

The Disciplinary 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
 SFC = Securities and Futures Commission
 SF Bill = Securities and Futures Bill

✓ = 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>IX – Discipline, etc</i>		
187 – Disciplinary action in respect of licensed persons, etc	- Disciplinary actions include: (i) Revocation, partial revocation, suspension and partial suspension of the licence of a licensed representative and a licensed corporation, for being guilty of misconduct or not fit and proper;	- Disciplinary actions include: (i) Revocation and partial revocation of the exemption granted to an exempt AI, for being guilty of misconduct or not fit and proper; Removal of an employee from engaging in any regulated function by management of an exempt AI (which would lead to the removal of his name from the register maintained by the HKMA) either
190 - Disciplinary action in respect of exempt persons		

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
		<p>(ii) Revocation and suspension of the approval granted to a person as a responsible officer, for being guilty of misconduct or not fit and proper;</p> <p>(iii) Private and public reprimand against a licensed representative, a licensed corporation, a responsible officer and a person involved in the management of the business of the licensed corporation, for being guilty of misconduct or not fit and proper;</p> <p>(iv) Prohibition against a licensed representative, a licensed corporation, a responsible officer and a person involved in the management of the business of the licensed corporation from applying to become licensed or approved as a responsible officer for a specified period, for being guilty of misconduct or not fit and proper; and</p> <p>(v) imposition of disciplinary fine on a licensed representative, a licensed corporation, a</p>	<p>○</p> <p>○</p> <p>○</p>	<p>voluntarily in accordance with the guidelines issued by the HKMA (which will be based on the relevant treatment of the SFC with respect to a licensed representative) or upon request by the HKMA (the register is to be maintained under clause 4 of the BAB amending section 20 of the BO);</p> <p>(ii) Revocation of the consent granted to a person as an executive officer, for being unable to satisfy the criteria adopted in granting the original consent (clause 9 of the BAB introducing section 71C of the BO);</p> <p>(iii) Private and public reprimand against an exempt AI, for being guilty of misconduct (clause 5 of the BAB introducing section 58A of the BO);</p> <p><u>General</u></p> <p>(iv) The HKMA is already empowered under the BO to take supervisory actions to deal with misconduct or non-compliance issues by an AI. These include issuing direction under section 52 of the BO to order remedial actions, restricting business of an exempt AI, and attaching conditions to the authorization of the concerned exempt AI.</p>

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
		responsible officer and a person involved in the management of the business of the licensed corporation, for being guilty of misconduct or not fit and proper.		
<p>188 – Other circumstances for disciplinary actions in respect of licensed persons, etc</p> <p>190 - Disciplinary action in respect of exempt person</p>	188	<p>- A licence may be revoked, partially revoked, suspended or partially suspended under the following circumstances:</p> <p>(i) facing financial difficulties;</p> <p>(ii) being affected by mental illness or in the case of a licensed corporation, one of the directors being affected by mental illness;</p> <p>(iii) having committed an offence or in the case of a licensed corporation, also one of the directors having committed an offence;</p> <p>(iv) having ceased the activities for which the licence is granted;</p> <p>(v) having requested the SFC for the revocation or suspension;</p> <p>(vi) in respect of providing automated trading services, having been requested to make an application for an authorization under clause 95 and failed to do so, or the relevant application having been rejected;</p> <p>(vii) having passed away or in the case of a licensed corporation, ceased to exist (for example, wound up);</p>	<p>190</p> <p>✓</p> <p>✓</p> <p>○</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>118(7)</p> <p>✓</p>	<p>- An exemption may be revoked, partially revoked or suspended (with respect to item (viii) below) under the following circumstances:</p> <p>(i) facing financial difficulties;</p> <p>(ii) comparable arrangements under Schedules 7 and 8 to the BO (see paragraph 16 and footnote 5 of main paper);</p> <p>(iii) having committed an offence;</p> <p>(iv) having ceased the activities for which the exemption is granted;</p> <p>(v) having requested the SFC for the revocation;</p> <p>(vi) in respect of providing automated trading services, having been requested to make an application for an authorization under clause 95 and failed to do so, or the relevant application having been rejected;</p> <p>(vii) having ceased to be an AI;</p>

Clause reference in the SF Bill / Caption	Brief Description (Licensed Persons)		Brief Description (Exempt AIs)	
		(viii)having failed to pay an annual fee (plus the accrued interest) within 3 months of the original due date; (ix) having failed to submit an annual return within 3 months of the original due date.	✓ ○	(viii)having failed to pay an annual fee (plus the accrued interest) within 3 months of the original due date; (ix) comparable requirement under the BO for submission of half-yearly returns, failure to comply with which is a criminal offence.
192 – Effect of suspension under Part IX	192(1)	- mirror clause as clause 192(3)	192(3) ✓	- mirror clause as clause 192(1)
193 – General provisions relating to exercise of powers under Part IX	193(1), (2) & (5)	- clause 193(1), (2) and (5) applicable to both licensed persons and exempt AIs - clause 193(3) and (4) are a pair and are about the power of the SFC to settle with licensed persons on disciplinary proceedings	193(1), (2) & (5) ✓	- clause 193(1), (2) and (5) applicable to both licensed persons and exempt AIs - clause 192(3) and (4) have no application to exempt AIs as the applicable disciplinary sanction administered by the SFC relates to revocation of exemption, which invariably involves serious matters not falling within the scope of matter that should be settled
194 – Requirement to transfer records upon revocation or suspension of licence or exemption		- same clause applicable to both licensed persons and exempt AIs	✓	- same clause applicable to both licensed persons and exempt AIs
195 – Permission to carry on business operations upon revocation or suspension of licence or exemption		- same clause applicable to both licensed persons and exempt AIs	✓	- same clause applicable to both licensed persons and exempt AIs