

For discussion on  
16 February 2001

**Bills Committee on  
Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Securities and Futures Bill  
Part V – Licensing and Exemption  
Schedule 6 – Regulated activities**

**Banking (Amendment) Bill 2000**

**I. Introduction**

1. Part V of and Schedule 6 to the Securities and Futures Bill (the “SF Bill”) delineate the activities for which a licence granted or exemption declared by the Securities and Futures Commission (the “SFC”) is required, and deal also with the application procedures, the approval criteria and the conditions attached to a licence or an exemption. Parts VI and VII of the SF Bill deal primarily with the financial and operational requirements that a licensed corporation, a licensed representative, an exempt authorized financial institution (“exempt AI”) or its relevant employee needs to comply with. Part IX deals with the disciplinary framework.

2. While the majority of the regulatory requirements in respect of an exempt AI are in the SF Bill, the Banking (Amendment) Bill 2000 (the “BAB”) and the Banking Ordinance (the “BO”) supplement this in areas considered more appropriately dealt with there. At **Annex A** is a table comparing respectively the regulatory frameworks for a licensed corporation and an exempt AI.

3. This paper covers the part of the regulatory regime set out in Part V of and Schedule 6 to the SF Bill and the corresponding proposals in the BAB. We have also extracted from Part XVII of and Schedule 9 to the SF Bill the corresponding transitional arrangements. At **Annex B** is a table comparing the provisions in Part V with the existing law.

## II. Policy Objectives and major proposals

4. The major guiding principles in re-designing the regulatory framework for intermediaries in the securities and futures market are to:

- (a) provide minimum barriers to entry without lowering standards and give equal and fair access to all suitably qualified candidates as market intermediaries;
- (b) set proper standards for internal organization and operational conduct for more effective and efficient operation, as well as better investor protection;
- (c) establish a streamlined framework that minimizes costs for intermediaries without compromising investor protection; and
- (d) establish a forward looking and flexible framework to accommodate new products and services.

5. The current regulatory framework is dispersed over four of the securities and futures related ordinances as well as the BO. Part V consolidates, and with the BAB revises the regulatory framework and requirements. The key features of the new system are discussed below.

### *The nine regulated activities*

6. We have set out in Schedule 6 to the SF Bill the nine regulated activities. They are advising on securities, advising on futures contracts, advising on corporate finance, dealing in securities, dealing in futures contracts, leveraged foreign exchange trading, asset management, securities margin financing and providing automated trading services. The Financial Secretary is empowered under clause 139 to amend the list of regulated activities by notice in the Gazette to cater for future developments. Such notice is subsidiary legislation and is subject to negative vetting by the Legislative Council.

7. Under the Securities Ordinance, a registered or an exempt investment adviser may carry on a variety of activities, namely, the provision of advice concerning securities (including advice regarding compliance with the Code on Takeovers and Mergers and the Code on Share Repurchases) and the management of a client's portfolio of securities. Under our proposal, these areas of activity will be separated into advising on securities, advising on corporate finance, and asset management, each of which requires specialized knowledge in the field in question and, in our view, are most appropriately regulated as distinct activities. We have also introduced a new regulated activity of providing automated trading services to cater for new developments brought by advance in information technology that enables the sale and purchase of securities and futures contracts via a network of telephone and computer connection. The remaining

definitions of regulated activities are substantially the same as in the current law<sup>1</sup>, though advising on securities and dealing in securities have been extended to cover interests in collective investment schemes by virtue of the amendment of the definition of securities to include the same. This is to fill a lacuna in current law whereby certain intermediaries dealing in or advising on collective investment schemes are unregulated. Furthermore, a person involved in dealing in futures contracts solely with persons outside Hong Kong will also be regulated under the new regime.

8. Under the SF Bill (as with existing legislation), provision is made to exclude certain groups of persons or activities from the licensing requirements. For example, the Bill continues to exclude from licensing requirements those persons who trade as principals solely with persons whose business involves the acquisition, disposal and holding of securities, whether as principal or agent. Several new exclusions have been included in the Bill. The definitions of advising on futures contracts and advising on corporate finance have been rationalized to provide the like exclusions (so far as applicable) as that of advising on securities. Moreover, the exclusion relating to advice provided by a corporation solely to its holding company or wholly-owned subsidiaries in the same group is newly introduced in each of these definitions. In addition, the exclusion of incidental advice given by accountants and solicitors would be extended to cover such advice given by counsel too. Furthermore, in the definitions of dealing in futures contracts and dealing in securities, a person who as principal deals solely with a “professional investor” is not required to be licensed or exempt for that regulated activity. Additional exclusions introduced in the definition of leveraged foreign exchange trading relate to transactions executed through a corporation licensed or exempted for providing automated trading services, and with specified exceptions, the placing of orders with a licensed leveraged foreign exchange trader or an authorized financial institution (“AI”).

### ***Admission to the regulatory regime***

9. Except for the provision of automated trading services authorized under clause 95 of the SF Bill, a person can only carry on a business in any regulated activity, or perform any regulated function for or on behalf of such business, if admitted to the regulatory regime in one of the following four forms:

- (a) a corporation licensed under clauses 115 and 116 of the SF Bill to carry on a business in one or more than one regulated activities;

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<sup>1</sup> We have introduced a number of drafting changes with respect to the definition of “securities margin financing”, namely to relocate some of the activities currently found in Schedule 4 to the Securities Ordinance to the definition itself as exclusions, and also to Part 3 of Schedule 6. The actual coverage of “securities margin financing” is essentially the same as in the current law.

- (b) an AI exempted under clause 118 of the SF Bill to carry on a business in one or more than one regulated activities;
- (c) an individual licensed under clauses 119 and 120 of the SF Bill to perform for or on behalf of a business in one or more than one regulated activities; and
- (d) an employee of an exempt AI whose name is entered in the register maintained by the HKMA under clause 4 of the BAB to perform for or on behalf of the exempt AI in one or more than one regulated activities.

Irrespective of the form of admission, a person must meet the same “fit and proper” criteria as outlined in clause 128 (see following paragraph in relation to (d)). These include financial status, qualifications, experience, ability, reputation, character, reliability and financial integrity. For a corporate applicant, its internal control procedures and risk management systems are also considered.

10. The “register” concept referred to in paragraph 9(d) above is a major new proposal. The HKMA will maintain a register of employees who perform for or on behalf of an exempt AI any regulated function in a regulated activity. The HKMA will set down the criteria for admission to the register, modelling on those in clause 128 of the SF Bill, and the intention is to apply the same fit and proper criteria promulgated by the SFC in respect of its licensees for this purpose. The primary responsibility for ensuring observation of the criteria rests with the management of an exempt AI. Specifically, an exempt AI will be required to demonstrate that suitable arrangements have been put in place to ensure its employees receive appropriate training in line with such criteria, the compliance with which will be inspected by the HKMA during on-site examinations. Moreover, the HKMA will conduct appropriate background checks, including, in particular, with the SFC. If such checks reveal anything negative against an employee, or there are circumstances suggesting an employee is not fit and proper, the HKMA will expect, and if necessary use its powers under the BO to require the concerned exempt AI to take appropriate action, such as to remove the employee concerned from the performance of “regulated activities”. It is also worth noting that the Business Conduct Rules and Business Conduct Codes to be made by the SFC under Part VII of the SF Bill will be applied directly to employees of exempt AIs, which will be further discussed in the context of Part VII. Though the proposed approach is not entirely the same as the licensing concept under the SF Bill, we believe it can provide an adequate safeguard of the quality of staff employed by AIs to perform regulated functions and is consistent with the existing regulatory requirements for AIs.

#### *Single licence and single declaration of exemption*

11. One major new proposal under the SF Bill is the introduction of a single licence or declaration of exemption regime for all regulated activities, except for the provision of securities margin financing (in the interests of risk management). This does away with

the existing need to apply for different categories of registration and the need to file separate and different returns and documents in respect of the various registrations. Registrants can also engage in a number of different “regulated activities” through one corporate vehicle. As a result, costs and administrative burdens are reduced for both the intermediaries and the regulator. Moreover, this benefit of economy does not come at the expense of investor protection.

#### *Executive officer concept*

12. To ensure that the controlling minds of an intermediary are competent to discharge their supervisory roles, we have introduced the “management responsibility” concept under Part V. Each licensed corporation and exempt AI must have at least two “executive officers” approved respectively by the SFC under clause 125 of the SF Bill and the HKMA under clause 9 of the BAB. In the case of a licensed corporation, all “executive directors” (as defined in paragraph 20 below) must be approved as executive officers. This latter requirement is not imposed in respect of an exempt AI, as its securities operation does not constitute the majority of its business. Apart from this, the SFC and the HKMA will adopt the same standard in their approval of executive officers, including that the person has sufficient authority within the corporation to discharge his responsibilities and is fit and proper to be so approved.

#### *Provisional licences*

13. Under clause 119 of the SF Bill, a representative can request for a provisional licence. The SFC may grant such a licence in cases where nothing adverse is known about the applicant who otherwise satisfies the SFC that he is fit and proper to be licensed for the regulated activity in question. The proposal allows the applicant to commence work in a licensed corporation earlier than is currently permissible. The provisional licence will remain valid until determination of the relevant application for a licence. The SFC may revoke a provisional licence if it considers that it is in the interest of the investing public to do so. We take the view this proposal strikes a good balance between investor protection and the regulatory burden on both the corporations and their representatives.

#### *Temporary licences*

14. To facilitate overseas corporations and their employees, licensed by competent overseas regulatory authorities, to work on short-term assignments in Hong Kong, the SF Bill empowers the SFC to grant temporary licences to them, provided that, among other things, they have not carried on a business in or carried on (as the case may be) the relevant regulated activity in Hong Kong.

### *The HKMA as the front line regulator of an exempt AI*

15. Under the scheme of co-operative supervision agreed by the SFC and the HKMA, the HKMA will remain as the front line regulator in so far as exempt AIs are concerned. The HKMA will perform its regulatory functions in relation to exempt AIs mostly according to standards set by the SFC for its licensees and in a manner consistent with the way the SFC applies those standards. This may involve the HKMA exercising its statutory powers under section 16(9) or 52 of the BO to enforce compliance with rules and guidelines in relation to regulated activities issued by the SFC and/or the HKMA. In this connection, clause 3 of the BAB seeks to put beyond doubt that the HKMA's supervisory responsibilities cover the whole of an AI's businesses, that is, not simply banking or deposit-taking business. The administration of the new regulatory framework will be underpinned by a revised Memorandum of Understanding under preparation between the SFC and the HKMA. To facilitate regulatory co-operation, clause 11 of the BAB also seeks to relax the official secrecy provision in the BO to enable the HKMA to disclose to the SFC regulatory information about exempt AIs.

### **III. Transitional arrangements**

16. We propose to allow for a two-year transitional period after the commencement of the SF Bill. During the two-year transitional period, existing SFC registrants, and exempt persons (including relevant AIs) and a licensed bank in respect of providing investment advice can continue their business without the need for a licence or declaration of exemption made by the SFC under Part V of the SF Bill. They are however required to comply with the provisions of the SF Bill with necessary modifications granted by the SFC. This is to provide ample time for the intermediaries to prepare themselves for migration to the new regime. Firms who wish to continue their business will have to satisfy the SFC or, in the case of AIs, the HKMA under the same criteria used by the SFC, that they are fit and proper to do so. In determining the fitness and properness of the applicants under the new regime, the SFC and the HKMA shall have regard to, among other things, the experience and ability of the applicants under the existing regime.

17. As highlighted in paragraph 7 above, we have introduced a new regulated activity of providing automated trading services; and also brought into the regulatory regime activities that involve dealing in / advising on collective investment schemes, and dealing in futures contracts solely with persons outside Hong Kong. The general approach in developing the corresponding transitional arrangements can be illustrated as below :

- (a) If the automated trading services are, before the commencement of the SF Bill, carried out by a person who is to be transited into the new regulatory regime for intermediaries, the person can continue the activities without the need to apply for a licence or exemption for providing automated trading services for a 2-year

period, during which the provisions of the SF Bill apply subject to necessary modifications granted by the SFC.

- (b) As regards dealing in / advising on collective investment schemes, a dealer / commodity trading adviser registered under the Commodities Trading Ordinance transited into the new regulatory regime for intermediaries can continue the activities without the need to apply for a licence or exemption for dealing in / advising on securities for a 2-year period, during which the provisions of the SF Bill do not apply.

A person transited into the new regulatory regime for dealing in / advising on securities is already entitled to continue dealing in / advising on collective investment schemes for a 2-year transitional period, during which the provisions of the SF Bill apply subject to necessary modifications granted by the SFC.

- (c) With respect to dealing in futures contracts solely with persons outside Hong Kong, a registered or exempt dealer under the Securities Ordinance transited into the new regulatory regime can continue the activities without the need to apply for a licence or exemption for dealing in futures contract for a 2-year period, during which the provisions of the SF Bill do not apply.

A person transited into the new regulatory regime for dealing in futures contract is already entitled to continue the activity for a 2-year transitional period, during which the provisions of the SF Bill apply subject to necessary modifications granted by the SFC.

In any other cases, a person can continue the relevant activities for a 6-month transitional period after the commencement of the SF Bill, during which the provisions of the SF Bill do not apply.

#### **IV. Market Comments and changes introduced**

18. During the public consultation exercise, certain key areas of concern to the market in respect of Part V were identified and addressed. They are discussed below.

##### *Definition of Executive Director*

19. “Executive director” had previously not been defined, which led to some uncertainty in the market in respect of the White Bill. We have thus introduced a definition for “executive director” in clause 113(1)(a) and (b), defined to mean a director who actively participates in, or is responsible for directly supervising, the business of a

regulated activity for which the corporation is licensed. This will carve out, for example, a major shareholder who is a passive investor, an overseas director who does not actively participate or is not directly responsible for supervising the business of the regulated activity, or a director who is responsible for activities that are not regulated activities, such as human resources.

#### *Supervision by Executive Director*

20. The White Bill required the physical presence of at least one executive officer in Hong Kong at all times. Market participants submitted that this would place an unacceptable burden on the industry, in particular on smaller brokers who may not have many personnel from which to choose executive officers. In view of this, the concept has been amended to require that each licensed corporation and exempt AI to have at least one executive officer who is “available to supervise” the regulated activities at all times (see clauses 117(1)(a)(ii) and 118(8)(a)).

#### *Executive officer to report to SFC*

21. Clause 130(5) of the White Bill required an executive officer to report to the SFC if any person was trying to prevent him from properly discharging his responsibilities. Comments received indicated that this was impracticable and indeed some expressed the view that this would be counterproductive. In view of this, this clause has been deleted from the SF Bill.

#### *Time limits for compliance*

22. Following submissions from market participants that the proposed time limits for compliance with administrative requirements were unduly onerous, Part V has, in general, been amended to extend the time limit for compliance with certain administrative requirements. The time limit for notifying the SFC by a person becoming a substantial shareholder of a licensed corporation has been extended from 2 to 3 business days. This is consistent with the proposals to reduce the notification periods in the existing Securities (Disclosure of Interests) Ordinance (Cap. 396) as adapted in Part XV of the SF Bill.

#### *Penalties of certain criminal offences*

23. Market participants submitted that proposed penalties under Part V were unduly harsh having regard to the nature of the offences. The Administration has reviewed the penalties with a view to ensuring that they are reasonable relative to the seriousness of the offences and other Ordinances. Consequent upon the review, the amendments set out below, which refer to clauses in the White Bill, have been reflected in the SF Bill:



- (a) custodial penalties for offences relating to clause 120(8) (in relation to provisional licence); clause 122(2) (in relation to notifying the SFC for ceasing to act for a principal); clause 123(4) (in relation to executive officers' requirements); clause 130(6) (in relation to failure to report to the regulator) and clause 134(11) (in relation to use of unauthorized titles), do not appear in the SF Bill.
- (b) maximum fines for offences in relation to clause 113(2) (relating to unlicensed dealing); clause 122(2) (see above); and clause 123(4) (see above) have been reduced.
- (c) maximum fines for offences in relation to clause 130(6) (relating to failure to notify certain events) and clause 134(11) (see above) have been increased.

### *Exempt AIs*

24. We have received some market comments that an AI should no longer be entitled to exempt status in respect of its conduct of regulated activities, and that the supervision of regulated activities should be by the SFC alone. Members will note from the comparison table at **Annex A** and the highlights in the aforesaid paragraphs that an exempt AI is subject to comparable, if not identical, regulatory requirements as those applicable to a licensed corporation. It is clear from the comparison table that exempt status does not mean that an AI is exempt from regulation in respect of its securities business. The HKMA remaining as the frontline regulator of an exempt AI, coupled with the new regulatory requirements, seek to achieve three objectives: to provide, as far as possible, adequate investor protection; to level the playing field between exempt AIs and SFC licensees; and to minimize regulatory overlap and thus reduce unnecessary costs. We consider the proposed arrangements best achieve these objectives.

## **IV. International Comparisons**

25. This part of the paper outlines the regulatory framework of intermediaries in the United Kingdom, United States and Australia, and serves only as a brief overview.

### *United Kingdom*

26. A single authorisation is required for firms (including banks) engaging in various regulated functions. Product and function differentiation is achieved by requiring authorised firms to seek permission to carry out defined regulated activities from the relevant regulatory authority. Approval from the regulatory authorities is required before

an accredited individual (including senior officers who carry out compliance functions) of the firm can perform regulated activities.

27. Assessment of the suitability of firms or individuals to carry out regulated functions is based on the “fit and proper” test. For firms, this would include capability and fitness and properness of the management and the reliability of the system of internal controls and risk management; and for individuals, this would include qualifications, experience and continuous training, competency level and general integrity.

### *United States*

28. For firms engaging in futures business, in addition to being a member of the National Futures Association, a self-regulatory organisation, they are also required to be registered with the Commodities Futures Trading Commission under the Commodities Exchange Act. Likewise, under that Act, individuals including those who exercise controlling influence over a regulated firm’s activities and those who engage in the futures business of the firm are required to be registered.

29. For firms, the assessment is based on capability, general competency and the experience of the management. They must also be assessed generally to be of good fame and character. For individuals, the general fitness test encompassing experience and competency is applicable. Mandatory written proficiency examinations and ethics training are also required for individuals.

30. Firms engaging in securities business (including affiliates of banks) and securities broker-dealers (including banks) must be registered with the Securities Exchange Commission (the “SEC”) and be a member of the National Association of Securities Dealers (the “NASD”), which is a self-regulatory organisation under the supervision of the SEC. Participants providing investment advisory services must be registered with the SEC under the Investment Advisers Act. Individuals including those persons having a supervisory or managerial role over a firm’s functions (including back office functions) are required to be licensed by NASD.

32. Each firm is assessed on the adequacy of its resources, standards of financial responsibility and operational capability. Principals and representatives of the firm must have appropriate educational qualifications and experience, must be competent and must be of good fame and character.

## *Australia*

33. Firms (including banks) are required to be authorized by the Australian Securities and Investments Commission (ASIC) as securities dealer or investment adviser or futures dealer or adviser (as the case may be) before they can carry on a business of regulated activities. Individuals acting on behalf of an authorized firm must have proper authority in the firm. They are not required to be separately approved by the ASIC but the licence holder is to maintain a record of all persons holding proper authority.

34. Firms seeking approval from the ASIC must satisfy it that they can perform their duties “efficiently and honestly”. In this regard, they must satisfy the ASIC that they have adequate resources and their responsible officers have appropriate educational qualification and experience and are generally of good fame and character.

**Financial Services Bureau  
12 February 2001**

## The Regulatory Framework for a Licensed Corporation and an Exempt Authorized Institution

### Abbreviations used in the table

AI = Authorized Financial Institution

BAB = Banking (Amendment) Bill 2000

BO = Banking Ordinance

HKMA = Hong Kong Monetary Authority

LC = Licensed Corporation

LR = Licensed Representative

SFC = Securities and Futures Commission

SF Bill = Securities and Futures Bill

The Ordinance = Securities and Futures Bill

Type 1 = Type 1 regulated activity = dealing in securities

Type 2 = Type 2 regulated activity = dealing in futures contracts

Type 3 = Type 3 regulated activity = trading in leveraged foreign exchange contracts

Type 4 = Type 4 regulated activity = advising on securities

Type 5 = Type 5 regulated activity = advising on futures contracts

Type 6 = Type 6 regulated activity = advising on corporate finance

Type 7 = Type 7 regulated activity = providing automated trading services

Type 8 = Type 8 regulated activity = providing securities margin financing

Type 9 = Type 9 regulated activity = providing asset management

✓ = corresponding regulatory provisions in the SF Bill

○ = corresponding or relevant regulatory provisions in the BAB / the BO

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
<i>V - Licensing and Exemption</i>				
114(1) – Restriction on carrying on a business in a regulated activity	114(2)(a) & (c)	- The restriction does not apply to a corporation licensed or authorized for that regulated activity under clause 115 or 116 or clause 95.	114(2)(b) ✓	- The restriction does not apply to an AI exempted for the regulated activity under clause 118.
114(3) – Restriction on performing any regulated function	114(4)(a)& (c)	- The restriction does not apply to an individual licensed under clause 119 or 120 who carries on for his principal, or being an employee of a person authorized under clause 95, for that regulated activity.	114(4)(b) ✓	- The restriction does not apply to an individual whose name is entered in a register maintained by HKMA under section 20 of the BO as employed by an exempt AI, and who carries on for the exempt AI that regulated activity (clause 4 of the BAB).
115 and 118 – Granting of a licence or a declaration of exemption	115(1)	- SFC may upon application grant to a corporation. a licence for carrying on such regulated activity as specified in the licence.	118(1) ✓	- SFC may upon application grant to an AI a declaration of exemption for carrying on such regulated activity as specified in the declaration. (Types 3 & 8 are statutory carve out for AIs.)

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
	115(2) & (3)	<ul style="list-style-type: none"> <li>- SFC shall not grant a licence unless the applicant :               <ul style="list-style-type: none"> <li>• is a company or an overseas company as defined</li> <li>• is fit and proper (see below in respect of clause 128)</li> <li>• has lodged for approval of 2 individuals as the responsible officers</li> <li>• is capable of complying with the Financial Resources Rules; and has lodged security with SFC or maintained insurance against risks prescribed by SFC</li> <li>• has lodged for approval suitable premises for keeping records and documents</li> </ul> </li> </ul>	118(4) <input checked="" type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<ul style="list-style-type: none"> <li>- SFC shall not grant a declaration of exemption unless the applicant :               <ul style="list-style-type: none"> <li>• is an AI</li> <li>• is fit and proper (see below in respect of clause 128)</li> <li>• has lodged for approval of 2 individuals as executive officers under section 71D of the BO (clause 9 of the BAB).</li> <li>• is in compliance with the stringent capital adequacy and liquidity requirements as prescribed in Parts XVII and XVIII of, and the Third and Fourth Schedules to, the BO</li> <li>• is keeping its records and documents in a manner not contrary to the extensive power of HKMA under section 56 of the BO to require the production of records and documents for examination purpose</li> </ul> </li> </ul>
115, 117 and 118 – conditions attached to a licence or a declaration of exemption	115(5) 117(1) (a)(ii)	- A licence is subject to conditions that include the requirement to make available at least one responsible officer available to supervise the regulated activity.	118(5) 118(8)(a) <input checked="" type="checkbox"/>	- A declaration of exemption is subject to conditions that include the requirement to make available at least one executive officer to supervise the regulated activity.
	115(7)	- An LC shall not use a name other than that as specified in the licence.		- Notwithstanding without a specific statutory provision, an AI is expected and where needed, will be required to use the name as specified in the declaration of exemption.
	117(1)(c)	- SFC shall have absolute discretion to require a corporation licensed for Type 7 regulated activity to apply for an authorization under clause 95 to provide automated trading services.	118(8)(b) <input checked="" type="checkbox"/>	- SFC shall have absolute discretion to require an AI exempted for Type 7 regulated activity to apply for an authorization under clause 95 to provide automated trading services.

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
119 – Representatives to be licensed	119(1)	- SFC may upon application grant to an individual a licence for performing such regulated activity as specified in the licence, subject to the conditions attached.	○	- HKMA shall, upon receiving the information submitted by an exempt AI, enter in the register maintained under section 20 of the BO (clause 4 of the BAB) the names of the employees the exempt AI employs to perform any regulated function.  Please refer to para.10 of the paper for the working of the register, including the circumstances under which an employee should not be registered, thus not being able to perform for or on behalf of an exempt AI the regulated function.
121 – Approval and transfer of accreditation	121	- SFC may, upon application, approve the accreditation of an LR to a principal or approve the transfer of an LR's accreditation from one principal to another.	○	- Please refer to para.10 of the paper for the working of the register, including the circumstances under which an employee would not be registered, thus not being able to perform for or on behalf of an exempt AI the regulated activity.
122 – Commission to be notified if licensed representative ceases to act for principal	122(1)	- If an LR ceases to act for or on behalf of the principal, the principal shall notify SFC of such cessation and the LR shall return the licence to SFC.	○	- An exempt AI is required under section 20 of the BO (clause 4 of the BAB) to notify HKMA, if its employee whose name is entered in the register maintained thereunder ceases to perform for or on behalf of it the regulated activity.
123 – Duplicate licence, etc.	123(1)	- An LC and an LR may apply to SFC for a duplicate licence on the ground that the licence is lost, defaced or destroyed.	123(1) ✓	- An exempt AI may apply to SFC for a duplicate declaration of exemption on the ground that the exemption is lost, defaced or destroyed.
124 – Requirement for executive officers	124(1)	- A corporation licensed under clause 115 shall not carry on any regulated activity unless it has at least 2 approved responsible officers.	124(2) ✓	- An exempt AI shall not carry on any regulated activity unless it has at least 2 approved executive officers.

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
125 – Approval of responsible officers	125	- The approval of a responsible officer by SFC shall be in accordance with the prescribed criteria and subject to conditions.	○	- The approval of an executive officer by HKMA shall be in accordance with the prescribed criteria that mirror the corresponding provisions in the SF Bill and subject to conditions. The mechanism is set out in sections 71C to F of the BO (clause 9 of the BAB).
126 – Variation of types of regulated activity	126(1)	- SFC may upon application vary the regulated activity specified in the applicant's licence by adding to or reducing the regulated activity.	126(1) ✓	- SFC may upon application vary the regulated activity specified in the applicant's exemption by adding to or reducing the regulated activity.
127 – A person seeking approval as regards any matter under Part V shall provide SFC with such information as it may reasonable require	127(1)	- Clause 127 applies to an LC and an LR as is applicable.	127(1) ✓	- Clause 127 applies to an exempt AI as is applicable.
128 – Determination of "fit and proper"	128	- In determining the fitness and properness in relation to an LC, SFC shall have regard to the fitness and properness of the corporation as well as any of its officers.	128 ✓	- In determining the fitness and properness in relation to an exempt AI, HKMA shall have regard to the fitness and properness of the AI as well as its directors, managers and executive officers.
129 – Suitability of premises for storing records and documents	129	- An LC shall keep the relevant records or documents in premises approved by SFC.	○	- An AI shall keep its records and documents in a manner not contrary to the extensive power of HKMA under section 56 of the BO to require the production of records and documents for examination purpose.
130 – Restriction on substantial shareholdings	130	- Substantial shareholders of an LC have to be approved by SFC.	○	- <a href="#">Shareholder controllers of an AI have to be approved by HKMA under section 70 of the BO.</a>



Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
131 – Modification or waiver of requirements	131(1) & (7)	<ul style="list-style-type: none"> <li>- The Commission may upon application by an LC or an associated entity which is not an AI, grant a modification or waiver of various requirements applicable to it; or may make rules for the granting of a class waiver.</li> </ul>	131(1) & (7) ✓	<ul style="list-style-type: none"> <li>- The Commission may upon application by an exempt AI or an associated entity which is an AI, grant a modification or waiver of various requirements applicable to it; or may make rules for the granting of a class waiver.</li> </ul>
132 – Events to be reported by licensed persons and exempt persons	132(1), (2), (3) & (6)	<ul style="list-style-type: none"> <li>- A licensed person shall report to SFC on -               <ul style="list-style-type: none"> <li>• intended cessation of the business</li> <li>• intended change of the address at which he proposes to carry on a regulated activity</li> <li>• change of such particulars supplied in an application under this Part as may be prescribed in rules</li> </ul> </li> <li>- A licensed person shall report to SFC on change of directors.</li> </ul>	132(1), (2) & (3) ✓  ○	<ul style="list-style-type: none"> <li>- An exempt AI shall report to SFC and HKMA on -               <ul style="list-style-type: none"> <li>• Intended cessation of the business</li> <li>• Intended change of the address at which he proposes to carry on a regulated activity</li> <li>• change of such particulars supplied in an application under this Part as may be prescribed in rules</li> </ul> </li> <li>- Directors of an AI have to be approved by HKMA under section 71 of the BO.</li> </ul>
133 – Commission to maintain register of licensed persons and exempt persons	133(1)	<ul style="list-style-type: none"> <li>- SFC shall maintain a register of LCs.</li> <li>- SFC shall maintain a register of LR.s.</li> </ul>	133(1) ✓  ○	<ul style="list-style-type: none"> <li>- SFC shall maintain a register of exempt AIs.</li> <li>- HKMA shall maintain a register of persons employed by an exempt AI in respect of the regulated activity under section 20 of the BO (clause 4 of the BAB).</li> </ul>
134 – Publication of names of licensed persons and exempt persons	134(1)	<ul style="list-style-type: none"> <li>- SFC shall publish the names of LCs and LR.s and such conditions of their licences, etc as SFC considers appropriate.</li> </ul>	134(1) ✓	<ul style="list-style-type: none"> <li>- SFC shall publish the names of exempt AIs and such conditions of their exemptions, etc as SFC considers appropriate.</li> </ul>

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
135 – Annual fee and return	135(1)	- A corporation licensed under clause 115 and a person licensed under clause 119(1) shall pay such annual fee to SFC as may be prescribed by rules.	135(1) ✓	- An exempt AI shall pay such annual fee to SFC as may be prescribed by rules.  - There is no annual fee payable direct by persons entered in the register maintained by HKMA under section 20 of the BO (clause 4 of the BAB). This is in line with the fee structure imposed by the HKMA on AIs that an institution-based approach is adopted.
	135(4)	- A licensed person other than a temporary or provisional licensee shall submit an annual return to SFC.	○	- An exempt AI shall submit a half-yearly return to HKMA on its securities related activities in accordance with the notice under section 63(2) of the BO.
137 – Procedural requirements	137	- SFC shall comply with prescribed procedural requirements in coming to and giving notification of a decision with respect to an application made or the imposition, amendment or revocation of a condition under Part V.	137 ✓	- SFC shall comply with prescribed procedural requirements in coming to and giving notification of a decision with respect to an application made or the imposition, amendment or revocation of a condition under Part V.
<b><i>VI - Capital Requirements, Client Assets, Records and Audit</i></b>				
<b><i>Division 2 - Capital Requirements</i></b>				
141 – Financial Resources Rules 142 – Failure to comply with financial resources rules 143 – Monitoring compliance with financial resources rules		- An LC shall comply with the financial resources rules made by SFC.	○	- An AI shall comply with the stringent capital adequacy and liquidity requirements prescribed in Parts XVII and Part XVIII of, and the Third and Fourth Schedules to, the BO.
<b><i>Division 3 - Client Assets</i></b>				

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
144 – Clients securities held by intermediaries and their associated entities	144	- An LC and an associated entity which is not an AI shall comply with the rules in respect of the treatment of client securities and collateral of an intermediary.	144 ✓	- An exempt AI and an associated entity which is an AI shall comply with the rules in respect of the treatment of client securities and collateral of an intermediary.
145 – Client money held by licensed corporations and their associated entities	145	- An LC and an associated entity which is not an AI shall comply with the rules in respect of the treatment of client money of an intermediary.	○	- <i>One of the primary objective of the BO is to regulate the business of taking deposits, and an AI is accordingly subject to the prudential supervision (e.g. large exposures, liquidity, capital adequacy, provision adequacy, etc) thereunder that aims at protecting depositors' interest. The acceptance and treatment of client money are already the core of AIs supervision.</i>
146 – Claims and liens not affected	146	- The existence of any lawful claim or lien does not relieve an LC or an associated entity which is not an AI of the duty to comply with the rules under clause 144 or 145 that apply to it.	146 ✓	- The existence of any lawful claim or lien does not relieve an exempt AI or an associated entity which is an AI of the duty to comply with the rules under clause 144 or 145 that apply to it.
<b><i>Division 4 – Records</i></b>				
147 – Keeping of accounts and records by intermediaries and their associated entities	147	- An LC and an associated entity which is not an AI shall comply with the rules in respect of the keeping of accounts and records.	147 ✓	- An exempt AI and an associated entity which is an AI shall comply with the rules in respect of the keeping of accounts and records.
148 – Contract notes, receipts, statements of account and notifications by intermediaries and their associated entities	148	- An LC and an associated entity which is not an AI shall comply with the rules in respect of the provision of contract notes, receipts, statements of account and notifications.	148 ✓	- An exempt AI and an associated entity which is an AI shall comply with the rules in respect of the provision of contract notes, receipts, statements of account and notifications.

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)
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<i>Division 5 – Audit</i>				
149 – Auditor to be appointed  150 – Notification of proposed change of auditors	149  150	- An LC and an associated entity which is not an AI shall appoint an auditor; and shall notify SFC of the auditor’s name and address, as well as any subsequent changes, in the prescribed manner.	○	- An AI shall comply with the Companies Ordinance in respect of the audit of a company’s account; and notify HKMA of any change in auditor under section 59A of the BO. An auditor appointed for the purpose of section 63(3) or (3A) of the BO requires the approval by HKMA under section 63(3B).
151 – Notification of end of financial year	151(1)	- An LC and an associated entity which is not an AI shall notify SFC of the date on which their financial year ends.	○	- An AI shall notify HKMA of the date on which their financial year ends, as required under section 59B to the BO (clause 6 of the BAB).
	151(2)	- An LC and an associated entity which is not an AI shall not alter its financial year end or adopt a period in excess of 12 months as its financial year without the approval of SFC.	○	- An AI shall not alter its financial year-end or adopt a period in excess of 12 months as its financial year without the approval of HKMA, as required under section 59B to the BO (clause 6 of the BAB).
152 – Audited accounts, etc. to be submitted by licensed corporations and their associated entities	152(1)	- An LC and an associated entity which is not an AI shall prepare the financial statements and other documents prescribed by rules and submit them together with the auditor’s report to SFC.	○	- An AI shall prepare the financial statements and submit such other information as may be required by HKMA pursuant to section 60 of the BO.

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
	152(2)	<ul style="list-style-type: none"> <li>- An LC and an associated entity which is not an AI shall upon cessation of carrying on the activities regulated under the SF Bill or being an associated entity (as the case may be), prepare the financial statements and other documents prescribed by rules and submit them together with the auditor's report to SFC.</li> </ul>		<ul style="list-style-type: none"> <li>- Notwithstanding without a specific statutory provision, upon revocation of an AI's licence, HKMA requires an AI to submit its financial statements with a certificate issued by its external auditors.</li> </ul>
153 – Auditors to lodge report with Commission in certain cases	153(1) & (3)	<ul style="list-style-type: none"> <li>- An auditor of an LC or an associated entity which is not an AI shall lodge with SFC a written report on any reportable matter including any matter that constitutes a failure to comply with the prescribed requirements; that in his opinion adversely affects to a material extent the financial position of the LC or associated entity; as well as any proposed qualification or adverse statements on any financial statements.</li> </ul>	<p style="text-align: center;">○</p> <p style="text-align: center;">✓</p> <p style="text-align: center;">153(1)(a) &amp; (3)</p>	<ul style="list-style-type: none"> <li>- An auditor of an AI shall submit to HKMA a written report on any matter that in his opinion adversely affects to a material extent the financial position of the AI and the reasons for such opinion as required under section 63A to the BO (clause 8 of the BAB); as well as any proposed qualification or adverse statements on any financial statements as required under section 59A(2)(c) of the BO. Section 63(3) of the BO also empowers HKMA to require an AI to submit a report by auditor(s) appointed by the AI as to whether or not a return submitted pursuant to section 63(1) or information submitted pursuant to section 63(2) by the AI is correctly compiled, in all material respects, from the books and records of the AI and, if not so correctly compiled, the nature and extent of the incorrectness.</li> <li>- An auditor of an associated entity which is an AI shall lodge with SFC and HKMA a written report on any reportable matter that constitutes a failure to comply with the prescribed requirements.</li> </ul>
	153(2)	<ul style="list-style-type: none"> <li>- An auditor of an LC or an associated entity which is not an AI shall notify SFC if he ceases to act as such auditor.</li> </ul>		<p style="text-align: center;">○</p>

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
155 – Power of Commission to appoint auditors	155	<ul style="list-style-type: none"> <li>- SFC may appoint an auditor to examine and audit the accounts and records of an LC and its associated entity that is not an AI, if it has reasonable cause to believe the LC or relevant entity fails to comply with certain specified requirements.</li> </ul>	155 <input checked="" type="checkbox"/>  <input type="checkbox"/>	<ul style="list-style-type: none"> <li>- SFC may, after consultation with HKMA, appoint an auditor to examine and audit the accounts and records of an associated entity that is an AI, if it has reasonable cause to believe the relevant entity fails to comply with certain specified requirements.</li> <li>- HKMA may, in accordance with section 59(2) of the BO, require an AI to appoint an auditor (whose appointment has to be approved by HKMA) to examine and audit its accounts and records, or such other matters as HKMA may reasonably require for the exercise of its functions under the BO.</li> </ul>
156 – Commission may appoint auditors on application of clients	156	<ul style="list-style-type: none"> <li>- SFC may appoint an auditor to examine and audit the accounts, records and client assets of an LC and its associated entity which is not an AI, upon application of a client alleging that the LC fails to account to him for client assets and to act in accordance with his instructions.</li> </ul>	156 <input checked="" type="checkbox"/>  <input type="checkbox"/>	<ul style="list-style-type: none"> <li>- SFC may, after consultation with HKMA, appoint an auditor to examine and audit the accounts, records and client assets of an associated entity that is an AI, upon application of a client alleging that the entity fails to account to him for client assets and to act in accordance with his instructions.</li> <li>- HKMA shall under section 55(2)(a) of the BO investigate the books, accounts and transactions of an AI, on application by shareholders holding not less than one-third of issued shares or depositors accounting for not less than one-tenth of total deposit liabilities in HK.</li> </ul>
<b><i>VII - Business Conduct, etc</i></b>				
<b><i>Division 2 - Business Conduct</i></b>				
163 – Business conduct of intermediaries and their representatives	163(1)	<ul style="list-style-type: none"> <li>- An LC and an LR shall comply with the business conduct rules made by SFC.</li> </ul>	163(1) <input checked="" type="checkbox"/>	<ul style="list-style-type: none"> <li>- An exempt AI and an employee of an exempt AI whose names is entered in the register maintained by HKMA under section 20 of the BO (clause 4 of the BAB) shall comply with the business conduct rules made by SFC.</li> </ul>

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
164 – Codes for business conduct	164(1)	- An LC and an LR shall comply with the codes of business conduct made by the SFC.	164(1) ✓	- An exempt AI and an employee of an exempt AI whose names is entered in the register maintained by HKMA under section 20 of the BO (clause 4 of the BAB) shall comply with the codes of business conduct made by SFC.
	164(4)	- A failure on the part of an LC or an LR to comply with the provisions of any code of conduct may be taken into account in considering whether he is fit and proper to remain licensed.	164(4) ✓	- A failure on the part of an exempt AI or an employee of an exempt AI whose name is entered in the register maintained by HKMA under section 20 of the BO (clause 4 of the BAB) may be taken into account in considering whether he is fit and proper to remain exempt, or to remain entered in the register (as the case may be).
<b><i>Division 4 - Other Requirements</i></b>				
168 - Requirements for options trading	168(1)	- SFC may make rules prohibiting a corporation licensed for Type 1 or 2 regulated activity, except in accordance with the rules, from transacting in Hong Kong or holding itself as being prepared to transact any dealing whereby it confers an option upon any person to sell to or purchase from it listed securities or futures contracts traded on a recognized futures market.	168(1) ✓	- SFC may make rules prohibiting an AI exempted for Type 1 or 2 regulated activity, except in accordance with the rules, from transacting in Hong Kong or holding itself as being prepared to transact any dealing whereby it confers an option upon any person to sell to or purchase from it listed securities or futures contracts traded on a recognized futures market.
169 – Certain agreements not to be made during unsolicited calls	169(1)	- An LC shall not make certain agreements with other persons during or as a result of unsolicited calls.	169(1) ✓	- An exempt AI shall not make certain agreements with other persons during or as a result of unsolicited calls.
170 – Certain representations prohibited	170(1)	- An LC and an LR shall not represent that its or his abilities or qualifications have been endorsed or warranted by the Government or SFC.	170(1) ✓	- An exempt AI and an employee whose name is entered in the register maintained by HKMA under section 20 of the BO (clause 4 of the BAB) shall not represent that its or his abilities or qualifications have been endorsed or warranted by the Government or SFC.

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
<i>Schedule – Savings, Transitional, Consequential and Related Provisions, etc</i>				
<i>Part V of this Ordinance (Licensing and Exemption) (Covering key areas only)</i>				
<p>Corporations other than exempt dealers and exempt investment advisers</p> <p>And</p> <p>Persons who are exempt dealers or exempt investment advisers</p> <p>And</p> <p>Licensed banks</p>	22-24	<p>- A corporation (or its director / representative) registered, licensed or exempted (other than an AI) immediately before the commencement of the Ordinance shall be regarded as licensed under the respective provisions of the Ordinance for the relevant regulated activity and having complied or exempted from complying with the requirements relating to responsible officers, for a period of 2 years.</p>	<p>25-26 32-33</p> <p>✓</p> <p>○</p>	<p>- An exempt person which is an AI shall be regarded as exempted under section 118 of the Ordinance for the relevant regulated activity for a period of 2 years.</p> <p>- A licensed bank shall be regarded as exempted under section 118 of the Ordinance for types 4, 6 and 9 regulated activities for a period of 2 years.</p> <p>- An employee of an exempt person which is an AI or a licensed bank, who immediately before the commencement of Part V of the Ordinance perform any act which would constitute a regulated function, shall be regarded as having his name entered in the register maintained by HKMA under section 20 of the BO (clause 4 of the BAB) in respect of the relevant regulated activity for a period of 2 years.</p> <p>- The requirements as regards executive officers have no application to the above-referred exempt person and licensed bank during the 2-year transitional period, pursuant to section 71F of the BO (clause 9 of the BAB).</p>
	52(1)	<p>- The 2-year transitional period is extendable pending final determination by SFC of the corresponding application for admission to the new regime, provided that the application is submitted prior to the expiry of the 2-year transitional period.</p>	52(1) ✓	<p>- The 2-year transitional period is extendable pending determination by SFC of the corresponding application for admission to the new regime, provided that the application is submitted prior to the expiry of the 2-year transitional period.</p>



Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
Regulatory requirements during the 2 year transitional period	52(4)	<ul style="list-style-type: none"> <li>- A corporation (or its director / representative) regarded as licensed shall comply with the provisions of the Ordinance subject to the necessary modifications during the 2 year transitional period.</li> </ul>	52(4) ✓	<ul style="list-style-type: none"> <li>- An AI regarded as exempted shall comply with the provisions of the Ordinance subject to the necessary modifications during the 2-year transitional period.</li> </ul>
	54	<ul style="list-style-type: none"> <li>- The conditions that have been attached to a registration, licence or an exemption before the commencement of the Ordinance shall be regarded as being imposed on the person who has been regarded as licensed through the transitional arrangements.</li> </ul>	52(5) ✓	<ul style="list-style-type: none"> <li>- An employee regarded as having his name entered in the register maintained by HKMA under section 20 of the BO (clause 4 of the BAB) shall comply with the provisions of the Ordinance subject to the necessary modifications during the 2-year transitional period.</li> </ul>
			54 ✓	<ul style="list-style-type: none"> <li>- The conditions that have been attached to an exemption before the commencement of the Ordinance shall be regarded as being imposed on the person who has been regarded as exempted through the transitional arrangements.</li> </ul>

**Securities and Futures Bill  
Part V**

**Derivation Table**

**Legend:**

CTO – Commodities Trading Ordinance (Cap. 250)

FSMA – Financial Services and Markets Act 2000 (U.K.)

LFETO – Leveraged Foreign Exchange Trading Ordinance (Cap. 451)

PIO – Protection of Investors Ordinance (Cap. 335)

SFCO – Securities and Futures Commission Ordinance (Cap. 24)

SMFAO – Securities (Margin Financing)(Amendment) Ordinance 2000 (Ord. No. 20 of 2000)

SO – Securities Ordinance (Cap. 333)

sc. - subclause

Clause	Contents	Derivation	Notes
	<b>PART V – LICENSING AND EXEMPTION</b>		
113	Interpretation : Part V	New	

114	Restriction on carrying on business in regulated activities, etc	New; CTO ss. 26(5), 27(4), 28(1) & (2) & 29(1) & (2); SO ss. 48(1) & (2), 49(1) & (2) & 50(2); SMFAO ss. 121B(3), 121C, 121D & Schedule 4; LFETO ss. 3, 4(a) & 6	<p>Subclauses (1) – (4) are new, though the substance of prohibiting unlicensed or unregistered conduct of regulated activity, save by exempt persons, reflects the existing law.</p> <p>Subclause (5) reflects s.121B(3) and items 4, 7, 8 &amp; 9 of the Schedule 4 of the SMFAO, whereas sc.(6) reflects s.121C(3).</p> <p>Subclause (7) is loosely based on s. 3(2) of the LFETO, but cast as an offence of without reasonable excuse and with the addition of a daily fine for continuing offences. Subclause (8) follows the elements of sc. (7).</p>
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- 115 Corporations to be licensed for carrying on regulated activities New; CTO ss.30, 31, 32 & 33A; SO ss.51, 53, 53A; SMFAO s. 121E; LFETO s. 7
- Whereas sc. (1) follows existing law, sc.2(a) introduces the requirement that only certain types of bodies corporate are eligible to be licensed as an entity. Such requirement is found in the LFETO and the SMFAO and is considered to best protect the interests of investors. The requirement in sc.2(b) essentially follows existing law, though extends to directors of licensed corporations with executive involvement in, or responsibility for, the conduct of regulated activity.
- Subclause 3(a) and (b) follow existing law, whereas sc.3(c)(i) reflects and extends the security deposit scheme that was introduced in the SMFAO. Subclause 3(c)(ii) is new and facilitates the transfer of licensed corporations to full fidelity insurance cover.
- Subclauses (4), (5) and (7) follow the existing law, whereas sc.(6) is new. Subclause (8) is new and deals with a corporation licensed to provide ATS that becomes authorized under Part III as an ATS provider.
- 116 Grant of temporary licenses to corporations for carrying on regulated activities New
- This clause essentially reflects the current practice of the Commission, although it has not been made explicit in the current law.

117	Licensing conditions in certain cases	New; CTO s. 31; SO s. 52; SFCO s.23; SMFAO s.121K, LFETO s.7(5)	<p>Subclause (1) is in substance a reflection of existing law; sc.(1)(a) being an extension thereof.</p> <p>Subclause (1)(c) is new. It facilitates the regulation of ATS providers to be applied appropriately according to the characteristics of each; those that the SFC considers require authorization under Part III can be required to seek such authorization.</p> <p>Subclause (2) follows existing law.</p>
118	Exempt persons	SO ss.60 & 61	<p>Though building on the current law that permits certain person to apply for a declaration of exemption for the carrying on of limited regulated activity, this clause is essentially new.</p>

119	Representatives to be licensed	SO ss.2 & 50 ; SMFAO s. 121H; CTO ss.2, 28, 29 & 41(4); LFETO s. 6; New	<p>Subclause (1) follows existing law, as essentially does sc.(3) and sc.(5), (7) and (13). Subclause (8) is new and the like appears in various provisions to enhance certainty.</p> <p>Subclause (2) is completely new and introduces the provisional licence category. Subclauses (4), (10), (11) and (12) are also new and relate to this area.</p> <p>Subclause (6) is new to the extent that it creates an obligation beyond the update of addresses contained in the annual return required under the existing law. The obligation to keep the SFC apprised of contact details serves to ensure that the SFC can always effect service of notices, including disciplinary process. The modified service provision in clause 138 follows this up.</p>
120	Temporary licence for representatives	New	This clause complements clause 116.
121	Approval and transfer of accreditation	New	<p>This provision is a codification of the practice of the SFC and reflects the spirit of s. 23 of the SFCO.</p> <p>Subclause (4) is to facilitate the accreditation of a temporarily licensed representative to a licensed corporation that is part of the same group as the individual's principal.</p>

122	Commission to be notified, etc. if licensed representative ceases to act for principal	SO s. 63(4); CTO s. 41(4); LFETO s. 14(5); New	The opening lines of sc. (1) and paragraph (a) accord with the current law. Paragraphs (1)(b) and (c) are new; the latter being introduced to deal with the problematic situation that arises under the current law whereby a representative may leave the employment of his principal and yet remain registered. Subclause (2) has an updated penalty level.
123	Duplicate licence, etc.	New	See s.146(1)(i) of the SO.
124	Requirement for executive officers	CTO s.26(2) & (3); SO ss. 48(1A), 49(1A), 49C, 49D; SMFAO s. 121I; LFETO s. 5	The requirement in the current law for a responsible director (LFETO), an approved director (SMFAO), a dealing director (SO) or a supervisory director (CTO) is developed in this clause. The base requirement is now 2 responsible officers and, in addition, every executive director (defined in clause 113(1) similar to the formula in s.48(1A) of SO) must also be a licensed representative and approved as a responsible officer. The requirement in sc.(2) is new. The penalty level in sc.(3) is substantially lower than in s. 5(3) of the LFETO.
125	Approval of responsible officers	New	Codifying the Commission's approach to the granting of such approvals.

126	Variation of types of regulated activity	New	To make the single-licence concept work, provision must be made for variation of the types of regulated activity for which a person is licensed. The same applies to exempt persons.
127	Applicant to provide information	CTO s.32(1)(a)(i) & (1)(b)(i); SO s. 53(1)(a)(i) & (1)(b)(i); SFCO ss.23(4), 24 & 26A(3) & (4); SMFAO s. 121F(2) & (3); LFETO s. 8(a)	Subclauses (1) and (2) essentially follow the current law and current practice of the Commission. Subclause (3) is new.
128	Determination of “fit and proper”	SFCO s. 23; LFETO s. 9; SMFAO ss. 121G(5) – (7) & 121H(3) – (5)	This clause essentially follows existing law, but with refinements and adapted to refer also to the role of the HKMA in relation to exempt persons and executive officers.
129	Suitability of premises for storing records and documents	SFCO s.27; LFETO s. 16	This clause follows existing law, save that prior approval is now required.
130	Restriction on substantial shareholdings	SFCO s. 26A; LFETO s. 14A	This clause essentially follows the existing law, though it has been somewhat rearranged and restated. For example sc. (2) is new in form though not in substance. Subclause (3) is new in that it enables a person who has unwittingly become a substantial shareholder and who applies promptly for approval to avoid liability for breach of sc.(1).



131	Modification or waiver of requirements	SFCO ss.29, 29AA & 55A; SMFAO s. 121BE; LFETO s. 69	The scope of matters which may be the subject of a modification or waiver, whether upon application or a class waiver granted by the SFC have been expanded in keeping with the approach taken in s.121BE of the SMFAO (from which provision this clause is principally derived). Subclause (8) derives from s.29AA(4)(b) . Subclauses (11) & (12) are new.
132	Events to be reported by licensed persons and exempt persons	CTO s. 41; SO s. 63; LFETO s. 14	Subclauses (1) & (2) are existing law, save that advance notice is now required and, as they now extend to exempt persons, reporting to the HKMA is also required. Subclause (3) is largely derived from s. 63(1)(b) of the SO, though expanded to any applications under this Part. Subclauses (4) and (5) are new, whereas sc.(6) is existing law. The offence and penalty in sc.(7) have been updated.
133	Commission to maintain register of licensed persons and exempt persons	CTO s. 42; SO s. 64; SMFAO s. 121O; LFETO s. 15	This clause is essentially the existing law, but extended to exempt persons. Subclause (4) is new and addresses a requirement under the Protection of Data Privacy Ordinance. Subclauses (5) and (6) are existing law.
134	Publication of names of licensed persons and exempt persons	CTO s. 43; SO s. 65; SMFAO s. 121P; LFETO s. 15(4) - (6)	This clauses follows existing law, save that it provides that the SFC may, in addition to publishing in the Gazette, also publish in such other manner as it considers appropriate.

135	Annual fee and return	SFC (Fees) Rules s. 3; SFCO s. 34	Subclauses (1) to (3) are new, though the requirement to pay an annual fee is in current law. Subsection (4) follows existing law.
136	Prohibition of use of certain titles	CTO s. 106; SO s.142;	This provision represents an extension of the current law in that a greater range of titles or descriptions are specified and also in the exclusion of individuals entered in the register maintained by the HKMA as employed by exempt persons in a regulated activity for which it is exempt. The penalty (absent from CTO) has been updated.
137	Procedural Requirements	New; CTO s. 40; SO s. 53(2) & (3); SMFAO ss.121G(8) & (9) & 121H(6) & (7); SFCO s. 26A(6) & (7); LFETO s. 7(9)	This provision rationalizes procedural requirements scattered around in the existing law, using slightly different language to underline the tentative nature of the preliminary decision. In the process, this clause accords procedural fairness in a wider variety of instances than in the current law.
138	Service of Notices	New; SFCO s. 60; LFETO s. 61	This provision is new in its inclusion of service by facsimile and by electronic mail, and also in deeming service to be effected “for all purposes”. The latter was introduced to ensure that licensed persons cannot frustrate disciplinary or other process by simply changing their address.

139

Amendment of Schedule 6

New; s. 22 & Schedule 2 FSMA

This provision was introduced to accord flexibility in case of need to amend the categories and definitions of what constitutes regulated activity. It was influenced by s.22 and Schedule 2 of the FSMA.