circumstances referred to in that subsection (1)(e).
- (10) Before an authorized person gives any direction under subsection (1) (other than subsection (1)(iii)) to any corporation-
- (a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or
  - (b) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap 41), the authorized person shall consult the Insurance Authority.
- (11) The Commission may authorize in writing any person as an authorized person for the purposes of this section.
- (12) The Commission shall furnish an authorized person with a copy of his authorization, and the authorized person,

before exercising any power under this section, shall produce a copy of the authorization to the person in respect of whom the power is exercised for inspection.

- (13) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable-
- (a) on conviction on indictment to a fine of \$200000 and to imprisonment for 1 year; or
  - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (14) A person who-
- (a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether, the record or document or the explanation or statement is false or misleading in a material particular,
- commits an offence and is liable-
- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (15) A person who-
- (a) with intent to defraud-
    - (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
    - (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or provides or makes an explanation or statement which is false or misleading in a material particular; or
  - (b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to-
    - (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
    - (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or provide or make an explanation or statement which is false or misleading in a material particular,
- commits an offence and is liable-
- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 7 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (16) A person is not excused from complying with a requirement imposed on the person by an authorized person under this section only on the ground that to do so might tend to incriminate the person.
- (17) In this section-

**authorized person** (獲授權人) means a person authorized under subsection (11);

**controller** (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap 155);

**material time** (關鍵時間) means-

- (a) where subsection (1)(a), (b), (c), (d) or (e) applies, the time at which the matter described in such subsection as being suggested by the circumstances referred to in such subsection appears to the Commission as occurring; or
- (b) where subsection (1)(f) applies, the time at which the matter in respect of the investigation of which the Commission decides to provide assistance under section 186 appears to the Commission as occurring;

**relevant time** (有關時間)-

- (a) in relation to a corporation which is listed, means any time since the formation of the corporation; or
- (b) in relation to a corporation which was listed, means any time since the formation of the corporation but before the corporation ceased to remain listed.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	180	Supervision of intermediaries and their associated entities	E.R. 2 of 2012	02/08/2012
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- (1) Subject to subsections (9) and (10), an authorized person may at any reasonable time, for the purpose of ascertaining whether an intermediary or an associated entity of an intermediary is complying or has complied

with, or is likely to be able to comply with, the requirement specified in subsection (2)-

- (a) enter-
  - (i) in the case of an intermediary-
    - (A) where it is a licensed corporation, its premises as approved by the Commission under section 130(1); or
    - (B) where it is a registered institution, the premises of the registered institution; or
  - (ii) in the case of an associated entity of an intermediary, the premises of the associated entity;
- (b) inspect, and make copies or otherwise record details of, any record or document relating to-
  - (i) the business conducted by the intermediary or the associated entity (as the case may be);
  - (ii) any transaction carried out by a related corporation of the intermediary or the associated entity (as the case may be); or
  - (iii) any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be); and
- (c) make inquiries of-
  - (i) the intermediary or the associated entity (as the case may be);
  - (ii) a related corporation of the intermediary or the associated entity (as the case may be);
  - (iii) subject to subsection (7), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in paragraph (b), concerning any record or document referred to in paragraph (b), or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be).
- (2) The requirement specified for the purposes of subsection (1) is the requirement not to contravene-
  - (a) any provision of this Ordinance;
  - (ba) any provision of Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615); (Added 15 of 2011 s. 89)
  - (b) any notice or requirement given or made under or pursuant to any of the relevant provisions;
  - (c) any of the terms and conditions of any licence or registration under this Ordinance;
  - (d) any other condition imposed under or pursuant to any provision of this Ordinance.
- (3) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(b) may require-
  - (a) the intermediary or the associated entity (as the case may be);
  - (b) a related corporation of the intermediary or the associated entity (as the case may be);
  - (c) subject to subsection (8), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in subsection (1)(b),to-
  - (i) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and
  - (ii) answer any question regarding the record or document.
- (4) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(c) may require the intermediary or the associated entity, the related corporation or the other person (as the case may be) referred to in subsection (1)(c), to-
  - (a) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and
  - (b) answer any question raised for the purposes of subsection (1)(c).
- (5) An authorized person may in writing require the person giving an answer under this section to verify within a reasonable period specified in the requirement the answer by statutory declaration, which may be taken by the authorized person.
- (6) If a person does not give an answer in accordance with a requirement under this section for the reason that the answer was not within his knowledge, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.
- (7) An authorized person shall not exercise any of his powers under subsection (1)(c)(iii) unless he has reasonable cause to believe that the information sought cannot be obtained by the exercise of any of the powers under



- subsection (1)(c)(i) or (ii).
- (8) An authorized person shall not exercise any of his powers under subsection (3)(c) unless he has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of any of the powers under subsection (3)(a) or (b).
  - (9) This section shall not be construed as requiring an authorized financial institution, not being the intermediary or the associated entity in question as referred to in subsection (1) or a related corporation of the intermediary or the associated entity (as the case may be), to disclose any information or produce any record or document relating to the affairs of a customer unless the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.
  - (10) Before an authorized person exercises any power under this section (other than subsection (1)(c)(iii) or (3)(c)) in respect of a corporation-
    - (a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or
    - (b) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap 41), the authorized person shall consult the Insurance Authority.
  - (11) The relevant authority may authorize in writing any person as an authorized person for the purposes of this section.
  - (12) The relevant authority shall furnish an authorized person authorized by it with a copy of his authorization, and the authorized person, when exercising any power under this section, shall as soon as reasonably practicable produce a copy of the authorization for inspection.
  - (13) Where a copy of any record or document is supplied or made for the purpose of complying with a requirement imposed under this section and a facility of a person other than the relevant authority is used to make the copy, the relevant authority shall reimburse the expenses which, in the opinion of the relevant authority, have been reasonably incurred by the person in making the copy.
  - (14) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable-
    - (a) on conviction on indictment to a fine of \$200000 and to imprisonment for 1 year; or
    - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
  - (15) A person who-
    - (a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; and
    - (b) knows that, or is reckless as to whether, the record or document or the answer is false or misleading in a material particular,
 commits an offence and is liable-
    - (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
    - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
  - (16) A person who-
    - (a) with intent to defraud-
      - (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
      - (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; or
    - (b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to-
      - (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
      - (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or give an answer which is false or misleading in a material particular,
 commits an offence and is liable-
    - (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 7 years; or
    - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
  - (17) In this section-

**authorized person** (獲授權人) means a person authorized under subsection (11);

**controller** (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap 155);

**relevant authority** (有關當局) means-

- (a) where-
  - (i) the intermediary in question as referred to in subsection (1) is a registered institution; or
  - (ii) the associated entity in question as referred to in that subsection is the associated entity of a registered institution,  
the Monetary Authority; or
- (b) in any other case, the Commission.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	182	Investigations	L.N. 95 of 2012	01/01/2013

(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 structured product, leveraged foreign exchange contract or collective investment scheme; (Amended 8 of 2011 s. 9)
  - (iv) giving advice in relation to the allotment of securities, or the acquisition or disposal of, or investment in, any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme; or (Amended 8 of 2011 s. 9)
  - (v) any transaction involving securities margin financing;
- (c) the Commission has reasonable cause to believe that market misconduct may have taken place;
- (ca) the Commission has reasonable cause to believe that a breach of a disclosure requirement may have taken place under Part XIVA; (Added 9 of 2012 s. 4)
- (d) the Commission has reasonable cause to believe that the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b)(i) to (v) is not in the interest of the investing public or in the public interest;
- (e) the Commission-
  - (i) for the purpose of considering whether to exercise any power under section 194 or 196, has reason to inquire whether any person is or was at any time guilty of misconduct, or is not a fit and proper person, as described in section 194(1) or (2) or 196(1) or (2); or
  - (ii) for the purpose of assisting the Monetary Authority to consider whether to exercise any power under section 58A or 71C of the Banking Ordinance (Cap 155), has reason to inquire whether any person-
    - (A) is or was at any time guilty of misconduct, or is not or has ceased to be a fit and proper person, as described in section 58A(1) of that Ordinance; or
    - (B) is or was at any time guilty of misconduct, or should cease to be regarded as a fit and proper person, as described in section 71C(4) of that Ordinance;
- (f) the Commission has reason to inquire whether any of the conditions imposed in respect of an authorization under section 104, 104A or 105 are being complied with; or (Amended 8 of 2011 s. 9)
- (g) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186 is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d), (e) or (f) as that which the Commission has reasonable cause to believe or has reason to inquire (as the case may be),

the Commission may in writing direct one or more of its employees or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate any of the matters referred to in paragraphs (a) to (g).

- (2) The costs and expenses incurred by an investigator, other than an employee of the Commission, are to be paid out of moneys provided by the Legislative Council.
- (3) The Commission shall furnish an investigator with a copy of his direction or appointment (as the case may be), and the investigator, before first imposing any requirement on a person under section 183(1), (2) or (3), shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.
- (4) Before the Commission directs any of its employees, or appoints any person-
  - (a) to investigate any matter under subsection (1)(e)(i), to the extent that the investigation is for the purpose of considering whether to exercise any power under section 196; or
  - (b) to investigate any matter under subsection (1)(e)(ii),
 the Commission shall consult the Monetary Authority.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	186	Assistance to regulators outside Hong Kong	E.R. 2 of 2012	02/08/2012
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- (1) Where the Commission receives, from an authority or regulatory organization outside Hong Kong which in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the authority or regulatory organization has contravened or is contravening legal or regulatory requirements which-
  - (a) the authority or regulatory organization enforces or administers; and
  - (b) relate to such transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions as are regulated by the authority or regulatory organization,
 the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 179, 181, 182 and 183.
- (2) Where the Commission receives, from a companies inspector outside Hong Kong who in the opinion of the Commission satisfies the requirements referred to in subsection (5)(a) and (b), a request for assistance to investigate whether a person specified by the companies inspector has contravened or is contravening legal or regulatory requirements which relate to transactions regarding any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or other similar transactions, the Commission may, where it is of the opinion that the condition specified in subsection (3) is satisfied, provide the assistance to investigate the matter by exercising any of its powers under sections 179, 181, 182 and 183.
- (3) The condition referred to in subsections (1) and (2) is that-
  - (a) it is desirable or expedient that the assistance requested under subsection (1) or (2) (as the case may be) should be provided in the interest of the investing public or in the public interest; or
  - (b) the assistance will enable or assist the recipient of the assistance to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the assistance should be provided.
- (4) In deciding whether the condition specified in subsection (3) is satisfied in a particular case, the Commission shall take into account-
  - (a) where the recipient of the assistance is an authority or regulatory organization referred to in subsection (1), whether the authority or regulatory organization will-
    - (i) pay to the Commission any of the costs and expenses incurred in providing the assistance; and
    - (ii) be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong; or
  - (b) where the recipient of the assistance is a companies inspector referred to in subsection (2), whether-
    - (i) the companies inspector will pay to the Commission any of the costs and expenses incurred in providing the assistance; and
    - (ii) under the laws of the country or territory in which the companies inspector is appointed, reciprocal assistance will be provided in response to a comparable request for assistance from Hong Kong.
- (5) Where the Commission is satisfied, for the purposes of subsection (1) or (2), that an authority, regulatory

organization or companies inspector outside Hong Kong-

- (a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and
- (b) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(6) If a person is required-

- (a) to provide or make an explanation or statement as required by an authorized person within the meaning of section 179 exercising pursuant to subsection (1) or (2) a power under section 179; or
- (b) to give an explanation or further particulars as required by, or to give an answer to any question as raised by, an investigator exercising pursuant to subsection (1) or (2) a power under section 183,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate him and he so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then, without limiting the provisions of section 187, the authorized person or investigator (as the case may be) shall not provide evidence of the requirement and the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) to an authority, regulatory organization or companies inspector outside Hong Kong for use in criminal proceedings against him in the jurisdiction of the authority, regulatory organization or companies inspector (as the case may be).

(7) Where the Commission receives from an authority, regulatory organization or companies inspector outside Hong Kong an amount paid in respect of any of the costs and expenses incurred in providing assistance under this section, and all or any of the costs and expenses have been paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary the amount received to the extent that it has already been paid out of moneys provided by the Legislative Council.

(8) Any matter published under subsection (5) is not subsidiary legislation.

(9) In this section, **companies inspector** (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	203	Permission to carry on business operations upon revocation or suspension of licence or registration	E.R. 2 of 2012	02/08/2012

- (1) Where any licence or registration is revoked or suspended under this Part, the Commission may by notice in writing permit the person to whom the licence or registration (as the case may be) was granted to-
  - (a) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or
  - (b) in the case of a suspension, carry on only essential business operations for the protection of interests of clients of the person or, in the case of a licensed representative, of the licensed corporation to which the person is accredited, during the period of suspension,
 subject to such conditions as the Commission may specify in the notice.
- (2) Notwithstanding section 200(1), where the Commission has granted a permission to a person under subsection (1), the person shall not, by reason of its carrying on business operations in accordance with the permission, be regarded as having contravened section 114.
- (3) Any permission granted under subsection (1), and the imposition of conditions pursuant to that subsection, take effect at the time of the service of the notice given in respect thereof or at the time specified in the notice, whichever is the later.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Schedule:	8	Securities and Futures Appeals Tribunal	L.N. 163 of 2013	03/03/2014
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[sections 215, 216, 217, 218,  
219, 222, 232, 233 &  
234 & Schedule 10]

## Part 1

### Appointment of Members and Proceedings of Tribunal, etc.

1. In this Schedule, unless the context otherwise requires-  
*appeal panel* (上訴委員會) means the panel of persons appointed under section 2;  
*application for review* (覆核申請) has the meaning assigned to it by section 215 of this Ordinance;  
*chairman* (主席) means the chairman of the Tribunal;  
*judge* (法官) has the meaning assigned to it by section 215 of this Ordinance;  
*member* (成員) means a member of the Tribunal;  
*ordinary member* (普通成員) means a member other than the chairman;  
*panel member* (上訴委員) means a member of the appeal panel;  
*parties* (各方) has the meaning assigned to it by section 215 of this Ordinance;  
*relevant authority* (有關當局) has the meaning assigned to it by section 215 of this Ordinance;  
*review* (覆核) has the meaning assigned to it by section 215 of this Ordinance;  
*Secretary* (局長) means the Secretary for Financial Services and the Treasury; (Amended L.N. 106 of 2002)  
*specified decision* (指明決定) has the meaning assigned to it by section 215 of this Ordinance;  
*Tribunal* (審裁處) has the meaning assigned to it by section 215 of this Ordinance.

### Appointment of appeal panel

2. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.
3. Subject to sections 4 and 5, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
4. A panel member may at any time resign his office by notice in writing to the Chief Executive.
5. The Chief Executive may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
6. For the avoidance of doubt, section 216(5) of this Ordinance does not require the appointment of persons to more than one panel under section 2.

### Appointment of chairman

7. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.
8. Subject to sections 9 to 11, the chairman shall be appointed for a term of 3 years or appointed to act in relation to

any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

9. The chairman may at any time resign his office by notice in writing to the Chief Executive.
10. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
11. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

### **Appointment of ordinary members**

12. For the purpose of determining a review, the Secretary on the recommendation of the chairman shall appoint 2 panel members as ordinary members in relation to the review.
13. Subject to sections 14 and 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
14. An ordinary member may at any time resign his office by notice in writing to the Secretary.
15. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

### **Sittings**

16. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.
17. Before convening a sitting under section 16 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.
18. Subject to section 19, at any sitting of the Tribunal-
  - (a) the chairman and 2 ordinary members shall be present;
  - (b) the chairman shall preside; and
  - (c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.
19. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 31 or 32, the chairman only shall be present, and every question before the Tribunal shall be determined by him.
20. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.
21. Where an application is made pursuant to section 20 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.
22. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard-
  - (a) in person or, in the case of the relevant authority or a corporation, through an officer or employee of the relevant authority or the corporation (as the case may be); and
  - (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.
23. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal,

which shall contain such particulars relating to the proceedings as he considers appropriate.

24. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

#### **Preliminary conferences and consent orders**

25. At any time after an application for review has been made, the chairman may-
- (a) on his own motion or on the application of any of the parties to the review;
  - (b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application for review by the parties to the review; and
  - (c) if the parties agree or, in the case of an application made by any party pursuant to paragraph (a), the other party agrees,
- direct that a conference, to be attended by the parties or their representatives and presided over by the chairman shall be held for the purposes of-
- (i) enabling the parties to prepare for the conduct of the review;
  - (ii) assisting the Tribunal to determine issues for the purposes of the review; and
  - (iii) generally securing the just, expeditious and economical conduct of the review.
26. At a conference held in accordance with a direction of the chairman under section 25, the chairman may-
- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
  - (b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.
27. After a conference has been held in accordance with a direction of the chairman under section 25, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.
28. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if-
- (a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and
  - (b) the parties consent to all of the terms of the order.
29. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 28 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.
30. In sections 28 and 29, **order** (命令) includes any finding, determination and any other decision.

#### **Chairman as sole member of Tribunal**

31. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.
32. Where-
- (a) an application is made to the Tribunal pursuant to section 217(4) of this Ordinance for the grant of an extension of the time within which an application for review shall be made; or
  - (b) an application is made to the Tribunal under section 227(2) of this Ordinance for a stay of execution of a specified decision,

the chairman may determine the application as the sole member of the Tribunal.

33. Where section 31 or 32 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.
34. After the chairman has made any determination under section 31, or made any determination in respect of an application described in section 32(b), the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.
35. Where-
- (a) there is an application described in section 32(b); and
  - (b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application,
- a judge within the meaning of paragraph (a) of the definition of *judge* in section 215 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

### **Miscellaneous**

36. Except as otherwise provided in this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

## **Part 2**

### **Specified Decisions**

#### **Division 1—Specified Decisions Made by Commission**

Item	Provision	Description of decision
1.	Section 93(12) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2) of this Ordinance	Refusal to grant an authorization, or imposition of any condition.
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
5.	Section 104(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.
6.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.
7.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
8.	Section 104(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
8A.	Section 104A(1) of this Ordinance	Refusal to authorize a structured product, or imposition of any conditions. (Added 8 of 2011 s. 15)
8B.	Section 104A(3) of this Ordinance	Refusal to approve an individual nominated in respect of a structured product. (Added 8 of 2011 s. 15)
8C.	Section 104A(4)(a) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. (Added 8 of 2011 s. 15)
8D.	Section 104A(4)(b) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a structured product. (Added 8 of 2011 s. 15)
9.	Section 105(1) of this Ordinance	Refusal to authorize the issue of any advertisement,



10.	Section 105(3) of this Ordinance	invitation or document, or imposition of any condition. Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.
11.	Section 105(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
12.	Section 105(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
13.	Section 106(1) of this Ordinance	Withdrawal of an authorization.
14.	Section 106(3) of this Ordinance	Refusal to withdraw an authorization.
15.	Section 106(4) of this Ordinance	Imposition of any condition.
16.	Section 116(1) of this Ordinance	Refusal to grant a licence.
17.	Section 116(6) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
18.	Section 117(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
19.	Section 117(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
20.	Section 119(1) of this Ordinance	Refusal to grant registration.
21.	Section 119(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
22.	Section 120(1) of this Ordinance	Refusal to grant a licence.
23.	Section 120(5) of this Ordinance	Imposition of any condition.
24.	Section 120(7) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
25.	Section 121(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
26.	Section 121(3) of this Ordinance	Imposition of any condition.
27.	Section 121(5) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
28.	Section 122(1) of this Ordinance	Refusal to approve an accreditation.
29.	Section 122(2) of this Ordinance	Refusal to approve a transfer of an accreditation.
30.	Section 124(1) of this Ordinance	Refusal to issue a duplicate licence or certificate of registration.
31.	Section 126(1) of this Ordinance	Refusal to approve a person as a responsible officer.
32.	Section 126(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
33.	Section 127(1) of this Ordinance	Refusal to vary any regulated activity.
34.	Section 130(1) of this Ordinance	Refusal to approve premises.
35.	Section 132(1) of this Ordinance	Refusal to approve a person to become or continue to be a substantial shareholder.
36.	Section 132(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
37.	Section 133(1) of this Ordinance	Direction to a licensed corporation.
38.	Section 133(2) of this Ordinance	Direction to a person.
39.	Section 134(1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of this Ordinance	Refusal to grant a modification or waiver.
40.	Section 134(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
41.	Section 146(2) or (5)(b) of this Ordinance	Imposition of any condition.
42.	Section 146(5)(a) of this Ordinance	Suspension of a licence.
43.	Section 146(6) or (7) of this Ordinance	Amendment of any condition.
44.	Section 147(3)(a) of this Ordinance	Suspension of a licence.
45.	Section 147(3)(b) of this Ordinance	Imposition of any condition.

46.	Section 147(4) or (5) of this Ordinance	Amendment of any condition.
47.	Section 159(1) of this Ordinance	Appointment of an auditor.
48.	Section 159(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
49.	Section 160(1) of this Ordinance	Appointment of an auditor.
50.	Section 160(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
51.	Section 194(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to impose a prohibition on a person.
52.	Section 194(2) of this Ordinance	Order to pay a pecuniary penalty.
53.	Section 195(1)(a), (b) or (c) of this Ordinance	Revocation or suspension of a licence.
54.	Section 195(2) of this Ordinance	Revocation of a licence.
55.	Section 195(7) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
56.	Section 196(1)(i), (ii) or (iii) of this Ordinance	Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person.
57.	Section 196(2) of this Ordinance	Order to pay a pecuniary penalty.
58.	Section 197(1)(a) or (b) of this Ordinance	Revocation or suspension of any registration.
59.	Section 197(2) of this Ordinance	Revocation of any registration.
60.	Section 202(1) of this Ordinance	Requirement to transfer records.
61.	Section 203(1) of this Ordinance	Imposition of any condition.
62.	Section 204(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.
63.	Section 205(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning relevant property.
64.	Section 206(1) of this Ordinance	Requirement imposed on a licensed corporation to maintain property.
65.	Section 208(1)(b) of this Ordinance	Substitution or variation of a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
66.	Section 208(1) of this Ordinance	Refusal to withdraw, substitute or vary a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
67.	Section 309(2) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
68.	Section 309(3) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
69.	Section 309(4)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition.
70.	Section 403 of this Ordinance	Imposition of any condition.
71.	Section 38A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)	Refusal to issue a certificate of exemption, or imposition of any condition. (Amended 28 of 2012 ss. 912 & 920)
72.	Section 342A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)	Refusal to issue a certificate of exemption, or imposition of any condition. (Amended 28 of 2012 ss. 912 & 920)
73.	Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)	Objection to a listing of securities. (Added L.N. 231 of 2002)
74.	Section 6(3)(b) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)	Imposition of any condition. (Added L.N. 231 of 2002)

75.	Section 8(3) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Refusal to approve a corporation as an approved lending agent. (Added L.N. 231 of 2002)
76.	Section 8(4) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Imposition of any condition. (Added L.N. 231 of 2002)
77.	Section 8(6) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Withdrawal of an approval. (Added L.N. 231 of 2002)
78.	Section 4(4)(c) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap 571 sub. leg. Y)	Refusal to give notice. (Added L.N. 231 of 2002)

### **Division 2—Specified Decisions Made by Monetary Authority**

Item	Provision	Description of decision
1.	Section 58A(1)(c) or (d) of the Banking Ordinance (Cap 155)	Removal or suspension of relevant particulars of a relevant individual from the register.
2.	Section 71C(1) of the Banking Ordinance (Cap 155)	Refusal to give consent.
3.	Section 71C(2)(b) of the Banking Ordinance (Cap 155)	Attachment of any condition.
4.	Section 71C(4)(c) or (d) of the Banking Ordinance (Cap 155)	Withdrawal or suspension of consent.
5.	Section 71C(9) of the Banking Ordinance (Cap 155)	Attachment or amendment of any condition.
6.	Section 71E(3) of the Banking Ordinance (Cap 155)	Attachment or amendment of any condition.

### **Division 3—Specified Decisions Made by Commission or Recognized Investor Compensation Company**

Item	Provision	Description of decision
1.	Section 4(4) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Refusal to determine that a claim which is not lodged within the time limit provided in section 4(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T) is not barred. (Added L.N. 231 of 2002)
2.	Section 7(1)(a), (b) or (c) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Determination as to whether there has been a default, as to the date of default, or as to whether a claimant is entitled to compensation. (Added L.N. 231 of 2002)
3.	Section 7(2) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Determination of a provisional amount of compensation. (Added L.N. 231 of 2002)
4.	Section 9(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Aggregation of separate claims or parts of those claims. (Added L.N. 231 of 2002)

## **Part 3**

### **Division 1—Specified Decisions Referred to in Section 217(3)(b) of this Ordinance**

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

**Division 2—Specified Decisions Referred to in Section 218(4)(a) of this Ordinance**

Item	Description of specified decision	Provisions
1.	A specified decision set out in item 56 or 57 of Division 1 of Part 2.	Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap 155).

**Division 3—Specified Decisions Referred to in Section 218(4)(b) of this Ordinance**

Item	Description of specified decision	Provision
1.	A specified decision set out in item 1 or 4 of Division 2 of Part 2.	Section 196(1) and (2) of this Ordinance.

**Division 4—Specified Decisions Referred to in Section 232(1) of this Ordinance**

Item	Description of specified decision	Provision
1.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

**Division 5—Specified Decisions Referred to in Section 232(2) of this Ordinance**

Item	Description of specified decision	Provision
1.	A specified decision set out in item 3 of Division 1 of Part 2.	Section 97(2) of this Ordinance.
2.	A specified decision set out in item 4 of Division 1 of Part 2.	Section 98(6) of this Ordinance.
3.	A specified decision set out in item 17 of Division 1 of Part 2.	Section 116(7) of this Ordinance.
4.	A specified decision set out in item 19 of Division 1 of Part 2.	Section 117(4) of this Ordinance.
5.	A specified decision set out in item 21 of Division 1 of Part 2.	Section 119(6) of this Ordinance.
6.	A specified decision set out in item 24 of Division 1 of Part 2.	Section 120(8) of this Ordinance.
7.	A specified decision set out in item 27 of Division 1 of Part 2.	Section 121(6) of this Ordinance.
8.	A specified decision set out in item 36 of Division 1 of Part 2.	Section 132(4) of this Ordinance.
9.	A specified decision set out in item 42 of Division 1 of Part 2.	Section 146(9) of this Ordinance.
10.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.

11. A specified decision set out in item 44 of Division 1 of Part 2. Section 147(7) of this Ordinance.
12. A specified decision set out in item 45 or 46 of Division 1 of Part 2. Section 147(8) of this Ordinance.
13. A specified decision set out in item 61 of Division 1 of Part 2. Section 203(3) of this Ordinance.
14. A specified decision set out in item 62, 63, 64 or 65 of Division 1 of Part 2. Section 209(1) of this Ordinance.
15. A specified decision set out in item 6 of Division 2 of Part 2. Section 71E(4) of the Banking Ordinance (Cap 155).
16. A specified decision set out in item 73 of Division 1 of Part 2. Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V). (Added L.N. 231 of 2002)
17. A specified decision set out in item 74 of Division 1 of Part 2. Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V). (Added L.N. 231 of 2002)  
(Format changes—E.R. 1 of 2013)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	378	Preservation of secrecy, etc.	L.N. 163 of 2013	03/03/2014

- (1) Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person-
  - (a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;
  - (b) shall not communicate any such matter to any other person; and
  - (c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.
- (2) Nothing in subsection (1) applies to-
  - (a) the disclosure of information which has already been made available to the public;
  - (b) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the laws of Hong Kong, in Hong Kong;
  - (c) the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
  - (d) the disclosure of information by a person in connection with any judicial or other proceedings to which the person is a party;
  - (e) the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;
  - (ea) the disclosure of information to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap 581) for the purpose of enabling or assisting the Board to perform its functions under section 5(a), (d) and (e) of that Ordinance; (Added 7 of 2004 s. 55)
  - (f) the communication of any information or opinion to which section 381(1) applies (whether with or without reference to section 381(2))-
    - (i) to the Commission in the manner described in section 381(1);
    - (ii) where section 381(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 381(4).
- (3) Notwithstanding subsection (1), the Commission may disclose information-

- (a) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
- (b) to a person who is a liquidator appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); (Amended 28 of 2012 ss. 912 & 920)
- (c) to the Market Misconduct Tribunal;
- (d) to the Securities and Futures Appeals Tribunal;
- (ea) to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615); (Added 15 of 2011 s. 90)
- (e) to the Monetary Authority, if-
  - (i) the information relates to-
    - (A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or
    - (B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or
  - (ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;
- (f) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to-
  - (i) the Chief Executive;
  - (ii) the Financial Secretary;
  - (iii) the Secretary for Justice;
  - (iv) (Repealed L.N. 106 of 2002);
  - (v) the Insurance Authority;
  - (vi) the Registrar of Companies;
  - (vii) the Official Receiver;
  - (viii) the Mandatory Provident Fund Schemes Authority;
  - (ix) the Privacy Commissioner for Personal Data;
  - (x) the Ombudsman;
  - (xi) a public officer authorized by the Financial Secretary under subsection (12);
  - (xia) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap 588); (Added 18 of 2006 s. 86)
  - (xii) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
  - (xiii) a recognized exchange company;
  - (xiv) a recognized clearing house;
  - (xv) a recognized exchange controller;
  - (xvi) a recognized investor compensation company;
  - (xvii) a person authorized to provide authorized automated trading services under section 95(2);
- (g) if in the opinion of the Commission the condition specified in subsection (5) is satisfied-
  - (i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(a) and (b);
  - (ii) to-
    - (A) the Hong Kong Institute of Certified Public Accountants; (Amended 23 of 2004 s. 56)
    - (B) any other body prescribed by rules made under section 397 for the purposes of this subparagraph, with a view to its taking of, or otherwise for the purposes of, any disciplinary action against any of its members;
- (h) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to perform its functions under any of the relevant provisions;
- (i) where the information is obtained by an investigator under section 183, to-
  - (i) the Financial Secretary;
  - (ii) the Secretary for Justice;
  - (iii) the Commissioner of Police;
  - (iv) the Commissioner of the Independent Commission Against Corruption;

- (v) the Market Misconduct Tribunal;
  - (vi) the Securities and Futures Appeals Tribunal;
  - (j) for the purpose of, or otherwise in connection with, an audit required by section 16;
  - (k) with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, also with the consent of the person to whom the information relates.
- (4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 159 or 160, and a person who is or was an employee or agent of such auditor, may disclose information obtained or received by him in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)-
- (a) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);
  - (b) in the case of a person who is or was an employee or agent of an auditor, to the auditor.
- (5) The condition referred to in subsection (3)(e), (f) and (g) is that-
- (a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(e), (f) or (g) (as the case may be) in the interest of the investing public or in the public interest; or
  - (b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.
- (6) Where the Commission is satisfied, for the purposes of subsection (3)(g)(i), that an authority, regulatory organization or companies inspector outside Hong Kong-
- (a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and
  - (b) is subject to adequate secrecy provisions,
- the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.
- (7) Where information is disclosed pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b))-
- (a) the person to whom that information is so disclosed; or
  - (b) any other person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),
- shall not disclose the information, or any part thereof, to any other person, unless-
- (i) the Commission consents to the disclosure;
  - (ii) the information or the part thereof (as the case may be) has already been made available to the public;
  - (iii) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
  - (iv) the disclosure is in connection with any judicial or other proceedings to which the person or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or
  - (v) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.
- (8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(b)-
- (a) the auditor; or
  - (b) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor,
- shall not disclose the information, or any part thereof, to any other person, unless-
- (i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(a);
  - (ii) the Commission consents to the disclosure;
  - (iii) the information or the part thereof (as the case may be) has already been made available to the public;
  - (iv) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
  - (v) the disclosure is in connection with any judicial or other proceedings to which the auditor or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or
  - (vi) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.
- (9) The Commission, in disclosing any information in any of the circumstances described in subsection (3) or in

granting any consent pursuant to subsection (7)(i) or (8)(ii), may impose such conditions as it considers appropriate.

- (10) A person who contravenes subsection (1) commits an offence and is liable-
- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (11) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of the disclosure-
- (a) in the case of a contravention of subsection (7), he-
    - (i) knew or ought reasonably to have known that the information was previously disclosed to him or any other person (as the case may be) pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b)); and
    - (ii) had no reasonable grounds to believe that subsection (7)(i), (ii), (iii), (iv) or (v) applies to the disclosure of the information by him; or
  - (b) in the case of a contravention of subsection (8), he-
    - (i) knew or ought reasonably to have known that the information was previously disclosed to him or an auditor (as the case may be) in the circumstances described in subsection (4)(b); and
    - (ii) had no reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applies to the disclosure of the information by him,
- he commits an offence and is liable-
- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(f)(xi).
- (13) Any matter published under subsection (6) is not subsidiary legislation.
- (14) (Repealed 9 of 2012 s. 44)
- (15) In this section-

**companies inspector** (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place;

**specified person** (指明人士) means-

- (a) the Commission;
- (b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or
- (c) any person who is or was-
  - (i) a person appointed under any of the relevant provisions;
  - (ii) a person performing any function under or carrying into effect any of the relevant provisions; or
  - (iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Schedule:	2	Securities and Futures Commission	L.N. 95 of 2012	01/01/2013

[sections 3, 7 & 10 &  
Schedules 1 & 10]

## Part 1

### Constitution and Proceedings of Commission, etc.

#### Chairman, chief executive officer and other members of Commission

(Amended 15 of 2006 s. 6)

1. The Commission shall consist of a chairman, a chief executive officer and such number of other executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by



the Chief Executive as follows- (Amended 15 of 2006 s. 6)

- (a) the number of members of the Commission shall not be less than 8; and
- (b) the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission. (Replaced 15 of 2006 s. 6)

2. (Repealed 15 of 2006 s. 6)

3. When the membership of the Commission ceases to comply with the requirements of section 1, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

#### **Deputy chairman and vacancies in office of chairman or deputy chairman**

4. The Chief Executive may appoint an executive director or non-executive director of the Commission to be the deputy chairman of the Commission. (Amended 15 of 2006 s. 6)

5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.

6. Notwithstanding that a deputy chairman has been appointed under section 4, the chairman of the Commission may, where there is no designation under section 7, designate an executive director or non-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. (Amended 15 of 2006 s. 6)

7. If-

- (a) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or
- (b) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,

the Financial Secretary may designate an executive director or non-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. (Amended 15 of 2006 s. 6)

8. A designation under section 7 ceases to have effect when-

- (a) it is revoked by the Financial Secretary;
- (b) where the designation is under section 7(a), an appointment is made under section 4; or
- (c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is able to act as chairman,

whichever is the earlier.

9. A deputy chairman of the Commission who acts as chairman of the Commission under section 5, or an executive director or non-executive director of the Commission who acts as chairman of the Commission in accordance with a designation under section 6 or 7, shall be deemed for all purposes to be the chairman of the Commission. (Replaced 15 of 2006 s. 6)

9A. Notwithstanding section 9-

- (a) an executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission; and
- (b) a non-executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission. (Added 15 of 2006 s. 6)

#### **Vacancy in office of chief executive officer**

(Added 15 of 2006 s. 6)

- 9B. The Chief Executive may designate an executive director of the Commission to act as chief executive officer of the Commission for any period during which the chief executive officer of the Commission is unable to act as chief executive officer due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation. (Added 15 of 2006 s. 6)
- 9C. An executive director of the Commission who acts as chief executive officer of the Commission shall be deemed for all purposes to be the chief executive officer of the Commission. (Added 15 of 2006 s. 6)

#### **Functions and office of members, etc.**

(Amended 15 of 2006 s. 6)

- 9D. Subject to the other provisions of this Ordinance, the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission. (Added 15 of 2006 s. 6)
10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be determined by the Chief Executive. (Amended 15 of 2006 s. 6)
11. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) may at any time resign his office by notice in writing to the Chief Executive. (Amended 15 of 2006 s. 6)
12. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine. (Amended 15 of 2006 s. 6)
13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) whose removal appears to him to be desirable for the effective performance by the Commission of its functions. (Amended 15 of 2006 s. 6)

#### **Meetings**

14. Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman, deputy chairman, chief executive officer, or any 2 other members, of the Commission. (Amended 15 of 2006 s. 6)
15. At a meeting of the Commission-
- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting;
  - (b) if the chairman of the Commission is not present but the deputy chairman of the Commission is present, the deputy chairman shall be the chairman of the meeting; or
  - (c) if neither the chairman nor the deputy chairman of the Commission is present, the members of the Commission present shall choose one of their number to be the chairman of the meeting.
16. The quorum for a meeting of the Commission is not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission.
- 16A. For the purpose of forming a quorum under section 16-
- (a) subject to paragraph (b), the chairman of the Commission shall be counted as a non-executive director of the Commission; and
  - (b) notwithstanding sections 9 and 9A-
    - (i) an executive director of the Commission who acts as chairman of the Commission shall only be counted as an executive director of the Commission; and
    - (ii) a non-executive director of the Commission who acts as chairman of the Commission shall only be counted as a non-executive director of the Commission. (Added 15 of 2006 s. 6)

17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.
18. Each member of the Commission present at a meeting of the Commission has one vote.
19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.
20. The chairman of a meeting of the Commission shall not exercise a casting vote in respect of any question for decision at the meeting until after he has consulted the Financial Secretary on the question.

### **Written resolution**

21. Where a resolution-
  - (a) is in writing; and
  - (b) is signed by such number of members of the Commission as-
    - (i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and
    - (ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.
22. For the purposes of section 21, a resolution to which that section applies may be-
  - (a) in the form of one document; or
  - (b) in the form of more than one document, each in the like form and signed by one or more members of the Commission.
23. Where a resolution is in the form of more than one document as described in section 22(b), the requirement under section 21(b) shall be regarded as having been satisfied if the documents together bear the signatures of such number of members of the Commission as is specified in section 21(b)(i) and (ii).
24. For the purposes of sections 21 to 23-
  - (a) a document shall be regarded as having been signed by a member of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the member; and
  - (b) a resolution to which section 21 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as a member of the Commission for the purposes of that section.

### **Seal, and regulation of administration, etc.**

25. The Commission shall have a seal, the affixing of which shall be authenticated by the signature of the chairman or the deputy chairman of the Commission, or by the signature of such other member of the Commission as is authorized by it to act in that behalf.
26. The Commission shall organize and regulate its administration, procedure and business in such manner as it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

### **Advisory Committee**

27. The Advisory Committee shall consist of-
  - (a) the chairman of the Commission;
  - (aa) the chief executive officer of the Commission; (Added 15 of 2006 s. 6)
  - (b) not more than 2 other executive directors of the Commission who shall be appointed by the

Commission;

- (c) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.
28. A meeting of the Advisory Committee may be convened by-
- (a) the chairman of the Commission; (Amended 15 of 2006 s. 6)
  - (aa) the chief executive officer of the Commission; or (Added 15 of 2006 s. 6)
  - (b) any 3 other members of the Advisory Committee.
29. At a meeting of the Advisory Committee-
- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting; or
  - (b) if the chairman of the Commission is not present, the members of the Advisory Committee present shall choose one of their number to be the chairman of the meeting.
30. Where a member of the Advisory Committee appointed under section 27(b) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.
31. A member of the Advisory Committee appointed under section 27(b) or (c) may at any time resign his office by notice in writing to-
- (a) where he has been appointed under section 27(b), the Commission; or
  - (b) where he has been appointed under section 27(c), the Chief Executive.
32. The Chief Executive may by notice in writing remove from office any member of the Advisory Committee appointed under section 27(c).

## **Part 2**

### **Non-Delegable Functions of Commission**

1. Any function of the Commission to make subsidiary legislation under or pursuant to any Ordinance.
2. The following functions of the Commission-
  - (1) to borrow money, under section 5(4)(d) of this Ordinance;
  - (1A) to establish a wholly owned subsidiary, under section 5(4)(da) of this Ordinance; (Added 9 of 2012 s. 33)
  - (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) (Repealed 9 of 2012 s. 47)
  - (12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;
  - (13) to amend or revoke conditions, or impose new conditions, under section 19(3) of this Ordinance;
  - (14) to give a company a reasonable opportunity of being heard, under section 19(7) of this Ordinance;
  - (15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;
  - (16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;
  - (17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;

- (18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;
- (19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;
- (20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;
- (21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;
- (22) to withdraw recognition of a recognized exchange company, under section 28(1)(a) of this Ordinance;
- (23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(b) of this Ordinance;
- (24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;
- (25) to extend a direction, under section 29(3) of this Ordinance;
- (26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;
- (27) to amend or revoke conditions, or impose new conditions, under section 37(2) of this Ordinance;
- (28) to give a company a reasonable opportunity of being heard, under section 37(5) of this Ordinance;
- (29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;
- (30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;
- (31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;
- (32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;
- (33) to withdraw recognition of a recognized clearing house, under section 43(1)(a) of this Ordinance;
- (34) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(b) of this Ordinance;
- (35) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;
- (36) to amend or revoke conditions, or impose new conditions, under section 59(3) of this Ordinance;
- (37) to direct a person to take specified steps, under section 59(9)(c) of this Ordinance;
- (38) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;
- (39) to approve the increase or decrease of any interest a recognized exchange controller has in a recognized exchange company or recognized clearing house, pursuant to section 60(a) of this Ordinance;
- (40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;
- (41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;
- (42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;
- (43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;
- (44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;
- (45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;
- (46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;
- (47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;
- (48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;
- (49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;
- (50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;
- (51) to make statement in writing, pursuant to section 74(1) of this Ordinance;

- (52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;
- (53) to approve a fee, pursuant to section 76(1) of this Ordinance;
- (54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;
- (55) to amend or revoke conditions, or impose new conditions, under section 79(2) of this Ordinance;
- (56) to give a company a reasonable opportunity of being heard, under section 79(5) of this Ordinance;
- (57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;
- (58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;
- (59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;
- (60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;
- (61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;
- (62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;
- (63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;
- (64) to serve a notice, under section 92(1) of this Ordinance;
- (65) to extend the period during which a restriction notice is to remain in force, under section 92(7) of this Ordinance;
- (66) to apply to the Court of First Instance, pursuant to section 92(9) of this Ordinance;
- (67) to make a suspension order, under section 93(1) of this Ordinance;
- (68) to extend the period during which a suspension order is to remain in force, under section 93(9) of this Ordinance;
- (69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 182(1)(a) to (g) of this Ordinance, under section 182(1) of this Ordinance;
- (70) to cause a report to be published, under section 183(6) of this Ordinance;
- (71) to impose a prohibition or requirement, under section 204, 205 or 206 of this Ordinance;
- (72) to withdraw, substitute or vary a prohibition or requirement, under section 208(1) of this Ordinance;
- (73) to present a petition, under section 212 of this Ordinance;
- (74) to apply to the Court of First Instance, pursuant to section 213(1) of this Ordinance;
- (75) to apply to the Court of First Instance, under section 214(1) of this Ordinance;
- (76) to specify the time at which a specified decision is to take effect, under section 232(3) of this Ordinance;
- (77) to establish a compensation fund, under section 236 of this Ordinance;
- (78) to borrow, or to charge any investments by way of security, under section 237(2)(a) of this Ordinance;
- (79) to appoint an auditor, under section 240(5) of this Ordinance;
- (80) (Repealed 9 of 2012 s. 47)
- (81) to institute proceedings in the Market Misconduct Tribunal under section 252(1) of this Ordinance (Replaced 9 of 2012 s. 27)
- (81A) to institute disclosure proceedings under section 307I(1) of this Ordinance; (Added 9 of 2012 s. 12)
- (82) to publish guidelines, under section 309(1) of this Ordinance;
- (83) to make an application, pursuant to section 385(1) of this Ordinance;
- (84) to consult the Financial Secretary, under section 396(1) of this Ordinance;
- (85) to make recommendation to the Chief Executive in Council, under section 396(2) of this Ordinance;
- (86) to appoint members of the Advisory Committee, under section 27(b) of Part 1;
- (87) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;
- (88) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;
- (89) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance.

(Format changes—E.R. 2 of 2012)

Chapter:	571Z	Securities and Futures (Levy) Order	Gazette Number	Version Date
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Section:	10	Mini-Hang Seng Index Futures Contracts, Mini-Hang Seng Index Options Contracts and Mini-Hang Seng China Enterprises Index Futures Contracts*	L.N. 74 of 2014	01/11/2014
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For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a Mini-Hang Seng Index Futures Contract, a Mini-Hang Seng Index Options Contract or a Mini-Hang Seng China Enterprises Index Futures Contract- (L.N. 121 of 2008)

- (a) is payable by the seller and purchaser; and
- (b) is-
  - (i) in the case of the seller, \$0.108; or
  - (ii) in the case of the purchaser, \$0.108. (L.N. 142 of 2006; L.N. 56 of 2010; L.N. 74 of 2014)

**Note:**

\* (Amended L.N. 121 of 2008)

Chapter:	571Z	Securities and Futures (Levy) Order	Gazette Number	Version Date
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Section:	13	Stock futures contracts	L.N. 74 of 2014	01/11/2014
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For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a stock futures contract or an option on such a contract-

- (a) is payable by the seller and purchaser; and
- (b) is-
  - (i) in the case of the seller, \$0.108; or
  - (ii) in the case of the purchaser, \$0.108. (L.N. 142 of 2006; L.N. 56 of 2010; L.N. 74 of 2014)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	307	No further proceedings after Part XIII market misconduct proceedings	E.R. 2 of 2012	02/08/2012
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- (1) Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if- (Amended 9 of 2012 s. 26)
  - (a) proceedings have previously been instituted against the person under section 252 in respect of the same conduct; and
  - (b) (i) those proceedings remain pending; or
  - (ii) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 252 in respect of the same conduct.
- (2) Subsection (1) does not apply in relation to any proceedings instituted under section 252 without the consent of the Secretary for Justice under section 252A(1). (Added 9 of 2012 s. 26)

Chapter:	571Q	SECURITIES AND FUTURES (CONTRACT NOTES, STATEMENTS OF ACCOUNT AND RECEIPTS) RULES	Gazette Number	Version Date
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Section:	11	Preparation and provision of monthly statements of account	L.N. 119 of 2006	01/10/2006
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- (1) In this section- (L.N. 119 of 2006)

"monthly accounting period" (按月會計期) means- (L.N. 119 of 2006)

- (a) in relation to the first statement of account required to be prepared and provided to a client of an intermediary in accordance with subsection (2) or (4) (as the case may be), a period not exceeding one month ending on a date selected by the intermediary; and
- (b) in relation to any subsequent statement of account, a period the duration of which shall be not less than 4 weeks and not exceed one month, commencing on the day after the date on which the previous monthly accounting period ended, and ending on a date selected by the intermediary; (L.N. 119 of 2006)

"repledge" (再質押), in relation to an intermediary or an associated entity of an intermediary, means an act by which the intermediary or the associated entity deposits securities collateral of the intermediary as collateral for financial accommodation provided to the intermediary. (L.N. 119 of 2006)

(2) Subject to subsection (4), where any of the circumstances specified in subsection (6) apply in respect of a client of an intermediary in respect of a monthly accounting period, the intermediary shall-

- (a) prepare a statement of account in respect of the client in accordance with subsections (3) and (3A); and (L.N. 119 of 2006)
- (b) provide the statement of account to the client no later than the end of the seventh business day after the end of the monthly accounting period.

(3) A statement of account referred to in subsection (2) shall include the information required to be included under section 7 and, to the extent applicable, the following information relating to the account of the client-

- (a) the address of the principal place of business in Hong Kong of the intermediary;
- (b) the outstanding balance of and the net equity in that account as at the beginning and as at the end of that monthly accounting period and details of all movements in the balance of that account during that period;
- (c) details of all relevant contracts entered into by the intermediary with or on behalf of the client during that monthly accounting period, indicating those initiated by the intermediary;
- (d) details of all events specified in section 8(3) which have taken place during that monthly accounting period, including what happened to the proceeds of any disposals initiated by the intermediary during that period of any client securities and collateral of the client held for that account;
- (e) details of all movements during that monthly accounting period of any-
  - (i) client securities and collateral of the client; and
  - (ii) security provided by or on behalf of the client in relation to a margined transaction, held for that account;
- (f) the quantity, and, in so far as readily ascertainable, the market price and market value of each description of-
  - (i) client securities and collateral of the client; and
  - (ii) security provided by or on behalf of the client in relation to a margined transaction, held for that account as at the end of that monthly accounting period;
- (g) the margin ratio and margin value of each description of securities collateral held for that account as at the end of that monthly accounting period;
- (h) details of all income credited to and charges levied against that account during that monthly accounting period;
- (i) all floating profits and floating losses in respect of open positions held for that account as calculated as at the end of that monthly accounting period and the prices used for such purposes;
- (j) a list of all open positions held for that account as at the end of that monthly accounting period;
- (k) the minimum margin requirement for all open positions held for that account as at the end of that monthly accounting period;
- (l) the amount of margin excess or margin shortfall in that account as at the end of that monthly accounting period;
- (m) the amount of option premium receivable or payable in respect of that account as at the end of that monthly accounting period; and
- (n) where the account is for dealing in securities, an indication that it is a margin account.

(3A) In the case of an intermediary which is licensed for dealing in securities or securities margin financing, where-

- (a) the intermediary or an associated entity of such intermediary has held securities collateral for that



- account at any time during that monthly accounting period; and
- (b) at any time during that monthly accounting period, the intermediary or an associated entity of such intermediary has repledged securities collateral of the intermediary (whether or not the securities collateral repledged is the same as that referred to in paragraph (a)),
- a statement of account referred to in subsection (2) shall also include a statement in a prominent position stating-
- (c) whether the client has provided the intermediary or an associated entity of such intermediary with a standing authority as defined in section 2 of the Securities and Futures (Client Securities) Rules (Cap 571 sub. leg. H), which has not been revoked, authorizing the intermediary or associated entity to repledge securities collateral provided by him or on his behalf; and
- (d) that the intermediary or an associated entity of such intermediary referred to in paragraph (b) has repledged securities collateral of the intermediary during that monthly accounting period. (L.N. 119 of 2006)
- (4) Where an intermediary is licensed or registered for asset management and, in relation to the conduct by the intermediary of asset management (other than the management of a collective investment scheme), any of the circumstances specified in subsection (6) apply in respect of a client of the intermediary in respect of a monthly accounting period, the intermediary shall-
- (a) prepare a statement of account in respect of the client in accordance with subsection (5); and
- (b) provide the statement of account to the client no later than the end of the tenth business day after the end of the monthly accounting period.
- (5) A statement of account referred to in subsection (4) shall include the information required to be included under section 7 and, to the extent applicable, the following information relating to the account of the client-
- (a) the address of the principal place of business in Hong Kong of the intermediary;
- (b) a valuation of the client's portfolio as at the end of the monthly accounting period providing-
- (i) details of the quantity, market price, purchase cost and market value of each description of securities held for that account as at the end of that period;
- (ii) details of all open positions as at the end of that period;
- (iii) the money balance held for that account as at the end of that period; and
- (iv) the amount of accounts payable and receivable in respect of that account as at the end of that period;
- (c) details of all income credited to and charges levied against that account during the monthly accounting period; and
- (d) a list of all contracts entered into in Hong Kong by the intermediary with or on behalf of the client during the monthly accounting period for dealing in securities and futures contracts and that are leveraged foreign exchange contracts.
- (6) The circumstances specified for the purposes of subsections (2) and (5) are- (L.N. 29 of 2004)
- (a) during a monthly accounting period, the intermediary is required to prepare and provide to the client-
- (i) a contract note in accordance with section 5;
- (ii) a statement of account in accordance with section 8 or 9; or
- (iii) a receipt in accordance with section 13;
- (b) during a monthly accounting period, an associated entity of the intermediary is required to prepare and provide to the client a receipt in accordance with section 13;
- (c) at any time during a monthly accounting period, the client has an account balance that is not nil;
- (d) the client has an open position as at the end of a monthly accounting period; or
- (e) at any time during a monthly accounting period-
- (i) any client securities and collateral; or
- (ii) any security provided in relation to a margined transaction,
- are held for the account of the client.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	308	Interpretation of Part XV	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

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

**associated corporation** (相聯法團), in relation to a listed corporation, means a corporation-

- (a) which is a subsidiary or holding company of the listed corporation or a subsidiary of the listed corporation's holding company; or
- (b) (not being a subsidiary of the listed corporation) in which the listed corporation has an interest in the shares of a class comprised in its share capital exceeding in number one-fifth of the number of the issued shares of that class; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

**cash settled equity derivatives** (現金結算股本衍生工具) means equity derivatives other than physically settled equity derivatives;

**chief executive** (最高行政人員) means the person employed or otherwise engaged by a corporation who, either alone or together with one or more persons, is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation;

**contract multiplier** (合約乘數), in relation to a stock futures contract, means the number specified by the recognized exchange company operating the futures market on which the stock futures contract is traded to be the contract multiplier for that stock futures contract under the rules of the recognized exchange company;

**custodian** (保管人) means a corporation the principal business of which is to act as a custodian of securities or other property for another person, whether on trust or by contract;

**deliver** (交付), in relation to any shares or debentures, means deliver the shares or debentures either physically or by electronic means and, in the case of unissued shares, means deliver the shares after they are issued; and **take delivery** (提取) shall be construed accordingly;

**duty of disclosure** (披露責任)-

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means the duty of disclosure arising under section 310 which has to be performed in accordance with section 324; or
- (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means the duty of disclosure arising under section 341 which has to be performed in accordance with section 347;

**equity derivatives** (股本衍生工具) means any-

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, underlying shares;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of-
  - (i) underlying shares; or
  - (ii) any rights, options or interests referred to in paragraph (a);
- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of-
  - (i) any rights, options or interests referred to in paragraph (a); or
  - (ii) any contracts referred to in paragraph (b); or
- (d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including stock futures contracts, certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase-
  - (i) underlying shares; or
  - (ii) the rights, options or interests or the contracts,

whether or not-

- (i) the rights, options or interests, the contracts or the instruments or documents are traded on a recognized stock market or a recognized futures market;
- (ii) the rights, options or interests, the contracts or the instruments or documents are, where the underlying shares are shares in a listed corporation, issued or made available by the listed corporation; or
- (iii) the obligations under the rights, options or interests, the contracts or the instruments or documents are settled by payment of cash or by delivery of the underlying shares or otherwise;

**Exchange Company** (交易所公司) means the Exchange Company within the meaning of the repealed Securities (Disclosure of Interests) Ordinance;

**founder** (成立人), in relation to a discretionary trust, means a person who-

- (a) has directly or indirectly provided, or undertaken to provide, property for the purpose of the trust; or
- (b) has entered into a reciprocal arrangement or understanding (whether having legal effect or not) with another person leading, directly or indirectly, to the creation of the trust, or has procured another person, directly or indirectly, to create the trust,

and whose consent is required as a condition (whether having legal effect or not) to the exercise by any trustee of his discretion in connection with the trust property, or in accordance with whose wishes (whether having legal effect or not) any trustee is accustomed, or would be expected, to act;

**Hong Kong register** (香港登記冊), in relation to a listed corporation, means the register of members, or a branch register, of the listed corporation that is kept in Hong Kong;

**inspector** (審查員) means an inspector appointed under section 356 or 357;

**issued voting shares** (已發行的有投票權股份), in relation to a listed corporation, means the listed corporation's issued shares of a class which carry rights to vote in all circumstances at general meetings of the corporation; (Added 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

**listed** (上市) means listed on a recognized stock market;

**listed corporation** (上市法團) means any corporation which has any of its securities listed;

**notifiable interest** (須具報權益) has the meaning assigned to it by section 311(3);

**notifiable percentage level** (須具報百分率水平) has the meaning assigned to it by section 315(1);

**off-exchange transaction** (場外交易) means any transaction, arrangement or occurrence of an event (other than an on-exchange transaction) under which a person becomes, or ceases to be, interested in shares;

**on-exchange transaction** (場內交易) means any transaction conducted on a recognized stock market or a recognized futures market under which a person becomes, or ceases to be, interested in shares;

**physically settled equity derivatives** (實物結算股本衍生工具) means equity derivatives that are, or are to be, settled by delivery of the underlying shares, including equity derivatives in respect of which the holder, writer or issuer of the equity derivatives may choose to settle by payment of cash or by delivery of the underlying shares;

**qualified lender** (合資格借出人) means a person who is-

- (a) an authorized financial institution;
- (b) an insurer authorized under the Insurance Companies Ordinance (Cap 41);
- (c) an exchange participant of a recognized exchange company;
- (d) an intermediary licensed or registered for Type 1 or Type 8 regulated activity; or
- (e) a corporation authorized under the law of any place outside Hong Kong recognized for the purposes of section 313(13), 317(6), 323(6) or (7) or 341(5) by the Commission to carry on business-
  - (i) as a bank;
  - (ii) as an insurance company; or
  - (iii) in an activity that is in the opinion of the Commission equivalent to any of the regulated activities carried on by an intermediary referred to in paragraph (d);

**register of directors' and chief executives' interests and short positions** (董事及最高行政人員權益及淡倉登記冊) means the register kept under section 352;

**register of interests in shares and short positions** (股份權益及淡倉登記冊) means the register kept under section 336 including, except where the context otherwise requires, that part of the register kept under section 337;

**regulations** (規例) means regulations made under section 376;

**relevant event** (有關事件)-

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means-
  - (i) in a case under section 310(1)(a) or (b) or (4)(a) or (b), the event or change referred to in such section;

- (ii) in a case under section 310(2)(a), the event in consequence of which the corporation becomes a listed corporation;
- (iii) in a case under section 310(2)(b), the event in consequence of which the listed corporation's shares of a particular class become voting shares; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (iv) in a case under section 310(2)(c) or (5), the commencement of this Part; or
- (v) in a case under section 310(3) or (6), the taking effect of the regulation providing for the reduction referred to in such section; or
- (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means-
  - (i) in a case under section 341(1)(a), (b), (c), (d), (e) or (f), the event referred to in such section;
  - (ii) in a case under section 341(2)(a), the event in consequence of which the corporation becomes a listed corporation;
  - (iii) in a case under section 341(2)(b), the commencement of this Part;
  - (iv) in a case under section 341(2)(c), the event in consequence of which the person becomes a director or chief executive of a listed corporation; or
  - (v) in a case under section 341(2)(d), the event in consequence of which the corporation becomes an associated corporation of a listed corporation;

**relevant exchange company** (有關交易所公司), in relation to a listed corporation, means the recognized exchange company operating the stock market on which the shares in the listed corporation are listed;

**relevant time** (有關時間) means the time of the occurrence of the relevant event;

**rights issue** (供股) means an offer or issue by a listed corporation of shares in the listed corporation (whether issued or unissued) to all persons holding issued shares in the listed corporation at a certain date (other than a person whose address is in a place where such offer or issue is not permitted under the law of that place) in proportion to the number of those issued shares held by them at that date, but does not include an offer or issue of shares in the listed corporation in lieu of all or part of a cash dividend;

**short position** (淡倉) means the position which a person has-

- (a) where the person is the holder, writer or issuer of any equity derivatives, by virtue of which the person-
  - (i) has a right to require another person to take delivery of the underlying shares of the equity derivatives;
  - (ii) is under an obligation to deliver the underlying shares of the equity derivatives to another person, if called upon to do so;
  - (iii) has a right to receive from another person an amount if the price of the underlying shares of the equity derivatives declines; or
  - (iv) has a right to avoid or reduce a loss if the price of the underlying shares of the equity derivatives declines,
 before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute; or
- (b) where the person is the borrower of shares under a securities borrowing and lending agreement, by virtue of which the person is under an obligation to deliver shares to another person who has lent shares, if called upon to do so, before or on a certain date or within a certain period, whether or not the obligation to deliver shares is to be settled by payment of cash or by delivery of shares or otherwise;

**specified percentage level** (指明百分率水平) has the meaning assigned to it by section 315(2);

**stock futures contract** (股票期貨合約) means a contract which is of a class approved by the Commission as stock futures contracts for trading on a recognized futures market;

**target corporation** (目標法團), in relation to an agreement to which section 317 applies, means the particular listed corporation which is the target corporation for that agreement;

**underlying shares** (相關股份), in relation to any equity derivatives and subject to subsection (5), means-

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6-
  - (i) the voting shares in 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 voting shares in the listed corporation concerned by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined; or
- (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10-
  - (i) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or
  - (ii) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined, whether in any case those shares are issued or unissued; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

**voting shares** (有投票權股份), in relation to a listed corporation-

- (a) means the listed corporation's issued voting shares; and
  - (b) includes the listed corporation's unissued shares of a class which, if issued, would carry rights to vote in all circumstances at general meetings of the corporation. (Added 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (2) The temporary suspension of voting rights in respect of shares comprised in a class of the issued shares in a listed corporation does not affect the application of this Part in relation to interests in those or any other shares comprised in that class. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (3) In section 317, and also in references elsewhere in this Part to an agreement to which that section applies, **agreement** (協議) includes any agreement or arrangement, and a reference in that section to provisions of an agreement-
    - (a) accordingly includes a reference to undertakings, expectations or understandings operative under any arrangement; and
    - (b) (without prejudice to paragraph (a)) also includes a reference to any provisions, whether express or implied and whether absolute or not.
  - (4) For the purposes of any provision of this Part which provides that an officer of a corporation who is in default is liable to a fine or penalty, the expression **every officer of it who is in default** (其每名違責的高級人員) means every officer of the corporation who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that provision.
  - (5) In the case of equity derivatives-
    - (a) where-
      - (i) no less than 5 listed corporations' shares will be required to be delivered on the exercise of rights or fulfilment of obligations under the equity derivatives; and
      - (ii) at the time of the issue of the equity derivatives, no more than-
        - (A) subject to sub-subparagraph (B), 30%; or
        - (B) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,
 of the value of all the shares which, but for this subsection, would have been the underlying shares of the equity derivatives is represented by the shares in any one of those listed corporations; or
    - (b) where-
      - (i) the prices or values of no less than 5 listed corporations' shares play a part in the derivation or determination of the price or value of the equity derivatives; and
      - (ii) at the time of the issue of the equity derivatives, no more than-
        - (A) subject to sub-subparagraph (B), 30%; or
        - (B) where any other percentage is prescribed by regulations for the purposes of this subsection, such other percentage,
 of the price or value of the equity derivatives is derived from or determined by the prices or values of the shares in any one of those listed corporations,
 those equity derivatives are taken to have no underlying shares.
  - (6) In subsection (5), a reference to shares shall be construed as-

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, a reference to voting shares in the listed corporation concerned; or (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, a reference to shares in the listed corporation concerned.
- (7) In subsections (5) and (6), a reference to a listed corporation includes a reference to a corporation that is listed on a specified stock exchange.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	313	Circumstances in which duty of disclosure arises	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

- (1) The circumstances referred to in section 310(1) are those where-
  - (a) the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time;
  - (b) the person had a notifiable interest immediately before the relevant time, but does not have a notifiable interest immediately after the relevant time;
  - (c) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the percentage levels of his interest immediately before and immediately after the relevant time are not the same; or
  - (d) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the nature of his interest (or part thereof) immediately before and immediately after the relevant time is not the same.
- (2) The circumstances referred to in section 310(2) are those where the person has a notifiable interest immediately after the relevant time.
- (3) The circumstances referred to in section 310(3) are those where the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time.
- (4) The circumstances referred to in section 310(4) are those where the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, and-
  - (a) the person-
    - (i) did not have a short position in voting shares in the listed corporation concerned immediately before the relevant time; or
    - (ii) had a short position in such voting shares immediately before the relevant time of a percentage level less than the specified percentage level, but has a short position in such voting shares 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 such voting shares immediately before the relevant time of a percentage level equal to or more than the specified percentage level, but does not have a short position in such voting shares immediately after the relevant time of a percentage level equal to or more than the specified percentage level; or
  - (c) the person had a short position in such voting shares immediately before the relevant time of a percentage level equal to or more than the specified percentage level, and has a short position in such voting shares 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. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (5) The circumstances referred to in section 310(5) are those where the person has a notifiable interest immediately after the relevant time, and has a short position in voting shares in the listed corporation concerned immediately after the relevant time of a percentage level equal to or more than the specified percentage level. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (6) The circumstances referred to in section 310(6) are those where-
  - (a) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time; and
  - (b) the person had a short position in voting shares in the listed corporation concerned immediately before the relevant time of a percentage level less than the specified percentage level, but has a short position in such

voting shares immediately after the relevant time of a percentage level equal to or more than the specified percentage level. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

- (7) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(c) is not under such a duty where-
- (a) the percentage level of his interest in voting shares in the listed corporation concerned, calculated in accordance with section 314(1), immediately after the relevant time is the same as or less than the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and
  - (b) the difference between-
    - (i) the percentage figure of his interest in such voting shares, calculated in accordance with subsection (14)(a), at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and
    - (ii) the percentage figure of his interest in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),is less than 0.5%. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (8) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(d) is not under such a duty where the percentage level of his interest (excluding that part of his interest the nature of which has changed immediately after the relevant time) in voting shares in the listed corporation concerned, calculated in accordance with section 314(1) (by construing the reference in that section to the aggregate number of all the voting shares in which a person is interested as a reference to the aggregate number of the voting shares the nature of the person's interest in which has not changed), immediately after the relevant time- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (a) is the same as the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(a), (c) or (d) (whichever is the latest); or
  - (b) is the same as or less than the percentage level of his interest in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c), and the difference between- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
    - (i) the percentage figure of his interest in such voting shares, calculated in accordance with subsection (14)(a) (by construing the reference in that subsection to section 314(1) in the manner aforementioned in this subsection), at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and
    - (ii) the percentage figure of his interest in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),is less than 0.5%. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (9) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (4)(c) is not under such a duty where-
- (a) the percentage level of his short position in voting shares in the listed corporation concerned, calculated in accordance with section 314(4), immediately after the relevant time is the same as or less than the percentage level of his short position in such voting shares at the time of the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and
  - (b) the difference between-
    - (i) the percentage figure of his short position in such voting shares calculated in accordance with subsection (14)(b) at all times since the relevant event giving rise to the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and
    - (ii) the percentage figure of his short position in such voting shares disclosed in the last notification given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c),is less than 0.5%. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (10) Subject to subsection (11), a qualified corporation which would otherwise come under a duty of disclosure in the circumstances specified in subsection (1) or (4) is not under such a duty if its holding company (or where its holding company is a qualified corporation of another holding company, that other holding company)-
- (a) is, at the relevant time, taken under section 316(2)-

- (i) to be interested in any shares in which the qualified corporation is interested; and
  - (ii) to have a short position in any shares in which the qualified corporation has a short position; and
  - (b) accordingly complies with the duty of disclosure.
- (11) If a corporation ceases to be a qualified corporation of its holding company and in such circumstances the holding company is regarded as having ceased to be interested, or have a short position, in shares under section 316(6), the corporation is taken to have acquired that interest or come to have that short position (as the case may be).
- (12) In subsections (10), (11) and (13), **qualified corporation** (合資格法團), in relation to a holding company, means a wholly owned subsidiary of the holding company (whether or not the holding company is itself a wholly owned subsidiary of another holding company).
- (13) In subsection (1)(d), a reference to the nature of a person's interest as being not the same includes a reference to a change in the nature of-
- (a) the person's title to voting shares in the listed corporation concerned;
  - (b) any of the person's interest whether legal or equitable in such voting shares;
  - (c) any of the person's interest in such voting shares, which are the underlying shares of equity derivatives, on the exercise by, or against, him of rights under the equity derivatives; or
  - (d) any of the person's interest in such voting shares in such other circumstances as are prescribed by rules made under section 377 for the purposes of this section, (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- but does not include a reference to a change in the nature of the person's interest in such voting shares- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (i) on delivery of the shares to him, if his equitable interest in those shares is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 3 or 4;
  - (ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue;
  - (iii) on-
    - (A) the exercise of rights to subscribe for shares granted to him as part of a rights issue; or
    - (B) delivery of shares to him pursuant to a rights issue;
  - (iv) where another person, being a qualified lender, comes to have an interest in his shares by way of security; or
  - (v) where the person is a holding company, due to the acquisition of an interest in those shares by a qualified corporation of the person from another qualified corporation of the person.
- (14) For the purposes of-
- (a) subsections (7)(b) and (8)(b) and section 326(1)(b), **percentage figure** (百分率數字) means the percentage figure referred to in section 314(1) before rounding down, if applicable, to the next whole number; and
  - (b) subsection (9)(b) and section 326(1)(c), **percentage figure** (百分率數字) means the percentage figure referred to in section 314(4) before rounding down, if applicable, to the next whole number.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	316	Notification of family and corporate interests and short positions	E.R. 2 of 2012	02/08/2012

- (1) For the purposes of this Division and Divisions 3 and 4, a person is taken-
  - (a) to be interested in any shares in which his spouse, or any minor child (natural or adopted) of his, is interested; and
  - (b) to have a short position in any shares in which his spouse, or any minor child (natural or adopted) of his, has a short position.
- (2) For the purposes of this Division and Divisions 3 and 4, a person is taken-
  - (a) to be interested in any shares in which a corporation is interested; and
  - (b) to have a short position in any shares in which a corporation has a short position,



- if-
- (i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or
  - (ii) subject to subsection (5), he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.
- (3) Where-
- (a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and
  - (b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation (*the effective voting power*),
- then, for the purposes of subsection (2)(ii), the effective voting power is taken as exercisable by that person.
- (4) For the purposes of subsections (2) and (3), a person is entitled to exercise or control the exercise of voting power if-
- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
  - (b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.
- (5) For the purposes of subsections (2) and (3), a person is not taken-
- (a) to be interested in any shares in which a corporation is interested; or
  - (b) to have a short position in any shares in which a corporation has a short position,
- if-
- (i) that corporation is interested in those shares or has a short position in those shares (as the case may be) by reason only of its obligation or power to invest in, manage, deal in or hold interests in those shares on behalf of its customers in the ordinary course of its business as an investment manager, custodian or trustee;
  - (ii) to the extent that the corporation has any right or power to vote in respect of those shares arising from or by reason of its capacity as an investment manager, custodian or trustee, such right or power is exercisable by that corporation independently without any reference to the person or any related corporation of the person; and
  - (iii) when performing its functions as an investment manager, custodian or trustee, the power of that corporation to invest in, manage, deal in or hold interests in those shares is exercised by that corporation independently without any reference to the person or any related corporation of the person.
- (6) A person who is taken to be interested, or have a short position, in shares under subsection (2) shall be regarded as having ceased to be interested, or have a short position, in the shares if subsection (2)(i) or (ii) no longer applies.
- (7) In subsection (5)-
- (a) *investment manager* (投資經理) means-
    - (i) an intermediary licensed or registered for Type 9 regulated activity; or
    - (ii) a corporation which is licensed, registered or exempt in a place outside Hong Kong recognized for the purposes of this section by the Commission for an activity which is equivalent to Type 9 regulated activity,
 and is authorized to manage investments in securities for another person under a written agreement; and
  - (b) *trustee* (受託人) means a corporation the principal business of which is to hold property belonging to another person under the provisions of a trust deed.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	317	Agreement to acquire interests in particular listed corporation	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

- (1) This section applies in relation to an agreement between 2 or more persons which includes provisions for the acquisition by any one or more of them of interests in voting shares in a particular listed corporation (*the target corporation*), if- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (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 voting shares in the target

corporation acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the voting shares in the target corporation to which the agreement relates); or

- (b) the agreement provides for the making of a loan, or the providing of security for a loan, by a controlling person or a director of the target corporation to any person on the understanding or with the knowledge that such loan (or part thereof) would be used or applied for the acquisition of an interest in voting shares in the target corporation,

and an interest in voting shares in the target corporation is in fact acquired by any of the parties in pursuance of such agreement. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

- (2) In subsection (1)(a), a reference to the use of interests in voting shares in 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). (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (3) Once any interest in voting shares in 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- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (a) whether or not any further acquisitions of interests in voting shares in the target corporation take place in pursuance of the agreement; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (b) any change in the persons who are for the time being parties to it; and
  - (c) any variation of the agreement,
 so long as the agreement continues to include provisions of any description referred to in subsection (1)(a) or (b).
- (4) In subsection (3), a reference to the agreement includes a reference to any agreement having effect (whether directly or indirectly) in substitution for an earlier agreement.
- (5) In subsection (1), a reference to an agreement, in so far as subsection (1)(a) applies, does not include-
  - (a) a reference to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; and
  - (b) a reference to an agreement to underwrite or sub-underwrite any offer of shares in a corporation, if the agreement is confined to that purpose and any matters incidental to it.
- (6) In subsection (1), a reference to an agreement, in so far as subsection (1)(b) applies, does not include a reference to an agreement under which a controlling person or a director of the target corporation makes the loan in the ordinary course of his business as a qualified lender.
- (7) For the purposes of this section, **controlling person** (控權人士), in relation to a corporation, means a person who, either alone or with any of his associates-
  - (a) is entitled to exercise or control the exercise of not less than-
    - (i) subject to subparagraph (ii), 30%; or
    - (ii) where any other percentage is prescribed by rules made under section 397 for the purposes of this subsection, such other percentage,
 of the voting power at general meetings of the corporation;
  - (b) has the right to nominate any of the directors of the corporation; or
  - (c) has an interest in shares carrying the right to-
    - (i) veto any resolution; or
    - (ii) amend, modify, limit or add conditions to any resolution,
 at general meetings of the corporation.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	318	Interests of parties to agreement	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

- (1) In the case of an agreement to which section 317 applies, each party to the agreement is taken (for the purposes of the duty of disclosure) to be interested in any voting shares in the target corporation in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).
- (2) For the purposes of subsection (1) and sections 319 and 326(6)(b), an interest of a party to such an agreement in

voting shares in the target corporation is an interest apart from the agreement if he is interested in those shares otherwise than by the application of this section and section 317 in relation to the agreement.

- (3) Accordingly, any such interest of the party to the agreement (apart from the agreement) includes, for the purposes of subsection (1) and section 319, any interest which he is taken to have under section 316 or by the application of this section and section 317 in relation to any other agreement with respect to voting shares in the target corporation to which he is a party.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	319	Duty of parties to agreement acting together to keep each other informed	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

- (1) A person who is a party to an agreement to which section 317 applies is subject to the requirements of this section at any time when-
- (a) the target corporation is a listed corporation, and he knows it to be so;
  - (b) the shares in the target corporation to which the agreement relates consist of or include voting shares in the target corporation, and he knows that to be the case; and (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (c) he knows the facts which make the agreement one to which section 317 applies.
- (2) A person who is subject to the requirements of this section is under a duty to give notification to every other party to the agreement of the relevant particulars of his interest apart from the agreement (if any) in voting shares in the target corporation- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (a) on his first becoming subject to the requirements of this section; and
  - (b) on each occurrence after that time and while he is still subject to those requirements of any event or change referred to in section 310(1), (2) or (3) (as it applies to his case otherwise than by reference to interests which he is taken to have under section 318 as applying to that agreement).
- (3) The relevant particulars to be notified under subsection (2) are the number of voting shares (if any) in 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. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (4) A person who is a party to an agreement to which section 317 applies is under a duty to give notification to every other party to the agreement of his current address-
- (a) on his first becoming subject to the requirements of this section; and
  - (b) on any change in his address occurring after that time and while he is still subject to those requirements.
- (5) If a person is under a duty to give any notification required by this section to any other person, the notification shall be given within 3 business days after the day on which that duty arises.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	320	Circumstances in which persons have interests in shares or short positions by attribution	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

Expanded Cross Reference:

310, 311, 312, 313

- (1) In sections 310 to 313- <\* Note - Exp. X-Ref.: Sections 310, 311, 312, 313 \*>
  - (a) a reference to a person acquiring an interest in, or ceasing to be interested in, voting shares in a listed corporation includes a reference to his becoming or ceasing to be interested in those shares by virtue of another person's interest;
  - (b) a reference to the nature of a person's interest in voting shares in a listed corporation as being not the same includes a reference to a change in the nature of his interest in those shares by virtue of a change in the nature of another person's interest; and
  - (c) a reference to a person coming to have a short position in, or ceasing to have a short position in, voting shares in a listed corporation includes a reference to his coming to have or ceasing to have a short position in those shares by virtue of another person's short position. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (2) Subsection (1) applies where-
  - (a) a person becomes or ceases to be interested in voting shares in a listed corporation;
  - (b) the nature of a person's interest in such voting shares changes; or
  - (c) a person comes to have or ceases to have a short position in such voting shares, (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
 under section 316 or 318 (as the case may be) whether-
  - (i) by virtue of the fact that the other person who is interested, or has a short position, in those shares becomes or ceases to be a person by reference to whose interests or short positions (if any) he is taken to have an interest or short position (as the case may be) under section 316 or 318;
  - (ii) in consequence of the fact that the other person has become or ceased to be interested in those shares, the nature of the other person's interest in those shares has changed, or the other person has come to have or ceased to have a short position in those shares (as the case may be);
  - (iii) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 317 applies to which the other person interested in those shares is for the time being a party; or
  - (iv) in consequence of the fact that an agreement to which both he and the other person are parties becomes or ceases to be one to which section 317 applies.
- (3) Upon-
  - (a) a person becoming or ceasing to be interested in voting shares in a listed corporation;
  - (b) a change in the nature of a person's interest in such voting shares; or
  - (c) a person coming to have or ceasing to have a short position in such voting shares, (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
 (as the case may be) in the circumstances specified in subsection (2), the person shall be deemed to know that he has acquired an interest in those shares or has ceased to be interested in those shares, or that the nature of his interest in those shares has changed, or that he has come to have a short position in those shares or has ceased to have a short position in those shares (as the case may be), when he knows both-
  - (i) the relevant facts with respect to the other person's interest or short position (as the case may be) in those shares; and
  - (ii) the relevant facts by virtue of which he himself has become or ceased to be interested, or come to have or ceased to have a short position (as the case may be) in those shares under section 316 or 318.
- (4) A person has the knowledge referred to in subsection (3)(i) if he knows (whether contemporaneously or not) either-
  - (a) of the fact that the other person is interested in those shares, or the nature of the other person's interest in those shares changes, or the other person has a short position in those shares (as the case may be) at any material time; or

- (b) of the fact that the other person has become or ceased to be interested in those shares, or the nature of the other person's interest in those shares has changed, or the other person has come to have or ceased to have a short position in those shares (as the case may be) at any material time.
- (5) A person shall be deemed to know of the fact that-
- (a) the other person is interested in those shares or the nature of the other person's interest in those shares changes (as the case may be); or
  - (b) the other person has become or ceased to be interested in those shares or the nature of the other person's interest in those shares has changed (as the case may be),
- if he has been notified under section 319 of facts which indicate that the other person is or has become or ceased to be interested in those shares or the nature of the other person's interest in those shares changes or has changed (as the case may be), whether on the other person's own account or by virtue of a third party's interest in them.
- (6) In subsection (4), **material time** (關鍵時間) means any time at which the interests or short positions (as the case may be) of the person concerned which are taken to be his under section 316 or 318 fall or fell to be so taken.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	321	Notification by agents	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014
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Where a person authorizes another person (**the agent**)-

- (a) to acquire or dispose of, on his behalf, interests in voting shares in a listed corporation; or
- (b) to have or cease to have, on his behalf, short positions in such voting shares,

he shall secure that the agent notifies him immediately of acquisitions or disposals of interests, or having or ceasing to have short positions, effected by the agent which will or may give rise to any duty of disclosure or any duty to give notification under any provision of this Division or Division 3 or 4 with respect to his interests or short positions in those shares.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	322	Interests and short positions to be taken into account for the purpose of notification	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014
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- (1) This section applies, subject to section 323, in determining for the purposes of Divisions 2, 4 and 5 whether a person has, or ceases to have, an interest or short position in voting shares in a listed corporation that is notifiable. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (2) A reference to an interest in shares shall be construed as including a reference to an interest of any kind whatsoever in the shares, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.
- (3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.
- (4) Where property is held on trust and an interest, or short position, in shares is comprised in that property-
  - (a) a beneficiary of the trust who apart from this section does not have an interest, or short position, in the shares is taken to have such an interest or short position (as the case may be); and
  - (b) in the case of a discretionary trust, the founder of the trust is taken to have an interest or short position (as the case may be) in the shares.
- (5) A person is taken to have an interest in shares if-
  - (a) he enters into a contract for their purchase by him (whether for cash or other consideration); or
  - (b) he is entitled to-
    - (i) exercise any right conferred by the holding of the shares; or
    - (ii) control the exercise of any such right.
- (6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares if-

- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or
  - (b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.
- (7) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust-
- (a) he has a right to subscribe for the shares or call for delivery of the shares to himself or to his order; or
  - (b) he has a right to acquire an interest in the shares or is under an obligation to take delivery of the shares, whether in any case the right or obligation is conditional or absolute.
- (8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives-
- (a) he has a right to require another person to deliver the underlying shares to him;
  - (b) he is under an obligation to take delivery of the underlying shares;
  - (c) he has a right to receive from another person an amount if the price of the underlying shares increases; or
  - (d) he has a right to avoid or reduce a loss if the price of the underlying shares increases, before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.
- (9) The number of shares in which a person is taken to be interested under subsection (8) is-
- (a) the number of the underlying shares of the equity derivatives-
    - (i) which he has a right to require another person to deliver to him; or
    - (ii) of which he is under an obligation to take delivery;
  - (b) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or
  - (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract, whether in any case the right or obligation is conditional or absolute. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (10) A person shall be regarded as having ceased to be interested in shares if-
- (a) he delivers the shares to another person or to another person's order-
    - (i) in accordance with a contract under which he agreed to sell the shares to the other person;
    - (ii) in fulfilling an obligation to do so when called upon by the other person to deliver the shares; or
    - (iii) pursuant to a right to require the other person to take delivery of the shares;
  - (b) his right to subscribe for or call for delivery of the shares lapses or he assigns such a right to another person;
  - (c) his obligation to take delivery of the shares lapses or he assigns such an obligation to another person; or
  - (d) he receives from another person an amount, or avoids or reduces a loss, on assignment or settlement of any cash settled equity derivatives.
- (11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is-
- (a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
  - (b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (12) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is-
- (a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;
  - (b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
  - (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (13) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may be settled by

payment of cash or by delivery of shares or otherwise. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

- (14) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).
- (15) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	323	Interests and short positions to be disregarded for the purpose of notification	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

- (1) The following interests, and short positions, in voting shares in a listed corporation shall be disregarded for the purposes of Divisions 2 to 4- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (a) where property is held on trust and an interest in shares is comprised in that property-
    - (i) an interest in reversion or remainder;
    - (ii) an interest of a bare trustee; and
    - (iii) any discretionary interest;
  - (b) an exempt custodian interest;
  - (c) subject to subsection (4), an interest in shares comprised in the property under-
    - (i) a collective investment scheme authorized under section 104;
    - (ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap 485); or
    - (iii) a qualified overseas scheme, of a holder, trustee or custodian of the scheme;
  - (d) an interest of a person subsisting by virtue of-
    - (i) a charitable scheme made by order of any court of competent jurisdiction; or
    - (ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration;
  - (e) an interest for the life of himself, or of another, of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the following conditions are satisfied-
    - (i) the settlement is irrevocable; and
    - (ii) the settlor has no interest in any income arising under, or property comprised in, the settlement;
  - (f) an exempt security interest;
  - (g) an interest in shares of a recognized clearing house;
  - (h) an interest in shares of the Registrar of the High Court held in his official capacity;
  - (i) an interest in shares of an intermediary licensed or registered for Type 1 regulated activity where-
    - (i) the interest is acquired by the intermediary as an agent only for the purposes of a transaction entered into in the ordinary course of his business as such an intermediary;
    - (ii) the principal in that transaction is a person other than a related corporation of the intermediary;
    - (iii) the interest is acquired from a person other than a related corporation of the intermediary; and
    - (iv) the intermediary has been interested in the shares for not more than 3 business days;
  - (j) such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by regulations for the purposes of this section; and
  - (k) subject to section 377, such interests or interests of such a class, or such short positions or short positions of such a class, as are prescribed by rules made under section 377 for the purposes of this section.
- (2) A person is not taken to be interested in shares under section 322(5)(b) by reason only that he-
- (a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or of any class of its members and at any adjournment of that meeting; or
  - (b) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or of any class of its members.
- (3) For the purposes of subsection (1)(b), an interest in shares is an exempt custodian interest if-
- (a) it is held by a corporation which carries on a business of holding securities in custody for another person, whether on trust or by contract; and

- (b) the corporation has no authority to exercise discretion in dealing in the interest, or in exercising rights attached to the interest.
- (4) An interest in shares of a holder, trustee or custodian of a scheme referred to in subsection (1)(c)(i), (ii) or (iii), comprised in the property under the scheme, shall not be disregarded under subsection (1)(c) if the holder, trustee or custodian (as the case may be) is also a manager of the scheme.
- (5) For the purposes of subsection (1)(c), **qualified overseas scheme** (合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme which-
- (a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and
  - (b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of such scheme in the place where it is established, and complies with the requirements of such authority, but does not include-
    - (i) an arrangement operated by a person otherwise than by way of business;
    - (ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;
    - (iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and
    - (iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.
- (6) An interest in shares is an exempt security interest for the purposes of subsection (1)(f) if it is held by a qualified lender by way of security only for the purposes of a transaction entered into in the ordinary course of his business as such a qualified lender.
- (7) An interest in shares shall cease to be an exempt security interest for the purposes of subsection (1)(f), and the qualified lender holding the interest in the shares by way of security shall be taken to have acquired that interest for the purposes of Divisions 2 to 5, when-
- (a) the qualified lender-
    - (i) becomes entitled to exercise voting rights in respect of the interest in the shares held as security as a result of, or following, a default by the person giving the interest in the shares as security; and
    - (ii) has-
      - (A) evidenced an intention to exercise the voting rights or control their exercise; or
      - (B) taken any step to exercise the voting rights or control their exercise; or
  - (b) the power of sale in respect of the interest in the shares held as security becomes exercisable, and the qualified lender or its agent offers the interest in the shares held as security, or any part of that interest, for sale.
- (8) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that-
- (a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or
  - (b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.
- (9) A notice published pursuant to subsection (5)(a) or (iv) is not subsidiary legislation.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	326	Particulars to be contained in notification	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

- (1) Where a duty of disclosure arises under section 310, a person shall, in performing the duty of disclosure, specify in the notification his name and address, and (so far as he is aware)-
- (a) the date on which the relevant event occurred and-
    - (i) the date (if later) on which he became aware of the occurrence of the relevant event; or
    - (ii) in the case referred to in section 325(2)(b) or (3)(b), the date on which he became aware that he has the interest or short position (as the case may be) in the voting shares in the listed corporation concerned;



(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

- (b) the total number and class of-
    - (i) voting shares in the listed corporation concerned in which he was interested immediately before the relevant time specifying the percentage figure of his interest in the shares in each class; and
    - (ii) such voting shares in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the shares in each class; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (c) the total number and class of-
    - (i) voting shares in the listed corporation concerned in which he had a short position immediately before the relevant time specifying the percentage figure of his short position in the shares in each class; and
    - (ii) such voting shares in which he has a short position immediately after the relevant time specifying the percentage figure of his short position in the shares in each class; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (d) the circumstances in which he comes under the duty of disclosure;
  - (e) where the duty of disclosure arises under section 310(1) or (4), the total number and class of voting shares in the listed corporation in which- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
    - (i) he has acquired an interest, or ceased to have an interest, at the relevant time;
    - (ii) he has come to have, or ceased to have, a short position at the relevant time; or
    - (iii) the nature of his interest changes at the relevant time;
  - (f) where he acquires or disposes of the interest referred to in paragraph (e)(i)-
    - (i) through an on-exchange transaction, the highest price and the average price paid or received per share for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or
    - (ii) through an off-exchange transaction, the nature of the consideration given or received, and the highest amount and the average amount of the consideration given or received per share, for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);
  - (g) the capacity in which the interest, or short position, in voting shares in the listed corporation is held immediately after the relevant time and, if the interest or short position in the shares is held in more than one capacity, the number of shares held in each capacity; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (h) where the duty of disclosure arises in the circumstances in which the nature of his interest in voting shares in the listed corporation is not the same immediately before and immediately after the relevant time, the nature of his interest immediately before and immediately after the relevant time; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (i) where he is taken to be interested or have a short position in voting shares in the listed corporation under section 316(1), 316(2) or 322(14)- (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
    - (i) the number and class of the shares; and
    - (ii) the name and address of, and his relationship with, each of the other persons having an interest or short position in the shares, in which he is so taken to be interested or have a short position under each of those sections taken separately;
  - (j) where-
    - (i) he no longer has a notifiable interest; or
    - (ii) he has a notifiable interest, but he no longer has a short position of a percentage level equal to or more than the specified percentage level,the fact that he no longer has such an interest or short position; and
  - (k) such other information as may be required in the form specified for the purpose. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (2) Where any shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (c), (e), (h) or (i) are the underlying shares of equity derivatives, the person shall also specify separately in the notification the total number of-
- (a) shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time-
    - (i) cash settled equity derivatives; or
    - (ii) physically settled equity derivatives;

- (b) shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time-
    - (i) cash settled equity derivatives; or
    - (ii) physically settled equity derivatives;
  - (c) shares which are the underlying shares of any of the equity derivatives referred to in paragraph (a) in which he is interested, or has a short position, immediately after the relevant time; and
  - (d) shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time.
- (3) In determining the number of shares in which a person is interested for the purposes of this section-
- (a) there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of the shares in which the person is interested; and
  - (b) particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.
- (4) Unless a corporation is-
- (a) a listed corporation;
  - (b) a wholly owned subsidiary of a listed corporation;
  - (c) a corporation listed on a specified stock exchange; or
  - (d) a wholly owned subsidiary of a corporation listed on a specified stock exchange,
- it shall, in performing a duty of disclosure arising under section 310, also specify in the notification the name and address of any person in accordance with whose directions or instructions it, or its directors, are accustomed or obliged to act.
- (5) For the purposes of subsection (4), a person shall not be regarded as a person in accordance with whose directions or instructions a corporation or its directors are accustomed or obliged to act by reason only that the corporation or its directors act on advice given by him in a professional capacity.
- (6) A notification given by a person who is for the time being a party to an agreement to which section 317 applies shall also-
- (a) state that the person giving the notification is a party to such an agreement;
  - (b) include-
    - (i) the names and (so far as he is aware) the addresses of the other parties to the agreement, identifying them as such; and
    - (ii) the number and class of shares in which each of those other parties is interested (apart from the agreement);
  - (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by the application of sections 317 and 318 and, if so, the total number and class of those shares;
  - (d) include a copy of any written agreement, contract, document or other instrument which records any terms or details of the agreement to which section 317 applies; and
  - (e) (where there is no written agreement, contract, document or other instrument of the type referred to in paragraph (d) or where the agreement is only partly recorded in writing) include a written memorandum recording the material terms of the agreement to which section 317 applies, which are not otherwise recorded in writing, including, but not limited to-
    - (i) any cash or other consideration involved; and
    - (ii) the identity of all persons between whom such cash or other consideration is passed or is intended to pass.
- (7) A notification given by a person in consequence of his ceasing to be interested in any shares by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 317 applies shall also-
- (a) state that he or that other person (as the case may be) has ceased to be a party to the agreement; and
  - (b) (in the latter case) include the name and (so far as he is aware) the address of that other person.
- (8) Nothing in subsection (1) or (2) shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	329	Power of listed corporation to investigate ownership of interests in its shares, etc.	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

Expanded Cross Reference:

316, 317, 318

- (1) A listed corporation may carry out an investigation in relation to-
  - (a) any interest in its voting shares;
  - (b) any short position in its voting shares; or
  - (c) where its voting shares are the underlying shares of any equity derivatives, any interest in those equity derivatives, (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

by requiring, by notification, a person whom the listed corporation knows or has reasonable cause to believe to be interested in those shares or equity derivatives or have a short position in those shares or, at any time during the 3 years immediately before the day on which the notification is given, to have been interested in those shares or equity derivatives or had a short position in those shares-

  - (i) to confirm that fact or to indicate whether or not it is the case (as the case may be); and
  - (ii) where he has, or has during that time had, an interest in those shares or equity derivatives or a short position in those shares, to give such further information as may be required in accordance with subsection (2).
- (2) A notification under subsection (1) may require the person to whom it is addressed-
  - (a) to give particulars of-
    - (i) his own present interest in those shares or equity derivatives or his own present short position in those shares; or
    - (ii) his own past interest in those shares or equity derivatives or his own past short position in those shares (which he had at any time during the 3-year period referred to in subsection (1));
  - (b) where-
    - (i) his interest in those shares or equity derivatives is a present interest and any other person has an interest in those shares or equity derivatives; or
    - (ii) in any case, any other person had an interest in those shares or equity derivatives during that 3-year period at any time when he himself had an interest in those shares or equity derivatives,

to give (so far as he is aware) such particulars with respect to the other person's interest as may be required by the notification;
  - (c) where his interest in those shares or equity derivatives was a past interest, to give (so far as he is aware) particulars of the identity of the person who had that interest immediately upon his ceasing to have it;
  - (d) where-
    - (i) his short position in those shares is a present short position and any other person has an interest or short position in those shares; or
    - (ii) in any case, any other person had an interest or short position in those shares during that 3-year period at any time when he himself had a short position in those shares,

to give (so far as he is aware) such particulars with respect to the other person's interest or short position as may be required by the notification; or
  - (e) where his short position in those shares was a past short position, to give (so far as he is aware) particulars of the identity of the person who had that short position or had an interest in those shares immediately upon his ceasing to have that short position.
- (3) The particulars referred to in subsection (2)(a), (b) and (d) include-
  - (a) particulars of the identity of persons interested in the shares or equity derivatives in question, or having a short position in the shares in question; and
  - (b) particulars of whether persons interested in the same shares are or were-
    - (i) parties to any agreement to which section 317 applies; or
    - (ii) parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- (4) A notification under subsection (1) shall require any information given in response to the notification to be given

within such reasonable time as may be specified in the notification.

- (5) The Financial Secretary may by notice published in the Gazette exempt a person from the operation of this section.
- (6) A notice published pursuant to subsection (5) is not subsidiary legislation.
- (7) Sections 316 to 318 and 322 (with the omission of the reference in section 322 to section 323) apply- <\* Note - Exp. X-Ref.: Sections 316, 317, 318 \*>
  - (a) for the purposes of construing-
    - (i) references in this section to a person interested in shares and to an interest in shares respectively; and
    - (ii) references in this section to a person having a short position in shares and to a short position in shares respectively,
 as they apply for the purposes of Divisions 2 to 4; and
  - (b) for the purposes of this Division as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.
- (8) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a listed corporation which would on issue be voting shares in that corporation as it applies in relation to a person who is or was interested in such voting shares; and in this section, a reference to an interest in shares and to shares shall be construed accordingly in any such case as including a reference respectively to any such right and shares which would on issue be such voting shares. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	331	Listed corporation to investigate ownership of interests in its shares, etc. on requisition by members	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014
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- (1) A listed corporation may be required to exercise its powers under section 329 on the requisition of members of the corporation holding, at the date of the deposit of the requisition, in aggregate not less than 10% of the total number of issued voting shares in the corporation. (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (2) The requisition must-
  - (a) state that the requisitionists are requiring the listed corporation to exercise its powers under section 329;
  - (b) specify the manner in which they require those powers to be exercised; and
  - (c) give reasonable grounds for requiring the listed corporation to exercise those powers in the manner specified,
 and, subject to subsection (3), must be signed by the requisitionists and deposited at the listed corporation's registered office.
- (3) The requisition may consist of several documents in like form each signed by one or more requisitionists.
- (4) On the deposit of a requisition complying with this section, it is the duty of the listed corporation to exercise its powers under section 329 in the manner specified in the requisition.
- (5) If default is made in complying with subsection (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable-
  - (a) on conviction on indictment to a fine at level 6; or
  - (b) on summary conviction to a fine at level 3.
- (6) In this section and in sections 332 and 333, a reference to a corporation's registered office shall, where the corporation does not have a registered office in Hong Kong, be deemed to be a reference to the corporation's principal place of business in Hong Kong.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	336	Register of interests in shares and short positions	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014
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- (1) Every listed corporation shall keep a register of interests in shares and short positions.
- (2) Whenever a listed corporation receives information from a person given in performance of a duty imposed on him by any provision of Divisions 2 to 5, the listed corporation is under a duty to record in the register, against

- the person's name, the information received and the date of the entry.
- (3) Without prejudice to subsection (2), where a listed corporation receives a notification which includes a statement that the person giving the notification, or any other person, has ceased to be a party to an agreement to which section 317 applies, the listed corporation is under a duty to record that information against the name of the person who has ceased to be a party to that agreement in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).
  - (4) A duty imposed by subsection (2) or (3) shall be performed within 3 business days after the day on which that duty arises.
  - (5) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or equity derivatives.
  - (6) The register must be so made up that the entries against the several names recorded in it appear in chronological order.
  - (7) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.
  - (8) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.
  - (9) Subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) 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. (Amended 28 of 2012 ss. 912 & 920)
  - (10) The register and any index-
    - (a) shall be kept-
      - (i) if the corporation's register of members is kept at its registered office, at the corporation's registered office;
      - (ii) if the corporation's register of members is not so kept, at the corporation's registered office or the place where the register of members is kept; or
      - (iii) if the corporation does not have a registered office in Hong Kong, at the corporation's principal place of business in Hong Kong; and
    - (b) shall, for the purposes of Divisions 2 to 5 and for the purposes of-
      - (i) enabling members of the public to ascertain-
        - (A) the identities and the particulars of persons who are or were the true owners of, or have or had any interest or short position in, voting shares in the listed corporation; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
        - (B) the nature and the particulars of the interest or short position; and
        - (C) the capacity in which a person holds or held the interest or short position; and
      - (ii) providing the investing public with information to enable them to make informed investment decisions,

be made available for inspection in accordance with section 340. (Amended 28 of 2012 ss. 912 & 920)

  - (11) (Repealed 28 of 2012 ss. 912 & 920)
  - (12) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of-
    - (a) the place where the register is kept; and
    - (b) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

  - (13) The duty imposed by subsection (12) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).
  - (14) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.
  - (15) For the purposes of this section, a reference to books and papers in section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section. (Amended 28 of 2012 ss. 912 & 920)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	337	Registration of interests and short positions disclosed under section 329	E.R. 2 of 2012	02/08/2012

- (1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 329 the listed corporation receives any information, the listed corporation is under a duty to record, against the name of the person interested in those shares or having a short position in those shares (as the case may be), in a separate part of its register of interests in shares and short positions-
  - (a) the fact that the requirement was imposed and the date on which it was imposed; and
  - (b) any information received in pursuance of the requirement.
- (2) Section 336(4) to (14) applies in relation to any part of the register kept in accordance with subsection (1) as it applies in relation to the remainder of the register.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	363	Expenses of investigation of affairs of corporation	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

- (1) The expenses of and incidental to an investigation by an inspector shall be defrayed in the first instance out of the general revenue, but the following persons shall, to the following extent, be liable to repay such expenses to the Government-
  - (a) any person who is convicted by a court on a prosecution instituted as a result of the investigation shall be liable to such extent (if any) as may be ordered by such court;
  - (b) the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;
  - (c) the director and the chief executive of the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;
  - (d) any person who has an interest or short position notifiable under any provision of Divisions 2 to 5 in voting shares in 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 (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
  - (e) the applicants for the investigation, where the inspector was appointed under section 356(3), shall be liable to such extent (if any), subject to the limit of the estimate given under section 356(5), as the Financial Secretary may direct.
- (2) An inspector appointed under section 356(3) may, if he considers appropriate, and shall if the Financial Secretary so directs, include in a report made by him a recommendation as to the directions (if any) he considers appropriate, in the light of his investigation, to be given under subsection (1)(b), (c), (d) or (e).
- (3) A person to whom a direction is given under subsection (1)(b), (c), (d) or (e) may appeal against the direction to the Court of First Instance.
- (4) Notwithstanding rule 3(3) of Order 55 of the Rules of the High Court (Cap 4 sub. leg. A), a direction under subsection (1)(b), (c), (d) or (e) shall not take effect, if an appeal against the direction is made under subsection (3), until the appeal is withdrawn, abandoned or determined.
- (5) Any person liable under paragraph (a), (b), (c), (d) or (e) of subsection (1) shall be entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities thereunder or, if an appeal is made, according to the amount of their respective liabilities as determined by the Court of First Instance.

(Amended E.R. 2 of 2012)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	366	Power of Court of First Instance to impose restrictions on shares, etc. in case of failure to provide information required by listed corporation	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014
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- (1) Where-
- (a) a notification is given by a listed corporation under section 329 to a person who is or was interested in voting shares in the corporation that are registered on the Hong Kong register; and
  - (b) that person fails to give the corporation any information required by the notification within the time specified in it,
- the listed corporation may apply to the Court of First Instance for an order directing that the shares in question be subject to the restrictions under this Division.
- (2) Where-
- (a) a notification is given by a listed corporation under section 329 to a person who is or was interested in equity derivatives; and
  - (b) that person fails to give the corporation any information required by the notification within the time specified in it,
- the listed corporation may apply to the Court of First Instance for an order directing that the equity derivatives in question be subject to the restrictions under this Division.
- (3) An order under subsection (1) or (2) (as the case may be) may be made notwithstanding any power contained in the applicant corporation's constitution enabling the listed corporation itself to impose similar restrictions on the shares or equity derivatives in question.

(Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

Chapter:	571AG	Securities and Futures (Disclosure of Interests-Exclusions) Regulation	Gazette Number	Version Date
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Section:	5	Exclusion from requirements for notification in certain circumstances of change in nature of interest	E.R. 2 of 2014	10/04/2014
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A person is not required to give notification under section 324 of the Ordinance, where a duty of disclosure arises under section 310(1) of the Ordinance in the circumstances specified in section 313(1)(d) of the Ordinance because of a change in the nature of the person's interest in voting shares in the listed corporation concerned, if the change is due to his entering into a contract for the sale of such voting shares in which he is interested, under which he is required to deliver the shares to the purchaser under the contract within 4 trading days after the date of the contract.

(28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)

qualifying activity, conducted by the  
authorized financial institution.

## **Part 2**

### **Transitional Arrangements for Type 11 Regulated Activity and Type 12 Regulated Activity**

#### **Division 1—No Restriction during Transitional Period**

##### **2. Section 114 not contravened during transitional period**

- (1) A person who, during the transitional period, does an act referred to in section 114(1) in relation to a specified regulated activity, does not contravene that section even if the person is not a person referred to in section 114(2)(a), (b) or (c).
- (2) A person who, during the transitional period, does an act referred to in section 114(3) in relation to a specified regulated activity, does not contravene that section even if the person is not a person referred to in section 114(4)(a), (b) or (c).

#### **Division 2—Corporations and Individuals**

##### **3. Deemed licensing of corporations**

- (1) A person who applies in accordance with section 116(1) to be licensed to carry on a specified regulated activity is deemed to be licensed under that section to carry on the specified regulated activity concerned if the conditions in subsection (3) are satisfied.



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- (2) A person who applies in accordance with section 127(1) for variation of the regulated activity specified in the person's licence by adding a specified regulated activity is deemed to be licensed under section 116(1) to carry on the specified regulated activity concerned if the conditions in subsection (3) are satisfied.
- (3) The conditions are that—
- (a) the corporate applicant is a person referred to in section 116(2)(a);
  - (b) the application is made within the application period;
  - (c) an application for the purposes of section 130(1) is lodged, unless—
    - (i) the corporate applicant is a licensed corporation; and
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the specified regulated activity concerned, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;
  - (e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the specified regulated activity concerned and none of them has been issued a no-deeming notice before the corporate applicant is deemed;

- (f) subsection (4) is complied with; and
  - (g) the corporate applicant has not been issued a no-deeming notice before the deeming date.
- (4) The corporate applicant must submit, together with the application, a confirmation form confirming—
- (a) if the application relates to Type 11 regulated activity, that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
  - (b) if the application relates to Type 12 regulated activity, that the corporate applicant or any other corporation in the same group of companies as that applicant has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period;
  - (c) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—
    - (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the specified regulated activity concerned; and
    - (ii) satisfy the conditions in section 5(2)(a), (b) and (d) of this Schedule;
  - (d) that every executive director of the corporate applicant who is an individual—
    - (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the specified regulated activity concerned; and
    - (ii) satisfies the conditions in section 5(2)(a), (b) and (d) of this Schedule;
  - (e) either that—

- (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the specified regulated activity concerned; and
  - (g) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the specified regulated activity concerned.
- (5) The deeming under subsections (1) and (2)—
- (a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and
  - (b) ends in accordance with section 6 of this Schedule.

#### **4. Deemed licensing of representatives**

- (1) An individual who applies in accordance with section 120(1) to be licensed to carry on a specified regulated activity for a corporation, but not as a responsible officer, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (3) are satisfied—

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- (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the specified regulated activity concerned; and
    - (b) to be accredited to that principal.
  - (2) An individual who applies in accordance with section 127(1) for variation of the regulated activity specified in the individual's licence by adding a specified regulated activity, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (3) are satisfied—
    - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the specified regulated activity concerned; and
    - (b) to be accredited to that principal.
  - (3) The conditions are that—
    - (a) the application is made within the application period;
    - (b) the application relates to a corporate applicant who has made an application referred to in section 3(1) or (2) of this Schedule for the same specified regulated activity to which the LR applicant's application relates;
    - (c) the conditions in section 3(3) of this Schedule are satisfied in relation to the principal's application for the same specified regulated activity to which the LR applicant's application relates;
    - (d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
    - (e) the LR applicant has not been issued a no-deeming notice before the deeming date.
  - (4) The deeming under subsections (1) and (2)—

- (a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and
  - (b) ends in accordance with section 8 of this Schedule.
- (5) For the purposes of subsections (1) and (2), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (6) For the purposes of subsections (1) and (2), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

## **5. Deemed approval of responsible officers**

- (1) An individual who has made an LR application, and who also applies in accordance with section 126(1) to be approved as a responsible officer, is deemed to be approved in relation to the specified regulated activity concerned if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the application under section 126 in relation to the specified regulated activity concerned is made within the application period;
  - (b) the conditions in section 4(3)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the specified regulated activity concerned;
  - (c) the conditions in section 3(3) of this Schedule are satisfied in relation to the principal's application for the specified regulated activity concerned;
  - (d) subsection (3) is complied with; and

- (e) the RO applicant has not been issued a no-deeming notice before the deeming date.
- (3) The RO applicant must submit, together with the application, a confirmation form confirming—
  - (a) if the application relates to Type 11 regulated activity, that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period; and
  - (b) if the application relates to Type 12 regulated activity, that the RO applicant has been carrying on in Hong Kong or elsewhere a qualifying activity for the qualification period.
- (4) The deeming under subsection (1)—
  - (a) takes effect on the date immediately after the end of the transitional period for the specified regulated activity concerned; and
  - (b) ends in accordance with section 10 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
  - (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

## **6. When deemed status ends—corporations**

- (1) A person deemed to be licensed under section 3(1) of this Schedule for a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the corporate applicant's application under section 116 for the specified regulated activity is withdrawn;

- (b) a licence is granted under section 116 for the specified regulated activity;
  - (c) a refusal to grant a licence for the specified regulated activity takes effect as a specified decision under section 232.
- (2) A person deemed to be licensed under section 3(2) of this Schedule for a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the corporate applicant's application under section 127 for the specified regulated activity is withdrawn;
  - (b) the regulated activity specified in the licence is varied by adding the specified regulated activity;
  - (c) a refusal to vary the regulated activity specified in the licence by adding the specified regulated activity takes effect as a specified decision under section 232.

## **7. Consequences of deemed status—corporations**

- (1) This section applies—
  - (a) if a person is deemed to be licensed under section 3(1) or (2) of this Schedule; and
  - (b) in respect of the specified regulated activity for which the person is so deemed.
- (2) During the period the person is deemed to be licensed—
  - (a) the premises in respect of which an application is lodged under section 130(1) are deemed to be approved;
  - (b) the person is deemed to have complied with section 130(3) in relation to the premises; and

- (c) the requirement in section 131(1) does not apply in respect of the person, but only if the person is not licensed for any other regulated activity.
- (3) If the person is deemed to be licensed under section 3(1) of this Schedule, during the period the person is so deemed, and if the person is granted a licence under section 116 for the specified regulated activity, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the person is licensed, unless another date is approved by the Commission under that section.

#### **8. When deemed status ends—representatives**

- (1) An individual deemed to be licensed under section 4(1) of this Schedule for a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the individual's application under section 120, or the principal's application under section 116 or 127, for the specified regulated activity concerned is withdrawn;
  - (b) the individual is granted a licence for the specified regulated activity;
  - (c) a refusal to—
    - (i) grant the individual a licence for the specified regulated activity takes effect as a specified decision under section 232;



- (ii) grant the principal a licence for the specified regulated activity takes effect as a specified decision under section 232; or
    - (iii) vary the regulated activity specified in the principal's licence by adding the specified regulated activity takes effect as a specified decision under section 232;
  - (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the specified regulated activity for which the individual is deemed.
- (2) An individual deemed to be licensed under section 4(2) of this Schedule for a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
- (a) the individual's application under section 127, or the principal's application under section 116 or 127, for the specified regulated activity concerned is withdrawn;
  - (b) the regulated activity specified in the individual's licence is varied by adding the specified regulated activity;
  - (c) a refusal to—
    - (i) vary the regulated activity specified in the individual's licence by adding the specified regulated activity takes effect as a specified decision under section 232;
    - (ii) grant the principal a licence for the specified regulated activity takes effect as a specified decision under section 232; or
    - (iii) vary the regulated activity specified in the principal's licence by adding the specified regulated activity takes effect as a specified decision under section 232;

- (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the specified regulated activity for which the individual is deemed.

## **9. Consequences of deemed status—representatives**

- (1) This section applies to an individual who is deemed to be licensed—
  - (a) under section 4(1) of this Schedule; and
  - (b) in respect of the specified regulated activity for which the individual is so deemed.
- (2) During the period the individual is deemed to be licensed, and if the individual is granted a licence under section 120 for the specified regulated activity, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the individual is licensed, unless another date is approved by the Commission under that section.

## **10. When deemed status ends—responsible officers**

An individual deemed to be approved as a responsible officer under section 5(1) of this Schedule in relation to a specified regulated activity ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the individual's LR application under section 120 or 127 for the specified regulated activity is withdrawn;

- (b) a refusal to grant a licence applied for by that LR applicant for the specified regulated activity takes effect as a specified decision under section 232;
- (c) a refusal to vary the regulated activity specified in the individual's licence by adding the specified regulated activity takes effect as a specified decision under section 232;
- (d) the individual's application under section 126 to be approved as a responsible officer in relation to the specified regulated activity is withdrawn;
- (e) the individual is approved under section 126 as a responsible officer in relation to the specified regulated activity;
- (f) a refusal to approve the individual as a responsible officer in relation to the specified regulated activity takes effect as a specified decision under section 232;
- (g) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the specified regulated activity for which the individual is deemed;
- (h) the principal's application under section 116 or 127 for the specified regulated activity is withdrawn;
- (i) a refusal to grant the principal a licence for the specified regulated activity takes effect as a specified decision under section 232;
- (j) a refusal to vary the regulated activity specified in the principal's licence by adding the specified regulated activity takes effect as a specified decision under section 232.

## **Part 3**

### **Transitional Arrangements for New Type 9 Activity**

#### **Division 1—No Restriction during Transitional Period**

##### **12. Section 114 not contravened during transitional period**

- (1) A person who, during the transitional period, does an act referred to in section 114(1) in relation to the new Type 9 activity, does not contravene that section even if the person is not a person referred to in section 114(2)(a), (b) or (c).
- (2) A person who, during the transitional period, does an act referred to in section 114(3) in relation to the new Type 9 activity, does not contravene that section even if the person is not a person referred to in section 114(4)(a), (b) or (c).

#### **Division 2—Corporations and Individuals**

##### **13. Deemed licensing of corporations**

- (1) This section applies to a person that—
  - (a) is not an authorized financial institution; and
  - (b) is not a corporation that is licensed to carry on the existing Type 9 RA.
- (2) A person who applies in accordance with section 116(1) to be licensed to carry on the expanded Type 9 RA is deemed to be licensed under that section to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.

- (3) A person who applies in accordance with section 127(1) for variation of the regulated activity specified in the person's licence by adding the expanded Type 9 RA is deemed to be licensed under section 116(1) to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.
- (4) The conditions are that—
  - (a) the corporate applicant is a person referred to in section 116(2)(a);
  - (b) the application is made within the application period;
  - (c) an application for the purposes of section 130(1) is lodged, unless—
    - (i) the corporate applicant is a licensed corporation; and
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 9 RA, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;
  - (e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 9 RA and none of them has been issued a no-deeming notice before the corporate applicant is deemed;

- (f) subsection (5) is complied with; and
  - (g) the corporate applicant has not been issued a no-deeming notice before the deeming date.
- (5) The corporate applicant must submit, together with the application, a confirmation form confirming—
- (a) that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
  - (b) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—
    - (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 9 RA; and
    - (ii) satisfy the conditions in section 15(2)(a), (b) and (d) of this Schedule;
  - (c) that every executive director of the corporate applicant who is an individual—
    - (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 9 RA; and
    - (ii) satisfies the conditions in section 15(2)(a), (b) and (d) of this Schedule;
  - (d) either that—
    - (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or

- (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (e) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the expanded Type 9 RA; and
  - (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the new Type 9 activity.
- (6) The deeming under subsections (2) and (3)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 16 of this Schedule.

#### **14. Deemed licensing of representatives**

- (1) This section applies to an individual who is not licensed to carry on the existing Type 9 RA.
- (2) An individual who applies in accordance with section 120(1) to be licensed to carry on the expanded Type 9 RA for a corporation, but not as a responsible officer, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—

- (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the expanded Type 9 RA; and
    - (b) to be accredited to that principal.
  - (3) An individual who applies in accordance with section 127(1) for variation of the regulated activity specified in the individual's licence by adding the expanded Type 9 RA, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
    - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the expanded Type 9 RA; and
    - (b) to be accredited to that principal.
  - (4) The conditions are that—
    - (a) the application is made within the application period;
    - (b) the application relates to a corporate applicant who has made an application referred to in section 13(2) or (3) of this Schedule for the expanded Type 9 RA;
    - (c) the conditions in section 13(4) of this Schedule are satisfied in relation to the principal's application for the expanded Type 9 RA;
    - (d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
    - (e) the LR applicant has not been issued a no-deeming notice before the deeming date.
  - (5) The deeming under subsections (2) and (3)—



- (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 18 of this Schedule.
- (6) For the purposes of subsections (2) and (3), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (7) For the purposes of subsections (2) and (3), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

#### **15. Deemed approval of responsible officers**

- (1) An individual who has made an LR application, and who also applies in accordance with section 126(1) to be approved as a responsible officer, is deemed to be approved in relation to the expanded Type 9 RA if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the application under section 126 in relation to the expanded Type 9 RA is made within the application period;
  - (b) the conditions in section 14(4)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the expanded Type 9 RA;
  - (c) the conditions in section 13(4) of this Schedule are satisfied in relation to the principal's application for the expanded Type 9 RA;
  - (d) subsection (3) is complied with; and
  - (e) the RO applicant has not been issued a no-deeming notice before the deeming date.

- (3) The RO applicant must submit, together with the application, a confirmation form confirming that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
- (4) The deeming under subsection (1)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 20 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
  - (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

#### **16. When deemed status ends—corporations**

- (1) A person deemed to be licensed under section 13(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the corporate applicant's application under section 116 for the expanded Type 9 RA is withdrawn;
  - (b) a licence is granted under section 116 for the expanded Type 9 RA;
  - (c) a refusal to grant a licence for the expanded Type 9 RA takes effect as a specified decision under section 232.
- (2) A person deemed to be licensed under section 13(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the corporate applicant's application under section 127 for the expanded Type 9 RA is withdrawn;
- (b) the regulated activity specified in the licence is varied by adding the expanded Type 9 RA;
- (c) a refusal to vary the regulated activity specified in the licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232.

#### **17. Consequences of deemed status—corporations**

- (1) This section applies if a person is deemed to be licensed under section 13(2) or (3) of this Schedule in respect of the expanded Type 9 RA.
- (2) During the period the person is deemed to be licensed—
  - (a) the premises in respect of which an application is lodged under section 130(1) are deemed to be approved;
  - (b) the person is deemed to have complied with section 130(3) in relation to the premises; and
  - (c) the requirement in section 131(1) does not apply in respect of the person, but only if the person is not licensed for any other regulated activity.
- (3) If the person is deemed to be licensed under section 13(2) of this Schedule, during the period the person is so deemed, and if the person is granted a licence under section 116 for the expanded Type 9 RA, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and

- (b) for the purposes of section 138(4), as the date on which the person is licensed, unless another date is approved by the Commission under that section.
- (4) During the period the person is deemed to be licensed under section 13(2) or (3) of this Schedule, the person is also deemed to be subject to the condition that the person must not carry on securities or futures contracts management.

#### **18. When deemed status ends—representatives**

- (1) An individual deemed to be licensed under section 14(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the individual's application under section 120, or the principal's application under section 116 or 127, for the expanded Type 9 RA is withdrawn;
  - (b) the individual is granted a licence for the expanded Type 9 RA;
  - (c) a refusal to—
    - (i) grant the individual a licence for the expanded Type 9 RA takes effect as a specified decision under section 232;
    - (ii) grant the principal a licence for the expanded Type 9 RA takes effect as a specified decision under section 232; or
    - (iii) vary the regulated activity specified in the principal's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;
  - (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 9 RA.

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- (2) An individual deemed to be licensed under section 14(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
- (a) the individual's application under section 127, or the principal's application under section 116 or 127, for the expanded Type 9 RA is withdrawn;
  - (b) the regulated activity specified in the individual's licence is varied by adding the expanded Type 9 RA;
  - (c) a refusal to—
    - (i) vary the regulated activity specified in the individual's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;
    - (ii) grant the principal a licence for the expanded Type 9 RA takes effect as a specified decision under section 232; or
    - (iii) vary the regulated activity specified in the principal's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;
  - (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 9 RA.

**19. Consequences of deemed status—representatives**

- (1) This section applies to an individual who is deemed to be licensed under section 14(2) of this Schedule in respect of the expanded Type 9 RA.
- (2) During the period the individual is deemed to be licensed, and if the individual is granted a licence under section 120 for the expanded Type 9 RA, even after that, the deeming date is to be regarded—

- (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
- (b) for the purposes of section 138(4), as the date on which the individual is licensed, unless another date is approved by the Commission under that section.

## **20. When deemed status ends—responsible officers**

An individual deemed to be approved as a responsible officer under section 15(1) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the individual's LR application under section 120 or 127 for the expanded Type 9 RA is withdrawn;
- (b) a refusal to grant the licence applied for by that LR applicant for the expanded Type 9 RA takes effect as a specified decision under section 232;
- (c) a refusal to vary the regulated activity specified in the individual's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232;
- (d) the individual's application under section 126 to be approved as a responsible officer in relation to the expanded Type 9 RA is withdrawn;
- (e) the individual is approved under section 126 as a responsible officer in relation to the expanded Type 9 RA;
- (f) a refusal to approve the individual as a responsible officer in relation to the expanded Type 9 RA takes effect as a specified decision under section 232;

- (g) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 9 RA;
- (h) the principal's application under section 116 or 127 for the expanded Type 9 RA is withdrawn;
- (i) a refusal to grant the principal a licence for the expanded Type 9 RA takes effect as a specified decision under section 232;
- (j) a refusal to vary the regulated activity specified in the principal's licence by adding the expanded Type 9 RA takes effect as a specified decision under section 232.

## **21. Issue of no-deeming notices by Commission**

- (1) The Commission may issue a notice to a corporate applicant informing that the applicant is not to be deemed to be licensed under section 13(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 116(1) or 127(1); or
  - (b) the conditions in section 13(4)(a), (b), (c), (d), (e) and (f) of this Schedule have been met.
- (2) The Commission may issue a notice to an LR applicant informing that the applicant is not to be deemed to be licensed under section 14(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 120(1) or 127(1); or
  - (b) the conditions in section 14(4)(a), (b), (c) and (d) of this Schedule have been met.

- (3) The Commission may issue a notice to an RO applicant informing that the applicant is not to be deemed to be approved under section 15(1) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 126(1); or
  - (b) the conditions in section 15(2)(a), (b), (c) and (d) of this Schedule have been met.

### **Division 3—Authorized Financial Institutions and Individuals**

#### **22. Deemed registration of authorized financial institutions**

- (1) This section applies to an authorized financial institution that is not registered to carry on the existing Type 9 RA.
- (2) An authorized financial institution that applies in accordance with section 119(1) to carry on the expanded Type 9 RA is deemed to be registered under that section to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.
- (3) An authorized financial institution that applies in accordance with section 127(1) for variation of the regulated activity specified in its certificate of registration by adding the expanded Type 9 RA is deemed to be registered under section 119(1) to carry on the expanded Type 9 RA if the conditions in subsection (4) are satisfied.
- (4) The conditions are that—
  - (a) the application is made within the application period;



- (b) not less than 2 individuals who propose to carry out, in relation to the expanded Type 9 RA, the functions of an executive officer under section 71D of the Banking Ordinance (Cap. 155)—
    - (i) have applied for consent under section 71C(1)(a) of that Ordinance; and
    - (ii) have not been issued no-deeming notices;
  - (c) subsection (5) is complied with; and
  - (d) the applicant has not been issued a no-deeming notice before the deeming date.
- (5) The applicant must submit, together with the application, a confirmation form confirming that—
- (a) the applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
  - (b) not less than 2 individuals—
    - (i) have applied to obtain consent under section 71C(1)(a) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA; and
    - (ii) satisfy the conditions in section 23(3)(a) and (c) of this Schedule;
  - (c) the applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a registered institution that carries on the new Type 9 activity;
  - (d) the applicant is in compliance with the requirement in paragraph 6 of the Seventh Schedule to the Banking Ordinance (Cap. 155); and

- (e) if the applicant is a locally incorporated authorized financial institution, the applicant has also complied with any requirements imposed under Part XVIA of the Banking Ordinance (Cap. 155).
- (6) The deeming under subsections (2) and (3)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 24 of this Schedule.

### **23. Deeming of executive officers**

- (1) This section applies to an individual who is not an executive officer of an authorized financial institution in relation to the existing Type 9 RA.
- (2) An individual who applies for consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA is deemed to have consent to be an executive officer of the authorized financial institution concerned, in relation to that regulated activity, if the conditions in subsection (3) are satisfied.
- (3) The conditions are that—
  - (a) the application for consent under section 71C(1) of the Banking Ordinance (Cap. 155) in relation to the expanded Type 9 RA is made within the application period;
  - (b) the authorized financial institution in relation to which the application is made—
    - (i) has made an application under section 119 or 127 in relation to the expanded Type 9 RA; and

- (ii) satisfies the conditions in section 22(4) of this Schedule;
  - (c) subsection (4) is complied with; and
  - (d) the applicant has not been issued a no-deeming notice before the deeming date.
- (4) The applicant must submit, together with the application, a confirmation form confirming that the applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
- (5) The deeming under subsection (2)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 9 activity; and
  - (b) ends in accordance with section 26 of this Schedule.

#### **24. When deemed status ends—authorized financial institutions**

- (1) An authorized financial institution deemed to be registered under section 22(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the application under section 119 for the expanded Type 9 RA is withdrawn;
  - (b) a certificate of registration is granted under section 119(1) for the expanded Type 9 RA;
  - (c) a refusal to grant a certificate of registration for the expanded Type 9 RA takes effect as a specified decision under section 232.
- (2) An authorized financial institution deemed to be registered under section 22(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the application under section 127 for the expanded Type 9 RA is withdrawn;
- (b) the regulated activity specified in the certificate of registration is varied by adding the expanded Type 9 RA;
- (c) a refusal to vary the regulated activity specified in the certificate of registration by adding the expanded Type 9 RA takes effect as a specified decision under section 232.

**25. Consequences of deemed status—authorized financial institutions**

- (1) This section applies to an authorized financial institution that is deemed to be registered under section 22(2) or (3) of this Schedule in respect of the expanded Type 9 RA.
- (2) If the authorized financial institution is deemed to be registered under section 22(2) of this Schedule, subsection (3) applies.
- (3) During the period the authorized financial institution is so deemed, and if the authorized financial institution is granted a certificate of registration under section 119(1) for the expanded Type 9 RA, even after that, the deeming date is to be regarded for the purposes of section 138(2) as the date of the grant of the certificate of registration, unless another date is approved by the Commission under section 138(2).
- (4) During the period the authorized financial institution is deemed to be registered under section 22(2) or (3) of this Schedule, it is also deemed to be subject to the condition that it must not carry on securities or futures contracts management.

**26. When deemed status ends—executive officers**

An individual deemed under section 23(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the application for consent in relation to the expanded Type 9 RA is withdrawn;
- (b) the Monetary Authority gives consent under section 71C(1) of the Banking Ordinance (Cap. 155);
- (c) a refusal by the Monetary Authority to give consent in relation to the expanded Type 9 RA takes effect as a specified decision under section 232;
- (d) the application of the authorized financial institution under section 119 or 127 in relation to the expanded Type 9 RA is withdrawn;
- (e) a refusal to grant the authorized financial institution a certificate of registration for the expanded Type 9 RA takes effect as a specified decision under section 232;
- (f) a refusal to vary a regulated activity specified in the certificate of registration of the authorized financial institution by adding the expanded Type 9 RA takes effect as a specified decision under section 232.

**27. Issue of no-deeming notices by Commission and Monetary Authority**

- (1) The Commission may, after consultation with the Monetary Authority, issue a notice to an applicant referred to in section 22(2) or (3) of this Schedule informing that the applicant is not to be deemed to be registered under that section, if the Commission is not satisfied that—

## **Part 4**

### **Transitional Arrangements for New Type 7 Activity**

#### **Division 1—No Restriction during Transitional Period**

##### **32. Section 114 not contravened during transitional period**

- (1) A person who, during the transitional period, does an act referred to in section 114(1) in relation to the new Type 7 activity, does not contravene that section even if the person is not a person referred to in section 114(2)(a), (b) or (c).
- (2) A person who, during the transitional period, does an act referred to in section 114(3) in relation to the new Type 7 activity, does not contravene that section even if the person is not a person referred to in section 114(4)(a), (b) or (c).

#### **Division 2—Corporations and Individuals**

##### **33. Deemed licensing of corporations**

- (1) This section applies if—
  - (a) a person is not licensed to carry on the existing Type 7 RA; and
  - (b) the person indicates in the application referred to in subsection (2) or (3) that the person does not intend to carry on the existing Type 7 RA.
- (2) Subject to subsection (4), a person who applies in accordance with section 116(1) to be licensed to carry on the expanded Type 7 RA is deemed to be licensed under that section to carry on the expanded Type 7 RA if the conditions in subsection (5) are satisfied.

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- (3) Subject to subsection (4), a person who applies in accordance with section 127(1) for variation of the regulated activity specified in the person's licence by adding the expanded Type 7 RA is deemed to be licensed under section 116(1) to carry on the expanded Type 7 RA if the conditions in subsection (5) are satisfied.
  - (4) During the period the person is deemed to be licensed to carry on the expanded Type 7 RA, the person is also deemed to be subject to the condition that the person must not carry on the existing Type 7 RA.
  - (5) The conditions are that—
    - (a) the corporate applicant is a person referred to in section 116(2)(a);
    - (b) the application is made within the application period;
    - (c) an application for the purposes of section 130(1) is lodged, unless—
      - (i) the corporate applicant is a licensed corporation; and
      - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
    - (d) not less than 2 individuals, at least one of whom is an executive director of the corporate applicant, have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 7 RA, and at least 2 of them, including at least 1 executive director of the corporate applicant, have not been issued a no-deeming notice before the corporate applicant is deemed;

- (e) every executive director of the corporate applicant has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 7 RA and none of them has been issued a no-deeming notice before the corporate applicant is deemed;
  - (f) the corporate applicant indicates in the application that, if it is deemed to be licensed to carry on the expanded Type 7 RA, the corporate applicant does not intend to carry on the existing Type 7 RA during the period that it is so deemed;
  - (g) subsection (6) is complied with; and
  - (h) the corporate applicant has not been issued a no-deeming notice before the deeming date.
- (6) The corporate applicant must submit, together with the application, a confirmation form confirming—
- (a) that the corporate applicant has been carrying on in Hong Kong a qualifying activity for the qualification period;
  - (b) that the corporate applicant does not intend to carry on the existing Type 7 RA during the period that it is deemed for the expanded Type 7 RA;
  - (c) that not less than 2 individuals, at least one of whom is an executive director of the corporate applicant—
    - (i) have applied under section 126 to be approved as responsible officers of the corporate applicant in relation to the expanded Type 7 RA; and
    - (ii) satisfy the conditions in section 35(2)(a), (b) and (d) of this Schedule;
  - (d) that every executive director of the corporate applicant who is an individual—



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- (i) has applied under section 126 to be approved as a responsible officer of the corporate applicant in relation to the expanded Type 7 RA; and
    - (ii) satisfies the conditions in section 35(2)(a), (b) and (d) of this Schedule;
  - (e) either that—
    - (i) the corporate applicant has lodged an application under section 130(1) and the premises concerned satisfy the requirements of section 130(2)(a) and (b); or
    - (ii) the premises proposed to be used for keeping records or documents for the purposes of section 130(1) are the subject of an existing approval under that section;
  - (f) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any requirements of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) applicable to a licensed corporation that carries on the expanded Type 7 RA; and
  - (g) that the corporate applicant is in compliance, or has arrangements in place to ensure compliance, with any provisions of this Ordinance, the guidelines and codes of conduct applicable to a licensed corporation that carries on the new Type 7 activity.
- (7) The deeming under subsections (2) and (3)—
- (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 36 of this Schedule.

**34. Deemed licensing of representatives**

- (1) This section applies to an individual who is not licensed to carry on the existing Type 7 RA.
- (2) An individual who applies in accordance with section 120(1) to be licensed to carry on the expanded Type 7 RA for a corporation, but not as a responsible officer, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
  - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal the expanded Type 7 RA; and
  - (b) to be accredited to that principal.
- (3) An individual who applies in accordance with section 127(1) for variation of the regulated activity specified in the individual's licence by adding the expanded Type 7 RA, and who applies in accordance with section 122(1) to be accredited to the principal, is deemed, if the conditions in subsection (4) are satisfied—
  - (a) to be licensed as a licensed representative under section 120(1) to carry on for the principal expanded Type 7 RA; and
  - (b) to be accredited to that principal.
- (4) The conditions are that—
  - (a) the application is made within the application period;
  - (b) the application relates to a corporate applicant who has made an application referred to in section 33(2) or (3) of this Schedule for the expanded Type 7 RA;

- (c) the conditions in section 33(5) of this Schedule are satisfied in relation to the principal's application for the expanded Type 7 RA;
  - (d) the LR applicant is carrying on for or on behalf of the principal the relevant qualifying activity at the time the application is made; and
  - (e) the LR applicant has not been issued a no-deeming notice before the deeming date.
- (5) The deeming under subsections (2) and (3)—
  - (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 38 of this Schedule.
- (6) For the purposes of subsections (2) and (3), the reference in section 120(1) to a corporation licensed under section 116 is to be read as a reference to the principal.
- (7) For the purposes of subsections (2) and (3), the reference in section 122(1)(a) to a corporation licensed under section 116 is to be read as a reference to the principal.

### **35. Deemed approval of responsible officers**

- (1) An individual who has made an LR application, and who also applies in accordance with section 126(1) to be approved as a responsible officer, is deemed to be approved in relation to the expanded Type 7 RA if the conditions in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the application under section 126 in relation to the expanded Type 7 RA is made within the application period;

- (b) the conditions in section 34(4)(a), (b), (d) and (e) of this Schedule are satisfied in relation to the LR application for the expanded Type 7 RA;
  - (c) the conditions in section 33(5) of this Schedule are satisfied in relation to the principal's application for the expanded Type 7 RA;
  - (d) subsection (3) is complied with; and
  - (e) the RO applicant has not been issued a no-deeming notice before the deeming date.
- (3) The RO applicant must submit, together with the application, a confirmation form confirming that the RO applicant has been carrying on in Hong Kong a qualifying activity for the qualification period.
- (4) The deeming under subsection (1)—
- (a) takes effect on the date immediately after the end of the transitional period for the new Type 7 activity; and
  - (b) ends in accordance with section 40 of this Schedule.
- (5) For the purposes of subsection (1), the reference in section 126(1) to—
- (a) a licensed representative is to be read as a reference to an LR applicant; and
  - (b) the licensed corporation is to be read as a reference to the principal.

### **36. When deemed status ends—corporations**

- (1) A person deemed to be licensed under section 33(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the corporate applicant's application under section 116 for the expanded Type 7 RA is withdrawn;
  - (b) a licence is granted under section 116 for the expanded Type 7 RA;
  - (c) a refusal to grant a licence for the expanded Type 7 RA takes effect as a specified decision under section 232.
- (2) A person deemed to be licensed under section 33(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the corporate applicant's application under section 127 for the expanded Type 7 RA is withdrawn;
  - (b) the regulated activity specified in the licence is varied by adding the expanded Type 7 RA;
  - (c) a refusal to vary the regulated activity specified in the licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232.

### **37. Consequences of deemed status—corporations**

- (1) This section applies if a person is deemed to be licensed under section 33(2) or (3) of this Schedule in respect of the expanded Type 7 RA.
- (2) During the period the person is deemed to be licensed—
  - (a) the premises in respect of which an application is lodged under section 130(1) are deemed to be approved;
  - (b) the person is deemed to have complied with section 130(3) in relation to the premises; and

- (c) the requirement in section 131(1) does not apply in respect of the person, but only if the person is not licensed for any other regulated activity.
- (3) If the person is deemed to be licensed under section 33(2) of this Schedule, during the period the person is so deemed, and if the person is granted a licence under section 116 for the expanded Type 7 RA, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the person is licensed, unless another date is approved by the Commission under that section.

### **38. When deemed status ends—representatives**

- (1) An individual deemed to be licensed under section 34(2) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
  - (a) the individual's application under section 120, or the principal's application under section 116 or 127, for the expanded Type 7 RA is withdrawn;
  - (b) the individual is granted a licence for the expanded Type 7 RA;
  - (c) a refusal to—
    - (i) grant the individual a licence for the expanded Type 7 RA takes effect as a specified decision under section 232;
    - (ii) grant the principal a licence for the expanded Type 7 RA takes effect as a specified decision under section 232; or

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- (iii) vary the regulated activity specified in the principal's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232;
    - (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 7 RA.
  - (2) An individual deemed to be licensed under section 34(3) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—
    - (a) the individual's application under section 127, or the principal's application under section 116 or 127, for the expanded Type 7 RA is withdrawn;
    - (b) the regulated activity specified in the individual's licence is varied by adding the expanded Type 7 RA;
    - (c) a refusal to—
      - (i) vary the regulated activity specified in the individual's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232;
      - (ii) grant the principal a licence for the expanded Type 7 RA takes effect as a specified decision under section 232; or
      - (iii) vary the regulated activity specified in the principal's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232;
    - (d) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 7 RA.

**39. Consequences of deemed status—representatives**

- (1) This section applies to an individual who is deemed to be licensed under section 34(2) of this Schedule in respect of the expanded Type 7 RA.
- (2) During the period the individual is deemed to be licensed, and if the individual is granted a licence under section 120 for the expanded Type 7 RA, even after that, the deeming date is to be regarded—
  - (a) for the purposes of section 138(2), as the date of the grant of the licence, unless another date is approved by the Commission under that section; and
  - (b) for the purposes of section 138(4), as the date on which the individual is licensed, unless another date is approved by the Commission under that section.

**40. When deemed status ends—responsible officers**

An individual deemed to be approved as a responsible officer under section 35(1) of this Schedule ceases to be so deemed on the date when one of the following events happens (whichever happens first)—

- (a) the individual's LR application under section 120 or 127 for the expanded Type 7 RA is withdrawn;
- (b) a refusal to grant the licence applied for by that LR applicant for the expanded Type 7 RA takes effect as a specified decision under section 232;
- (c) a refusal to vary the regulated activity specified in the individual's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232;



- (d) the individual's application under section 126 to be approved as a responsible officer in relation to the expanded Type 7 RA is withdrawn;
- (e) the individual is approved under section 126 as a responsible officer in relation to the expanded Type 7 RA;
- (f) a refusal to approve the individual as a responsible officer in relation to the expanded Type 7 RA takes effect as a specified decision under section 232;
- (g) after the deeming date, the individual ceases to act for or on behalf of the principal in relation to the expanded Type 7 RA;
- (h) the principal's application under section 116 or 127 for the expanded Type 7 RA is withdrawn;
- (i) a refusal to grant the principal a licence for the expanded Type 7 RA takes effect as a specified decision under section 232;
- (j) a refusal to vary the regulated activity specified in the principal's licence by adding the expanded Type 7 RA takes effect as a specified decision under section 232.

#### **41. Issue of no-deeming notices by Commission**

- (1) The Commission may issue a notice to a corporate applicant informing that the applicant is not to be deemed to be licensed under section 33(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 116(1) or 127(1); or
  - (b) the conditions in section 33(5)(a), (b), (c), (d), (e), (f) and (g) of this Schedule have been met.

- (2) The Commission may issue a notice to an LR applicant informing that the applicant is not to be deemed to be licensed under section 34(2) or (3) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 120(1) or 127(1); or
  - (b) the conditions in section 34(4)(a), (b), (c) and (d) of this Schedule have been met.
- (3) The Commission may issue a notice to an RO applicant informing that the applicant is not to be deemed to be approved under section 35(1) of this Schedule if the Commission is not satisfied that—
  - (a) the application is made in accordance with section 126(1); or
  - (b) the conditions in section 35(2)(a), (b), (c) and (d) of this Schedule have been met.

## **Part 5**

### **Extension of Non-prosecution Period in Certain Circumstances**

#### **Division 1—Applicants for Licences or Registration**

##### **42. Application and interpretation of this Division**

- (1) This Division applies despite sections 2, 12 and 32 of this Schedule.
- (2) This Division applies to—
  - (a) a person (other than an individual) who—
    - (i) applies under section 116(1) or 127(1) during the application period to carry on a new regulated activity; and

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- (ii) has been issued a no-deeming notice in respect of the application;
  - (b) an individual who—
    - (i) applies under section 120(1) or 127(1) to carry on a new regulated activity; and
    - (ii) carries on the new regulated activity for a person referred to in paragraph (a);
  - (c) an authorized financial institution that—
    - (i) applies under section 119(1) or 127(1) during the application period for registration to carry on a new regulated activity; and
    - (ii) has been issued a no-deeming notice in respect of the application;
  - (d) an individual who carries on the new regulated activity for an applicant referred to in paragraph (c);
  - (e) a person who—
    - (i) is deemed under this Schedule to be licensed under section 116 in respect of a new regulated activity; and
    - (ii) becomes an unsuccessful appellant or is a non-appellant;
  - (f) an individual who—
    - (i) is licensed, or deemed under this Schedule to be licensed, under section 120(1) to carry on a new regulated activity; and
    - (ii) carries on the new regulated activity for a person referred to in paragraph (e);
  - (g) an authorized financial institution that—

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- (i) is deemed under this Schedule to be registered under section 119 or 127 for a new regulated activity; and
    - (ii) becomes an unsuccessful appellant or is a non-appellant; and
  - (h) an individual who carries on the new regulated activity for an authorized financial institution referred to in paragraph (g).
- (3) For the purposes of this Division, a person (other than an individual) or an authorized financial institution becomes an unsuccessful appellant, if—
- (a) the person or the authorized financial institution applies for a review of a decision to refuse to—
    - (i) grant a licence under section 116 to carry on a new regulated activity;
    - (ii) grant a certificate of registration under section 119 to carry on a new regulated activity; or
    - (iii) vary the regulated activity specified in the licence or certificate of registration by adding a new regulated activity under section 127; and
  - (b) the decision is confirmed on review.
- (4) For the purposes of this Division, a person (other than an individual) or an authorized financial institution is a non-appellant, if the person or the authorized financial institution does not apply for a review of a decision to refuse to—
- (a) grant a licence under section 116 to carry on a new regulated activity;
  - (b) grant a certificate of registration under section 119 to carry on a new regulated activity; or

- (c) vary the regulated activity specified in the licence or certificate of registration by adding a new regulated activity under section 127.

**43. Section 114 not contravened during specified period**

- (1) A person (other than an individual) or an authorized financial institution to whom this Division applies who does an act referred to in section 114(1) in relation to a new regulated activity, does not contravene that section even if the person or the authorized financial institution is not a person referred to in section 114(2)(a), (b) or (c), if the conditions in subsection (3) are satisfied.
- (2) An individual to whom this Division applies who does an act referred to in section 114(3) in relation to a new regulated activity, does not contravene that section even if the individual is not a person referred to in section 114(4)(a), (b) or (c), if the conditions in subsection (4) are satisfied.
- (3) The conditions referred to in subsection (1) are that the act is done—
  - (a) during the specified period; and
  - (b) solely for the purpose of closing down the business that is connected with the new regulated activity concerned.
- (4) The conditions referred to in subsection (2) are that the act is done—
  - (a) during the specified period; and
  - (b) solely for the purpose of closing down the business—