

PART V

LICENSING AND ~~EXEMPTION~~ REGISTRATION**113. Interpretation of Part V**

(1) In this Part, unless the context otherwise requires -
"executive director" (執行董事), in relation to a licensed

corporation, means a director of the corporation who -

(a) actively participates in; or

(b) is responsible for directly supervising,
the business of a regulated activity for which the
corporation is licensed;

"prescribed fee" (訂明費用) means a fee prescribed by rules made
under section 382;

"prescribed manner" (訂明方式) means such manner as is prescribed by
rules made under section 384¹;

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

"specified titles" (指明稱銜) means the titles specified in column 2
of Schedule 6A².

"regulated function" (受規管職能), in relation to a regulated
activity carried on as a business by any person, means any

¹ We accept the comment of the Legal Service Division of the Legislative Council that it would be clearer to put in a definition of "prescribed manner".

² The amendment is consequential to the relocation of titles which use is subject to restriction under clause 136 to a separate Schedule. See footnote 39.

function performed for or on behalf of or by arrangement with the person relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier.

(2) In this Part, a reference to a licence to carry on a regulated activity shall be construed -

(a) in relation to a licensed corporation, as a licence to carry on a business in the regulated activity;

and

(b) in relation to a licensed representative, as a licence to perform for or on behalf of or by arrangement with a licensed corporation to which he is accredited any regulated function in relation to the regulated activity.

(3) ~~³In this Part, a reference to a declaration of exemption for carrying on~~ Registration for a regulated activity under section 118 shall be construed as an exemption registration for carrying on a business in the regulated activity.

114. Restriction on carrying on business in regulated activities, etc.

(1) Subject to subsections (2), (5) and (6), no person shall -

(a) carry on a business in a regulated activity; or

³ We accept the comment of some Members that the term “exempt person” is a misnomer and does not reflect the proposed regulatory framework whereby authorized institutions engaging in regulated activities are subject to a whole range of regulatory requirements and disciplinary sanctions. We informed Members at the meeting on 14 September 2001 that we would replace “exempt person” with “registered institution” and “exempt” with “registered” throughout the Bill to duly reflect the policy intention.

(b) hold himself out as carrying on a business in a regulated activity.

(2) Subsection (1) shall not apply to -

(a) a corporation licensed under section 115 or 116 for the regulated activity;

(b) an authorized financial institution ~~exempt~~registered³ under section 118 for the regulated activity; or

(c) a person authorized under section 95(2) for the regulated activity.

(3) Without prejudice to subsection (1) but subject to subsection (4), no person shall -

(a) perform any regulated function in relation to a regulated activity carried on as a business; or

(b) hold himself out as performing such function.

(4) Subsection (3) shall not apply to -

(a) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;

(b) an individual -

(i) ³who carries on for an ~~exempt person~~ registered institution a regulated activity for which the ~~exempt person is~~ exempt registered institution is registered; and

(ii) ³whose name is entered in the register maintained by the Monetary Authority

under section 20 of the Banking Ordinance (Cap. 155) as ~~employed by the exempt person~~ engaged⁴ by the registered institution in respect of the regulated activity; or

- (c) an employee of a person authorized under section 95(2) for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.

(5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more than one of the activities specified in Part 3 of Schedule 6.

(6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate -

- (a) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or
- (b) the continued holding of such securities.

⁴ Amendment consequential to the Committee Stage Amendments proposed to the Banking (Amendment) Bill 2000, as explained to Members on 10 July 2001. The word “engaged” gives a wider catch than “employed”, as a bank may engage a person other than its employees to conduct a regulated activity.

⁵(6A) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding as referred to in subsection (6)(a) and (b), that person is presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used.

(7) Any person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or
- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

⁵ **We accept the comment of some Members expressed at the Bills Committee meeting on 4 July 2001 that the requirement expected from a person for satisfying the exclusion under clause 114(6) should be made clearer. The amendment now provides that if the person has obtained a written confirmation from a borrower, he is taken to have reasonably believed the financial accommodation is not to be used to facilitate the acquisition or continued holding of securities listed on a stock market, unless proved to the contrary.**

Moreover, the SFC will arrange with the Companies Registry, which is responsible for administering the Money Lenders Ordinance, for making known the requirement under clause 114(6) of the SF Bill to money lenders registered under that Ordinance.

(8) Any person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable -

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

6114A. Application of section 114 in relation to conduct or activities outside Hong Kong

(1) If -

(a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any services that he provides; and

(b) such services, if provided in Hong Kong, would constitute a regulated activity.

⁶ **We briefed Members at the Bills Committee meeting on 4 July 2001 that we shall propose a Committee Stage Amendment to reflect clearly our policy intention to cover in this Part of the Bill also those regulated activities conducted overseas but targeting at investors in Hong Kong. We are mindful that the regulatory catch should not be overly wide that catches such overseas service merely by their being available to local investors. We have accordingly proposed to confine the regulatory catch only to those regulated activities actively marketed to the public in Hong Kong. This is in line with the arrangements in overseas jurisdictions. Consequential amendments are proposed to clause 115(2) such that an overseas corporation falling within the regulatory catch as a result is eligible for applying for the requisite licence. We are grateful to those market participants who have provided constructive input to us in defining the scope and drafting these amendments.**

the provision of such services so actively marketed shall be regarded for the purposes of section 114(1) as carrying on a business in that regulated activity.

(2) If -

(a) a person actively markets, whether by himself or another person on his behalf and whether in Hong Kong or from a place outside Hong Kong, to the public any function that he performs; and

(b) such function, if performed in Hong Kong in relation to a regulated activity carried on as a business, would constitute a regulated function,

the performance of such function so actively marketed shall be regarded for the purposes of section 114(3) as performance of that regulated function in relation to that regulated activity.

115. Corporations to be licensed for carrying on regulated activities

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence.

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

(a) the applicant is -

(i) a company; ~~or~~

(ii) an overseas company which has complied with the provisions of Part XI of the

Companies Ordinance (Cap. 32) for the registration of documents; or

°(iii) a corporation (other than a company or an overseas company) -

(A) which carries on a business

principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

(B) to which section 114(1) would not apply but for the provisions of section 114A(1); and

(C) to which Part XI of the Companies Ordinance (Cap. 32) would apply if it established a place of business in Hong Kong;

(b) applications have been lodged under section 125 in respect of such persons as referred to in section 124(1)(a) and (b) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and

(c) an application has been lodged under section 129 for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

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

- (a) it is a fit and proper person to be licensed for the regulated activity;
- (b) it will be able, if licensed, to comply with the financial resources rules; and
- (c) it -
 - (i) has lodged and maintains with the Commission such security in accordance with rules made under subsection (4); or
 - (ii) ~~is insured, in lieu of such security, to the satisfaction of the Commission against risks prescribed by the Commission in accordance with rules made under subsection (4A).~~

(4) The Commission may make rules for the purposes of subsection (3)(c)(i)⁷ that provide for -

- (a) any security to be lodged and maintained by a licensed corporation with the Commission;
- (b) the manner in which the security is lodged;
- (c) the terms on which the security is maintained;
- (d) the Commission's power to apply a security lodged and maintained with the Commission in such

⁷ **Amendments to clause 115(3)(c)(ii) and the addition of clause 115(4A) are technical in nature. They seek to empower the SFC to make rules on insurance coverage required of licensed corporation. They are similar to clause 115(3)(c)(i) and clause 115(4). Consequential amendment is also proposed to clause 117(1)(a)(i)(B).**

circumstances, for such purposes and in such manner as may be prescribed in the rules;

(e) any other matter relating to the security.

⁷(4A) The Commission may make rules for the purposes of subsection (3)(c)(ii) that provide for -

(a) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;

(b) the terms on which the insurance is to be taken out and maintained;

(c) any other matter relating to the insurance.

(5) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

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

(8) Without prejudice to ~~section 117(1)(c)~~ and⁸ the Commission's powers in Part IX, a licence granted to a corporation to carry on Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the corporation's being granted an authorization under section 95(2) to provide automated trading services.

116. Grant of temporary licences to corporations for carrying on regulated activities

(1) The Commission may, upon application by a corporation in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities)⁹ as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that -

- (a) it carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

⁸ The amendment is consequential to the deletion of clause 117(1)(c)(i). See footnote 13.

⁹ The amendment clarifies the range of regulated activities in respect of which an overseas corporation can seek a temporary licence for their activities in Hong Kong (required under clause 116(2)(b) to be incidental to their overseas operation). These activities are dealing in securities, dealing in futures contracts, advising on securities, advising on futures contracts and advising on corporate finance. Moreover, for investor protection, such a temporary licence holder should have responsible officers to supervise its local activities and should not be allowed to hold client assets. We have consulted the market and they are content with the amendments. We propose similar amendments to clause 120 in respect of temporary representative licence.

- (b) it seeks to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity;
- (c) it carries on such business in the activity in the place referred to in paragraph (a) under an authorization (however described) by an authority or regulatory organization in that place which -
- (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;
 - (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
 - (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
- (d) ¹⁰the granting of the licence would not result in it having been granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months;

¹⁰ We accept the comment of the Legal Service Division of the Legislative Council that the provision in the Blue Bill should be improved in order to fully reflect our policy objective that a corporation should not be allowed to conduct any regulated activity for more than 6 months in any 24-month period with a temporary licence. We propose similar amendments to clause 120 in respect of temporary representative licence.

~~(d) in the 24 months immediately before the date on which it lodges the application, it has not carried on a business in the regulated activity in Hong Kong for more than 6 months;~~

(e) it is a fit and proper person to be so licensed for the regulated activity;~~and~~

⁹(ea) it has nominated at least one individual for approval by the Commission for the purposes of subsection (4A)(a); and

(f) an application has been lodged under section 129 for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

⁹(4A) Without limiting the generality of subsection (3), it shall be a condition of a licence granted under subsection (1) for carrying on a regulated activity -

- (a) that, in relation to that regulated activity, there is at least one individual who is -
- (i) nominated by the licensed corporation and approved by the Commission for the purposes of this paragraph; and
- (ii) available at all times to supervise the business of the regulated activity for which the corporation is licensed; and
- (b) that the licensed corporation shall not hold any client assets in carrying on that regulated activity.

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

117. Licensing conditions in certain cases

(1) Without limiting the generality of section 115(5), it shall be a condition of a licence granted under section 115(1) for~~the~~ carrying on ~~of~~¹¹

- (a) a regulated activity -
- (i) that the licensed corporation -
- (A) shall lodge (whether or not in addition to any security that it may have lodged) and maintain with the Commission such security in respect

¹¹ **Minor technical drafting amendment.**

of that regulated activity as may be required by rules made under section 115(4); or

(B) ²is insured, in lieu of lodging (where applicable) and maintaining such security, ~~to the satisfaction of the Commission against risks prescribed by the Commission in~~ accordance with rules made under section 115(4A); and

(ii) that, in relation to that regulated activity, there is at least one responsible officer of the licensed corporation who is available at all times to supervise the business of the regulated activity for which the corporation is licensed;

(b) Type 3 regulated activity, that in relation to any dispute between the licensed corporation and a client regarding or touching upon any matter concerning the carrying on of that regulated activity, the licensed corporation is obliged, if the client so requires, to have the dispute settled by arbitration in accordance with rules made under subsection (2);

(c) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in

writing, the licensed corporation shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2)¹² for that regulated activity, and-

~~_____~~¹³(i) ~~the licence shall be deemed to be revoked—~~

~~(A) where the requirement is not complied with, upon the expiration of the period;~~

~~(B) where the requirement is complied with, upon the determination of the application for such authorization; and~~

~~_____~~(ii) ~~the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the licence under section 188(2)subparagraph¹³;~~

(d) Type 8 regulated activity, that -

(i) the licensed corporation shall carry on no business other than securities margin financing, except business that is necessarily incidental to the carrying on of such business; and

¹² **Minor technical drafting amendment.**

¹³ **Clause 117(1)(c)(i) overlaps with the disciplinary power under clause 188(2). Accordingly, technical amendments are proposed to delete the sub-clause so that the SFC will rely solely on the disciplinary power under clause 188(2). Similar amendments are proposed to clause 118(7) and 118(8).**

(ii) where the licensed corporation carries on a business in one or more than one of the activities specified in Part 3 of Schedule 6, it shall comply with the requirements of such rules made under Part VI as apply to it in relation to such business.

(2) The Commission may make rules for the purposes of subsection (1)(b) that provide for -

- (a) the establishment and functions of an arbitration panel and relevant matters;
- (b) the appointment by the Financial Secretary of members of the arbitration panel, including a chairman and one or more than one deputy chairman;
- (c) the appointment from the arbitration panel of a tribunal to hear a dispute between a licensed corporation and its client and the constitution and composition of the tribunal;
- (d) the liability or entitlement to costs of a party to a dispute and the recovery of costs;
- (e) the practice and procedure in the hearing of a dispute;
- (f) the Commission to use the findings of a tribunal for the exercise of its functions under any of the relevant provisions;
- (g) the exercise of any discretion by a person under the rules.

118. ~~Exempt persons~~ Registered institutions³

(1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, ~~grant a declaration of exemption to~~register the applicant ~~for~~carrying on one or more than one regulated activity (other than Type 3 and Type 8 regulated activities) ~~as the Commission may specify in the declaration of exemption and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.~~

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

(3) Upon receiving an application for ~~an exemption~~ registration for a regulated activity referred to him under subsection (2), the Monetary Authority shall -

- (a) consider the application;
- (b) consult the Commission upon the merits of the application; and
- (c) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be ~~granted the exemption~~registered for that regulated activity.

(4) ~~¹⁴The Commission shall~~

¹⁴ **We accept the comment of some Members expressed at the Bills Committee meeting on 4 July 2001 and propose the amendment to rationalize the respective roles of the SFC and the HKMA in the registration of authorized financial institutions for carrying on a regulated activity.**

~~(a) refuse to grant an exemption to the applicant if the Monetary Authority advises the Commission pursuant to subsection (3) that he is not satisfied; or~~

~~(b) grant an exemption to the applicant if the Monetary Authority advises the Commission pursuant to subsection (3) that he is satisfied,~~

~~that the applicant is a fit and proper person to be granted the exemption~~ In deciding whether to register or to refuse to register an applicant under subsection (1), the Commission -

(a) shall have regard to any advice given to it by the Monetary Authority pursuant to subsection (3); and

(b) may rely wholly or partly on that advice in making that decision.

(5) ~~Any exemption granted~~Any registration under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the ~~exempt person~~ registered institution concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(7) Without prejudice to ~~subsection (8)(b) and~~¹³ the Commission's powers in Part IX, ~~an exemption granted~~

~~the registration of~~ an authorized financial institution ~~to carry on~~
~~a business in for~~ Type 7 regulated activity shall be deemed to be
revoked in respect of that regulated activity upon the
institution's being granted an authorization under section 95(2)
to provide automated trading services.

(8) Without limiting the generality of subsection (5), it
shall be a condition of ~~any exemption granted any registration~~
under this section ~~for carrying on the business of~~ -

(a) a regulated activity, ~~that-~~

~~that,~~ (i) in relation to the regulated

activity, there is at least one executive
officer of the ~~exempt person~~ registered
institution who is available at all times
to supervise the business of the
regulated activity for which the person
is ~~exempt;~~ registered; and

¹⁵ (ii) any individual whose name is entered

in the register maintained by the
Monetary Authority under section 20 of
the Banking Ordinance (Cap. 155) as
engaged by the registered institution in
respect of the regulated activity is a
fit and proper person to be so engaged;

¹⁵ We propose the amendment to impose a statutory obligation on a registered institution to ensure that individuals engaged by it in respect of a regulated activity must be fit and proper. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 4 July 2001. The Law Draftsman has since made minor technical drafting improvement to enhance clarity.**

(b) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the ~~exempt person~~ registered institution shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2)¹² for that regulated activity, and-

~~¹³(i) the exemption shall be deemed to be revoked -~~

~~(A) where the requirement is not complied with,
upon the expiration of the period;~~

~~(B) where the requirement is complied with,
upon the determination of the application
for such authorization; and~~

~~(ii) the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the exemption under subparagraph (i). registration under section 190(2).~~

(9) The Commission shall not exercise its power under subsection (5) or (8)(b) unless the Commission has first consulted the Monetary Authority.

119. Representatives to be licensed

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence for a corporation licensed under section 115 to which he is accredited.

(2) The Commission in its absolute discretion may, upon request by the applicant in the prescribed manner and payment of the prescribed fee, grant to the applicant a provisional licence to carry on, for such corporation, the regulated activity in respect of which the application is made.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) or (2) unless the applicant satisfies the Commission that he is a fit and proper person to be so licensed for the regulated activity.

(4) The Commission shall refuse to grant a licence under subsection (2) unless the applicant satisfies the Commission that the grant of the licence will not prejudice the interest of the investing public.

(5) A licence granted under subsection (1) or (2) shall be subject to the condition specified in subsection (6) and to any other reasonable conditions as the Commission may impose.

(6) It shall be a condition of a licence granted under subsection (1) or (2) that the licensed representative concerned shall -

- (a) at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; and
- (b) inform the Commission of any change in the particulars within 14 days after the change takes place.

(7) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (5) or impose new conditions as may be reasonable in the circumstances.

(8) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (7), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(9) A provisional licence shall be deemed to be revoked -

(a) upon the Commission's refusal of the relevant application made under subsection (1); or

(b) upon the grant of the licence sought under the application,

whichever first occurs.

(10) Without prejudice to the Commission's powers under Part IX, the Commission may, after having regard to the interest of the investing public and in its absolute discretion, revoke a provisional licence granted under subsection (2) by serving a notice in writing on the licensed representative concerned.

(11) On the revocation of a provisional licence under subsection (9) or (10), the person who was formerly the licensed representative under such licence shall return the licence to the Commission within 7 business days after the revocation.

(12) Any person who, without reasonable excuse, contravenes subsection (11) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a

further fine of \$2,000 for every day during which the offence continues.

(13) A licensed representative shall not, when carrying on the regulated activity for which he is licensed under subsection (1) or (2), use a name other than the name specified in the licence.

120. Temporary licence for representative

(1) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities)⁹ as the Commission may specify in the licence -

- (a) for a corporation licensed under section 115 to which he is accredited; or
- (b) for a corporation licensed under section 116 to which he is accredited.

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

- (a) that he carries on in a place outside Hong Kong an activity which, if carried on in Hong Kong, would constitute carrying on the regulated activity, under an authorization (however described) by an authority or regulatory organization in that place which -

- (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;
 - (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
 - (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
- (b) where the application is for a licence under subsection (1)(a), that -
- (i) he carries on the activity referred to in paragraph (a) for or on behalf of a corporation which carries on the activity as a business principally in a place outside Hong Kong under an authorization (however described) by an authority or regulatory organization in that place which -
 - (A) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part; and

- (B) confirms to the satisfaction of the Commission that the corporation has been so authorized; and
- (ii) the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in subparagraph (i);
- (c) where the application is for a licence under subsection (1)(b), that he seeks to be so licensed solely for the conduct of his principal's business in the activity referred to in section 116(2)(a);
- (d) ~~that in the 24 months immediately before the date on which he lodges the application, he has not carried on the regulated activity in Hong Kong for more than 6~~the granting of the licence would not result in him having been granted licences under subsection (1)¹⁶ for respective licence periods that in total exceed 6 months in any period of 24 months; and
- (e) that he is a fit and proper person to be so licensed for the regulated activity.

¹⁶ We accept the market comment that the 6-month restriction should exclude the period during which the conduct of the regulated activity in Hong Kong by an individual is covered by a "usual" representative licence granted under clause 119. The proposed amendment provides that the 6-month period applies only to temporary licences granted under clause 120, such that a former representative licensed under clause 119 can also act for a temporary corporation licence holder for not more than 6 months in any period of 24 months as soon as he secures the relevant employment.

(3) A licence granted under subsection (1) shall be subject to the condition specified in subsection (4) and to any other reasonable conditions as the Commission may impose.

(4) It shall be a condition of a licence granted under subsection (1) that the licensed representative concerned ~~shall--~~

(a) shall at all times keep the Commission informed of particulars of his contact details including, in so far as applicable, his residential address, telephone and facsimile numbers and electronic mail address; ~~and~~

(b) shall inform the Commission of any change in the particulars within 14 days after the change takes place; ~~and~~

⁹(c) shall not hold any client assets in carrying on the regulated activity for which he is so licensed.

(5) The Commission may at any time, by notice in writing served on the licensed representative concerned, amend or revoke any condition imposed under subsection (3) or impose new conditions as may be reasonable in the circumstances.

(6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

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

121. Approval and transfer of accreditation

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the accreditation of a licensed representative -

(a) who is licensed under section 119(1) or (2) or 120(1)(a), to a corporation licensed under section 115; or

(b) who is licensed under section 120(1)(b), to a corporation licensed under section 116,

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

(2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed representative licensed under section 119(1) or (2) or 120(1), approve the transfer of his accreditation to another corporation licensed under section 115 or 116 (as the case may be), and upon approving the transfer, the Commission shall re-issue the licence to the licensed representative with the name of the corporation specified in the licence as his principal.

(3) The Commission shall refuse to -

(a) approve an accreditation under subsection (1); or

(b) approve a transfer of accreditation under subsection (2),

unless the applicant satisfies the Commission that he will be competent to carry out his duties to the requisite standard as a

licensed representative for or on behalf of the licensed corporation concerned.

(4) Without limiting the generality of subsection (3), where a licensed representative who is licensed under section 120(1)(a) applies -

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

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

to a corporation licensed under section 115, the Commission shall refuse to grant the approval unless the applicant satisfies the Commission that the licensed corporation to which he seeks to be accredited is a member of the same group of companies as the corporation referred to in section 120(2)(b)(i).

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

(1) If an individual licensed under section 119(1) or (2) or 120(1) ceases to act for or on behalf of his principal as a licensed representative, he thereupon ceases to be accredited to the principal and -

(a) the principal shall, within 7 business days after such cessation, notify the Commission of the cessation;

(b) the individual shall, within 7 business days after such cessation, return the licence to the Commission; and

(c) where the individual has not applied for transfer of his accreditation to another corporation licensed under section 115 or 116 (as the case may be) within ~~90~~¹⁷180 days after such cessation, the licence shall be deemed to have been revoked upon such cessation.

¹⁸(2) Any person who contravenes subsection (1)(a) commits an offence and is liable on conviction to a fine at level 6.

~~or~~¹⁸(3) Any person who, without reasonable excuse, contravenes subsection (1)(b) commits an offence and is liable on conviction to a fine at level 6.

123. ³Duplicate licence, etc.

(1) Subject to subsection (2), the Commission may, upon application in the prescribed manner and payment of the prescribed fee by a licensed person or ~~an exempt person registered institution~~ on the ground that his licence or ~~exemption certificate of registration~~ is lost, defaced or destroyed (as the case may be), issue to the person or the registered institution a duplicate of the licence or ~~exemption certificate of registration~~ (as the case may be) ~~granted to the person.~~

¹⁷ We accept the comment of some market participants that a representative licence should be deemed revoked only after the representative has ceased working for any licensed corporation for more than 180 days. The relaxation is acceptable in terms of investor protection as the representative cannot legally carry out any regulated activity without being accredited to and under the supervision of a licensed corporation.

¹⁸ We accept the market comment that failure by a licensed representative who ceases to act for or on behalf of the licensed corporation to which he is accredited to return his licence should not constitute a strict liability offence.

(2) In support of ~~his~~an application under subsection (1), the person or the registered institution shall -

- (a) submit to the Commission a statutory declaration made by the person or the registered institution stating the ground of ~~his~~the application and such other particulars as the case may require in order to verify the loss, defacement or destruction (as the case may be) of the licence or ~~exemption~~ certificate of registration; and
- (b) furnish to the Commission such other information as the Commission may reasonably require in relation to the application.

124. ³Requirement for executive officers

(1) A corporation licensed under section 115 shall not carry on any regulated activity for which it is licensed unless -

- (a) every executive director of the licensed corporation who is an individual is approved by the Commission as a responsible officer of the corporation in relation to the regulated activity; and
- (b) not less than 2 individuals, at least one of whom shall be an executive director of the licensed corporation, are approved by the Commission as the responsible officers of the corporation in relation to the regulated activity.

(2) ~~An exempt person registered institution~~ shall not carry on any regulated activity for which it is ~~exempt~~registered unless it has complied with section 71D of the Banking Ordinance (Cap. 155) in respect of the appointment of executive officers and such executive officers are in compliance with section 71C of that Ordinance (including section 71C of that Ordinance as read with section 71E of that Ordinance).

(3) If a licensed corporation contravenes subsection (1) or ~~an exempt person registered institution~~ contravenes subsection (2), without reasonable excuse, the ~~licensed~~ corporation or ~~exempt person registered institution~~ (as the case may be) commits an offence and is liable on summary conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

125. Approval of responsible officers

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

(2) The Commission shall refuse to approve an applicant as a responsible officer of a licensed corporation under subsection (1) unless the applicant satisfies the Commission that -

- (a) he is a fit and proper person to be so approved;
and
- (b) he has sufficient authority within the licensed corporation.

(3) An approval under subsection (1) shall be subject to such reasonable conditions as the Commission may impose on the licensed corporation and the responsible officer concerned, and the Commission may at any time, by notice in writing served on the licensed corporation or the responsible officer concerned, amend or revoke such condition or impose new conditions as may be reasonable in the circumstances.

(4) The approval of an individual as a responsible officer of a licensed corporation shall be deemed to be revoked if the individual -

(a) ceases to act as a licensed representative for or on behalf of; or

(b) ceases to be accredited to,
the licensed corporation.

**126. ³Variation of regulated activity specified
in licence or ~~exemption~~ certificate of registration**

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

(2) Where a person applies for variation of the regulated activity specified in his licence or ~~exemption~~ certificate of registration by adding any regulated activity, such application shall, for the purposes of this Part, be regarded as an

application for a licence or ~~exemption~~ registration (as the case may be) in respect of that regulated activity.

127. ³Applicant to provide information

- (1) A person who applies -
 - (a) for a licence under section 115, 116, 119 or 120;
 - (b) for ~~an exemption~~ registration under section 118;
 - (c) for approval of accreditation or approval of transfer of accreditation to a principal, under section 121;
 - (d) for approval to be a responsible officer under section 125;
 - (e) for variation, under section 126, of the regulated activity for which the person is licensed or ~~exempt~~registered;
 - (f) for approval of premises under section 129;
 - (g) for approval to become or continue to be a substantial shareholder under section 130¹⁹;
 - (h) for a modification or waiver under section 131; or
 - (i) for any other matter requiring the approval of the Commission under this Part,

shall provide the Commission with such information as it may reasonably require to enable it to consider the application.

¹⁹ The amendments are consequential to the amendments to the provisions in relation to approval of a substantial shareholder. See footnote 24.

(2) In considering an application referred to in subsection (1), the Commission may have regard to any information in its possession whether provided by the applicant or not.

²⁰(3) The Commission may make rules providing for -

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

128. ³Determination of "fit and proper"

(1) In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission or the Monetary Authority (as the case may be) shall, in addition to any other matter that the Commission or the Monetary Authority (as the case may be) may consider relevant, but subject to section 131, have regard to -

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is allowed, the person will perform;
- (c) the ability to carry on the regulated activity competently, honestly and fairly; and

²⁰ Minor technical drafting amendments.

(d) the reputation, character, reliability and financial integrity,

of -

(i) where the person is an individual, the person himself;

(ii) where the person is a corporation (other than an authorized financial institution), the corporation and any officer of the corporation; and

(iii) where the person is an authorized financial institution, the institution and any director, manager (as defined in section 2(1) of the Banking Ordinance (Cap. 155)) and executive officer of the institution.

(2) Without limiting the generality of subsection (1), the Commission ~~and~~²¹ the Monetary Authority (as the case may be) may, in considering whether a person is a fit and proper person for the purposes of any provision of this Ordinance -

(a) take into account a decision made in respect of the person by -

(i) (in the case of the Commission) the Monetary Authority or (in the case of the Monetary Authority) the Commission;

(ii) the Insurance Authority;

(iii) the Mandatory Provident Fund Schemes Authority; or

²¹ Minor technical drafting amendment.

- (iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function similar to the functions of the Commission;
- (b) take into account any information in the possession of the Commission or the Monetary Authority (as the case may be), whether provided by the person or not, relating to -
- (i) where such consideration relates to a licence under section 115 or 116 or an application for the licence, any other person who is or is to be employed by, or associated with, the person for the purposes of the regulated activity for which the licence is granted or the application is made (as the case may be);
 - (ii) where such consideration relates to a licence under section 115 or 116 ~~or an exemption to carry on a regulated activity or any registration for a regulated activity under section 118~~ or an application for the licence or ~~exemption registration~~, any other person who will be acting for or on behalf of the person in relation to the regulated activity ~~for which the licence or exemption is granted~~

~~or the application is made (as the case may be);~~

(iii) where the person is a corporation in a group of companies -

(A) any other corporation in the same group of companies; or

(B) any substantial shareholder or officer of the corporation or any corporation referred to in subparagraph (A);

(c) take into account, where such consideration relates to a licence under section 115 or 116 or any ~~exemption registration under section 118~~ or an application for the licence or ~~exemption registration~~, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under any of the relevant provisions, having regard in particular to the information provided in accordance with section 127; and

(d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

129. Suitability of premises for keeping records or documents

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve premises to be used by a licensed corporation for keeping records or documents required under this Ordinance.

(2) The Commission shall not approve premises under subsection (1) unless the applicant satisfies the Commission that -

(a) the premises are suitable for being used for the purpose referred to in that subsection; and

(b) where the premises are used partly for residential purposes, such residential use of the premises will not affect the exercise of any powers under this Part or Part VI or VIII .

(3) A licensed corporation shall not, without the prior approval in writing of the Commission, use any premises for the keeping of records or documents relating to the carrying on of the regulated activity for which it is licensed.

(4) The Commission shall inform the applicant in writing of its decision under subsection (1) as soon as reasonably practicable after receipt of the application.

~~130 Restriction on substantial shareholdings~~²²

²² We have revised clause 130 of the Blue Bill to rationalise the mechanism to deal with cases where a person has become a substantial shareholder of a licensed corporation without the approval of the SFC. We propose to split the clause into three to become the new clauses 130, 130A and 130B, as set out in Paper No. CE04A/01 considered by Members at the Bills Committee meeting on 10 July 2001. **Members did not raise objection to this approach at the meeting. The Law Draftsman has since made minor technical drafting improvement to the new provisions to enhance clarity.**

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

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

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

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

~~(b) he subsequently becomes aware that he has become a substantial shareholder of the licensed corporation; and~~

~~(c) he applies for approval under subsection (2) as soon as reasonably practicable and in any event within 3 business days after he becomes so aware.~~

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

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

~~— (6) Any person who contravenes subsection (1) commits an offence and is liable —~~

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

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

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

~~(a) did not know; and~~

~~(b) could not have by the exercise of reasonable diligence ascertained the existence of,~~

~~the act or circumstances by virtue of which he became a substantial shareholder of the licensed corporation.~~

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

~~(a) the transfer of shares concerned and, in the case of unissued shares, the transfer of the right to be~~

~~issued with them and their subsequent issue are of no effect at law or in equity;~~

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

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

~~— (9) In considering whether a person is a substantial shareholder for the purposes of subsection (1) and solely for such purposes, subsection (8)(a) shall be disregarded.~~

~~— (10) A person who purportedly exercises any right that is by virtue of subsection (8) of no effect at law or in equity or not exercisable commits an offence and is liable —~~

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

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

~~— (11) It is a defence for a person charged with an offence under subsection (10) to prove that he —~~

~~(a) did not know; and~~

~~(b) could not have by the exercise of reasonable diligence known,~~

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

~~(12) If a licensed corporation purports to give effect to a transfer of shares or purports to issue shares, and the transfer or issue of which is of no effect at law or in equity by virtue of subsection (8), then the corporation and every officer of the corporation who knowingly permits the transfer or the issue commit an offence and each is liable—~~

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

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

130. Restriction on substantial shareholding, etc.

²³(1) A person shall not become and continue to be a substantial shareholder of a corporation licensed under section 115 without first being approved by the Commission under section 130A(1)(a).

²⁴(2) Any person who contravenes subsection (1) commits an offence and is liable -

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

²³ Adapted from clause 130(1) of the Blue Bill. **Members considered this sub-clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes. The Law Draftsman has since made minor technical improvement to enhance clarity.**

²⁴ Adapted from clause 130(6) of the Blue Bill. We propose to make it a continuing offence to continue to be a substantial shareholder without SFC's approval, as it is considered a serious misconduct given the considerable influence a substantial shareholder may have on the fitness and properness of a licensed corporation. **Members considered this sub-clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes. The Law Draftsman has since made minor technical improvement to enhance clarity.**

fine of \$5,000 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 130A(1)(b); or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months, and to a further fine of \$500 for every day during which the person continues to be such substantial shareholder without the Commission's approval under section 130A(1)(b).

²⁵(3) It is a defence for a person charged under subsection (2) to prove -

(a) that he did not know, and could not have by the exercise of reasonable diligence ascertained, the existence of the act or circumstances by virtue of which he became such a substantial shareholder; and

(b) where he subsequently became aware of such act or circumstances, that he applied under section 130A(1)(b), as soon as reasonably practicable and in any event within 3 business days after he became so aware, for approval to continue to be a substantial shareholder of the corporation.

²⁵ The new defence provision is adapted from clauses 130(3) and 130(7) of the Blue Bill to remove duplication of them. **Members considered this sub-clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes. The Law Draftsman has since made minor technical improvement to enhance clarity.**

²⁶(4) If a person becomes a substantial shareholder of a corporation licensed under section 115 without the Commission's prior approval under section 130A(1)(a) by virtue of -

(a) a transfer of shares;

(b) an issue of shares; or

(c) a transfer of the right to be issued with shares,

then, unless and until the Commission approves the person to continue to be a substantial shareholder of the corporation under section 130A(1)(b), the voting rights conferred by the shares concerned are not exercisable.

²⁷(5) A person who purportedly exercises any voting right that is not exercisable under subsection (4) commits an offence and is liable -

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

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

²⁷(6) It is a defence for a person charged with an offence under subsection (5) to prove that he -

²⁶ The provision seeks not to void the transactions in the shares at issue in the relevant part of clause 130(8) of the Blue Bill. It will remove the adverse effect on legitimate share dealings and third party rights and on unwinding the transactions which is practically difficult. **Members considered this sub-clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes. The Law Draftsman has since made minor technical improvement to enhance clarity.**

²⁷ Adapted from clauses 130(10) and 130(11) of the Blue Bill. **Members considered this sub-clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes.**

(a) did not know; and

(b) could not have by the exercise of reasonable
diligence known,

that the right which he purportedly exercised is by virtue of
subsection (4) not exercisable.

**130A. Approval to become or continue to be a
substantial shareholder**

²⁸(1) The Commission may, upon application in the prescribed
manner and payment of the prescribed fee, approve the applicant -

(a) to become; or

(b) to continue to be,

as the case may be, a substantial shareholder of a corporation
licensed under section 115.

²⁸(2) The Commission shall refuse to approve an applicant to
become or continue to be (as the case may be) a substantial
shareholder of the licensed corporation concerned unless the
applicant satisfies the Commission that the corporation will
remain a fit and proper person to be licensed if the application
is approved.

²⁸(3) An approval under subsection (1)(a) or (b) shall be
subject to such reasonable conditions as the Commission may impose
on the applicant and on the licensed corporation concerned, and
the Commission may at any time by notice in writing served on the

²⁸ Adapted from clauses 130(2),130(4) and 130(5) of the Blue Bill. **Members considered this sub-clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes. The Law Draftsman has since made minor technical improvement to enhance clarity.**

approved substantial shareholder and the corporation, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

²⁹(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

³⁰(5) Without limiting the generality of subsection (3), it shall be a condition of an approval granted under subsection (1)(a) or (b) that the approved substantial shareholder shall -

- (a) at all times keep the Commission informed of the particulars of his contact details including, in so far as applicable, his business address, residential address, telephone and facsimile numbers and electronic mail address; and
- (b) inform the Commission of any change in the particulars within 14 days after the change takes place.

³¹**130B. Commission's power to give directions**

²⁹ The amendment makes it clear as to when the amendment, revocation or imposition of conditions by the SFC takes effect. **Members considered this sub-clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes. The Law Draftsman has since refined the drafting to align with similar provisions in this Part of the Bill, e.g. clause 119(8).**

³⁰ The amendment puts it beyond doubt the matters which may be covered in a condition imposed, amended or revoked by the SFC. **Members considered this sub-clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes. The Law Draftsman has since made minor technical improvement to enhance clarity.**

(1) Where a person became a substantial shareholder without the Commission's prior approval under section 130A(1)(a), whether or not he has applied under section 130A(1)(b) for approval to continue to be such shareholder and regardless of whether such approval is granted or not, the Commission may by notice in writing direct the licensed corporation concerned -

- (a) not to permit or acquiesce in the involvement of the person in the management of the business of the corporation;
- (b) to deem void and of no effect any votes cast by the person and any of his associates, if any, at any meeting of the corporation;
- (c) to reconvene any such meeting for voting anew on the business on which the votes were cast; and
- (d) to take such other reasonable steps as it may specify in the notice.

(2) Without prejudice to the operation of subsection (1), where the Commission refuses to approve an application to continue to be a substantial shareholder made under section 130A(1)(b), it may by notice in writing direct the applicant -

³¹ The new provision empowers the SFC to issue direction for dealing with situations where an unapproved substantial shareholder has already exercised his voting rights and with his involvement in the management of the business of the corporation (and the clause in effect continues to allow the SFC to deem void and of no effect any votes cast by the relevant person and his associate, if any, at any meeting of the corporation). It also empowers the SFC to direct a person who has become a substantial shareholder without its approval to reduce his shareholding within a reasonable time. The SFC may compel compliance with its directions through application to the Court of First Instance. **Members considered this clause as annexed to Paper No. CE04A/01 at the Bills Committee meeting on 10 July 2001 and did not propose further changes. The Law Draftsman has since made minor technical improvement to enhance clarity.**

(a) to reduce, within such reasonable time as the Commission may require, the interest in shares by virtue of which he became a substantial shareholder of the licensed corporation concerned to the extent that he is no longer a substantial shareholder of the corporation; and

(b) to take such other reasonable steps as the Commission may specify in the notice.

(3) If a person fails to comply with any direction under subsection (1) or (2), the Commission may, by originating summons or originating motion, make an application to the Court of First Instance in respect of the failure, and the Court may inquire into the case and -

(a) if the Court is satisfied that there is no reasonable ground for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and

(b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person who appears to have been involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(4) An originating summons under subsection (3) shall be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg.).

131. Modification or waiver of requirements

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee by -

- (a) a licensed corporation;
- (b) an applicant for a licence under section 115 or 116;
- (c) ~~an exempt person registered institution~~³;
- (d) an applicant for ~~an exemption registration under section 118~~³;
- (e) a licensed representative;
- (f) an applicant for a licence under section 119 or 120;
- (g) a responsible officer approved under section 125;
- (h) a substantial shareholder approved under section 130A;
- (i) an applicant for approval under section 130A to become or continue to be (as the case may be)³² a substantial shareholder; or
- (j) an associated entity,

grant a modification or waiver, in relation to the applicant, in respect of any condition specified in section 117 or imposed under section 115, 116, 118, 119, 120, 125 or 130A²⁸ or any of the requirements of the following -

³² **The amendment is consequential to the amendments to the provisions in relation to approval of substantial shareholder. See footnotes 24 and 28.**

(3) The Commission shall refuse to grant a modification or waiver under subsection (1) unless it is satisfied by the applicant that to do so will not prejudice -

- (a) in the case of a modification or waiver granted in respect of a condition imposed under section 115, 116 or 118, the interests of any client of the applicant; or
- (b) in the case of a modification or waiver granted in respect of a condition imposed under section 119, 120, 125 or 130A²⁸ or specified in section 117, or in respect of any requirement of a provision specified in subsection (1)(i) to (xii), the interest of the investing public.

(4) A modification or waiver granted under subsection (1) to a person shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time by notice in writing served on -

- (a) the person;
- (b) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; and
- (c) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited,

amend such modification or waiver, or amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(5) Subject to subsection (4), a modification or waiver granted under subsection (1) remains in force -

(a) if a period is specified in the notice served under subsection (2) in respect of the modification or waiver, until the end of the period; or

(b) if no such period is specified, until revoked by the Commission by notice in writing served on -

- (i) the person;
- (ii) where the person is an intermediary or an associated entity, an executive officer of the intermediary or the entity; and
- (iii) where the modification or waiver is granted pursuant to an application made under subsection (1)(e), (f) or (g), the principal to which the person is accredited.

³⁵(6) In relation to a modification or waiver under subsection (1) to a person, the Commission shall -

³⁵ As mentioned in Paper No. 5H/01, we agreed with the Bills Committee that the SFC should disclose the reasons for granting a modification or waiver for greater transparency. We propose that the SFC should also disclose the conditions imposed on a modification and waiver. However, the SFC should be provided with the discretion in disclosing the details about the conditions for preservation of trade secrets in justified cases, where such disclosure would reveal, for instance, prospective transactions, trading strategies, or the identity of clients or counterparties, which would prejudice the commercial interests of the applicant for the modification or waiver. The latter arrangement is similar to that in the UK where pursuant to the

- (a) on the grant of the modification or waiver;
- (b) on its amendment or an amendment or revocation of its conditions or the imposition of any new condition on it under subsection (4); or
- (c) on its revocation under subsection (5)(b),

publish a notice in the Gazette specifying, subject to subsection (6A) -

- (i) the name of the person;
- (ii) the event referred to in paragraph (a), (b) or (c) (as the case may be) and the reasons for the event; and
- (iii) any condition imposed on the modification or waiver on its grant, or the condition amended or revoked or newly imposed subsequently under subsection (4), as the case may be; and
- (iv) (if applicable) the period for which the grant or amendment or the condition so imposed is valid~~if the modification or waiver or the new condition so imposed on it or its conditions as amended is~~ valid.

(6A) If the applicant satisfies the Commission that specifying any condition in compliance with subsection (6)(iii) would prejudice, to an unreasonable degree, the commercial

Financial Services and Markets Act, the Financial Services Authority (the FSMA) will make public waivers or modifications granted unless the FSA believes it is inappropriate or unnecessary to do so. There would be publication unless the commercial interests of the regulatees are to be

interests of the applicant, the Commission may, in lieu of specifying the condition, include in the notice referred to in subsection (6) -

(a) a brief account of its reasons for not specifying the condition; and

(b) such appropriate information on the condition as the Commission considers incapable of prejudicing, to an unreasonable degree, the commercial interests of the applicant.

(7) The Commission may by rules grant a modification or waiver, in relation to a class of licensed persons or ~~exempt persons~~ registered institutions³ or associated entities, in respect of any of the requirements of the rules referred to in subsection (1)(v), (vi), (vii), (viii), (ix) or (x).

(8) The Commission shall not make any rules under subsection (7) to grant a modification or waiver referred to in that subsection unless the Commission is satisfied that to do so will not prejudice the interest of the investing public.

(9) The Commission may specify in the rules referred to in subsection (7) the conditions subject to which the modification or waiver is granted and the rules may provide that a person who fails to comply with such a condition commits an offence and is liable on conviction to a fine not exceeding level 6.

unfairly prejudiced. **Members considered the amendments and did not propose further changes at the meeting on 10 July 2001. The Law Draftsman has since further refined the legal language.**

- (10) The Commission may at any time by rules -
- (a) revoke a modification or waiver granted under subsection (7); or
 - (b) amend, revoke or add to, any condition subject to which such modification or waiver is granted.

(11) The Commission shall not exercise its power under subsection (1), (4), (7), (9) or (10) in relation to any ~~exempt person~~ registered institution³ or any associated entity that is an authorized financial institution unless the Commission has first consulted the Monetary Authority.

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

132. Events to be reported by licensed persons and ~~exempt persons~~ registered institutions³

(1) A licensed person or ~~exempt person~~ registered institution who intends to cease to carry on any regulated activity for which he is licensed or ~~exempt~~ registered shall notify the Commission and (in the case of a registered ~~an exempt person institution~~) the Monetary Authority in writing of such intended cessation as soon as reasonably practicable and in any event not later than 7 business days before such intended cessation.

(2) ~~An licensed person or exempt person intermediary~~ shall give to the Commission and (in the case of ~~an exempt person~~ registered institution) the Monetary Authority at least 7 business

days' advance notice in writing of any intended change of address at which heit proposes to carry on the regulated activity for which heit is licensed or ~~exempt~~registered.

(3) Subject to subsection (5), where a person has provided any information to the Commission under any provision of this Part and a change in the information occurs, then in such circumstances as are prescribed by rules made under section 384 for the purposes of this subsection, the person shall, within 7 business days of the change, give notice in writing of the change containing a full description of it.

(4) The notice referred to in subsection (3) shall be given to the following person or persons —

- (a) (where the information has been provided in connection with an application under any provision of this Part and the Commission is still considering the application) the Commission; or
- (b) (in other cases) the Commission and (if the information provided relates to an ~~exempt~~ person registered institution) the Monetary Authority.

(5) Where the information has been provided in connection with an application under any provision of this Part and the application has been refused or withdrawn, subsection (3) shall no longer apply in relation to the information.

(6) Where a person becomes or ceases to be a director of a licensed corporation, both the person and the corporation shall, within 7 business days thereafter, notify the Commission in writing of the name and address of the person and of the nature of

the position which he occupies or has ceased to occupy (as the case may be).

(7) Any person who, without reasonable excuse, contravenes subsection (1), (2), (3) or (6) commits an offence and is liable on conviction to a fine at level 5.

133. Commission to maintain register of licensed persons and ~~exempt persons~~ registered institutions³

(1) The Commission shall maintain a register of licensed persons and ~~exempt persons~~ registered institutions in such form as it considers appropriate.

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

- (a) the name and business address of the licensed person or ~~exempt person~~ registered institution (as the case may be);
- (b) such conditions of the licence or the ~~exemption~~ registration (as the case may be) as the Commission considers appropriate;
- (c) in relation to each licensed representative, the name of his principal;
- (d) in relation to the licensed corporation or ~~exempt person~~ registered institution (as the case may be) the name and business address of each of its executive officers; and

(e) such other particulars as are prescribed by rules made under section 384 for the purposes of this subsection.

(3) The register may be maintained -

(a) in a documentary form; or

(b) by recording the information required under subsection (2) otherwise than in a legible form, so long as the information is capable of being reproduced in a legible form.

(4) For the purposes of enabling any member of the public to ascertain whether he is dealing with a licensed person or ~~an exempt person~~ registered institution in matters of or connected with any regulated activity and to ascertain the particulars of the licence or ~~exemption~~ registration of such person, the register shall be made available for public inspection at all reasonable times.

(5) At all reasonable times, a member of the public may -

(a) inspect the register, or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form; and

(b) obtain a copy of an entry in or extract of the register on payment of the prescribed fee.

(6) A document purporting to be -

(a) a copy of an entry in or extract of the register maintained under this section; and

(b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (a),

shall be admissible as evidence of its contents in any legal proceedings.

(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record³⁶.

134. Publication of names of licensed persons and ~~exempt persons~~ registered institutions³

(1) The Commission shall at least once in each year publish ~~in the Gazette,~~³⁶at such time and in such~~other~~ manner as it considers appropriate,~~at the time and in the manner it considers appropriate, the names and addresses of all licensed~~ the name and address of each licensed person and registered institution, the regulated persons and exempt persons~~activities for which the person or institution is licensed or registered~~ and such conditions of their ~~licences or exemptions~~ licence or registration as the Commission considers appropriate.

(2) If the Commission amends the register maintained under section 133 by adding or removing the name of a person or ~~changing~~varying the regulated activity for which a person is

³⁶ **We accept the comment of some Members expressed at the Bills Committee meeting on 10 July 2001 that the SFC should be statutorily required to maintain its register on-line to provide investors with more timely access to information about licensed persons and registered institutions. With this improvement through the SFC website and having considered that publication in the Gazette might not be an effective means for making available to the public the register or amendments thereto, we propose to delete the gazettal requirement.**

licensed or registered or any condition of a licence or exemption registration, it shall publish particulars of the amendment ~~in the~~ Gazette³⁶ within one month after making the amendment.

135. Annual fee and return

(1) A person licensed under section 115 or 119(1) or ~~an exempt person registered institution~~³ shall pay to the Commission an annual fee prescribed by rules made under section 382 for the purposes of this subsection.

(2) The annual fee shall be payable ~~on or before each~~ successively within one month after each³⁷ anniversary of the date of grant of the licence or ~~exemption certificate of registration~~³ (as the case may be), or on such other date as may be approved by the Commission by notice in writing.

(3) In default of full payment of the annual fee as required under subsection (2), the person shall pay to the Commission an additional sum calculated as follows -

- (a) 10% of the fee or such part of the fee (as the case may be) that remains unpaid³⁸ for the first month after the due date for its payment;
- (b) 20% of the fee or such part of the fee (as the case may be) for each subsequent month when the fee remains unpaid, 20% of the fee it remains unpaid³⁸,

³⁷ **The amendment reflects the intention that the due date for annual fee payment should be within one month after each anniversary, instead of on or before each anniversary.**

³⁸ **This amendment clarifies that additional penalty should be calculated by reference to the unpaid portion of the fee.**

and in calculating the additional sum for the purpose of this subsection, any fraction of a month shall be treated as a month.

(4) A person licensed under section 115 or 119(1) shall submit an annual return to the Commission -

(a) within one month after each anniversary of the date on which the person is licensed; or

(b) by such other date as may be approved by the Commission by notice in writing,

which return shall contain such information as is prescribed by rules made under section 384 for the purposes of this subsection.

136. Prohibition of use of certain titles³⁹

(1) A person shall not take or use ~~the title of "bond broker", "bond dealer", "securities dealer", "stock dealer", "stockbroker", "股票經紀", "債券交易商", "債券經紀", "證券交易商" or "證券經紀"~~ unless any of the specified titles set out opposite to the reference to this subsection in column 1 of Schedule 6A unless -

(a) ~~he is licensed or exempt~~ the person is licensed or registered for Type 1 regulated activity; or

(b) ~~he is an employee of a person exempt for Type 1 regulated activity and his name is entered in the register maintained by the Monetary Authority under~~

³⁹ We accept the comment of some Members expressed at the Bills Committee meeting on 10 July 2001 that to better cater for market development, the titles which use should be subject to restrictions should be presented in a Schedule. We also propose to add a new clause 139A such that the SFC may by notice in the Gazette amend the Schedule.

section 20 of the Banking Ordinance (Cap. 155) as ~~employed engaged~~⁴ ~~by the person~~ in respect of that Type 1 regulated activity by a person registered for that regulated activity, while acting as ~~such employee~~ in that capacity.

——(2) A person shall not take or use ~~the title of "futures broker", "futures dealer", "期貨交易商" or "期貨經紀"~~ unless any of the specified titles set out opposite to the reference to this subsection in column 1 of Schedule 6A unless -

- (a) ~~he is licensed or exempt~~ the person is licensed or registered for Type 2 regulated activity; or
- (b) ~~he is an employee of a person exempt for Type 2 regulated activity~~ and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as ~~employed engaged~~⁴ ~~by the person~~ in respect of that Type 2 regulated activity by a person registered for that regulated activity, while acting as ~~such employee~~ in that capacity.

(3) A person shall not take or use ~~the title of "leveraged foreign exchange trader" or "槓桿式外匯交易商"~~ unless any of the specified titles set out opposite to the reference to this subsection in column 1 of Schedule 6A unless the person -

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

(c) ~~he is an employee of~~ is engaged by⁴ an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of "leveraged foreign exchange trading" in Part 2 of Schedule 6 but for paragraph (xii) of that definition.

(4) A person shall not take or use ~~the title of "securities adviser", "securities consultant", "stock adviser", "股票顧問" or "證券顧問"~~ unless any of the specified titles set out opposite to the reference to this subsection in column 1 of Schedule 6A unless -

- (a) ~~he the person~~ is licensed or exempt registered for Type 4 regulated activity; or
- (b) ~~he is an employee of a person exempt for Type 4 regulated activity and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed engaged~~⁴ by the person in respect of that Type 4 regulated activity by a person registered for that regulated activity, while acting as such employee in that capacity.

(5) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 1 of Schedule 6A ~~the title of "futures adviser", "futures consultant" or "期貨顧問"~~ unless -

- (a) ~~he the person is licensed or exempt registered for~~
Type 5 regulated activity; or
- (b) ~~he is an employee of a person exempt for Type 5~~
~~regulated activity and his name is entered in the~~
register maintained by the Monetary Authority under
section 20 of the Banking Ordinance (Cap. 155) as
~~employed engaged⁴ by the person in respect of that~~
Type 5 regulated activity by a person registered
for that regulated activity, while acting as such
employee in that capacity.

(6) A person shall not take or use any of the specified
titles set out opposite to the reference to this subsection in
column 1 of Schedule 6A the title of "corporate finance adviser",
"corporate finance consultant" or
"機構融資顧問" unless -

- (a) ~~he the person is licensed or registered exempt for~~
Type 6 regulated activity; or
- (b) ~~he is an employee of a person exempt for Type 6~~
~~regulated activity and his name is entered in the~~
register maintained by the Monetary Authority under
section 20 of the Banking Ordinance (Cap. 155) as
~~employed engaged⁴ by the person in respect of that~~
Type 6 regulated activity by a person registered
for that regulated activity, while acting in that
capacity. as such employee.

(7) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 1 of Schedule 6A ~~the title of "automated trading service provider" or "自動化交易服務提供者"~~ unless -

- (a) ~~he~~ the person is licensed or ~~exempt~~ registered for Type 7 regulated activity;
- (b) ~~he~~ the person is granted an authorization under section ~~95-95(2)~~ to provide automated trading services;
- (c) ~~he is an employee of a person exempt for Type 7 regulated activity and his name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as employed~~ engaged⁴ by the person in respect of that Type 7 regulated activity by a person registered for that regulated activity, while acting as such employee in that capacity; or
- (d) ~~he~~ the person is an employee of a person authorized under section ~~95-95(2)~~ to provide automated trading services, while acting for ~~the~~ that person in that regulated activity.

(8) A person shall not take or use any of the specified titles set out opposite to the reference to this subsection in column 1 of Schedule 6A ~~the title of "margin lender", "securities margin financier" or "證券保證金融資人"~~ unless the person -

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

(b) ~~he is~~ an authorized financial institution; or

~~(c) he is an employee of~~ is engaged by an authorized financial institution, while acting for the institution in an activity that would have fallen within the meaning of the definition of "securities margin financing" in Part 2 of Schedule 6 but for paragraph (v) of that definition.

(9) A person shall not take or use any title, other than any ~~title specified~~ specified title mentioned in subsection (1), (2), (3), (4), (5), (6), (7) or (8), which suggests that -

(a) he carries on a business in any regulated activity referred to in any of those subsections; or

(b) he performs any regulated function in relation to a regulated activity referred to in any of those subsections which is carried on as a business,

unless he falls within the description specified in a paragraph of such of those subsections.

(10) Any person who contravenes subsection (1), (2), (3), (4), (5), (6), (7), (8) or (9) commits an offence and is liable on conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

137. Procedural requirements

(1) If the Commission forms a preliminary view to -

(a) refuse the whole or a part of an application made under this Part;

- (b) impose conditions on approving an application; or
- (c) amend or revoke the conditions of, or impose new conditions to -

- (i) a licence granted under section 115, 116, 119 or 120, or ~~any exemption granted~~ registration under section 118;
- (ii) an accreditation approved or transferred under section 121;
- (iii) an approval for a person to be a responsible officer under section 125 or to become or continue to be (as the case may be)⁴⁰ a substantial shareholder under section 130A⁴⁰; or
- (iv) a modification or waiver granted under section 131(1),

then the Commission shall, before making its final decision -

⁴⁰ The amendment is consequential to the amendments to the provisions in the relation to approval of substantial shareholder. See footnotes 24 and 28.

- (i) inform the applicant or the relevant licensed corporation, ~~exempt person~~ registered institution³, licensed representative, responsible officer or approved substantial shareholder (as the case may be) of the ground for the preliminary view; and
- (ii) give such person a reasonable opportunity of being heard.

(2) When the Commission makes a final decision, it shall, as soon as reasonably practicable, notify the applicant or the relevant licensed corporation, ~~exempt person, licenseregistered institution~~³, licensed representative, responsible officer or approved substantial shareholder (as the case may be) in writing of its decision and the reasons for making such decision.

138. Service of notices, etc. on licensed persons

(1) Notwithstanding section 386, any written⁴¹ notice, decision, direction or other document (however described) required under this Ordinance to be issued to or served on a licensed person shall be regarded for all purposes as duly issued or served only if -

- (a) in the case of an individual, it is -
 - (i) delivered to him by hand; or
 - (ii) (A) left at, or sent by post to, the last residential address;

⁴¹ Minor technical drafting amendment.

- (B) sent by facsimile transmission to the last facsimile number; or
- (C) sent by electronic mail transmission to the last electronic mail address, provided by the person to the Commission pursuant to section 119(6) or 120(4) (as the case may be); or

(b) in the case of a corporation, it is -

(i) delivered to any officer of the corporation by hand⁴²;

(ii) (A) left at, or sent by post to, the last address;

~~(ii) (B) sent by facsimile transmission to the last facsimile number; or~~

~~(iii) (C) sent by electronic mail transmission to the last electronic mail address, provided by the corporation to the Commission pursuant to section 115, 116, 129(1), 132(2) or 135(4) (as the case may be).~~

(2) Where a notice, decision, direction or other document (however described) is regarded as duly issued to or served on a licensed person under subsection (1)(a)(ii) or (b), it shall be

⁴² The amendment seeks to allow delivery by hand as an acceptable means for serving notices on a corporation.

regarded for all purposes as issued to or served on the licensed person, and as coming to his notice, at the time when -

- (a) where it is left at an address, it is so left at that address;
- (b) where it is sent by post to an address, it would in the ordinary course of post be delivered to that address;
- (c) where it is sent by facsimile transmission to a facsimile number, it would in the ordinary course of transmission by facsimile be received at that number; or
- (d) where it is sent by electronic mail transmission to an electronic mail address, it would in the ordinary course of transmission by electronic mail be received at that address.

139. Amendment of Schedule 6

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

139A. Amendment of Schedule 6A³⁹

The Commission may, by notice published in the Gazette, amend Schedule 6A.

