

《2005年銀行業(修訂)條例草案》委員會文件

**金融管理專員就認可機構不遵從
《銀行業條例》條文的情況可行使的權力**

在2005年5月19日的法案委員會會議上，法案委員會主席應一位法案委員會委員的要求，指示法律事務部提供文件，說明金融管理專員(下稱“金管專員”)在認可機構不遵從《銀行業條例》(第155章)條文的情況時，除可提出刑事檢控外，還可採取甚麼行動。本文件綜述金管專員在有關情況下可行使的權力，所依據的詳細條文摘錄載於**附件**。

2. 本部認為應在開首說明，本文件將不會涵蓋《2002年銀行業(修訂)條例》(2002年第6號)所制定的條文。因為該等條文是為反映《證券及期貨條例》(第571章)下的相關條文而制定，以便金管專員可對從事受規管活動的人士，行使與證券及期貨事務監察委員會相若的監管權力，以及對這些人士執行《證券及期貨條例》的條文。

3. 任何認可機構如違反《銀行業條例》的條文，金管專員除可提出刑事檢控外，亦可根據每宗個案的情況行使下述任何權力：

- (a) 認可的撤銷(第22條)；
- (b) 暫停認可(第25條)；
- (c) 臨時暫停認可(第24條)；
- (d) 藉書面通知，規定該認可機構採取任何行動或作出任何作為或事情(第52(1)(A)條)；
- (e) 向該認可機構發出指示，規定其須向顧問徵詢意見(第52(1)(B)條)；
- (f) 向該認可機構發出指示，規定其事務、業務及財產須由一名經理人管理(第52(1)(C)條)；
- (g) 規定該認可機構須採取補救行動以遵從第98(1)條的規定(第100條)；及
- (h) 規定該認可機構須採取補救行動以遵從第102(1)條的規定(第104條)。

此外，有關認可機構的行政總裁及董事，金管專員可撤回其對他們的委任所給予的同意(第71(4)條)。

4. 撤銷認可或許是金管專員可就認可機構採取的最終措施。有關的認可機構必須停止經營屬其被撤銷認可的標的之業務(第23(2)條)。該條例的附表8指明行使這項權力的各項理由，包括沒有繳付第19條規定的任何費用、沒有遵從第60條的任何規定、違反第74條的規定及違反根據第16條所附加的任何條件。金管專員在作出撤銷認可前，必須先諮詢財政司司長。

5. 暫停認可是金管專員可採取的一項其次嚴厲的措施。行使這項權力的理由與撤銷認可相同(第25(1)條)。暫停認可為期不可超過6個月，但可續期為期不超過6個月。暫停認可的效力類似撤銷認可，惟該認可機構在獲得金管專員的同意及符合其施加的條件下，可繼續持有存款。

6. 當撤銷認可的理由出現時，而金管專員認為採取緊急行動是符合有關認可機構的存款人或潛在存款人的利益，又或獲財政司司長給予意見，表示採取緊急行動是符合公眾利益的(第24(1)條)，則臨時暫停認可是適用的做法。臨時暫停認可為期不可超過14天。與先前所述的措施不同，金管專員可不給予該認可機構陳詞的機會便行使這項權力。與暫停認可的情況相似，該認可機構在獲得金管專員的同意及符合其施加的條件下，可繼續持有存款。

7. 根據《銀行業條例》第52條，如任何認可機構已違反或沒有遵從《銀行業條例》的任何條文，金管專員可行使一般權力，藉書面通知，規定該認可機構就其事務、業務及財產，採取他認為有需要的任何行動或作出他認為有需要的任何作為或事情；發出指示，規定該認可機構須就其事務、業務及財產的管理，向金管專員委任的顧問徵詢意見；或發出指示，規定在該項指示所指明的該認可機構的該等事務、業務及財產，須由金管專員委任的一名經理人管理，而該名經理人須遵循在該項指示中的一項或多於一項的基本目標。金管專員在行使這些權力之前，必須先諮詢財政司司長、向有關認可機構發出7天的書面通知，以及給予該認可機構呈交書面申述的機會。

8. 如任何認可機構沒有保持第98(1)條規定的資本充足比率或第102條規定的流動資產比率，金管專員可行使第100及104條分別訂明的特定權力，藉書面通知，規定該認可機構採取通知書內指明的補救行動，目的在於使該認可機構遵從有關的法定規定。金管專員在發出所述的通知前，可與該認可機構進行他認為適當的討論。

9. 根據《銀行業條例》第71條，認可機構的行政總裁或任何在香港成立為法團的認可機構的董事，只有在金管專員的同意下，才可獲得委任。當金管專員不再信納某行政總裁或董事是該職位的適當人選，他可藉書面通知，撤回他給予的同意，惟他必須已就其決定發出不少於7天的事先通知並指明有關理由，以及已考慮該行政總裁或董事可能向他提交的任何書面申述。

10. 就認可機構的行政總裁、董事或經理干犯《銀行業條例》所訂罪行的情況，本部經細閱《銀行業條例》後，發現該條例並無訂明金管專員擁有任何其他權力，可藉施加罰則或採取紀律懲處行動以代替對該等犯罪者提出刑事檢控。

立法會秘書處
法律事務部
2005年5月23日

附件

銀行業條例(第 155 章) 條文摘錄

22. 認可的撤銷

(1) 在符合第 (3) 款及第 23(1) 條的規定下，金融管理專員可在諮詢財政司司長後，提議——（由 1997 年第 362 號法律公告修訂）

(a) 以附表 8 指明而適用於某認可機構或與該機構有關的任何一項或多於一項理由；及

(b) 藉向該機構送達的書面通知，

撤銷該認可機構的認可。

(2) （由 1997 年第 4 號第 27 條廢除）

(3) 如——

(a) 任何認可機構向金融管理專員送達書面通知，述明它不擬根據第 132A(2) 條就其認可根據第 (1) 款被提議撤銷一事而提出上訴；

(b) 任何認可機構就其認可根據第 (1) 款被提議撤銷一事在《行政上訴規則》（第 1 章，附屬法例）內所指明的可根據第 132A(2) 條提出上訴的期限已屆滿，但該認可機構並沒有提出上訴；或

(c) 任何認可機構根據第 132A(2) 條就其認可根據第 (1) 款被提議撤銷一事而提出的上訴並不成功，（由 1997 年第 4 號第 27 條修訂）

金融管理專員須於其後在合理切實可行的範圍內，盡快藉向該機構送達的書面通知，指明該項撤銷的生效日期（而該項認可即據此於該日期及由該日期起予以撤銷）。

(4) 金融管理專員可藉向任何認可機構（包括前認可機構）送達的書面通知，同意該機構繼續持有存款——

(a) 而該筆存款，是該機構在其認可根據第 (1) 款被提議撤銷的生效日期（在根據第 (3) 款向其送達的通知書內指明者）前所合法接受的；

(b) 而如非有本款的規定，在該日期或該日期之後持有該筆存款是會違反第 11、12 或 23(2) 條的條文的；及

(c) 但須受他認為於個別情況下恰當附加於該項同意的條件（如有的話）所規限，

而據此該機構如在該日期或該日期之後，依據該項同意並按照該等條件（如有的話）繼續持有該筆存款，則須當作沒有因此而違反任何該等條文。

(5) 在不限制第 (4)(c) 款的一般性的原則下，金融管理專員可藉向任何認可機構（或前認可機構）送達的書面通知，對依據第 (4) 款給予該機構的同意附加他認為恰當的條件（包括藉修訂已附加於該項同意的條件而附加者），或按他認為恰當，取消任何已附加於該項同意的條件。

22. Revocation of authorization

(1) Subject to subsection (3) and section 23(1), the Monetary Authority may, after consultation with the Financial Secretary, propose to revoke the authorization of an authorized institution—

(a) on any one or more of the grounds specified in the Eighth Schedule applicable to or in relation to the institution; and

(b) by notice in writing served on the institution.

(2) (*Repealed 4 of 1997 s. 27*)

(3) Where—

(a) an authorized institution serves a notice in writing on the Monetary Authority stating that it does not propose to appeal under section 132A(2) against the proposed revocation of its authorization under subsection (1);

(b) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg.) within which an authorized institution may appeal under section 132A(2) against the proposed revocation of its authorization under subsection (1) expires without any such appeal having been made; or

(c) an appeal under section 132A(2) by an authorized institution against the proposed revocation of its authorization under subsection (1) is unsuccessful, (*Amended 4 of 1997 s. 27*)

the Monetary Authority shall, as soon as reasonably practicable thereafter, by notice in writing served on the institution, specify the date on and from which that revocation shall take effect (and, accordingly, that authorization shall be revoked on and from that date).

(4) The Monetary Authority may, by notice in writing served on an authorized institution (including a former authorized institution), consent to the institution continuing to hold a deposit—

(a) lawfully taken by the institution before the date on which the proposed revocation under subsection (1) of its authorization takes effect as specified in a notice under subsection (3) served on it;

(b) the holding of which on or after that date would, but for this subsection, contravene any of the provisions of section 11, 12 or 23(2); and

(c) subject to such conditions, if any, as he may think proper to attach to the consent in any particular case,

and, accordingly, if that institution continues to hold that deposit on or after that date pursuant to that consent and in accordance with those conditions, if any, then it shall be deemed not to have thereby contravened any of those provisions.

(5) Without limiting the generality of subsection (4)(c), the Monetary Authority may, by notice in writing served on an authorized institution (or former authorized institution), attach to a consent given to the institution pursuant to subsection (4) such conditions (including attach by way of amending conditions already attached to such consent), or cancel any conditions attached to such consent, as he may think proper.

(6) 在不限制第 (4)(c) 或 (5) 款的一般性的原則下，該款提述的條件可指明——

- (a) 有關認可機構(或前認可機構)可持有第 (4) 款所提述的存款的期間；
- (b) 該機構可持有或動用該筆存款的方式。

(7) 金融管理專員可藉向任何認可機構(或前認可機構)送達的書面通知，規定該機構在該通知書內指明的期限，按該通知書內指明的方式，呈交他為確定該機構是否會遵從或正遵從(視屬何情況而定)第 (4)(c) 或 (5) 款所提述而且是附加於依據第 (4) 款給予該機構的同意的條件而合理地規定的資料。

(8) (由 1997 年第 4 號第 27 條廢除)

(9) 金融管理專員如根據第 (3) 款向任何認可機構送達通知，須於其後在合理切實可行的範圍內，盡快在於香港行銷的一份英文報章(以英文)及一份中文報章(以中文)刊登一則公告，述明——

- (a) 該機構的名稱；
- (b) 該機構的認可已經根據本條例撤銷；及
- (c) 該項撤銷在何日並自何日起生效。

(10) 任何認可機構(或前認可機構)違反第 (4)(c) 或 (5) 款所提述而且是附加於依據第 (4) 款給予該機構的同意的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)

- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，

如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

(11) 任何認可機構(或前認可機構)無合理辯解而沒有遵從根據第 (7) 款所作的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)

- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

(6) Without limiting the generality of subsection (4)(c) or (5), conditions referred to in that subsection may specify—

- (a) the period for which a deposit referred to in subsection (4) may be held by the authorized institution (or former authorized institution) concerned;
- (b) the manner in which such deposit may be held or used by the institution.

(7) The Monetary Authority may, by notice in writing served on an authorized institution (or former authorized institution), require the institution to submit, within such period and in such manner as are specified in the notice, such information as he may reasonably require in order to ascertain whether the institution will comply or is complying, as the case may be, with the conditions referred to in subsection (4)(c) or (5) attached to a consent given to the institution pursuant to subsection (4).

(8) (Repealed 4 of 1997 s. 27)

(9) Where the Monetary Authority serves a notice under subsection (3) on an authorized institution, he shall, as soon as reasonably practicable thereafter, publish in one English language newspaper (and in the English language) and one Chinese language newspaper (and in the Chinese language), each of which shall be a newspaper circulating in Hong Kong, a notice stating—

- (a) the name of the institution;
- (b) that the authorization of the institution has been revoked under this Ordinance; and
- (c) the date on and from which such revocation takes effect.

(10) Every director, every chief executive and every manager of an authorized institution (or former authorized institution) which contravenes any condition referred to in subsection (4)(c) or (5) attached to a consent given to the institution pursuant to subsection (4) commits an offence and is liable—(Amended 32 of 2001 s. 24)

- (a) on conviction upon indictment to a fine at tier 7; or
- (b) on summary conviction to a fine at tier 5,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(11) Every director, every chief executive and every manager of an authorized institution (or former authorized institution) which fails without reasonable excuse to comply with any requirement under subsection (7) commits an offence and is liable—(Amended 32 of 2001 s. 24)

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(12) 任何人就根據第 (7) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。 (由 1997 年第 4 號第 27 條修訂)

(12) Any person who signs any document for the purposes of any requirement under subsection (7) which he knows or reasonably ought to know to be false in a material particular commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (Amended 4 of 1997 s. 27)

附表 8

[第 22(1) 及 135(1) 條]

撤銷認可的理由

1. 在本附表中，“控權人”(controller) 包括小股東控權人。
- *2. 金融管理專員信納倘若認可機構並未獲得認可而就第 15 條所指的、其現正經營的業務根據該條申請認可，第 16(2) 條會禁止金融管理專員如此認可該機構(但不包括附表 7 第 2(b) 及 13 段所指明的準則)。
3. 金融管理專員信納認可機構擬與或已與其債權人訂立債務重整協議或作出債務償還安排，或該機構已無力償債，或正在清盤或已經清盤，或以其他方式解散。
4. 認可機構已根據第 67 條向金融管理專員作出報告，表示它相當可能會無能力履行它的義務，或即將中止付款，或金融管理專員信納該機構已無能力履行它的義務或已中止付款。
5. 金融管理專員信納認可機構不論在獲得認可之前或之後，沒有依本條例的規定，將關於該機構的重要資料，以及關於任何相當可能影響其營業方法的情況的重要資料，向金融管理專員提供。
6. 金融管理專員信納認可機構在獲得認可之前或之後向他所提供的資料，不論是否根據本條例的規定而提供的，在很大程度上是虛假、誤導或不準確的。
7. 金融管理專員信納認可機構已違反根據本條例第 16 條所附加於該機構的認可的條件。
8. 金融管理專員信納認可機構——
 - (a) (如屬銀行) 已停止經營銀行業務；
 - (b) (如屬任何其他情形) 已停止經營接受存款的業務。
9. 認可機構在用以組織公司的組織章程大綱及章程細則或其他文件所述明該機構的宗旨之中，不再包括以下宗旨——
 - (a) (如屬銀行) 經營銀行業務；
 - (b) (如屬任何其他情形) 經營接受存款的業務。
10. 認可機構獲金融管理專員書面告知它正違反第 19 條的規定後，仍沒有繳付該條規定它繳付的任何費用。
11. 認可機構獲金融管理專員書面告知它正違反第 60 條的規定後，仍沒有遵從該條中適用於它的規定。
12. 如屬接受存款公司或有限牌照銀行的認可機構，該機構已違反第 14(1) 或 (3) 條的規定。
13. 一名獲送達第 70 條所指的反對通知書，反對他成為認可機構的控權人的人，已經成為該機構的控權人。
14. 一名獲送達第 70 或 70A 條所指的反對通知書，反對他本身為認可機構的控權人的人，仍繼續作為該機構的控權人。

EIGHTH SCHEDULE

[ss. 22(1) & 135(1)]

GROUNDS FOR REVOCATION OF AUTHORIZATION

1. In this Schedule, “controller” (控權人) includes a minority shareholder controller.
- *2. The Monetary Authority is satisfied that, if the authorized institution were not authorized and were to make an application under section 15 for authorization in respect of the business referred to in that section presently being carried on by it, section 16(2) would prohibit him from so authorizing it (but excluding the criteria specified in paragraphs 2(b) and 13 of the Seventh Schedule).
3. The Monetary Authority is satisfied that the authorized institution proposes to make, or has made, any composition or arrangement with its creditors or is insolvent or is being or has been wound up or is otherwise dissolved.
4. The authorized institution has made a report to the Monetary Authority under section 67 that it is likely to become unable to meet its obligations or is about to suspend payment or the Monetary Authority is satisfied that the institution is so unable or has suspended payment.
5. The Monetary Authority is satisfied that the authorized institution has not provided him, whether before or after being authorized, with such information of a material nature relating to it, and to any circumstances likely to affect its method of business, as is required under this Ordinance.
6. The Monetary Authority is satisfied that the authorized institution has provided him, whether before or after being authorized, with information which is, to a material extent, false, misleading or inaccurate, and whether or not such information was so provided pursuant to a requirement under this Ordinance.
7. The Monetary Authority is satisfied that the authorized institution has contravened any condition attached under section 16 of this Ordinance to its authorization.
8. The Monetary Authority is satisfied that the authorized institution has—
 - (a) in the case of a bank, ceased to carry on banking business;
 - (b) in any other case, ceased to carry on a business of taking deposits.
9. The objects of the authorized institution as stated in its memorandum and articles of association or other document constituting the company no longer include the object of—
 - (a) in the case of a bank, carrying on banking business;
 - (b) in any other case, carrying on a business of taking deposits.
10. The authorized institution has failed to pay any fee required by section 19 to be paid by it after being advised in writing by the Monetary Authority that it is contravening that section.
11. The authorized institution has failed to comply with any requirement under section 60 applicable to it after being advised in writing by the Monetary Authority that it is contravening that section.
12. In the case of an authorized institution which is a deposit-taking company or restricted licence bank, the institution has contravened section 14(1) or (3).
13. A person has become a controller of the authorized institution after having been served with a notice of objection, within the meaning of section 70, objecting to his becoming such a controller.
14. A person continues to be a controller of the authorized institution after having been served with a notice of objection, within the meaning of section 70 or 70A, objecting to his being such a controller.

* 本段的施行受《2002年銀行業條例(修訂附表7)公告》(2002年第63號法律公告)所影響，請參閱該公告第2條的過渡性條文。

* The operation of this paragraph is affected by the Banking Ordinance (Amendment of Seventh Schedule) Notice 2002 (L.N. 63 of 2002). See the transitional provision in section 2 of that Notice.

15. 某人在違反第 71 條的情況下成為或繼續是認可機構的行政總裁或董事。

15A. 某人在違反第 71C 條的情況下成為或繼續擔任認可機構的主管人員。 (由 2002 年第 6 號第 15 條增補)

16. 認可機構違反第 74 條的規定。

17. 認可機構採取根據第 82(1) 條發出的通知書所指明的營業手法。

18. 金融管理專員信納認可機構如繼續獲得認可，其存款人或潛在存款人的利益會以任何其他方式受到威脅。

19. 認可機構以書面要求金融管理專員撤銷其認可，而金融管理專員信納如應此要求辦理，該機構的存款人的利益現時得到或會得到充分保障。

20. 金融管理專員信納認可機構採取的營業手法，相當可能會有損香港作為國際金融中心的利益。

(附表 8 由 1995 年第 49 號第 52 條增補)

21. 認可機構沒有遵從《存款保障計劃條例》(2004 年第 7 號)中任何適用於該機構的規定。

15. A person has become or continues to be a chief executive or director of the authorized institution in contravention of section 71.

15A. A person has become or continues to be an executive officer of the authorized institution in contravention of section 71C. (Added 6 of 2002 s. 15)

16. The authorized institution is in contravention of section 74.

17. The authorized institution engages in business practices specified in a notice under section 82(1).

18. The Monetary Authority is satisfied that the interests of depositors or potential depositors of the authorized institution are in any other manner threatened by the institution continuing to be authorized.

19. The authorized institution requests in writing the Monetary Authority to revoke its authorization and the Monetary Authority is satisfied that the interests of depositors of the institution are or will be adequately safeguarded if he complies with that request.

20. The Monetary Authority is satisfied that the authorized institution engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre.

21. The authorized institution has failed to comply with any requirement under the Deposit Protection Scheme Ordinance (7 of 2004) applicable to the institution.

23. 撤銷認可之程序及效力

(1) 金融管理專員在根據第 22(1) 條行使其權力而提議撤銷某認可機構的認可前，須將提議撤銷認可的一項或多於一項理由通知該機構，並須給予該機構在金融管理專員以書面指明的期限內陳詞的機會，而該期限是在所有情況下均須屬合理的。

(2) 除第 22(4) 條另有規定外，如有提議將任何認可機構的認可予以撤銷，則該項撤銷一經按照第 22(3) 條生效，該機構——

(a) 須立即停止經營屬其被撤銷認可的標的之業務；及

(b) 如根據第 16(3A)(a) 條獲批准或曾根據該條獲批准發行或促進發行多用途儲值卡，須立即停止——

(i) (如是屬多用途儲值卡的儲值卡) 進一步取得在“儲值卡”定義中描述的任何款項；

(ii) 為促進該等多用途儲值卡的發行而進一步取得款項。(由 1997 年第 4 號第 8 條修訂)

(3) 第 22(4) 條或第 (2) 款的施行，並不損害任何人向該條或該款(視屬何情況而定)所提述的認可機構(或前認可機構)強制執行或以其他方式維護任何權利或權益，亦不損害該機構向任何人強制執行或以其他方式維護任何權利或權益。

(4) 凡有關認可機構的認可被撤銷的理由是該機構以書面要求金融管理專員撤銷其認可，則第 (1) 款不適用。(由 1997 年第 4 號第 8 條增補)

(第 V 部由 1995 年第 49 號第 6 條代替)

23. Procedure on and effect of revocation of authorization

(1) The Monetary Authority shall, before exercising his power under section 22(1) to propose to revoke the authorization of an authorized institution, inform the institution of the ground or grounds for the proposed revocation and give it an opportunity, within such period as the Monetary Authority may specify in writing, being a period reasonable in all the circumstances, of being heard.

(2) Subject to section 22(4), immediately upon the proposed revocation of the authorization of an authorized institution taking effect in accordance with section 22(3), that institution shall cease—

(a) to carry on the business the subject of its revoked authorization; and

(b) if it has or had approval under section 16(3A)(a) to issue or facilitate the issue of multi-purpose cards, to take any further sum of money—

(i) referred to in the definition of “stored value card” in the case of any stored value cards which are such multi-purpose cards;

(ii) for facilitating the issue of such multi-purpose cards.
(Amended 4 of 1997 s. 8)

(3) Neither section 22(4) nor subsection (2) shall operate to prejudice the enforcement or other maintenance by any person of any right or interest against an authorized institution (or former authorized institution) referred to in that section or subsection, as the case may be, or by the institution of any right or interest against any person.

(4) Subsection (1) shall not apply where the ground for the revocation of the authorization of the authorized institution concerned is a request in writing by the institution to the Monetary Authority to revoke its authorization.
(Added 4 of 1997 s. 8)

(Part V replaced 49 of 1995 s. 6)

24. 臨時暫停認可

(1) 凡有以下情況——

- (a) 金融管理專員根據第 22(1) 條可對某認可機構行使他的權力(而不論金融管理專員是否已就該機構遵從第 23(1) 條); 及
- (b) 金融管理專員——
 - (i) 認為為符合該機構的存款人或潛在存款人的利益而採取緊急行動是有需要的; 或
 - (ii) 獲財政司司長給予意見, 表示他認為採取緊急行動是符合公眾利益的,

則金融管理專員在諮詢財政司司長後—— (由 1997 年第 362 號法律公告修訂)

(i) 可藉向該機構送達的書面通知, 暫停其認可為期不超過 14 天;

(ii) 如認為適當, 可因該事情緊急或其他理由, 不給予該機構陳詞的機會而如此暫停該項認可。

(2) 任何根據第 (1) 款發出的通知書, 可隨附一份通知, 述明金融管理專員正考慮是否根據第 22(1) 或 25 條行使其權力。

(3) 第 (2) 款提述的任何隨附通知須告知有關認可機構它根據第 23(1) 及 26 條所具有的權利及它可以何方式行使該等權利。

(4) 如金融管理專員藉着向任何屬於暫停認可(根據本條或第 25 條作出者)的標的之認可機構送達書面通知, 決定該認可機構的暫停認可在其期限屆滿前某日期終止, 則該暫停認可須在該日期終止。

(5) 金融管理專員可藉向任何認可機構送達的書面通知, 同意該機構繼續持有存款——

- (a) 而該筆存款, 是該機構在其認可根據第 (1) 款被暫停的生效日期(在根據第 (1) 款向其送達的通知書內指明者) 前所合法接受的;
- (b) 而如非有本款的規定, 在該日期或該日期之後持有該筆存款是會違反第 11、12 或 27(1) 條的; 及
- (c) 但須受他認為於個別情況下恰當附加於該項同意的條件(如有的話) 所規限,

24. Temporary suspensions

(1) In any case where—

- (a) the powers of the Monetary Authority become exercisable under section 22(1) with respect to an authorized institution (and whether or not the Monetary Authority has complied with section 23(1) in respect of the institution); and
- (b) the Monetary Authority—
 - (i) considers that it is necessary in the interests of depositors or potential depositors of the institution; or
 - (ii) is advised by the Financial Secretary that he considers that it is in the public interest,

that urgent action be taken, he may, after consultation with the Financial Secretary—

- (i) by notice in writing served on the institution suspend its authorization for a period not exceeding 14 days;
- (ii) if he thinks fit, by reason of the urgency of the matter or otherwise, so suspend such authorization without giving the institution an opportunity of being heard.

(2) Any notice under subsection (1) may be accompanied by a notice stating that the Monetary Authority is considering whether to exercise his powers under section 22(1) or 25.

(3) Any accompanying notice referred to in subsection (2) shall inform the authorized institution concerned of its rights under sections 23(1) and 26 and the manner in which it may exercise such rights.

(4) Any suspension under this section or section 25 shall cease on such date prior to the expiration of the period thereof as the Monetary Authority may, by notice in writing served on the authorized institution the subject of the suspension, determine.

(5) The Monetary Authority may, by notice in writing served on an authorized institution, consent to the institution continuing to hold a deposit—

- (a) lawfully taken by the institution before the date on which the suspension under subsection (1) of its authorization takes effect as specified in a notice under subsection (1) served on it;
- (b) the holding of which on or after that date would, but for this subsection, contravene section 11, 12 or 27(1); and
- (c) subject to such conditions, if any, as he may think proper to attach to the consent in any particular case,

而據此該機構如在該日期或該日期之後，依據該項同意並按照該等條件(如有的話)繼續持有該筆存款，則須當作沒有因此而違反該條。

(6) 在不限制第(5)(c)款的一般性的原則下，金融管理專員可藉向任何認可機構送達的書面通知，對依據第(5)款給予該機構的同意附加他認為恰當的條件(包括藉修訂已附加於該項同意的條件而附加者)，或按他認為恰當，取消任何已附加於該項同意的條件。

(7) 在不限制第(5)(c)或(6)款的一般性的原則下，該款提述的條件可指明——

(a) 有關認可機構可持有第(5)款所提述的存款的期間；

(b) 該機構可持有或動用該筆存款的方式。

(8) 金融管理專員可藉向任何認可機構送達的書面通知，規定該機構在該通知書內指明的期限，按該通知書內指明的方式，呈交他為確定該機構是否正遵從第(5)(c)或(6)款所提述而且是附加於依據第(5)款給予該機構的同意的條件而合理地規定的資料。

(9) (由 1997 年第 4 號第 27 條廢除)

(10) 任何認可機構違反第(5)(c)或(6)款所提述而且是附加於依據第(5)款給予該機構的同意的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)

(a) 一經循公訴程序定罪，可處第 7 級罰款；或

(b) 一經循簡易程序定罪，可處第 5 級罰款，

如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

(11) 任何認可機構無合理辯解而沒有遵從根據第(8)款所作的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)

(a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或

(b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

and, accordingly, if that institution continues to hold that deposit on or after that date pursuant to that consent and in accordance with those conditions, if any, then it shall be deemed not to have thereby contravened that section.

(6) Without limiting the generality of subsection (5)(c), the Monetary Authority may, by notice in writing served on an authorized institution, attach to a consent given to the institution pursuant to subsection (5) such conditions (including attach by way of amending conditions already attached to such consent), or cancel any conditions attached to such consent, as he may think proper.

(7) Without limiting the generality of subsection (5)(c) or (6), conditions referred to in that subsection may specify—

(a) the period for which a deposit referred to in subsection (5) may be held by the authorized institution concerned;

(b) the manner in which such deposit may be held or used by the institution.

(8) The Monetary Authority may, by notice in writing served on an authorized institution, require the institution to submit, within such period and in such manner as are specified in the notice, such information as he may reasonably require in order to ascertain whether the institution is complying with the conditions referred to in subsection (5)(c) or (6) attached to a consent given to the institution pursuant to subsection (5).

(9) (*Repealed 4 of 1997 s. 27*)

(10) Every director, every chief executive and every manager of an authorized institution which contravenes any condition referred to in subsection (5)(c) or (6) attached to a consent given to the institution pursuant to subsection (5) commits an offence and is liable— (*Amended 32 of 2001 s. 24*)

(a) on conviction upon indictment to a fine at tier 7; or

(b) on summary conviction to a fine at tier 5,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(11) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (8) commits an offence and is liable— (*Amended 32 of 2001 s. 24*)

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(12) 任何人就第 (8) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。 (由 1997 年第 4 號第 27 條修訂)

(12) Any person who signs any document for the purposes of any requirement under subsection (8) which he knows or reasonably ought to know to be false in a material particular commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (Amended 4 of 1997 s. 27)

25. 暫停認可

(1) 在符合第 26 條的規定下，如金融管理專員根據第 22(1) 條可對某認可機構行使其權力(而不論金融管理專員是否已就該機構遵從第 23(1) 條)，金融管理專員在諮詢財政司司長後，可藉向該機構送達的書面通知，暫停該機構的認可為期不超過 6 個月。(由 1997 年第 362 號法律公告修訂)

(2) 金融管理專員在諮詢財政司司長後，可在根據本條所作的暫停認可的期限屆滿前——(由 1997 年第 362 號法律公告修訂)

(a) 藉向屬暫停認可的標的之認可機構送達的書面通知，將該項暫停認可續期；及

(b) 將該項暫停認可續期為期不超過 6 個月，由緊接該項暫停認可屆滿時開始計算。

(3) 金融管理專員可藉向任何認可機構送達的書面通知，同意該機構繼續持有存款——

(a) 而該筆存款，是該機構在其認可根據第 (1) 款被暫停的生效日期(在根據第 (1) 款向其送達的通知書內指明者) 前所合法接受的；

(b) 而如非有本款的規定，在該日期或該日期之後持有該筆存款是會違反第 11、12 或 27(1) 條的；及

(c) 但須受他認為於個別情況下恰當附加於該項同意的條件(如有的話) 所規限，

而據此該機構如在該日期或該日期之後，依據該項同意並按照該等條件(如有的話) 繼續持有該筆存款，則須當作沒有因此而違反該條。

(4) 在不限制第 (3)(c) 款的一般性的原則下，金融管理專員可藉向任何認可機構送達的書面通知，對依據第 (3) 款給予該機構的同意附加他認為恰當的條件(包括藉修

25. Suspensions

(1) Subject to section 26, in any case where the powers of the Monetary Authority become exercisable under section 22(1) with respect to an authorized institution (and whether or not the Monetary Authority has complied with section 23(1) in respect of the institution), the Monetary Authority may, after consultation with the Financial Secretary, by notice in writing served on the institution, suspend its authorization for a period not exceeding 6 months.

(2) A suspension under this section may, before the expiration of the period thereof, be renewed by the Monetary Authority, after consultation with the Financial Secretary—

(a) by notice in writing served on the authorized institution the subject of the suspension; and

(b) for a period not exceeding 6 months commencing immediately upon the expiration of the suspension.

(3) The Monetary Authority may, by notice in writing served on an authorized institution, consent to the institution continuing to hold a deposit—

(a) lawfully taken by the institution before the date on which the suspension under subsection (1) of its authorization takes effect as specified in a notice under that subsection served on it;

(b) the holding of which on or after that date would, but for this subsection, contravene section 11, 12 or 27(1); and

(c) subject to such conditions, if any, as he may think proper to attach to the consent in any particular case,

and, accordingly, if that institution continues to hold that deposit on or after that date pursuant to that consent and in accordance with those conditions, if any, then it shall be deemed not to have thereby contravened that section.

(4) Without limiting the generality of subsection (3)(c), the Monetary Authority may, by notice in writing served on an authorized institution, attach to a consent given to the institution pursuant to subsection (3) such conditions (including attach by way of amending conditions already attached to such

訂已附加於該項同意的條件而附加者)，或按他認為恰當，取消任何已附加於該項同意的條件。

(5) 在不限制第 (3)(c) 或 (4) 款的一般性的原則下，該款提述的條件可指明——

(a) 有關認可機構可持有第 (3) 款所提述的存款的期間；

(b) 該機構可持有或動用該筆存款的方式。

(6) 金融管理專員可藉向任何認可機構送達的書面通知，規定該機構在該通知書內指明的期限，按該通知書內指明的方式，呈交他為確定該機構是否正遵從第 (3)(c) 或 (4) 款所提述而且是附加於依據第 (3) 款給予該機構的同意的條件而合理地規定的資料。

(7) (由 1997 年第 4 號第 27 條廢除)

(8) 任何認可機構違反第 (3)(c) 或 (4) 款所提述而且是附加於依據第 (3) 款給予該機構的同意的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪—— (由 2001 年第 32 號第 24 條修訂)

(a) 一經循公訴程序定罪，可處第 7 級罰款；或

(b) 一經循簡易程序定罪，可處第 5 級罰款，

如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。 (由 1997 年第 4 號第 27 條修訂)

(9) 任何認可機構無合理辯解而沒有遵從根據第 (6) 款所作的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪—— (由 2001 年第 32 號第 24 條修訂)

(a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或

(b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。 (由 1997 年第 4 號第 27 條修訂)

(10) 任何人就根據第 (6) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——

(a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或

(b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。 (由 1997 年第 4 號第 27 條修訂)

consent), or cancel any conditions attached to such consent, as he may think proper.

(5) Without limiting the generality of subsection (3)(c) or (4), conditions referred to in that subsection may specify—

(a) the period for which a deposit referred to in subsection (3) may be held by the authorized institution concerned;

(b) the manner in which such deposit may be held or used by the institution.

(6) The Monetary Authority may, by notice in writing served on an authorized institution, require the institution to submit, within such period and in such manner as are specified in the notice, such information as he may reasonably require in order to ascertain whether the institution is complying with the conditions referred to in subsection (3)(c) or (4) attached to a consent given to the institution pursuant to subsection (3).

(7) (*Repealed 4 of 1997 s. 27*)

(8) Every director, every chief executive and every manager of an authorized institution which contravenes any condition referred to in subsection (3)(c) or (4) attached to a consent given to the institution pursuant to subsection (3) commits an offence and is liable— (*Amended 32 of 2001 s. 24*)

(a) on conviction upon indictment to a fine at tier 7; or

(b) on summary conviction to a fine at tier 5,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(9) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (6) commits an offence and is liable— (*Amended 32 of 2001 s. 24*)

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(10) Any person who signs any document for the purposes of any requirement under subsection (6) which he knows or reasonably ought to know to be false in a material particular commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (*Amended 4 of 1997 s. 27*)

52. 金融管理專員的權力

(1) 凡——

(a) 任何認可機構通知金融管理專員它——

- (i) 相當可能會無能力履行它的義務；或
- (ii) 無力償債或即將中止付款；

(b) 任何認可機構無能力履行它的義務或已中止付款；

(c) 金融管理專員認為——

(i) 任何認可機構正以有損以下人士的利益的方式經營其業務——

- (A) 該機構的存款人或潛在存款人；
- (B) 該機構的債權人；或
- (C) 由該機構發行或促進發行的多用途儲值卡的持卡人或潛在持卡人；

(ii) 任何認可機構無力償債、相當可能會無能力履行它的義務或即將中止付款；

(iii) 任何認可機構已違反或沒有遵從本條例的任何條文；

(iv) 任何認可機構已違反或沒有遵從根據第 16 條附加於該機構的認可或批准的任何條件、第 49(1) 條指明的條件、第 50(1) 條指明的條件、第 50(2) 條指明的條件或第 51A(2) 條指明的條件；或

(v) 他根據第 22(1) 條提議撤銷某認可機構的認可的權力可予行使(而不論第 23(1) 條是否已獲遵從)；或 (由 1997 年第 4 號第 10 條代替)

(d) 財政司司長向金融管理專員給予意見，表示他認為為符合公眾利益須如此行事，(由 1997 年第 362 號法律公告修訂)

則金融管理專員在諮詢財政司司長後，可不時在他覺得有需要時行使以下一項或多於一項權力—— (由 1997 年第 362 號法律公告修訂)

- (A) 藉向該機構送達的書面通知，規定該機構立即就其事務、業務及財產，採取他認為有需要的任何行動或作出他認為有需要的任何作為或事情(包括任何對該機構所經營的銀行業務、作為接受存款公司接受存款

52. Powers of Monetary Authority

(1) Where—

(a) an authorized institution informs the Monetary Authority—

- (i) that it is likely to become unable to meet its obligations; or
- (ii) that it is insolvent or about to suspend payment;

(b) an authorized institution becomes unable to meet its obligations or suspends payment;

(c) the Monetary Authority is of the opinion that—

(i) an authorized institution is carrying on its business in a manner detrimental to the interests of—

- (A) its depositors or potential depositors;
- (B) its creditors; or
- (C) holders or potential holders of multi-purpose cards issued by it or the issue of which is facilitated by it;

(ii) an authorized institution is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;

(iii) an authorized institution has contravened or failed to comply with any of the provisions of this Ordinance;

(iv) an authorized institution has contravened or failed to comply with any condition attached under section 16 to its authorization or approval, the condition specified in section 49(1), the condition specified in section 50(1), the condition specified in section 50(2) or the condition specified in section 51A(2); or

(v) his power under section 22(1) to propose to revoke the authorization of an authorized institution is exercisable (and whether or not section 23(1) has been complied with); or (Replaced 4 of 1997 s. 10)

(d) the Financial Secretary advises the Monetary Authority that he considers it in the public interest to do so,

the Monetary Authority, after consultation with the Financial Secretary, may exercise such one or more of the following powers as may from time to time appear to him to be necessary—

- (A) to require the institution, by notice in writing served on it, forthwith to take any action or to do any act or thing whatsoever in relation to its affairs, business and property as he may consider necessary (including any requirement imposing

的業務或作為有限制牌照銀行接受存款的業務，或經營發行或促進發行多用途儲值卡的業務(視屬何情況而定)施加限制的規定)；(由 1995 年第 49 號第 13 條代替。由 1997 年第 4 號第 10 條修訂)

- (B) 除第 (3E) 款另有規定外，發出指示，規定在該項指示的生效期間，該機構須就其事務、業務及財產的管理向顧問徵詢意見，而金融管理專員須為此目的委任一人為該機構的顧問；(由 1995 年第 49 號第 13 條代替)
- (C) 除第 (3D) 及 (3E) 款另有規定外，發出指示，規定在該項指示的生效期間，該項指示所指明的該機構的該等事務、業務及財產須由一名經理人管理，而金融管理專員須為此目的——
- (I) 委任一人為該機構的經理人；及
 - (II) 在該項指示中，指明該名經理人須遵循(與本條例的條文不抵觸者)的一項或多於一項的基本目標；(由 1995 年第 49 號第 13 條代替)
- (D) 向行政長官會同行政會議報告上述情況。(由 1999 年第 68 號第 3 條修訂)
- (2) 除有第 (1)(a) 款指明的情況外，金融管理專員不得行使第 (1)(D) 款所授予的權力，除非情況如下——
- (a) 該認可機構是在香港成立為法團而根據第 (1)(C) 款發出的指示正就該機構生效的——
 - (i) 他已向該機構及他認為適當的有關人士(如有的話)發出不少於 7 天(或根據第 (2A) 款容許的較短期間)的書面通知，述明——
 - (A) 他行使該項權力的意向；及
 - (B) 他行使該項權力的理由；及
 - (ii) 他已給予該機構及他認為適當的有關人士(如有的話)就此向他呈交書面申述的機會(該等申述(如有的話)即構成他向行政長官會同行政會議所作報告的一部分)；(由 1995 年第 49 號第 13 條代替。由 1999 年第 68 號第 3 條修訂)

restrictions on the banking business, business of taking deposits as a deposit-taking company or business of taking deposits as a restricted licence bank, or business of issuing or facilitating the issue of multi-purpose cards as the case may be, which may be carried on by the institution); (Replaced 49 of 1995 s. 13. Amended 4 of 1997 s. 10)

- (B) subject to subsection (3E), to give a direction that, during the period for which the direction is in force, the institution shall seek advice on the management of its affairs, business and property from an Advisor, for which purpose the Monetary Authority shall appoint a person to be the Advisor of that institution; (Replaced 49 of 1995 s. 13)
- (C) subject to subsections (3D) and (3E), to give a direction that, during the period for which the direction is in force, such of the affairs, business and property of the institution as are specified in the direction shall be managed by a Manager, for which purpose the Monetary Authority shall—
- (I) appoint a person to be the Manager of that institution; and
 - (II) specify in the direction the primary objective or objectives (not inconsistent with the provisions of this Ordinance) with which the Manager shall comply; (Replaced 49 of 1995 s. 13)
- (D) to report the circumstances to the Chief Executive in Council. (Amended 68 of 1999 s. 3)
- (2) Except in the circumstances specified in subsection (1)(a), the Monetary Authority shall not exercise the power conferred by subsection (1)(D) unless he has—
- (a) where the authorized institution is incorporated in Hong Kong and a direction given under subsection (1)(C) is in force in respect of the institution—
 - (i) given to the institution, and such relevant persons, if any, as he thinks fit, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—
 - (A) his intention to exercise such power; and
 - (B) his reasons for the exercise thereof; and
 - (ii) afforded the institution, and such relevant persons, if any, as he thinks fit, an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Chief Executive in Council); (Replaced 49 of 1995 s. 13. Amended 68 of 1999 s. 3)

(b) 該認可機構是在香港以外成立為法團而根據第(1)(C)款發出的指示正就該機構生效的——

(i) 他已按該機構在香港以外的主要營業地點，向該機構發出不少於 7 天(或根據第(2A)款容許的較短期間)的書面通知，述明——

(A) 他行使該項權力的意向；及

(B) 他行使該項權力的理由；及

(ii) 他已給予該機構就此向他呈交書面申述的機會(該等申述(如有的話)即構成他向行政長官會同行政會議所作報告的一部分)；(由 1995 年第 49 號第 13 條代替。由 1999 年第 68 號第 3 條修訂)

(c) 在任何其他情況——

(i) 他已向該認可機構發出不少於 7 天(或根據第(2A)款容許的較短期間)的書面通知，述明——

(A) 他行使該項權力的意向；及

(B) 他行使該項權力的理由；及

(ii) 他已給予該機構就此向他呈交書面申述的機會(該等申述(如有的話)即構成他向行政長官會同行政會議所作報告的一部分)。(由 1995 年第 49 號第 13 條增補。由 1999 年第 68 號第 3 條修訂)

(2A) 如有以下情形，金融管理專員可向認可機構及任何有關人士給予少於第(2)款提述的 7 天的書面通知——(由 1995 年第 49 號第 13 條修訂)

(a) 他取得財政司司長的同意如此行事；及(由 1997 年第 362 號法律公告修訂)

(b) 在當時的情況下，如此行事是合理的。(由 1992 年第 67 號第 3 條增補)

(3) (由 1995 年第 49 號第 13 條廢除)

(3A) 在符合第(3D)款的規定下，金融管理專員可不時就下述事宜更改根據第(1)(C)款發出的指示——

(a) 屬與指示有關的認可機構的、在指示內所指明的事務、業務及財產；

(b) 指示內指明須由該機構的經理人遵循的一項或多於一項的基本目標。

(由 1995 年第 49 號第 13 條增補)

(3B) 現宣布凡基於根據第(1)(C)款發出的指示，而在根據第(3A)款對該項指示作出更改前的任何時間所辦理的任何事情，不得僅因該項更改以致無效。(由 1995 年第 49 號第 13 條增補)

(b) where the authorized institution is incorporated outside Hong Kong and a direction given under subsection (1)(C) is in force in respect of the institution—

(i) given to the institution, at its principal place of business outside Hong Kong, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—

(A) his intention to exercise such power; and

(B) his reasons for the exercise thereof; and

(ii) afforded the institution an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Chief Executive in Council); (Replaced 49 of 1995 s. 13. Amended 68 of 1999 s. 3)

(c) in any other case—

(i) given to the authorized institution not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—

(A) his intention to exercise such power; and

(B) his reasons for the exercise thereof; and

(ii) afforded the institution an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Chief Executive in Council). (Added 49 of 1995 s. 13. Amended 68 of 1999 s. 3)

(2A) The Monetary Authority may give an authorized institution and any relevant person less than the 7 days' notice in writing referred to in subsection (2) where— (Amended 49 of 1995 s. 13)

(a) he has the consent of the Financial Secretary to do so; and

(b) to do so is reasonable in the circumstances. (Added 67 of 1992 s. 3)

(3) (Repealed 49 of 1995 s. 13)

(3A) Subject to subsection (3D), the Monetary Authority may from time to time vary a direction given under subsection (1)(C) in respect of—

(a) the affairs, business and property specified in the direction of the authorized institution to which the direction relates;

(b) the primary objective or objectives specified in the direction with which the Manager of the institution shall comply. (Added 49 of 1995 s. 13)

(3B) It is hereby declared that any thing done, in reliance on a direction given under subsection (1)(C), at any time before a variation under subsection (3A) of that direction shall not be invalid by reason only of that variation. (Added 49 of 1995 s. 13)

(3C) 在根據第 (1)(C) 款發出的指示就任何認可機構生效的期間內，在本部中對——

- (a) 該機構的事務、業務或財產或其中任何組合的提述；或
- (b) 該機構的經理人須遵循的一項或多於一項基本目的之提述，

除文意另有所指外，須解釋為指在該項指示中所指明而不時根據第 (3A) 款而更改的——

- (i) (如 (a) 段適用) 事務、業務或財產或其中任何組合 (視屬何情況而定)；
(由 2003 年第 14 號第 24 條修訂)
- (ii) (如 (b) 段適用) 一項或多於一項基本目標。(由 1995 年第 49 號第 13 條增補)

(3D) 即使本部有任何其他條文，就在香港以外成立為法團的認可機構而根據第 (1)(C) 款發出的任何指示 (包括根據第 (3A) 款對該指示作出的任何更改) 不得適用於該機構的任何事務、業務或財產，但下述者除外——

- (a) 該機構在香港或從香港經營或管理的事務及業務；及
- (b) 該機構符合下述其中一種或兩種情況的財產——
 - (i) 位於香港或從香港管理者；
 - (ii) 該機構在香港的主要營業地點或任何本地分行或本地辦事處的資產。(由 1995 年第 49 號第 13 條增補。由 2001 年第 32 號第 10 條修訂)

(3E) 凡原訟法庭已就認可機構作出清盤命令，金融管理專員不得根據第 (1)(B) 或 (C) 款就該機構發出指示。(由 1995 年第 49 號第 13 條增補。由 1998 年第 25 號第 2 條修訂)

(3F) 現宣布金融管理專員根據第 (1)(B) 或 (C) 款行使其權力的方式為可——

- (a) 委任一公司或一合夥；或
- (b) 在不損害 (a) 段的一般性的原則下，委任 2 人或多於 2 人，

為認可機構的顧問或經理人 (視屬何情況而定)。(由 1995 年第 49 號第 13 條增補)

(3G) 金融管理專員如根據第 (1)(C) 款行使其權力所採用方式為委任 2 人或多於 2 人為某認可機構的經理人，則須——

- (a) 藉書面通知，指明根據本條例委予或授予經理人的職責及權力中有何職責及權力，須就該機構——

(3C) During the period for which a direction given under subsection (1)(C) is in force in respect of an authorized institution, any reference in this Part to—

- (a) the affairs, business or property, or any combination thereof, of the institution; or
- (b) the primary objective or objectives with which the Manager of the institution shall comply,

shall, unless the context otherwise requires, be construed to mean—

- (i) where paragraph (a) is applicable, such affairs, business or property, or combination thereof, as the case may be;
- (ii) where paragraph (b) is applicable, such primary objective or objectives,

specified in that direction as varied from time to time under subsection (3A).
(Added 49 of 1995 s. 13)

(3D) Notwithstanding any other provision of this Part, no direction given under subsection (1)(C) (including any variation thereof under subsection (3A)) in respect of an authorized institution incorporated outside Hong Kong shall apply to any of the affairs, business or property of the institution except—

- (a) so much of the affairs and business of the institution as are carried on, or managed, in or from Hong Kong; and
- (b) so much of the property of the institution as is either or both of the following—
 - (i) located in, or managed from, Hong Kong;
 - (ii) an asset of the institution's principal place of business in Hong Kong or of any local branch or local office. (Added 49 of 1995 s. 13. Amended 32 of 2001 s. 10)

(3E) The Monetary Authority shall not give a direction under subsection (1)(B) or (C) in respect of an authorized institution in relation to which the Court of First Instance has made an order for the winding-up of the institution. (Added 49 of 1995 s. 13. Amended 25 of 1998 s. 2)

(3F) It is hereby declared that the Monetary Authority may exercise his power under subsection (1)(B) or (C) in such a way as to appoint—

- (a) a company or partnership; or
- (b) without prejudice to the generality of paragraph (a), 2 or more persons,

to be the Advisor or Manager, as the case may be, of an authorized institution.
(Added 49 of 1995 s. 13)

(3G) Where the Monetary Authority exercises his power under subsection (1)(C) in such a way as to appoint 2 or more persons to be the Manager of an authorized institution, he shall—

- (a) by notice in writing, specify which of the duties and powers imposed or conferred on a Manager under this Ordinance shall be discharged or exercised, as the case may be, in relation to the institution, by—

(i) 由該等人士中任何一人單獨履行或行使(視屬何情況而定); (由 2003 年第 14 號第 24 條修訂)

(ii) 由任何該等人士共同履行或行使(視屬何情況而定);

(iii) 由每名該等人士履行或行使(視屬何情況而定); 及

(b) 將該通知附加於根據該款發出並根據第 53A(1) 條送達該認可機構的有關指示,

而本條例的條文(包括第 53G 條),須為顧及該通知作必需的變通而理解並具有效力。
(由 1995 年第 49 號第 13 條增補)

(3H) 為免生疑問,現宣布根據第(1)(B)或(C)款獲委任為認可機構的顧問或經理的人,可以是一名根據《外匯基金條例》(第 66 章)第 5A(3)條獲委任職位的人。
(由 1995 年第 49 號第 13 條增補)

(3I) (由 1997 年第 4 號第 27 條廢除)

(4) 任何認可機構不遵從金融管理專員根據第(1)(A)款作出的任何規定,其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)

(a) 一經循公訴程序定罪,可處第 9 級罰款及監禁 5 年,如屬持續的罪行,可就罪行持續期間,另加每日第 5 級罰款;或

(b) 一經循簡易程序定罪,可處第 5 級罰款及監禁 2 年,如屬持續的罪行,可就罪行持續期間,另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

(5) 在本條中,“有關人士”(relevant person)就任何認可機構而言,指以下任何人——

(a) 該機構的經理人;

(b) 該機構的小股東控權人、大股東控權人或間接控權人;

(c) 因第 53B(1)(a) 條不再是該機構的行政總裁或董事的人;

(d) 憑藉第 53B(2) 條的施行而是該機構的行政總裁或董事的人。(由 1995 年第 49 號第 13 條增補)

(由 1992 年第 82 號第 25 條修訂)

(i) any such person alone;

(ii) any such persons jointly;

(iii) each such person; and

(b) attach that notice to the direction concerned given under that subsection served on the institution under section 53A(1),

and the provisions of this Ordinance (including section 53G) shall be read and have effect with such modifications as are necessary to take into account that notice. (Added 49 of 1995 s. 13)

(3H) For the avoidance of doubt, it is hereby declared that a person appointed under subsection (1)(B) or (C) to be the Advisor or Manager of an authorized institution may be a person who holds an appointment under section 5A(3) of the Exchange Fund Ordinance (Cap. 66). (Added 49 of 1995 s. 13)

(3I) (Repealed 4 of 1997 s. 27)

(4) Every director, every chief executive and every manager of an authorized institution which fails to comply with any requirement of the Monetary Authority under subsection (1)(A) commits an offence and is liable— (Amended 32 of 2001 s. 24)

(a) on conviction upon indictment to a fine at tier 9 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(5) In this section, “relevant person” (有關人士), in relation to an authorized institution, means any person who—

(a) is the Manager of the institution;

(b) is a minority shareholder controller, majority shareholder controller or indirect controller of the institution;

(c) has ceased to be a chief executive or director of the institution by virtue of section 53B(1)(a);

(d) is a chief executive or director of the institution by virtue of the operation of section 53B(2). (Added 49 of 1995 s. 13)

(Amended 82 of 1992 s. 25)

100. 補救行動

(1) 任何認可機構如違反第 98(1) 條，該機構及金融管理專員須展開討論，以決定該機構須採取何種補救行動以遵從該條的規定，但金融管理專員無須一定受任何上述討論約束。

(2) 金融管理專員根據第 (1) 款進行他認為適當的討論後，可藉向該認可機構送達的書面通知，規定該機構採取通知書內指明的補救行動，以使該機構能遵從第 98(1) 條的規定。

(3) (由 1997 年第 4 號第 27 條廢除)

(4) (由 1990 年第 3 號第 41 條廢除)

(5) 任何認可機構違反第 (2) 款所指的通知書內所載的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款。 (由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂)

(由 1992 年第 82 號第 25 條修訂)

100. Remedial action

(1) Where an authorized institution contravenes section 98(1), the institution and the Monetary Authority shall enter into discussions for the purposes of determining what remedial action is required to be taken by the institution for it to comply with that section, but the Monetary Authority shall not be bound by any such discussions.

(2) The Monetary Authority may, after holding such discussions as he thinks fit under subsection (1), by notice in writing served on the authorized institution, require the institution to take such remedial action as is specified in the notice for the purpose of having the institution comply with section 98(1).

(3) (Repealed 4 of 1997 s. 27)

(4) (Repealed 3 of 1990 s. 41)

(5) Every director, every chief executive and every manager of an authorized institution which contravenes any requirement contained in a notice under subsection (2) commits an offence and is liable on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years and, in the

case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues. (Amended 4 of 1997 s. 27; 32 of 2001 s. 24)

(Amended 82 of 1992 s. 25)

104. 補救行動

(1) 任何認可機構如違反第 102(1) 條，該機構及金融管理專員須展開討論，以決定該機構須採取何種補救行動以遵從該條的規定，但金融管理專員無須一定受任何上述討論約束。

(2) 金融管理專員根據第 (1) 款進行他認為適當的討論後，可藉向該認可機構送達的書面通知，規定該機構採取通知書內指明的補救行動，以使該機構能遵從第 102(1) 條的規定。

(3) (由 1997 年第 4 號第 27 條廢除)

(4) (由 1990 年第 3 號第 43 條廢除)

(5) 任何認可機構違反第 (2) 款所指的通知書內所載的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款。(由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂)

(由 1992 年第 82 號第 25 條修訂)

104. Remedial action

(1) Where an authorized institution contravenes section 102(1), the institution and the Monetary Authority shall enter into discussions for the purposes of determining what remedial action is required to be taken by the institution for it to comply with that section, but the Monetary Authority shall not be bound by any such discussions.

(2) The Monetary Authority may, after holding such discussions as he thinks fit under subsection (1), by notice in writing served on the authorized institution, require the institution to take such remedial action as is specified in the notice for the purpose of having the institution comply with section 102(1).

(3) (Repealed 4 of 1997 s. 27)

(4) (Repealed 3 of 1990 s. 43)

(5) Every director, every chief executive and every manager of an authorized institution which contravenes any requirement contained in a notice under subsection (2) commits an offence and is liable on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues. (Amended 4 of 1997 s. 27; 32 of 2001 s. 24)

(Amended 82 of 1992 s. 25)

71. 行政總裁及董事須得金融管理專員的同意

- (1) 除第 53C(5) 條另有規定外，任何人——
 - (a) 如沒有金融管理專員的書面同意，不得成為——
 - (i) 任何認可機構的行政總裁；或
 - (ii) 任何在香港成立為法團的認可機構的董事；
 - (b) 如在沒有該項同意下成為該行政總裁或董事，則不得在沒有該項同意的情況下以或繼續以該行政總裁或董事（視屬何情況而定）的身分行事；
 - (c) 不得違反根據第 (2)(b) 或 (5) 款附加而不時有效的條件；或
 - (d) 在該項同意根據第 (4) 款被撤回後，不得以或繼續以該行政總裁或董事的身分行事。
- (2) 金融管理專員——
 - (a) 除非信納有關的人是有關認可機構的行政總裁或董事的適當人選，否則須拒絕根據第 (1) 款給予同意；
 - (b) 可於根據第 (1) 款給予同意時，附加他認為恰當的條件，以確保或進一步確保有關的人會繼續是有關認可機構的行政總裁或董事的適當人選。
- (3) 如金融管理專員——
 - (a) 根據第 (1) 款給予同意，則他須在其後的合理切實可行的範圍內盡快向有關的人及有關認可機構發出書面通知，並在通知內指明任何附加於該項同意的條件；
 - (b) 拒絕根據第 (1) 款給予同意，則他須在其後的合理切實可行的範圍內盡快向有關的人及有關認可機構發出書面通知，並在通知內指明拒絕的理由。
- (4) 如金融管理專員——
 - (a) 已作出決定，不再信納某認可機構的行政總裁或董事是該機構的行政總裁或董事的適當人選；
 - (b) 已就該決定向該行政總裁或董事發出不少於 7 天的事先通知，並在通知內指明其理由以及附上一份本條的文本；並且
 - (c) 已考慮該行政總裁或董事向他提交的任何書面申述，
 則金融管理專員可藉送達該行政總裁或董事及該機構的書面通知，撤回根據第(1)款給予的同意。

71. Chief executives and directors require Monetary Authority's consent

- (1) Subject to section 53C(5), no person shall—
 - (a) become—
 - (i) the chief executive of an authorized institution; or
 - (ii) a director of an authorized institution incorporated in Hong Kong,
 without the consent in writing of the Monetary Authority;
 - (b) if he becomes such chief executive or director without such consent, act or continue to act as such chief executive or director, as the case may be, without such consent;
 - (c) fail to comply with a condition attached under subsection (2)(b) or (5) as such condition is in force from time to time; or
 - (d) act or continue to act as such chief executive or director after such consent has been withdrawn under subsection (4).
- (2) The Monetary Authority—
 - (a) shall refuse to give consent under subsection (1) unless the Monetary Authority is satisfied that the person concerned is a fit and proper person to be the chief executive or a director of the authorized institution concerned;
 - (b) may give consent under subsection (1) subject to such conditions as the Monetary Authority thinks proper to attach thereto for the purpose of securing, or further securing, that the person concerned will continue to be a fit and proper person to be the chief executive or a director of the authorized institution concerned.
- (3) Where the Monetary Authority gives consent, or refuses to give consent, under subsection (1), he shall, as soon as is reasonably practicable, thereafter give notice in writing—
 - (a) in the case of the consent, to the person concerned and the authorized institution concerned and specifying any conditions attached to the consent;
 - (b) in the case of the refusal, to the person concerned and the authorized institution concerned and specifying his reasons.
- (4) Where the Monetary Authority—
 - (a) has decided that he has ceased to be satisfied that the chief executive or a director of an authorized institution is a fit and proper person to be such chief executive or director;
 - (b) has given to the chief executive or director not less than 7 days' advance notice of his decision, specifying his reasons, and accompanied by a copy of this section; and
 - (c) has taken into account any written representation received by him from the chief executive or director,
 the Monetary Authority may, by notice in writing served on the chief executive or director and the institution, withdraw the consent.

(5) 如金融管理專員——

(a) 已作出決定，信納需要對某項已根據第(1)款給予的同意附加條件，或任何附加於如此給予的同意的條件需予修訂，以確保或進一步確保獲給予該項同意的認可機構行政總裁或董事會繼續是該機構的行政總裁或董事的適當人選；

(b) 已就該決定向該行政總裁或董事發出不少於 7 天的事先通知，並在通知內指明其理由以及附上一份本條的文本；並且

(c) 已考慮該行政總裁或董事向他提交的任何書面申述，

則金融管理專員可藉送達該行政總裁或董事及該機構的書面通知，對該項同意附加條件，或修訂任何已附加於該項同意的條件(視屬何情況而定)。

(6) 任何人違反第(1)款，即屬犯罪——

(a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或

(b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，

如屬持續的罪行，可就罪行持續的期間，另加每日第 2 級罰款。

(7) 凡任何人獲委任在緊接他作為某認可機構的行政總裁或董事的任期屆滿後，繼續擔任該職位，則就第(1)款而言，該人不得被視為成為該機構的行政總裁或董事。

(8) 就本條而言，凡任何人獲金融管理專員根據第(1)款給予同意，出任某認可機構的行政總裁，而該人亦正擔任該機構的行政總裁，則該人出任該機構的董事無須取得金融管理專員根據第(1)款給予的同意。

(5) Where the Monetary Authority—

(a) has decided that he is satisfied that conditions need to be attached to a consent given under subsection (1), or that conditions attached to any such consent need to be amended, for the purpose of securing, or further securing, that the chief executive or director of the authorized institution to whom the consent relates will continue to be a fit and proper person to be such chief executive or director;

(b) has given to the chief executive or director not less than 7 days' advance notice of his decision, specifying his reasons, and accompanied by a copy of this section; and

(c) has taken into account any written representation received by him from the chief executive or director,

the Monetary Authority may, by notice in writing served on the chief executive or director and the institution, attach conditions to the consent, or amend conditions attached to the consent, as the case may be.

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

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.

(7) A person shall not be regarded for the purposes of subsection (1) as becoming the chief executive or a director of an authorized institution if he is appointed to serve as such chief executive or director immediately on the expiration of a previous term by him as such chief executive or director.

(8) For the purposes of this section, where a person has the consent of the Monetary Authority under subsection (1) to be the chief executive of an authorized institution, and is such chief executive, he is not required to have the consent of the Monetary Authority under subsection (1) to be a director of the institution.

(9) 凡任何人在緊接《2001 年銀行業(修訂)條例》(2001 年第 32 號)第 16 條的生效日期* 前，已獲或被視為已獲金融管理專員根據當時有效的本條(“原有條文”)給予同意(“原有同意”)，出任某認可機構的行政總裁或董事，則於該生效日期* 當日及之後——

- (a) 該項原有同意須當作是金融管理專員根據第 (1) 款就該人出任該機構的行政總裁或董事(視屬何情況而定)而給予的同意(“當作同意”)；及
- (b) 根據原有條文附加於該項原有同意的條件，須當作是根據第 (2)(b) 款附加於當作同意的條件，

而第 (4)、(5) 及 (8) 款須據此適用。

(由 2001 年第 32 號第 16 條代替)

(9) Where immediately before the commencement* of section 16 of the Banking (Amendment) Ordinance 2001 (32 of 2001) a person had, or was regarded as having, the Monetary Authority's consent (“former consent”) under this section as then in force (“former section”) to be the chief executive or a director of an authorized institution, then, on and after that commencement*—

- (a) the former consent shall be deemed to be the Monetary Authority's consent (“deemed consent”) under subsection (1) for the person to be that chief executive or director, as the case may be; and
- (b) any conditions attached under the former section to the former consent shall be deemed to be conditions attached under subsection (2)(b) to the deemed consent,

and subsections (4), (5) and (8) shall apply accordingly.

(Replaced 32 of 2001 s. 16)