

**For Discussion**

**Bills Committee on  
Financial Reporting Council Bill**

**Component Four  
Miscellaneous Matters**

**PURPOSE**

In relation to Component Four<sup>1</sup> of the Financial Reporting Council Bill (the Bill), this paper aims to –

- (a) outline the major proposals contained in **Part 5** of the Bill which covers miscellaneous matters including (i) **preservation of secrecy**; (ii) **avoidance of conflict of interests**; (iii) **immunity**; and (iv) **other matters** including those with common application to the exercise of certain powers throughout the other Parts; and
- (b) set out the responses of the Administration to the salient comments on these matters as discussed at the second Bills Committee’s meeting held on 27 September 2005 or as reflected in deputations’ comments<sup>2</sup>.

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<sup>1</sup> For the grouping of components, please refer to the Administration’s paper entitled “Proposed work plan” (LC Paper No. CB(1)2288/04-05(35)) as discussed by the Bills Committee at its meeting held on 27 September 2005.

<sup>2</sup> For details of the responses, please refer to the Administration’s note entitled “Summary of submissions and Administration’s responses” (LC Paper No. CB(1)166/05-06(03)).

## PRESERVATION OF SECRECY

2. Regulators and investigatory agencies in the financial services sector are generally required to preserve the secrecy of the information obtained in the course of performing their functions. The Financial Reporting Council (FRC) is not an exception. The establishment of a confidentiality regime as set out in **clause 51** is modelled on section 46 of the Deposit Protection Scheme Ordinance (DPSO, Cap. 581) and section 378 of the Securities and Futures Ordinance (SFO, Cap. 571)<sup>3</sup>. We propose in **clause 51(1)**<sup>4</sup> that, except in the performance of any function under the FRC Ordinance or for carrying into effect the provisions of the Ordinance, a specified person -

- (a) shall not suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in the performance of any function under the Ordinance; and
- (b) shall not communicate any such matter to any person other than the person to whom such matter relates.

3. By virtue of **clause 51(13)**, a specified person means -

- (a) the FRC;
- (b) any person who is or has been (i) a member of the FRC, Audit Investigation Board (AIB), a Financial Reporting Review Committee (FRRC), or any other committee established by the FRC; (ii) a related person<sup>5</sup> of the FRC; or (iii) a person employed by or assisting a related person of the FRC; or
- (c) any person who performs or has performed any function under

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<sup>3</sup> See **Annex**.

<sup>4</sup> **Clause 51(1)** is modelled on section 46(1) of DPSO.

<sup>5</sup> As defined in **clause 2(1)**, a "*related person*", in relation to the FRC, means (a) a person employed by the FRC under **clause 10**; or (b) a person appointed as a consultant, agent or adviser of the FRC under **clause 10**.

the Ordinance.

4. Moreover, to enable the FRC to properly perform its functions, we propose in **clauses 51(2) and (3)**<sup>6</sup> certain exemption clauses so that the prohibition in **clause 51(1)** does not apply to the disclosure of information in specified circumstances. In particular, to empower the FRC to refer cases or complaints, or disclose information, to other regulatory agencies, professional bodies and relevant parties<sup>7</sup>, **clauses 51(3)(a) and (b)** set out the disclosure gateways, subject to the restrictions prescribed in **clause 51(4)**<sup>8</sup>. In addition, **clause 51(3)(c)** permits the disclosure of information to liquidators<sup>9</sup>, while **clause 51(3)(e)** provides that information can be disclosed in summary form that is so framed as to prevent particulars relating to any person from being ascertained from it.

5. We note that section 13(3) of The Ombudsman Ordinance (Cap. 397) and section 44(8) of the Personal Data (Privacy) Ordinance (Cap. 486)<sup>10</sup> respectively provide that, subject to certain exemptions, no obligation to maintain secrecy or other restriction, imposed by law, upon the disclosure of any information or document, that is or has been in the

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<sup>6</sup> **Clauses 51(2) and (3)** are modelled on sections 378(2) and (3) of the SFO.

<sup>7</sup> These include a “specified authority” referred to in **clause 12**; the Chief Executive; the Financial Secretary; the Secretary for Justice; the Secretary for Financial Services and the Treasury; the Commissioner of Police of Hong Kong; the Commissioner of the Independent Commission Against Corruption; the Commissioner of Inland Revenue; the Registrar of Companies; the Official Receiver, the Monetary Authority; the Securities and Futures Commission; the Market Misconduct Tribunal; the Insurance Authority; and the Mandatory Provident Fund Schemes Authority; the Hong Kong Institute of Certified Public Accountants (HKICPA); an inspector appointed under the Companies Ordinance (Cap. 32) to investigate the affairs of a corporation; an authorized public officer; or a company recognized as an exchange company under the SFO.

<sup>8</sup> **Clause 51(4)** provides that the FRC shall not disclose information under **clause 51(3)(a) or (b)** unless the Council is of the opinion that (a) the disclosure will enable or assist the recipient of the information to perform his functions; and (b) it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

<sup>9</sup> We note some deputations’ views about why FRC’s disclosure of information to liquidators should be exempted from the secrecy obligations. One of the important duties of a liquidator is to look into the affairs of the company in liquidation and ascertain whether any misfeasance, fraudulent preference, or breach of trust has been committed by any of its officers and, if necessary, the liquidator must take proceedings in respect of these. Given this, the FRC should be allowed to disclose information regarding the auditor of a listed entity (which may include information on suspected fraud or breach of trust committed by its officers) to the liquidator. For reference, section 378(3)(b) of the SFO also contains a disclosure gateway to liquidators.

<sup>10</sup> See **Annex**.

possession or under the control of an organization, shall apply to the disclosure to The Ombudsman or the Privacy Commissioner for Personal Data (as the case may be) for the purpose of an investigation under the two ordinances. Following advice of the Department of Justice, we have included **clause 51(8)** to provide, for the avoidance of doubt, that the secrecy prohibition in **clause 51(1)** does not affect the operation of these two provisions in The Ombudsman Ordinance and the Personal Data (Privacy) Ordinance. In other words, the FRC shall be able to accede to the request for information by The Ombudsman and the Privacy Commissioner for Personal Data for the purpose of their investigations under the relevant provisions of the two ordinances<sup>11</sup>.

6. **Clauses 51(5) to (7)**, modelled on sections 378(7) and (9) of the SFO, provide for the supplementary conditions governing the exempted disclosure. **Clauses 51(9) to (11)**, modelled on sections 378(10) and (11) of the SFO, prescribe the offence provisions in relation to the breach of the secrecy obligations.

## **AVOIDANCE OF CONFLICT OF INTERESTS**

7. Given the proposed powers of the FRC, we recognize the importance of putting in place an appropriate system to ensure that members or employees of the FRC, or other persons performing a function under the Ordinance, are not involved in any conflict of interest, as such conflicts (whether genuine or perceived) will undermine the credibility of the FRC and the effectiveness of the whole set-up. As the powers of the FRC are closely modelled on those of the SFC, we have made reference to section 379(3) of the SFO<sup>12</sup> to define the “interests” that should be subject to disclosure. The main features of the disclosure regime are summarized as follows -

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<sup>11</sup> This being the case, we do not see the need to put in place an additional disclosure gateway in **clause 51(3)** for The Ombudsman and the Privacy Commissioner for Personal Data. According to the Department of Justice, the inclusion of the reference to The Ombudsman and the Commissioner in the list of persons under **clause 51(3)(b)** will make any disclosure by the FRC to The Ombudsman and the Commissioner subject to the restrictions or conditions set out in **clauses 51(4) to (7)**, hence rendering **clause 51(3)(b)** incompatible with the existing section 13(3) of The Ombudsman Ordinance and section 44(8) of the Personal Data (Privacy) Ordinance.

<sup>12</sup> See **Annex**.

- (a) **Clause 52(1)** provides that the regime applies to a person who (i) is a member of the FRC, the AIB, a FRRC or any other committee established by the FRC; or (ii) performs a function under the Ordinance. Under **clause 52(2)**, if, in the course of performing such a function, a person is required to consider a matter in which he has an interest, he shall immediately disclose the nature of the interest to the FRC.
- (b) **Clauses 52(3) and (9)** define the kind of interests which should be disclosed. **Clause 52(3)**, which is modelled on section 379(3) of the SFO, provides that a person has an interest in a matter if the matter relates to (a) a listed entity (in which he has an interest); or (b) his, past or present, employers, clients, associates; or (c) another person whom he knows is or was a client of his, past or present, employers or associates. **Clause 52(9)**, which mirrors the same definition under Part 1 of Schedule 1 to the SFO<sup>13</sup>, defines the term “*associate*” to mean a close family member of a person, any corporation of which the person is a director or with which the person has a close business relationship, any employee or partner of the person, or any other related party.
- (c) **Clause 52(4)** provides that the FRC shall keep a record of the particulars of any disclosure made. **Clause 52(5)** provides that a person who has an interest in the matter shall **not, unless the FRC otherwise determines**, be present during any deliberation of the FRC, the AIB, a FRRC or any other committee established by the Council, or take part in any decision therein, with respect to the matter.
- (d) **Clause 52(7)** sets out the offence provision, for which a “reasonable excuse” defence is provided, in relation to any breach of the disclosure requirement. This provision is modelled on section 379(4) of the SFO<sup>14</sup>.

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<sup>13</sup> See Annex.

<sup>14</sup> See Annex.

8. We note the views of some deputations concerning the extensiveness of the interests subject to the disclosure requirement and the consequences of non-compliance. For example, the Law Society of Hong Kong notes that, given the “onerous disclosure obligations and severity of the sanctions”, it may be difficult to pull together sufficient number of qualified and suitable candidates to take up the appointments to serve the FRC. The HKICPA considers that the preferred approach is to enunciate the general principles of avoiding bias rather than to define the scope of potential conflicts in such detail. Nonetheless, we note that some Members of the Bills Committee have reiterated the importance of adopting a proper disclosure system to ensure that the FRC will, and will be seen to, discharge its functions impartially. In formulating **clause 52**, the Administration has been guided by the principle that it is necessary to put in place proper disclosure requirements that are proportionate to the proposed functions and powers of the FRC. We would welcome any further views on the subject by the Bills Committee to assess whether, and if so, how the proposed clause could be improved.

## **IMMUNITY**

9. **Clause 53** grants immunity to the FRC, or a person who is or is acting as a member or a related person of the FRC, in relation to any liability for anything done, or omitted to be done, **in good faith** in the performance or purported performance of the functions of the FRC. This clause is modelled on section 47(1) of DPSO<sup>15</sup>.

## **IMMUNITY IN RESPECT OF COMMUNICATION WITH FRC BY AUDITORS OF LISTED ENTITIES**

10. The development of financial markets and the increasing complexity of financial transactions have provided greater scope for persons responsible for fraud and other questionable practices to disguise the true nature of their activities. The past or present auditors and

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<sup>15</sup> See **Annex**.

reporting accountants, in the course of carrying out their duties, may identify the possibility of a fraud or an irregularity / non-compliance. In such a circumstance, they may wish to report their concerns to the FRC. However, in “blowing the whistle”, **albeit in good faith**, they may face a civil claim (whether arising in contract, tort, defamation, equity or otherwise) brought by the listed entity in question for, among other things, breach of confidentiality and, consequently, suffer financial loss. In this regard, **clause 54** grants immunity from civil liability, arising by reason only of the communication, to (a) a person who is or was an auditor, or a reporting accountant, of a listed entity; or (b) an auditor of an associated undertaking<sup>16</sup> of a listed entity or a former associated undertaking of the listed entity.

11. We note that the Privacy Commissioner for Personal Data has put forward views about the justifications for this immunity clause, vis-à-vis the need to protect personal data privacy. Bearing in mind the aftermath of the corporate scandals in other parts of the world over the past few years which have revealed the potential repercussions of auditors’ irregularities and questionable financial reporting, we consider it justifiable to put in place this immunity provision in **clause 54**, which is modelled on section 381 of the SFO<sup>17</sup>. We need to stress that such immunity will be afforded only to auditors and reporting accountants whose communications with the FRC are made **in good faith**. Moreover, the FRC shall operate (for example, in its dealing of information received from auditors or reporting accountants) in such a manner that is consistent with the requirements enshrined in the Personal Data (Privacy) Ordinance.

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<sup>16</sup> The term “*associated undertaking*” is defined in **clause 2(1)**. In essence, it means (i) the subsidiary of a listed entity; (ii) an undertaking in which the listed entity has an interest (whether held by that entity directly or indirectly through any other corporation or corporations) that is accounted for by that entity in its accounts using the method of equity accounting; or (iii) a corporation a substantial shareholder of which is also a substantial shareholder of the listed corporation.

<sup>17</sup> See **Annex**.

## OTHER MISCELLANEOUS MATTERS

12. **Clause 55** expressly provides that the Ordinance does not affect any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege. The clause is modelled on sections 380(4) and (5) of the SFO<sup>18</sup>. **Clauses 56 to 58** have general application to the investigations and enquiries referred to in **Parts 3 and 4** of the Bill. **Clause 56**, modelled on section 189 of the SFO<sup>19</sup>, governs the production of information in information system. **Clause 57**, which mirrors section 188 of the SFO<sup>20</sup>, governs the lien claimed on records or documents that are required to be produced. **Clause 58**, modelled on section 192 of the SFO<sup>21</sup>, prohibits the destruction of documents required to be produced.

13. **Clause 60(1)** provides that the Secretary for Financial Services and the Treasury may by notice published in the Gazette amend **Schedule 1**, which sets out the definitions of “relevant financial report” and “relevant requirement”. **Clause 60(2)** provides that the Chief Executive in Council may, by notice published in the Gazette, amend **Schedules 2 to 6**, which contain the supplementary provisions relating to the FRC, the AIB, the Financial Reporting Review Panel, a FRRC, or their members.

**Financial Services and the Treasury Bureau**  
**January 2006**

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<sup>18</sup> See Annex.

<sup>19</sup> See Annex.

<sup>20</sup> See Annex.

<sup>21</sup> See Annex.



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Section:	46	Heading:	<b>Confidentiality</b>	Version Date: 22/05/2004

PART 7  
MISCELLANEOUS

(1) Except so far as it is necessary for the performance of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, a specified person—

- (a) shall not suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in the performance of any function under this Ordinance; and
- (b) shall not communicate any such matter to any person other than the person to whom such matter relates.

(2) Subsection (1) does not apply—

- (a) to the disclosure of information in summary form that is so framed as to prevent particulars relating to the business of any particular Scheme member from being ascertained from it;
- (b) to the disclosure of information with a view to the institution of, or otherwise for the purpose of, any criminal proceedings, whether under this Ordinance or otherwise;
- (c) in connection with any other legal proceedings arising out of this Ordinance;
- (d) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice, relevant to the proper investigation of any criminal complaint;
- (e) to the disclosure of information with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the discharge of his professional duties by an auditor, or a former auditor, of a Scheme member or former Scheme member, whether or not the auditor or former auditor, as the case may be, was appointed for the purposes of section 48(3) or (4);
- (f) to the disclosure of information to the Chief Executive, the Financial Secretary, the Monetary Authority, the Securities and Futures Commission, an investor compensation company recognized by the Commission under section 79 of the Securities and Futures Ordinance (Cap 571) or any public officer authorized by the Financial Secretary where the disclosure will, in the opinion of the Board,

- enable or assist the recipient of the information to perform his functions;
- (g) to the disclosure of information to an auditor, or a former auditor, of a Scheme member or former Scheme member for the purpose of enabling or assisting the Board to perform its functions under this Ordinance;
- (h) to the disclosure of information with the consent of—
  - (i) the person from whom the information was obtained or received; and
  - (ii) where the information does not relate to such person, the person to whom it relates;
- (i) to the disclosure of information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section; or
- (j) to the disclosure of information required by law.

(3) The Board may attach a condition to any disclosure of information made pursuant to subsection (2)(b), (c), (d), (e), (f) or (j), and shall attach a condition to any disclosure of information made pursuant to subsection (2)(g), that neither—

- (a) the person to whom the information has been disclosed; nor
- (b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a),

shall disclose that information to any other person without the consent of the Board.

(4) No person shall, without the written consent of the Monetary Authority given generally or in any particular case or class of cases, disclose to any other person—

- (a) any information regarding a Scheme member' s MA supervisory rating or the amount of a Scheme member' s contribution; or
- (b) any other information that would, by itself or together with other information, enable a Scheme member' s MA supervisory rating or the amount of a Scheme member' s contribution to be ascertained or inferred.

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

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) If a person, knowing that the condition referred to in subsection (3) has been attached to a disclosure of information made pursuant to subsection (2), contravenes that condition, the person commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(7) If a person contravenes subsection (4), the person or, where the person is a Scheme member, every director and every chief executive of the person, commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) In this section, “specified person” (指明人士) means—

(a) any person who—

(i) is or has been—

(A) a member of the Board;

(B) a related person of the Board; or

(C) a person employed by or assisting a related person of the Board;  
and

(ii) performs or has performed any function under this Ordinance; or

(b) the Monetary Authority, or a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap 66) to assist the Monetary Authority.

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Section: 378 Heading: **Preservation of secrecy, etc.** Version Date: 08/09/2004

#### PART XVI

#### MISCELLANEOUS

#### Division 1-Secrecy, conflict of interests, and immunity

(1) Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person-

(a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;

(b) shall not communicate any such matter to any other person; and

(c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.

(2) Nothing in subsection (1) applies to-

(a) the disclosure of information which has already been made available to the public;

(b) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the laws of Hong Kong, in Hong Kong;

(c) the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

- (d) the disclosure of information by a person in connection with any judicial or other proceedings to which the person is a party;
- (e) the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;
- (ea) the disclosure of information to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap 581) for the purpose of enabling or assisting the Board to perform its functions under section 5(a), (d) and (e) of that Ordinance; (Added 7 of 2004 s. 55)
- (f) the communication of any information or opinion to which section 381(1) applies (whether with or without reference to section 381(2))-
  - (i) to the Commission in the manner described in section 381(1);
  - (ii) where section 381(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 381(4).

(3) Notwithstanding subsection (1), the Commission may disclose information-

- (a) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
- (b) to a person who is a liquidator appointed under the Companies Ordinance (Cap 32);
- (c) to the Market Misconduct Tribunal;
- (d) to the Securities and Futures Appeals Tribunal;
- (e) to the Monetary Authority, if-
  - (i) the information relates to-
    - (A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or
    - (B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or
  - (ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;
- (f) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to-
  - (i) the Chief Executive;
  - (ii) the Financial Secretary;
  - (iii) the Secretary for Justice;
  - (iv) (Repealed L.N. 106 of 2002);
  - (v) the Insurance Authority;
  - (vi) the Registrar of Companies;
  - (vii) the Official Receiver;
  - (viii) the Mandatory Provident Fund Schemes Authority;
  - (ix) the Privacy Commissioner for Personal Data;
  - (x) the Ombudsman;
  - (xi) a public officer authorized by the Financial Secretary under subsection (12);
  - (xii) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
  - (xiii) a recognized exchange company;
  - (xiv) a recognized clearing house;
  - (xv) a recognized exchange controller;

- (xvi) a recognized investor compensation company;
- (xvii) a person authorized to provide authorized automated trading services under section 95(2);
- (g) if in the opinion of the Commission the condition specified in subsection (5) is satisfied-
  - (i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(a) and (b);
  - (ii) to-
    - (A) the Hong Kong Institute of Certified Public Accountants; (Amended 23 of 2004 s. 56)
    - (B) any other body prescribed by rules made under section 397 for the purposes of this subparagraph, with a view to its taking of, or otherwise for the purposes of, any disciplinary action against any of its members;
  - (h) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to perform its functions under any of the relevant provisions;
  - (i) where the information is obtained by an investigator under section 183, to-
    - (i) the Financial Secretary;
    - (ii) the Secretary for Justice;
    - (iii) the Commissioner of Police;
    - (iv) the Commissioner of the Independent Commission Against Corruption;
    - (v) the Market Misconduct Tribunal;
    - (vi) the Securities and Futures Appeals Tribunal;
  - (j) for the purpose of, or otherwise in connection with, an audit required by section 16;
  - (k) with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, also with the consent of the person to whom the information relates.

(4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 159 or 160, and a person who is or was an employee or agent of such auditor, may disclose information obtained or received by him in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)-

- (a) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);
- (b) in the case of a person who is or was an employee or agent of an auditor, to the auditor.

(5) The condition referred to in subsection (3)(e), (f) and (g) is that-

- (a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(e), (f) or (g) (as the case may be) in the interest of the investing public or in the public interest; or
- (b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(6) Where the Commission is satisfied, for the purposes of subsection (3)(g)(i), that an authority, regulatory organization or companies inspector outside Hong Kong-

- (a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and
- (b) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(7) Where information is disclosed pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b))-

- (a) the person to whom that information is so disclosed; or
- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),

shall not disclose the information, or any part thereof, to any other person, unless-

- (i) the Commission consents to the disclosure;
- (ii) the information or the part thereof (as the case may be) has already been made available to the public;
- (iii) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
- (iv) the disclosure is in connection with any judicial or other proceedings to which the person or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or
- (v) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(b)-

- (a) the auditor; or
- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor,

shall not disclose the information, or any part thereof, to any other person, unless-

- (i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(a);
- (ii) the Commission consents to the disclosure;
- (iii) the information or the part thereof (as the case may be) has already been made available to the public;
- (iv) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
- (v) the disclosure is in connection with any judicial or other proceedings to which the auditor or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or

(vi) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(9) The Commission, in disclosing any information in any of the circumstances described in subsection (3) or in granting any consent pursuant to subsection (7)(i) or (8)(ii), may impose such conditions as it considers appropriate.

(10) A person who contravenes subsection (1) commits an offence and is liable-

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(11) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of the disclosure-

- (a) in the case of a contravention of subsection (7), he-
  - (i) knew or ought reasonably to have known that the information was previously disclosed to him or any other person (as the case may be) pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b)); and
  - (ii) had no reasonable grounds to believe that subsection (7)(i), (ii), (iii), (iv) or (v) applies to the disclosure of the information by him; or
- (b) in the case of a contravention of subsection (8), he-
  - (i) knew or ought reasonably to have known that the information was previously disclosed to him or an auditor (as the case may be) in the circumstances described in subsection (4)(b); and
  - (ii) had no reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applies to the disclosure of the information by him,

he commits an offence and is liable-

- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(f)(xi).

(13) Any matter published under subsection (6) is not subsidiary legislation.

(14) For the avoidance of doubt, it is hereby declared that subsection (1) does not preclude the disclosure of information under a reprimand under section 194(1)(iii) or 196(1)(ii).

(15) In this section-

"companies inspector" (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place;

"specified person" (指明人士) means-

- (a) the Commission;
- (b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or
- (c) any person who is or was-
  - (i) a person appointed under any of the relevant provisions;
  - (ii) a person performing any function under or carrying into effect any of



the relevant provisions; or

(iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

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Chapter:	397	Title:	THE OMBUDSMAN ORDINANCE	Gazette Number: L.N. 273 of 2001
Section:	13	Heading:	<b>Evidence</b>	Version Date: 19/12/2001

(3) Except in relation to the subject of any certificate issued under section 14(3)-

(a) no obligation to maintain secrecy or other restriction, imposed by law, upon the disclosure of any information, document or other thing, that is or has been in the possession or under the control of an organization, shall apply to its disclosure for the purposes of an investigation under this Ordinance; and (Amended 30 of 2001 s. 12)

(b) any requirement by the Ombudsman that any such information, document or thing as is referred to in paragraph (a) be disclosed or produced for the purposes of an investigation under this Ordinance shall be sufficient authority for its disclosure or production to the Ombudsman.

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▼  
Chapter: 486 Title: PERSONAL DATA Gazette Number: 25 of 1998 s. 2  
(PRIVACY) ORDINANCE  
Section: 44 Heading: Evidence Version Date: 01/07/1997

(8) It is hereby declared that-

- (a) no obligation to maintain secrecy or other restriction, imposed by law, upon the disclosure of any information, document or other thing, that is or has been in the possession or under the control of any person referred to in subsection (1), shall apply to its disclosure for the purposes of an investigation; and
- (b) any requirement by the Commissioner that any such information, document or thing as is referred to in paragraph (a) be disclosed or produced for the purposes of an investigation shall be sufficient authority for its disclosure or production to the Commissioner.

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Chapter: 571 Title: SECURITIES AND FUTURES ORDINANCE Gazette Number: L.N. 12 of 2003  
Section: 379 Heading: **Avoidance of conflict of interests** Version Date: 01/04/2003

(3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to-

(a) any securities, futures contract, leveraged foreign exchange contract, regulated investment agreement, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or regulated investment agreement-

(i) in which he has an interest;

(ii) in which a corporation, in the shares of which he has an interest, has an interest; or

(iii) which-

(A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest; or

(B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or

(b) a person-

(i) by whom he is or was employed;

(ii) of whom he is or was a client;

(iii) who is or was his associate; or

(iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable-

(a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or

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

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▼  
Chapter: 571 Title: SECURITIES AND FUTURES ORDINANCE Gazette Number: L.N. 154 of 2004  
Schedule: 1 Heading: INTERPRETATION AND GENERAL PROVISIONS Version Date: 03/12/2004

[sections 2, 19, 66, 164, 171,  
174, 175, 202 &  
406 & Schedule 9]

PART 1

INTERPRETATION

1. Interpretation of this Ordinance

In this Ordinance, unless otherwise defined or excluded or the context otherwise requires-  
"associate" (有聯繫者), in relation to a person, means-

- (a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) the trustee of a trust of which the person, his spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object;
- (e) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;
- (f) another person accustomed or obliged to act in accordance with the directions or instructions of the person;
- (g) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;
- (h) a corporation which is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;
- (i) a corporation at general meetings of which the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;
- (j) a corporation of which the person controls the composition of the board of directors;

(k) where the person is a corporation-

(i) each of its directors and its related corporations and each director or employee of any of its related corporations; and

(ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation;

(l) without limiting the circumstances in which paragraphs (a) to (k) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement-

(i) with respect to the acquisition, holding or disposal of such securities or such interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

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Chapter:	581	Title:	DEPOSIT PROTECTION SCHEME ORDINANCE	Gazette Number:	L.N. 101 of 2004
Section:	47	Heading:	<b>Immunity</b>	Version Date:	22/05/2004

(1) The Board, or a person who is, or is acting as, a member, or a related person, of the Board, is not liable for anything done, or omitted to be done, in good faith in the performance, or purported performance, of the functions of the Board.

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Chapter: 571 Title: SECURITIES AND FUTURES ORDINANCE Gazette Number: L.N. 12 of 2003  
Section: 381 Heading: **Immunity in respect of communication with Commission by auditors of listed corporations, etc.** Version Date: 01/04/2003

(1) Without prejudice to section 380, a person who is or was an auditor of a corporation which is listed, or of any associated corporation of the corporation, shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, by reason only of his communicating in good faith to the Commission any information or opinion on a matter of which he becomes or became aware in his capacity as such auditor, being a matter which in his opinion suggests-

(a) that at any time since the formation of the corporation the business of the corporation has been conducted-

- (i) with intent to defraud its creditors, or the creditors of any other person;
- (ii) for any fraudulent or unlawful purpose; or
- (iii) in a manner oppressive to its members or any part of its members;

(b) that the corporation was formed for any fraudulent or unlawful purpose;

(c) that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud, misfeasance or other misconduct;

(d) that at any time since the formation of the corporation persons involved in the management of the affairs of the corporation have engaged, in relation to such management, in defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

(e) that at any time since the formation of the corporation members of the corporation or any part of its members have not been given all the information with respect to its affairs that they might reasonably expect.

(2) In addition to applying to a person who is or was an auditor of a corporation which is listed, or of any associated corporation of the corporation, subsection (1) also applies to-

(a) a person who is or was an auditor of a corporation which was formerly listed, or of any associated corporation of that corporation, in which case a reference to matter in that subsection shall be construed on the basis that-



- (i) it includes any matter occurring at any time whether before or after the corporation first referred to in this paragraph ceased to remain listed;
  - (ii) the circumstances required to be suggested by the matter under paragraph (a), (b), (c), (d) or (e) of that subsection relate, instead of to the corporation referred to in such paragraph, to the corporation first referred to in this paragraph; and
  - (iii) the circumstances required to be suggested by the matter under paragraph (a), (d) or (e) of that subsection occurred at any time since the formation of the corporation but before the corporation ceased to remain listed; and
- (b) a person who is or was an auditor of a corporation which was formerly an associated corporation of a corporation which is listed, in which case a reference to matter in that subsection shall be construed on the basis that-
- (i) it includes any matter occurring at any time whether before or after the corporation first referred to in this paragraph ceased to remain an associated corporation of the corporation which is listed; and
  - (ii) the circumstances required to be suggested by the matter under paragraph (a), (b), (c), (d) or (e) of that subsection relate, instead of to the corporation referred to in such paragraph, to the corporation of which the corporation first referred to in this paragraph was formerly an associated corporation.

(3) The application of subsection (1) to any person (whether with or without reference to subsection (2)) is not affected by the fact that the person has, before communicating in the manner described in subsection (1) any information or opinion to which subsection (1) applies (whether with or without reference to subsection (2)), previously communicated such information or opinion to any other person.

(4) Without prejudice to subsection (1), where a person communicates in the manner described in that subsection any information or opinion to which that subsection applies (whether with or without reference to subsection (2)), he shall at the same time communicate the information or opinion to-

- (a) where the corporation of which he is or was an auditor is or was an insurer authorized under the Insurance Companies Ordinance (Cap 41), the Insurance Authority; or
- (b) where the corporation of which he is or was an auditor is or was an authorized financial institution, the Monetary Authority.

(5) In this section-

"associated corporation" (相聯法團), in relation to a corporation, means-

- (a) a subsidiary of that corporation;
- (b) a corporation in which that corporation has an interest (whether held by that corporation directly or indirectly through any other corporation or corporations), which is properly accounted for by that corporation in its accounts using the method generally known as equity accounting; or
- (c) a corporation a substantial shareholder of which is also a substantial shareholder of that corporation;

"auditor" (核數師), in relation to a corporation, means-

- (a) a person appointed to be an auditor of the corporation for the purposes of any Ordinance, or otherwise for the purposes of auditing the accounts of the corporation (irrespective of whether such person is qualified for the appointment under the Professional Accountants Ordinance (Cap 50) or is otherwise qualified

for the appointment); or

(b) a person appointed to be an auditor of the corporation for the purposes of any enactment of a place outside Hong Kong which imposes on such person responsibilities comparable to those imposed on an auditor by the Companies Ordinance (Cap 32).

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▼  
Chapter: 571 Title: SECURITIES AND FUTURES ORDINANCE Gazette Number: L.N. 12 of 2003  
Section: 380 Heading: Immunity Version Date: 01/04/2003

(4) Subject to subsection (5), nothing in this Ordinance affects any claims, rights or entitlements which would, apart from this Ordinance, arise on the ground of legal professional privilege.

(5) Nothing in subsection (4) affects any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

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Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE
			Gazette Number: L.N. 12 of 2003
Section:	189	Heading:	<b>Production of information in information systems, etc.</b>
			Version Date: 01/04/2003

Where any information or matter contained in any record or document required to be produced under this Part is recorded otherwise than in a legible form, any power conferred by this Part to require the production of the record or document includes the power to require the production of a reproduction of the recording of the information or matter or of the relevant part of it-

- (a) where the recording enables the information or matter to be reproduced in a legible form, in a legible form; and
- (b) where the information or matter is recorded in an information system, in a form which enables the information or matter to be reproduced in a legible form.

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Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	188	Heading:	<b>Lien claimed on records or documents</b>	Version Date:	01/04/2003

Where the person in possession of any record or document required to be produced under this Part claims a lien on the record or document-

- (a) the requirement to produce the record or document shall not be affected by the lien;
- (b) no fees shall be payable for or in respect of the production; and
- (c) the production shall be without prejudice to the lien.

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Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number: L.N. 12 of 2003
Section:	192	Heading:	<b>Destruction of documents, etc.</b>	Version Date: 01/04/2003

(1) A person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document required to be produced under this Part, with intent to conceal, from the person by whom the requirement to produce was imposed, facts or matters capable of being disclosed by the record or document.

(2) A person who commits an offence under subsection (1) is liable-

- (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.