

Clause 6 (section 16) Ascertainment of chargeable profits

4. Please explain the method of calculating "the most reasonable and appropriate" amount of deduction to be reduced under the proposed **section 16(2A)**.

5. In response to my query raised at the Bills Committee meeting on the test of control of a person other than a corporation proposed in **section 16(3A)(b)**, the Administration has referred to Appendix C of LC Paper No. CB(1)7/03-04(01) for similar definitions in other existing legislation. All of the definitions therein referred to (including section 51B(8) of the Bankruptcy Ordinance)(extracts attached) are tests of control in relation to the operation of a company. It is clear in those contexts that a person to whom the directors are accustomed to act in accordance with his directions or instructions would be regarded as having control over the company. In the present case, the proposed test would apply in relation to a person's investment or business affair which is wider in context, and the definition is also wider than the existing definitions referred to. Please explain the policy intent as to who would satisfy the proposed test.

6. **Section 16(5A)** is a grand-fathering provision that exempts from the application of the proposed amendment the interest on a loan that is covered by a favourable advance ruling or advance clearance given by the Commissioner of the Inland Revenue. Please clarify :

- (a) why the application for advance clearing must be made before 1 April 1998;
- (b) how many applications for advance clearing have been submitted to the Commissioner to which he has not expressed an opinion up to the present date;
- (c) how many applications for advance ruling have been submitted to the Commissioner to which he has not made a ruling up to the present date? I note that neither section 88A nor Schedule 10 prescribe any time limit on the Commissioner to do so;
- (d) the reason for such advance clearance or advance ruling to be given before commencement of the Amendment Ordinance.

Yours sincerely,

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D of J (Mr Michael Lam, SGC)

- (a) 已知悉有關的周圍情況及有關的法律程序；或
 (b) 是該有關債務人的有聯繫人士，或是與該債務人訂立交易或獲該債務人給予該項不公平的優惠的人的有聯繫人士，

則除非有相反證明，否則就第(2)(a)或(b)款而言，須推定該項權益並非是真誠地取得或該利益並非是真誠地收取的。

(4) 按照一項根據第 49 或 50 條作出的命令而須向受託人支付的任何款項，須組成破產人的產業。

- (5) 就第(3)(a)款而言，以下乃屬有關的周圍情況(按情況所需而定)——
 (a) 有關的債務人以低於一般價值而訂立交易的事實；或
 (b) 構成有關的債務人給予該項不公平的優惠的有關情況。
 (6) 就第(3)(a)款而言，如任何人知悉以下事實，即屬知悉有關的法律程序——
 (a) 有關的債務人據之被判定破產的呈請已提出；或
 (b) 有關的債務人已被判定破產。

(由 1996 年第 76 號第 36 條增補)

51B. “有聯繫人士”的涵義

(1) 就第 49 至 51A 條而言，任何人是否為另一人的有聯繫人士此一問題，須按照本條決定。

(2) 任何人如是任何債務人的配偶，或是該債務人或其配偶的親屬，或是該債務人或其配偶的親屬的配偶，則該人即為該債務人的有聯繫人士。

(3) 與任何債務人組成合夥的任何一人即為該債務人的有聯繫人士，亦是與其組成合夥的任何債務人的配偶或親屬的有聯繫人士。

(4) 任何人均為他所僱用的或僱用他的任何債務人的有聯繫人士，而就此而言，一間公司的任何董事或其他高級人員，須視為獲該公司僱用。

(5) 如某項信託的受益人包括任何債務人或該債務人的有聯繫人士，或包括一項可為該債務人或其任何有聯繫人士的利益而行使的權力，則任何屬該項信託的受託人的人，即為該債務人的有聯繫人士。

(6) 如任何債務人控制一間公司或該債務人及身為該債務人的有聯繫人士的人一起控制該公司，則該公司即為該債務人的有聯繫人士。

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings; or
 (b) he was an associate of either the debtor in question or the person with whom that debtor entered into the transaction or to whom that debtor gave the unfair preference,

then, unless the contrary is shown, it shall be presumed for the purposes of subsection (2)(a) or (b) that the interest was acquired or the benefit was received otherwise than in good faith.

(4) Any sums required to be paid to the trustee in accordance with an order under section 49 or 50 shall be comprised in the bankrupt's estate.

(5) For the purposes of subsection (3)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the debtor in question entered into the transaction at an undervalue; or
 (b) the circumstances which amounted to the giving of the unfair preference by the debtor in question.

(6) For the purposes of subsection (3)(a), a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the debtor in question is adjudged bankrupt has been presented; or
 (b) of the fact that the debtor in question has been adjudged bankrupt.

(Added 76 of 1996 s. 36)

51B. Meaning of “associate”

(1) For the purposes of sections 49 to 51A, any question whether a person is an associate of another person shall be determined in accordance with this section.

(2) A person is an associate of a debtor if that person is the debtor's spouse, or is a relative, or the spouse of a relative of the debtor or his spouse.

(3) A person is an associate of a debtor with whom he is in partnership, and of the spouse or a relative of any debtor with whom he is in partnership.

(4) A person is an associate of a debtor whom he employs or by whom he is employed and for this purpose, any director or other officer of a company shall be treated as employed by that company.

(5) A person in his capacity as trustee of a trust is an associate of a debtor if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that debtor or an associate of that debtor.

(6) A company is an associate of a debtor if that debtor has control of it or if that debtor and persons who are his associates together have control of it.

(7) 就本條而言，任何人如是任何債務人的兄弟、姊妹、伯父、叔父、舅父、姑丈、姨丈、伯母、孀母、舅母、姑母、姨母、姪、甥、姪女、甥女、直系祖先或直系後裔，該人即屬該債務人的親屬，而——

(a) 任何半血親關係須視為全血親關係，任何人的繼子女或領養子女則須視為其子女；及

(b) 非婚生子女須視為其母親與其據稱的父親的婚生子女，

此外，在本條中凡提述配偶之處，須包括前配偶。

(8) 就本條而言，如有以下情況，任何債務人須視為控制一間公司——

(a) 該公司的董事或控制該公司的另一間公司的董事（或該等董事中的任何董事），習慣於按照該債務人的指示或指令行事，但任何債務人不得只因該等董事按他以專業人士身分提出的意見行事而被認為是控制一間公司；或

(b) 該債務人有權在該間公司的大會上或在控制該間公司的另一間公司的任何大會上行使三分之一或以上的表決權或控制三分之一或以上的表決權的行使，

此外，如 2 名或多於 2 名的人合起來符合上述兩項條件之一，則他們須視作控制該公司。

(9) 在本條中，“公司” (company) 包括不論是否在香港或其他地方成立的法人團體；此外，凡提述任何公司的董事及其他高級人員之處與提述在任何公司的任何大會上的表決權之處，在作必要的變通後具有效力。

(由 1996 年第 76 號第 36 條增補)

52. 與未獲解除破產的破產人的交易

(1) (由 1996 年第 76 號第 37 條廢除)

(2) 凡任何個人、公司或商號已確定：向該名個人或該公司或商號存款（不論是否與資本有關的存款）或與其有貸餘的人是一名未獲解除破產的破產人，該名個人、公司或商號有責任立即將該存款或貸餘的存在，告知破產管理署署長及破產案受託人，而除非根據法院命令或按照破產管理署署長或破產案受託人的指示，否則該名個人或該公司或商號不得從該存款或貸餘中作任何付款，亦不得就該存款或貸餘而作任何付款。

(7) For the purposes of this section, a person is a relative of a debtor if he is that debtor's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—

(a) any relationship of the half blood as a relationship of the whole blood and the step child or adopted child of any person as his child; and

(b) an illegitimate child as the legitimate child of his mother and reputed father,

and references in this section to a spouse shall include a former spouse.

(8) For the purposes of this section, a debtor shall be taken to have control of a company if—

(a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, but a debtor shall not be considered to have control of a company by reason only that the directors act on advice given by him in a professional capacity; or

(b) he is entitled to exercise, or control the exercise of, 1/3 or more of the voting power at any general meeting of the company or of another company which has control of it,

and where 2 or more persons together satisfy either of the above conditions, they shall be taken to have control of the company.

(9) In this section, “company” (公司) includes any body corporate (whether incorporated in Hong Kong or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company shall have effect with any necessary modifications.

(Added 76 of 1996 s. 36)

52. Dealings with undischarged bankrupt

(1) (Repealed 76 of 1996 s. 37)

(2) Where any individual, company or firm has ascertained that a person having a deposit, whether a deposit in respect of capital or not, or a credit balance, with such individual, company or firm is an undischarged bankrupt, then it shall be the duty of such individual, company or firm forthwith to inform the Official Receiver and the trustee in the bankruptcy of the existence of the deposit or credit balance, and such individual, company or firm shall not make any payment out of or in respect of the deposit or credit balance except under an order of the court or in accordance with instructions from the Official Receiver or the trustee in the bankruptcy.

- (d) that the company is, and will continue to be, able to meet its obligations including obligations in respect of business other than the class of insurance business in respect of which the application is made; and
- (e) in the case of a company to which Part XI of the Companies Ordinance (Cap. 32) applies, that it has complied with the provisions of that Part; and
- (f) that the company will be able to comply with such of the provisions of this Ordinance as would be applicable to it; and
- (g) that in the case of a company which carries on, or proposes to carry on, some other form of business in addition to insurance business, the carrying on of that other form of business in addition to insurance business is not contrary to the interest of existing and potential policy holders; and
- (h) that the name of the company is not likely to deceive.
- (4) For the purposes of this Ordinance—
- (a) in computing the amount of the liabilities of a company or an insurer, as the case may be, all contingent and prospective liabilities shall be taken into account but not liabilities in respect of the company's or insurer's share capital;
- (b) subject to subsection (5), the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable regulations made under section 59(1)(a), and paragraph (a) shall have effect subject to any such regulations; *(Amended 29 of 1997 s. 3)*
- (c) if no such regulations are applicable in the case of a company or an insurer, as the case may be, regard shall be had—
- (i) in determining the value of its assets, to their market value and the cost of realizing such assets; and
- (ii) in determining the amount of its liabilities, to the cost of the settlement of such liabilities and, where the amount of any such liabilities is assessed or estimated, to the experience of the company or insurer in carrying on any relevant insurance business or of other persons carrying on the same or similar insurance business. *(Replaced 25 of 1994 s. 4)*
- (5) Subsection (4)(b) shall not apply in the case of a company carrying on or intending to carry on business as a captive insurer. *(Added 29 of 1997 s. 3)*

9. Meaning of "controller" (控權人) in section 8(2)

- (1) In section 8(2) "controller" (控權人), in relation to a company ("the applicant" (申請人)), means—
- (a) a managing director of the applicant or of a body corporate of which it is a subsidiary;

- (d) 公司有能力和將會繼續有能力履行其義務，包括與其中請經營的保險業務類別以外的業務有關的義務；及
- (e) 如屬《公司條例》(第 32 章) 第 XI 部適用的公司，則該公司已遵從該部的條文；及
- (f) 該公司將會有能力遵從本條例中任何對其適用的條文；及
- (g) 如該公司除經營保險業務外另行經營或擬另行經營其他形式的業務，則該項除保險業務外另行經營的其他形式的業務，與現有及潛在的保單持有人的利益並無抵觸；及
- (h) 公司的名稱相當不可能騙人。
- (4) 就本條例而言——
- (a) 在計算任何公司或保險人(視屬何情況而定)的負債額時，除與該公司的或該保險人的股本有關的負債外，一切或有負債及預期負債均須計算在內；
- (b) 除第(5)款另有規定外，任何資產的價值及任何負債的數額，須按照根據第 59(1)(a) 條所訂立的任何適用規例而釐定，而(a)段的效用則須受該等規例規限；*(由 1997 年第 29 號第 3 條修訂)*
- (c) 如並無該等規例適用於任何公司或保險人(視屬何情況而定)，則——
- (i) 在釐定其資產值時，須顧及該等資產的市值，以及將該等資產變現所需的費用；及
- (ii) 在釐定其負債額時，須顧及了結該等債務所需的費用，而在評定或評估任何該等負債額時，則須顧及該公司或保險人在經營任何有關的保險業務方面的經驗，或其他人在經營相同或類似的保險業務方面的經驗。*(由 1994 年第 25 號第 4 條代替)*
- (5) 第(4)(b)款並不適用於作為專屬自保保險人而經營或擬作為專屬自保保險人而經營業務的公司。*(由 1997 年第 29 號第 3 條增補)*

9. 第 8(2) 條內“控權人”(controller) 的涵義

- (1) 在第 8(2) 條內“控權人”(controller) 一詞，就某間公司(“申請人”(the applicant))而言，指——
- (a) 申請人的常務董事，或申請人乃其附屬公司的法人團體的常務董事；

- (b) a chief executive of the applicant or of a body corporate, being an insurer, of which it is a subsidiary;
- (c) a person—
- (i) in accordance with whose directions or instructions the directors of the applicant or of a body corporate of which it is a subsidiary (or any of them) are accustomed to act; or
 - (ii) who, alone or with any associate or through a nominee, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the applicant or of a body corporate of which it is a subsidiary. (Amended 8 of 1989 s. 2)
- (2) Subject to subsection (3), in this section "chief executive" (行政總裁), in relation to the applicant or a body corporate of which it is a subsidiary, means an employee of the applicant or that body corporate, who, alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of the applicant or that body corporate.
- (3) In relation to an applicant incorporated outside Hong Kong—
- (a) the reference in subsection (1)(a) to a managing director of the applicant includes a reference to a person who is a managing director of the applicant in respect of so much of its insurance business as is carried on within Hong Kong; and
 - (b) the reference in subsection (1)(b) to a chief executive of the applicant includes a reference to a person employed by the applicant who, alone or jointly with others, is responsible (whether or not under the immediate authority of the directors) for the conduct of the whole of the insurance business carried on by the applicant within Hong Kong, not being a person who—
 - (i) is also responsible for the conduct of insurance business carried on by the applicant elsewhere; and
 - (ii) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant within Hong Kong.
- (4) In this section "associate" (相聯者), in relation to any person, means—
- (a) the wife or husband or minor child of that person;
 - (b) any body corporate of which that person is a director;
 - (c) any person who is an employee or partner of that person;
 - (d) if that person is a body corporate—
 - (i) any director of that body corporate;
 - (ii) any subsidiary of that body corporate;
 - (iii) any director or employee of any such subsidiary,
- and for the purposes of this subsection "child" includes a step-child.

- (b) 申請人的行政總裁，或申請人乃其附屬公司的法人團體（此法人團體為一名保險人）的行政總裁；
- (c) 下述人士——
- (i) 申請人的董事，或申請人乃其附屬公司的法人團體的董事（或其中任何董事）慣常按照其指示或指令行事的人；或
 - (ii) 有權單獨或連同任何相聯者或透過代名人，在申請人或申請人乃其附屬公司的法人團體的大會上行使或控制行使 15% 或以上的投票權的人。（由 1989 年第 8 號第 2 條修訂）
- (2) 除第 (3) 款另有規定外，在本條內，“行政總裁” (chief executive) 就任何申請人或申請人乃其附屬公司的法人團體而言，指該申請人或該法人團體的任何僱員，而該僱員在董事的直接權限下，單獨或與其他人共同負責處理該申請人或該法人團體的整個保險業務。
- (3) 就香港以外地方成立為法團的申請人而言——
- (a) 第 (1)(a) 款提述申請人的常務董事之處，包括提述申請人僅限於在香港經營的保險業務的常務董事；及
 - (b) 第 (1)(b) 款提述申請人的行政總裁之處，包括提述申請人所僱用，以單獨或與其他人共同負責（不論是否在董事的直接權限下）處理申請人在香港的整個保險業務的人，但不包括——
 - (i) 同時負責處理申請人在其他地方經營的保險業務；並且
 - (ii) 有下屬負責申請人在香港經營的整個保險業務的人。
- (4) 在本條內，“相聯者” (associate) 就任何人而言，指以下的人士——
- (a) 該人的妻子、丈夫或未成年子女；
 - (b) 該人身為董事的法人團體；
 - (c) 該人的僱員或合夥人；
 - (d) 如該人是法人團體，則指——
 - (i) 該法人團體的任何董事；
 - (ii) 該法人團體的任何附屬公司；
 - (iii) 該附屬公司的任何董事或僱員，
- 就本款而言，“子女”包括繼子女。

- (i) 可被屬報價對象的任何其他人接受；或
- (ii) 可依據該服務而配對；(由 1997 年第 4 號第 3 條增補)
- “行使”(exercise) 就職能而言，包括執行與履行；(由 1991 年第 95 號第 2 條增補)
- “行政總裁”(chief executive) 就任何認可機構而言，指根據第 74 條就該機構而委任的行政總裁，並包括如此委任的候補行政總裁；(由 1991 年第 95 號第 2 條修訂)
- “有限牌照銀行”(restricted licence bank) 指持有有效的有限牌照銀行的公司；(由 1990 年第 3 號第 2 條增補)
- “有限牌照銀行”(restricted banking licence) 指根據第 16 條批給的有限牌照銀行牌照；(由 1990 年第 3 號第 2 條增補。由 1995 年第 49 號第 2 條修訂)
- “在香港以外成立為法團”(incorporated outside Hong Kong) 包括以任何方式在香港以外設立；(由 1993 年第 94 號第 2 條增補)
- “在香港以外成立為法團的認可機構”(authorized institution incorporated outside Hong Kong) 指藉或根據在香港以外任何地方的法律或其他權限而成立為法團的認可機構；(由 1990 年第 3 號第 2 條修訂；由 1993 年第 94 號第 2 條修訂)
- “在香港成立為法團的認可機構”(authorized institution incorporated in Hong Kong) 指藉或根據《公司條例》(第 32 章) 或任何其他條例在香港成立為法團的認可機構；凡提述在香港成立為法團的銀行、在香港成立為法團的接受存款公司或在香港成立為法團的有限牌照銀行之處，須據此解釋；(由 1990 年第 3 號第 2 條修訂)
- “自動櫃員機”(automated teller machine) 指由認可機構或其他人安裝而直接或間接與某認可機構所使用的電腦系統接駁並向該認可機構的客戶提供設施的終端裝置；(由 2001 年第 32 號第 2 條代替)
- “存款”(deposit)——
- (a) 指以下貸款——
- (i) 有利息的、無利息的或負利息的；或
- (ii) 須附以溢價付還的或須附以任何以金錢或金錢的等值為代價付還的；但
- (b) 不包括以下貸款——
- (i) 貸款條款涉及任何公司的債權證或其他證券的發行，而有關的招股章程已根據《公司條例》(第 32 章) 註冊；(由 1987 年第 64 號第 2 條代替)
- (ii) 貸款條款乃關於財產或服務的提供者；或
- (iii) 一間公司給予另一間公司的貸款(兩間公司均不是認可機構)，而當時其中一間是另一間公司的附屬公司，或兩間均是另一間公司的附屬公司。
- 而凡本條例提述接受存款或作出存款之處，須據此解釋；

- (c) incorporated outside Hong Kong; (Amended 94 of 1993 s. 2)
- “controller” (控權人), in relation to a company—
- (a) means, in respect of all the provisions of this Ordinance, any person who is—
- (i) an indirect controller; or
- (ii) a majority shareholder controller; and
- (b) includes, in respect of the provisions of Part XIII, any person who is a minority shareholder controller,
- of that company, and references in this Ordinance to “control” (控制) shall be construed accordingly; (Replaced 95 of 1991 s. 2)
- “currency” (貨幣) includes—
- (a) the European Currency Unit; and
- (b) any medium of exchange the subject of a declaration under subsection (5)(a) which is in force; (Added 94 of 1993 s. 2)
- “dealing service” (交易服務) means a service, whether or not offered in person or by electronic means or otherwise, whereby the persons to whom the service is provided are given the ability to quote bid or offer prices or rates—
- (a) for the purpose of effecting an agreement of any type referred to in paragraph (a) of the definition of “money broker” (and whether or not any such agreement is effected); and
- (b) which may be—
- (i) accepted by any of those other persons to whom they are quoted; or
- (ii) matched pursuant to the service; (Added 4 of 1997 s. 3)
- “deposit” (存款)——
- (a) means a loan of money—
- (i) at interest, at no interest or at negative interest; or
- (ii) repayable at a premium or repayable with any consideration in money or money's worth; but
- (b) does not include a loan of money—
- (i) upon terms involving the issue, by any company, of debentures or other securities in respect of which a prospectus has been registered under the Companies Ordinance (Cap. 32); (Replaced 64 of 1987 s. 2)
- (ii) upon terms referable to the provision of property or services; or
- (iii) by one company to another (neither company being an authorized institution) at a time when one is a subsidiary of the other or both are subsidiaries of another company,
- and references in this Ordinance to the taking or the making of a deposit shall be construed accordingly;

“核准貨幣”(approved currency)指——

- (a) 可自由兌換為港元的貨幣；或
- (b) 獲金融管理專員核准的貨幣；(由 1987 年第 64 號第 2 條增補。由 1992 年第 82 號第 11 條修訂)

“核准貨幣經紀”(approved money broker)指持有有效核准證明書的貨幣經紀；(由 1997 年第 4 號第 3 條增補)

“核准證明書”(certificate of approval)指根據第 118C(1)(a)條附於送達某公司的通知書的核准證明書；(由 1997 年第 4 號第 3 條增補)

“核數師”(auditor)指根據《專業會計師條例》(第 50 章)持有執業證書的專業會計師；

“帳目”(accounts)指以書寫、印刷或藉任何機器或裝置備存的任何帳目；

“控股公司”(holding company)及“附屬公司”(subsidiary)的涵義，與《公司條例》(第 32 章)中該等詞語的涵義相同；

“控權人”(controller)就任何公司而言——

(a) 並就本條例所有條文而言，指該公司以下任何人——

- (i) 間接控權人；或
- (ii) 大股東控權人；及

(b) 並就第 XIII 部條文而言，包括任何屬該公司小股東控權人的人，而凡本條例提述“控制”(control)之處，須據此解釋；(由 1991 年第 95 號第 2 條代替)

“接受存款公司”(deposit-taking company)指一間現時註冊的公司；(由 1990 年第 3 號第 2 條代替。由 1995 年第 49 號第 2 條修訂)

“接受存款公司諮詢委員會”(Deposit-taking Companies Advisory Committee)指由第 5 條設立的接受存款公司諮詢委員會；

“貨幣”(currency)包括——

- (a) 歐洲貨幣單位；及
- (b) 任何兌換媒介而該兌換媒介屬根據第 (5)(a) 款所作並正生效的宣布的標的者；(由 1993 年第 94 號第 2 條增補)

“issue”(發出), in relation to any advertisement, invitation or document, includes publishing, circulating, distributing or otherwise disseminating the advertisement, invitation or document, whether—

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other periodical publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures, pamphlets or handbills;
- (e) by an exhibition of photographs or cinematography films;
- (f) by way of sound broadcasting or television;
- (g) by computer or other electronic device; or
- (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the advertisement, invitation or document to be issued; (*Replaced 32 of 2001 s. 2*)

“liquidity ratio”(流動資產比率) means the liquidity ratio referred to in section 102;

“local branch”(本地分行), in relation to—

- (a) an authorized institution which is a bank, means—
 - (i) in the case of a bank incorporated in Hong Kong, a place of business thereof in Hong Kong, other than its principal place of business in Hong Kong or any automated teller machine, at which it carries on—
 - (A) banking business; or
 - (B) any other business whereby it may incur financial exposure mentioned in section 81(2), and to which members of the public ordinarily have physical access for the purposes of that business;
 - (ii) in the case of a bank incorporated outside Hong Kong, a place of business thereof in Hong Kong, other than its principal place of business in Hong Kong or any automated teller machine, at which it carries on—
 - (A) banking business; or
 - (B) any other business whereby it may incur financial exposure mentioned in section 81(2), and to which members of the public ordinarily have physical access for the purposes of that business; and
- (b) an authorized institution which is a deposit-taking company or a restricted licence bank, means a place of business in Hong Kong of the deposit-taking company or the restricted licence bank, other than its principal place of business in Hong Kong or any automated teller machine, at which it carries on—

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第 I 部

導言

1. 簡稱

本條例可引稱為《旅行代理商條例》。

2. 釋義及適用範圍

在本條例中，除文意另有所指外——

- “外遊旅行代理商” (outbound travel agent) 指第 4 條所指的經營外遊旅行代理商業務的人； (由 2002 年第 10 號第 3 條增補)
- “外遊旅行服務” (outbound travel service) 指透過進行第 4(1)(a) 或 (b) 條所述活動而提供的服務，而提供該服務的人須根據本條例領有牌照，但本定義並不適用於第 IIIA 部； (由 2002 年第 10 號第 3 條增補)
- “申請人” (applicant) 就牌照的續期申請或其他申請而言，包括持牌人； (由 1988 年第 70 號第 2 條增補)
- “合資格” (qualified) 指按照認可機構或商會會員的章程、規則或組織章程細則 (視屬何情況而定) 而合資格； (由 1988 年第 70 號第 2 條增補)
- “到港旅行代理商” (inbound travel agent) 指第 4A 條所指的經營到港旅行代理商業務的人； (由 2002 年第 10 號第 3 條增補)
- “到港旅行服務” (inbound travel service) 指透過進行第 4A(1)(a)、(b) 或 (c) 條所述活動而提供的服務，而提供該服務的人須根據本條例領有牌照； (由 2002 年第 10 號第 3 條增補)
- “旅行代理商” (travel agent) 包括到港旅行代理商及外遊旅行代理商，但本定義並不適用於第 IIIA 部； (由 2002 年第 10 號第 3 條代替)
- “旅行服務” (travel service) 包括到港旅行服務及外遊旅行服務； (由 2002 年第 10 號第 3 條代替)
- “商會會員” (association member) 指附表 1 第 II 部指明的任何團體； (由 1988 年第 70 號第 2 條增補。由 1993 年第 51 號第 3 條修訂)
- “控權人” (controller) 就法人團體而言，指控制該法人團體的人，並包括該法人團體的董事慣常按照其指示或指令行事的人；
- “註冊主任” (Registrar) 指根據第 5 條獲委任的旅行代理商註冊主任；

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Travel Agents Ordinance.

2. Interpretation and application

In this Ordinance, unless the context otherwise requires—

- “Advisory Committee” (諮詢委員會) means the Advisory Committee on Travel Agents established under section 7;
- “applicant” (申請人), in relation to an application for a licence whether by way of renewal or otherwise, includes a licensee; (Added 70 of 1988 s. 2)
- “approved organization” (認可機構) means any body specified in Part I of Schedule 1; (Added 70 of 1988 s. 2. Amended 51 of 1993 s. 3)
- “association member” (商會會員) means any body specified in Part II of Schedule 1; (Added 70 of 1988 s. 2. Amended 51 of 1993 s. 3)
- “controller” (控權人), in relation to a body corporate, means the person who controls the body corporate and includes any person in accordance with whose directions or instructions the directors thereof are accustomed to act;
- “exempt person” (獲豁免人士) means a person or class of persons granted an exemption under section 3;
- “inbound travel agent” (到港旅行代理商) means a person who carries on business as an inbound travel agent within the meaning of section 4A (Added 10 of 2002 s. 3)
- “inbound travel service” (到港旅行服務) means a service provided through the carrying on of an activity described in section 4A(1)(a), (b) or (c) in respect of the provision of which a person is required to be licensed under this Ordinance; (Added 10 of 2002 s. 3)
- “licence” (牌照) means a travel agent’s licence granted under section 11 and “licensed” (領有牌照) and “licensee” (持牌人) shall have corresponding meanings; (Amended 70 of 1988 s. 2)
- “outbound travel agent” (外遊旅行代理商) means a person who carries on business as an outbound travel agent within the meaning of section 4 (Added 10 of 2002 s. 3)
- “outbound travel service” (外遊旅行服務), except in Part IIIA, means a service provided through the carrying on of an activity described in section 4(1)(a) or (b) in respect of the provision of which a person is required to be licensed under this Ordinance; (Added 10 of 2002 s. 3)