

**LEGISLATIVE COUNCIL BRIEF**  
**FINANCIAL REPORTING COUNCIL BILL**

**INTRODUCTION**

A At the meeting of the Executive Council on 7 June 2005, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that the Financial Reporting Council Bill (the Bill), at Annex A, should be introduced into the Legislative Council (LegCo) to provide for the legislative framework for the establishment of the Financial Reporting Council (FRC).

**JUSTIFICATIONS**

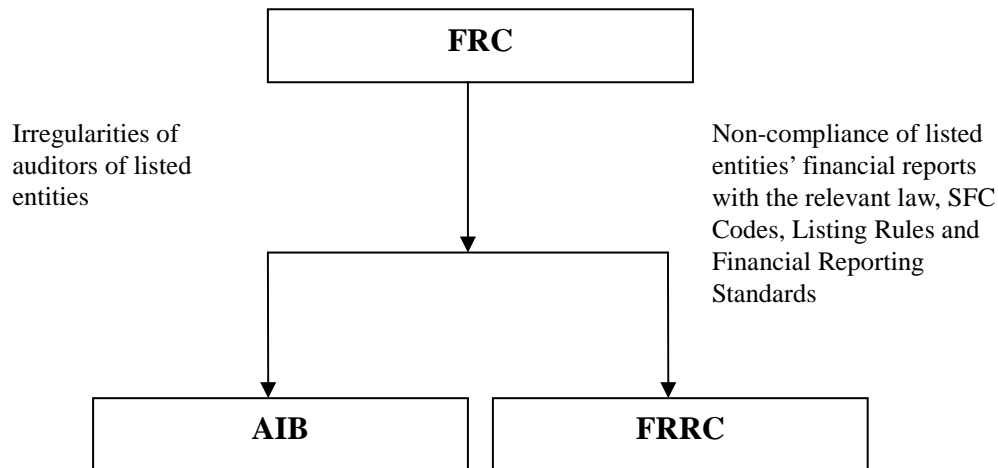
2. It is of paramount importance that we maintain an effective regulatory regime for the accounting profession. The proposal to establish the FRC recognizes the importance of reassuring the markets and the investing public that Hong Kong's financial reporting and corporate governance frameworks are, and will continue to be, robust. It is also a response to the greater public expectation in this regard. Furthermore, the proposal is in line with the international trend towards making the overseeing of auditors and financial reporting of listed entities more independent from the accounting profession. In the past few years, efforts have been made by other jurisdictions for similar purposes.

3. The salient features of the FRC proposal, worked out by Government in consultation with the Hong Kong Exchanges and Clearing Limited (HKEx), the Hong Kong Institute of Certified Public Accountants (HKICPA) and the Securities and Futures Commission (SFC), and refined in the light of the comments received during the public consultation, are set out in paragraphs 4 to 15 below.

***Establishment of the FRC***

4. We propose to establish the FRC as a new statutory body. Its two main tasks are to investigate irregularities of auditors of listed

entities<sup>1</sup> and to make enquiries into financial reports of such entities to help ensure that they comply with the relevant legal, accounting and regulatory requirements. Institutionally, the FRC would oversee both the Audit Investigation Board (AIB) and the Financial Reporting Review Committee(s) (FRRC), as illustrated in the following diagram -



5. In terms of composition, we propose that the FRC should comprise not more than 11 members, namely -

- (a) One ex-officio member from Government, i.e. the Registrar of Companies or his representative;
- (b) Three members, each nominated by the HKEx, HKICPA and SFC separately and appointed on an *ad personam* basis;
- (c) At least four and not more than six other appointed members; and
- (d) The Chief Executive Officer of the FRC.

Save for the ex-officio member, all members of the FRC should be appointed by the Chief Executive (CE). The majority of FRC members must be lay persons, i.e. non-accountants. The non-executive Chairman of the FRC would be appointed by the CE from among the lay members.

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<sup>1</sup> Including listed corporations and listed collective investment schemes such as the Tracker Fund.

## *Accountability Measures*

6. Given the “watchdog” role that the FRC is expected to play, we propose to put in place a number of accountability measures. These include the approval of the FRC’s budget by the Secretary for Financial Services and the Treasury, the audit of the FRC’s accounts by the Director of Audit and the laying of annual reports and accounts together with the auditor’s report before LegCo. There would also be provisions in respect of the avoidance of conflict of interests of FRC members/staff and other related persons.

7. Moreover, since the role of the FRC is investigatory/enquiry only (see paragraphs 9 to 14 below) and the FRC would not have the power to impose sanctions, we do not propose to set up a separate body to hear appeals against the decisions of the FRC. Instead, actions of the FRC may be subject to judicial review by the court and complaints against actions or staff of the FRC may be lodged with the Ombudsman.

## *Funding Arrangement*

8. The HKEx, HKICPA, SFC and Government<sup>2</sup> have agreed to contribute to the funding of the FRC on an equal share basis. The Companies Registry Trading Fund will provide free accommodation for the FRC, and other costs will be shared on an equal basis. The sharing of the costs of the FRC among the four parties is considered appropriate, as the establishment of the FRC will further enhance the regulation of auditors and the quality of financial reporting of listed entities, hence contributing to the improvement of the overall market quality. As to the amount of contributions, it is proposed that for the first three years, each party would contribute \$2.5 million per annum as recurrent funding. On top of this recurrent funding, the four parties have agreed to contribute a one-off amount of up to \$2.5 million each to set up a Reserve Fund. With this proposed funding, it is believed that the FRC should have sufficient resources to carry out its functions, at least for the initial years of operation. The amount of contributions from the fourth year onwards will be reviewed in the third year in the light of actual experience. The detailed funding agreement is intended to be effected through a Memorandum of Understanding among the four parties.

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<sup>2</sup> Government’s contribution would come from the Companies Registry Trading Fund.

### ***Audit Investigation Board (AIB)***

9. A key function of the FRC is, through the AIB, to investigate suspected irregularities of auditors of listed entities in relation to the audit of published accounts or financial statements of such entities and the preparation of financial reports<sup>3</sup> for inclusion in prospectuses or other listing documents. The FRC's investigatory work is proposed to be confined to the listed sector because such cases would likely involve broader public interest. Investigation of irregularities of auditors and accountants outside this scope would continue to be undertaken by the HKICPA under the Professional Accountants Ordinance (Cap. 50), as would decisions on discipline on the HKICPA members.

10. To enable the FRC to undertake this function effectively, we propose to give the FRC investigatory powers similar to those given to the SFC under sections 179 and 183 of the Securities and Futures Ordinance (SFO, Cap. 571). In short, where it appears to the FRC that there are circumstances suggesting the occurrence of auditors' irregularities, the FRC (or AIB if so directed by the FRC) may require the auditor of a listed entity or other persons (e.g. the relevant listed entity and its officers and employees) to produce relevant records and to give explanation for any entry in the records or an omission of an entry. These proposed powers aim to enable the FRC to conduct a relatively quick and discreet investigation into suspected irregularities. Furthermore, when the FRC has reasonable cause to believe that an auditor of a listed entity may have engaged in irregularities, the FRC would be able to exercise more extensive investigatory powers, such as requiring a person to attend before the FRC to answer questions or to give the FRC all reasonable assistance in connection with the investigation.

11. To ensure compliance, the FRC would be given the power to require the person giving an explanation to verify the explanation by statutory declaration, or to seek assistance from the court in case of unreasonable refusal or failure to comply with the FRC's request. With a warrant granted by the Magistrate, officers of the FRC may also enter and search premises and seize relevant documents.

### ***Financial Reporting Review Committees (FIRC)***

12. The other key function of the FRC is, through a FIRC, to enquire into suspected non-compliance of the financial reports of a listed

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<sup>3</sup> Commonly known as "reporting accountants' reports".

entity with relevant accounting requirements under the Companies Ordinance (Cap. 32), the relevant SFC Codes, Listing Rules, and Financial Reporting Standards, with a view to promoting confidence in the quality of financial reporting of listed entities.

13. We propose that if it appears to the FRC that there may be a question on whether or not there is a relevant non-compliance in relation to a listed entity, the FRC would enquire into the questionable financial reports, or constitute a FRRC by drawing at least five members from a Financial Reporting Review Panel (FRRP) to conduct the enquiry. The FRRP would comprise not less than 20 members to be appointed by the CE in consultation with the FRC. The members are expected to come from a wide range of financial reporting, auditing, banking, financial services and commercial expertise. In the course of enquiry, the FRC (or FRRC if so constituted) may require the relevant persons to produce records or information relating to the financial reports concerned. Furthermore, the FRC or FRRC may consult other professional and regulatory bodies during the enquiries, on matters such as the interpretation of accounting standards.

14. If the enquiry shows that the relevant financial reports do not comply with the relevant requirements or standards, the FRC would be empowered to request a voluntary rectification of financial reports or seek a court order to mandate such a rectification<sup>4</sup>. Our proposals in relation to the functions, powers and composition of a FRRC are modelled on the similar set-up in the United Kingdom.

### ***Referral of Investigation / Enquiry Reports***

15. We propose that the function of the FRC should remain purely investigatory. Upon the completion of an investigation / enquiry, the AIB or a FRRC would submit a report to the FRC for consideration of any necessary follow-up actions, such as referring the relevant investigation/enquiry report to a “specified body”<sup>5</sup> for disciplinary action, further investigation or any other actions. To illustrate, the FRC would be empowered to refer a case of auditors’ irregularities to the HKICPA for

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<sup>4</sup> Based on the legal advice, we propose that the FRC should only be empowered to seek a court order to mandate rectification of the annual accounts of Hong Kong incorporated companies or any auditor’s reports that are required under the Companies Ordinance to be included in a prospectus.

<sup>5</sup> Which can include a regulatory authority or a professional accountancy body in Hong Kong or elsewhere.

disciplinary proceedings<sup>6</sup>; to the SFC and the HKEx for enforcement of the relevant SFC codes and Listing Rules; or to the Police for follow-up investigation of suspected criminal offences.

## **OTHER OPTIONS**

16. In consulting the public on the detailed proposals, there is overwhelming support for the FRC proposal. We consider that the current proposal, i.e. to establish the FRC as a new statutory body, is the preferred option in terms of perceived independence and cost-effectiveness. Legislation is needed to confer the necessary authorities and status on the FRC.

## **THE BILL**

17. The following are the main provisions of the Bill –

- (a) Part 1 contains preliminary provisions. They define the terms used in the Bill. Schedule 1 also contains some definitions.
- (b) Part 2 deals with the establishment of the FRC. Clauses 9 and 10 set out the functions and powers of the FRC. Clause 14 empowers the CE to give the FRC written directions with respect to the performance of the Council's functions. Clauses 17 to 20 deal with the financial provisions of the FRC.
- (c) Part 3 deals with relevant irregularities. Clause 23 specifies when the FRC may exercise the powers under clauses 25 to 28 for the purpose of investigations concerning relevant irregularities, or direct the AIB to conduct such investigations with those powers. Clause 35 requires the AIB to submit to the FRC written reports on the findings of investigations. Clause 36 sets out what the FRC may do in relation to cases under investigation.

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<sup>6</sup> It is also relevant to point out that with the commencement of the Professional Accountants (Amendment) Ordinance 2004 in November 2004, the independence and transparency of the disciplinary proceedings of the HKICPA have been substantially enhanced. The majority of the members of a Disciplinary Committee under the HKICPA must now be lay persons, and in general the proceedings of the Committee are open to the public.

- (d) Part 4 deals with relevant non-compliances. Clause 40 specifies when the FRC may exercise the powers under clause 43 for the purpose of enquires concerning relevant non-compliances. Clause 47 requires the FRRC to submit to the FRC written reports on the findings of enquiries. Clause 48 sets out what the FRC may do in relation to cases under enquiry. Clauses 49 and 50 empower the FRC to request a voluntary rectification of accounts and financial reports and to seek a court order to mandate such a rectification.
- (e) Parts 5 and 6 deal with miscellaneous matters and consequential amendments.
- (f) Schedules 2 to 6 contain provisions relating to the FRC, the Chief Executive Officer of the FRC, the AIB, the FRRP and the FRRC.

B The existing provisions being amended are at Annex B.

### **LEGISLATIVE TIMETABLE**

18. The legislative timetable will be –

Publication in the Gazette	17 June 2005
First Reading and commencement of Second Reading debate	29 June 2005
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

### **IMPLICATIONS OF THE PROPOSAL**

C 19. The proposals set out in the Bill have economic and financial implications as set out at Annex C. They are in conformity with the Basic Law, including the provisions concerning human rights. They have no civil service, productivity, environmental or sustainability implications. The Bill will not bind the State, nor Government, upon enactment.

## **PUBLIC CONSULTATION**

20. We conducted a public consultation on the “Proposals to (a) Enhance the Oversight of the Public Interest Activities of Auditors; and (b) Establish the Financial Reporting Review Panel” in September 2003. Most of the respondents generally supported the broad proposals to establish an independent investigation board to deal with irregularities of auditors of listed corporations and a review panel to help ensure compliance of listed corporations’ financial reports with the relevant law and standards.

21. We conducted a second round of public consultation on the detailed proposals from 28 February to 15 April this year. For this purpose, a “Consultation Paper on the Legislative Proposals to Establish the Financial Reporting Council” was circulated to stakeholders, such as the relevant professional bodies, chambers of commerce, financial service regulators, industry associations in the financial services sector, the Standing Committee on Company Law Reform, as well as respondents during the first consultation in 2003. It was also posted on the website of the Financial Services and the Treasury Bureau. The overwhelming majority of respondents indicated support for the establishment of the FRC. Some respondents have commented on a number of specific issues, such as the proposed powers of the FRC and its modus operandi, corresponding checks and balances, as well as the provision of adequate funding for the FRC.

22. Furthermore, we have briefed the LegCo Panel on Financial Affairs on the broad proposals on 13 June 2003 and 2 April 2004, and have briefed the Panel on the detailed proposals on 7 March and 6 May 2005. Members of the Panel generally support the proposal and some of them have urged the early establishment of the FRC, although a few Panel members had raised questions on matters such as whether greater power should be given to the FRC or whether its role should be expanded to, say, also act as the “prosecutor” in the disciplinary proceedings of the HKICPA.

## **PUBLICITY**

23. A press release will be issued on 15 June 2005. A government spokesman will be available to handle enquiries.



## **BACKGROUND**

24. In December 2002, following several notable corporate scandals in other parts of the world, the Secretary for Financial Services and the Treasury requested the then Hong Kong Society of Accountants (now the HKICPA) to put forward proposals<sup>7</sup> to strengthen the regulatory regime for the profession. One of the key proposals is to set up an independent investigation board to investigate irregularities of auditors of listed corporations. Moreover, Government, together with relevant parties, has stated a financial reporting review panel should be established to check the compliance of financial reporting of listed corporations with relevant legal and accounting requirements. This proposal is in line with the recommendations of the Standing Committee on Company Law Reform in Phase I of its Corporate Governance Review.

25. To gauge the views of the public on the proposals, we conducted the first public consultation in September 2003. In the light of the strong support received, Government has worked out the detailed proposals in consultation with the HKEx, the HKICPA and the SFC.

## **ENQUIRIES**

26. Enquiries on this brief can be directed to Mr. Alan Lo, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2528 9016.

**Financial Services and the Treasury Bureau**  
**15 June 2005**

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<sup>7</sup> Parts of the proposals relating to the governance of the HKICPA have been effected through the Professional Accountants (Amendment) Ordinance 2004 which provides for the Chief Executive's appointment of lay persons to the governing Council and the Investigation and Disciplinary Panels of the HKICPA, with a view to enhancing the independence and transparency of the relevant bodies. The relevant part of the Amendment Ordinance came into effect in November 2004.

# **FINANCIAL REPORTING COUNCIL BILL**

## **ANNEXES**

- Annex A - Financial Reporting Council Bill
- Annex B - The Existing Provisions Being Amended
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**FINANCIAL REPORTING COUNCIL BILL**

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## A BILL

To

Provide for the establishment of a Financial Reporting Council to investigate irregularities committed by auditors of listed corporations and of listed collective investment schemes in respect of the audit of accounts, and irregularities committed by reporting accountants of such corporations and of such schemes in respect of the preparation of financial reports for prospectuses or other listing documents, and to enquire into instances of non-compliance with legal, accounting or regulatory requirements in the financial reports of such corporations and of such schemes, for the establishment of an Audit Investigation Board to conduct such investigations, for the appointment by the Council of a Financial Reporting Review Committee to make such enquiries, and for related matters.

Enacted by the Legislative Council.

## PART 1

### PRELIMINARY

#### **1. Short title and commencement**

(1) This Ordinance may be cited as the Financial Reporting Council Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

#### **2. Interpretation**

(1) In this Ordinance, unless the context otherwise requires –  
“appointed member” (委任成員), in relation to the Council, means a member of the Council appointed under section 7(1)(c);

“associated undertaking” (相聯企業) –

- (a) in relation to a listed corporation, means –
  - (i) an undertaking that is a subsidiary of the corporation within the meaning of section 2 of the Companies Ordinance (Cap. 32);
  - (ii) an undertaking that is accounted for and consolidated in the accounts, or is required to be accounted for and consolidated in the next accounts, of the corporation as a subsidiary for the purposes of –
    - (A) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
    - (B) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
    - (C) the Listing Rules; or
    - (D) any generally acceptable accounting principles allowed for usage under the Listing Rules;
  - (iii) an undertaking in which the corporation has an interest (whether held by that corporation directly or indirectly through any other corporation or corporations) that is accounted for by that corporation in its accounts using the method generally known as equity accounting; or
  - (iv) a corporation a substantial shareholder of which is

- also a substantial shareholder of the corporation;
- (b) in relation to a listed collective investment scheme, means –
- (i) an undertaking that is accounted for and consolidated in the accounts, or is required to be accounted for and consolidated in the next accounts, of the scheme as a subsidiary for the purposes of –
    - (A) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
    - (B) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
    - (C) the Listing Rules; or
    - (D) any generally acceptable accounting principles allowed for usage under the Listing Rules; or
  - (ii) an undertaking in which the scheme has an interest (whether held by that scheme directly or indirectly through any other corporation or corporations) that is accounted for by that scheme in its accounts using the method generally known as equity accounting;

“audit” (審計) –

- (a) in relation to the accounts of a listed corporation, means an audit of those accounts required for the purposes of the

Companies Ordinance (Cap. 32), as in force at the material time, or the Listing Rules;

- (b) in relation to the accounts of a listed collective investment scheme, means an audit of those accounts required for the purposes of the relevant code or the Listing Rules;
- (c) in relation to the accounts of a relevant undertaking of a listed entity, means –
  - (i) in the case where an audit of those accounts is required for the purposes of the Companies Ordinance (Cap. 32), or the corporate law of a place outside Hong Kong, as in force at the material time, such an audit so required;
  - (ii) in any other case, the audit of those accounts, regardless of whether or not required for the purposes of any constitutional instrument of the undertaking;

“audit working paper” (審計工作材料) means a record, or document, that is prepared, or obtained and retained, by or on behalf of an auditor for, or in connection with, the auditor’s performance of his functions relating to an audit of accounts;

“auditor” (核數師) –

- (a) in relation to a listed corporation –
  - (i) means a person appointed to be an auditor of the corporation for the purposes of the Companies Ordinance (Cap. 32), as in force at the material time, or the Listing Rules, regardless of whether or not the person is qualified for the appointment; and
  - (ii) includes –

- (A) if the person so appointed is an individual, an employee or agent of that person involved in the audit of the accounts of the corporation;
  - (B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the audit of the accounts of the corporation; and
  - (C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved in the audit of the accounts of the corporation;
- (b) in relation to a listed collective investment scheme –
- (i) means a person appointed to be an auditor of the scheme for the purposes of the relevant code or the Listing Rules, regardless of whether or not the person is qualified for the appointment; and
  - (ii) includes –
    - (A) if the person so appointed is an individual, an employee or agent of that person involved in the audit of the accounts of the scheme;
    - (B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the audit of the accounts of the scheme; and
    - (C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved

- in the audit of the accounts of the scheme;
- (c) in relation to a relevant undertaking or associated undertaking of a listed entity, or an undertaking that was formerly an associated undertaking of a listed entity –
- (i) means –
- (A) in the case where an auditor of the undertaking is required to be appointed for the purposes of the Companies Ordinance (Cap. 32), or the corporate law of a place outside Hong Kong, as in force at the material time, a person appointed to be such an auditor, regardless of whether or not the person is qualified for the appointment;
- (B) in any other case, a person appointed to be an auditor of the undertaking –
- (I) regardless of whether or not the person is appointed for the purposes of any constitutional instrument of the undertaking;  
and
- (II) regardless of whether or not the person is qualified for the appointment; and
- (ii) includes –

- (A) if the person so appointed is an individual, an employee or agent of that person involved in the audit of the accounts of the undertaking;
- (B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the audit of the accounts of the undertaking; and
- (C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved in the audit of the accounts of the undertaking;

“authorized institution” (認可機構) means an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

“books” (簿冊) includes accounts and accounting information, however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

“collective investment scheme” (集體投資計劃) means a collective investment scheme within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

“Commissioner of Inland Revenue” (稅務局局長) means the Commissioner of Inland Revenue appointed under the Inland Revenue Ordinance (Cap. 112);

“company” (公司) means a company within the meaning of section 2(1) of the Companies Ordinance (Cap. 32);

“controller” (控權人) means a person who is an indirect controller, or a majority shareholder controller, within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);



- “corporation” (法團) means a company or other body corporate incorporated either in Hong Kong or elsewhere;
- “Council” (財務匯報局) means the Financial Reporting Council established by section 6(1);
- “debenture” (債權證) means a debenture within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);
- “director” (董事) includes a shadow director and any person occupying the position of director by whatever name called;
- “Director of Audit” (審計署署長) means the Director of Audit appointed under section 3 of the Audit Ordinance (Cap. 122);
- “document” (文件) includes –
- (a) any register, books and tape recording;
  - (b) any input or output, in whatever form, into or from an information system; and
  - (c) any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);
- “function” (職能) includes a power and a duty;
- “HKEC” (交易結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Exchanges and Clearing Limited;
- “HKICPA” (香港會計師公會) means the Hong Kong Institute of Certified Public Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50);
- “Independent Commission Against Corruption” (廉政公署) means the Independent Commission Against Corruption established by section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);
- “information” (資料) includes data, text, images, sound codes, computer

programmes, software and databases, and any combination thereof;

“information system” (資訊系統) means an information system within the meaning of section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“Insurance Authority” (保險業監督) means the Insurance Authority appointed under section 4(1) of the Insurance Companies Ordinance (Cap. 41);

“Investigation Board” (調查委員會) means the Audit Investigation Board established by section 22(1);

“lay person” (業外人士) means a person who is not –

- (a) a certified public accountant within the meaning of the Professional Accountants Ordinance (Cap. 50); or
- (b) a member of an accountancy body that is a member of the International Federation of Accountants;

“listing document” (上市文件) –

- (a) in relation to a listed corporation, means –
  - (i) a prospectus; or
  - (ii) a document issued for the purposes of the Listing Rules that –
    - (A) offers any securities issued by the corporation to the public for subscription, or purchase, for a consideration; or
    - (B) is calculated to invite offers by the public to subscribe for, or purchase, for a consideration any securities issued by the corporation;
- (b) in relation to a listed collective investment scheme, means a document issued for the purposes of the relevant code or the Listing Rules that –
  - (i) offers any interests in the scheme to the public for

acquisition for a consideration;

- (ii) offers the scheme to the public for participation for a consideration; or
- (iii) is calculated to invite offers by the public to acquire for a consideration any interests, or participate for a consideration, in the scheme;

“Listing Rules” (《上市規則》) means –

- (a) the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited; or
- (b) the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited,

approved by the Securities and Futures Commission under section 24 of the Securities and Futures Ordinance (Cap. 571), and as in force at the material time;

“manager” (管理人), in relation to a listed collective investment scheme, means the person who is responsible, for the purposes of the relevant code or the Listing Rules, for the operation, and the management of the property, of the scheme for the benefit of those who hold interests in the scheme;

“Mandatory Provident Fund Schemes Authority” (強積金管理局) means the Mandatory Provident Fund Schemes Authority established by section 6(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

“Market Misconduct Tribunal” (市場失當行為審裁處) means the Market Misconduct Tribunal established by section 251(1) of the Securities and Futures Ordinance (Cap. 571);

“Monetary Authority” (金融管理專員) means the Monetary Authority appointed under section 5A(1) of the Exchange Fund Ordinance (Cap. 66);

“officer” (高級人員) –

- (a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or
- (b) in relation to an unincorporated association or partnership, means any member of the governing body of, or any other person involved in the management of, the association or partnership;

“Official Receiver” (破產管理署署長) means the Official Receiver appointed under section 75(1) of the Bankruptcy Ordinance (Cap. 6);

“possession” (管有), in relation to any matter, includes custody, control and power of or over the matter;

“prospectus” (招股章程) means a prospectus within the meaning of section 2(1) of the Companies Ordinance (Cap. 32);

“record” (紀錄) means any record of information (however compiled or stored) and includes –

- (a) any books, deed, contract, agreement, voucher and receipt;
- (b) any document or other material used with or produced by an information system;
- (c) any information that is recorded otherwise than in a legible form but is capable of being reproduced in a legible form;
- (d) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are

embodied so as to be capable (with or without the aid of other equipment) of being reproduced; and

- (e) any film (including a microfilm), disc, tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;

“Registrar of Companies” (公司註冊處處長) means the Registrar of Companies appointed under section 303(2) of the Companies Ordinance (Cap. 32);

“related person” (有關連人士), in relation to the Council, means –

- (a) a person employed by the Council under section 10; or
- (b) a person appointed as a consultant, agent or adviser of the Council under section 10;

“relevant code” (有關守則) means a code or guideline published under section 399 of the Securities and Futures Ordinance (Cap. 571) for providing guidance in relation to the operation of section 104 of that Ordinance, and as in force at the material time;

“relevant financial report” (有關財務報告) –

- (a) except in relation to sections 5(2) and 50, has the meaning assigned to it by Part 1 of Schedule 1;
- (b) in relation to sections 5(2) and 50, has the meaning assigned to it by Part 2 of Schedule 1;

“relevant requirement” (有關規定) –

- (a) except in relation to sections 5(2) and 50, has the meaning assigned to it by Part 1 of Schedule 1;
- (b) in relation to sections 5(2) and 50, has the meaning assigned to it by Part 2 of Schedule 1;

“relevant time” (有關期間) –

- (a) in relation to an auditor’s report on the audit of the accounts of a listed entity, means any time, whether

before, on or after the commencement of section 4, during which the entity is or was listed;

- (b) in relation to a listing document issued by or on behalf of a listed entity, means any time, whether before, on or after the commencement of section 4, since the entity was formed;
- (c) in relation to a relevant financial report of a listed entity (other than a specified report), means any time, whether before, on or after the commencement of section 5, during which the entity is or was listed;

“relevant undertaking” (有關企業) –

- (a) in relation to a listed corporation, means an undertaking that is, or was at the material time –
  - (i) a subsidiary of the corporation within the meaning of section 2 of the Companies Ordinance (Cap. 32); or
  - (ii) an undertaking that is required to be accounted for and consolidated in the accounts, or the next accounts, of the corporation as a subsidiary for the purposes of –
    - (A) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
    - (B) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
    - (C) the Listing Rules; or

- (D) any generally acceptable accounting principles allowed for usage under the Listing Rules;
- (b) in relation to a listed collective investment scheme, means an undertaking that is, or was at the material time, an undertaking that is required to be accounted for and consolidated in the accounts, or the next accounts, of the scheme as a subsidiary for the purposes of –
  - (i) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
  - (ii) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
  - (iii) the Listing Rules; or
  - (iv) any generally acceptable accounting principles allowed for usage under the Listing Rules;

“reporting accountant” (匯報會計師) –

- (a) in relation to a listed corporation –
  - (i) means a person appointed for the purposes of paragraph 43 of the Third Schedule to the Companies Ordinance (Cap. 32), or the Listing Rules, to prepare a specified report required for a listing document issued by or on behalf of the corporation, regardless of whether or not the person is qualified for the appointment; and
  - (ii) includes –
    - (A) if the person so appointed is an

- individual, an employee or agent of that person involved in the preparation of the specified report;
- (B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the preparation of the specified report; and
  - (C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved in the preparation of the specified report;
- (b) in relation to a listed collective investment scheme –
- (i) means a person appointed for the purposes of the relevant code or the Listing Rules to prepare a specified report required for a listing document issued by or on behalf of the scheme, regardless of whether or not the person is qualified for the appointment; and
  - (ii) includes –
    - (A) if the person so appointed is an individual, an employee or agent of that person involved in the preparation of the specified report;
    - (B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the preparation of the specified report; and
    - (C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved



in the preparation of the specified report;

“responsible person” (負責人), in relation to a listed collective investment scheme, means –

- (a) the manager of the scheme; or
- (b) the person appointed as the trustee, or custodian, of the property of the scheme;

“Review Committee” (檢討委員會) means a Financial Reporting Review Committee appointed under section 40(1)(b);

“Review Panel” (檢討委員會) means the Financial Reporting Review Panel appointed under section 39(1);

“Secretary” (局長) means the Secretary for Financial Services and the Treasury;

“securities” (證券) –

- (a) means –
  - (i) shares, stocks, debentures, loan stocks, funds, bonds or notes;
  - (ii) rights, options or interests (whether described as units or otherwise) in, or in respect of, shares, stocks, debentures, loan stocks, funds, bonds or notes;
  - (iii) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, shares, stocks, debentures, loan stocks, funds, bonds or notes;
  - (iv) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
  - (v) interests, rights or property that is interests, rights or property, or is of a class or description of

interests, rights or property, prescribed by notice under section 392 of the Securities and Futures Ordinance (Cap. 571) as being regarded as securities in accordance with the terms of the notice; but

- (b) does not include –
  - (i) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document;
  - (ii) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) and any promissory note within the meaning of section 89 of that Ordinance;
  - (iii) interests, rights or property that is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of the Securities and Futures Ordinance (Cap. 571) as not being regarded as securities in accordance with the terms of the notice;

“Securities and Futures Commission” (證監會) means the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);

“shadow director” (幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

“share” (股份) means any share in the share capital of a corporation;

“specified authority” (指明當局) –

- (a) means –
  - (i) an authority, or regulatory organization, whether in Hong Kong or elsewhere; or
  - (ii) an accountancy body, whether in Hong Kong or elsewhere, that is a member of the International Federation of Accountants; but
- (b) does not include a specified enforcement agency;

“specified body” (指明團體) means a specified authority or a specified enforcement agency;

“specified enforcement agency” (指明執行機構) means –

- (a) the Commissioner of Police of Hong Kong;
- (b) the Commissioner of the Independent Commission Against Corruption;
- (c) the HKICPA;
- (d) the HKEC;
- (e) the Securities and Futures Commission;
- (f) the Registrar of Companies;
- (g) the Monetary Authority;
- (h) the Insurance Authority;
- (i) the Commissioner of Inland Revenue;
- (j) the Official Receiver;
- (k) the Mandatory Provident Fund Schemes Authority; or
- (l) the Market Misconduct Tribunal;

“specified report” (指明報告) –

- (a) in relation to a prospectus issued by or on behalf of a listed corporation, means any report, specified in Part II of the Third Schedule to the Companies Ordinance (Cap.

32), that is required under section 38 or 342 of that Ordinance to be set out in the prospectus;

(b) in relation to a listing document (other than a prospectus) issued by or on behalf of a listed entity, means any report on the profits and losses of, the assets and liabilities of, and other financial information on –

(i) the entity; or

(ii) a business or undertaking to be acquired, or disposed of, by the entity,

that is required for inclusion in the listing document issued for the purposes of the relevant code or the Listing Rules;

“substantial shareholder” (大股東) means a substantial shareholder within the meaning of section 6 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

“undertaking” (企業) includes an unincorporated association carrying on a trade or business (whether or not for profit), a corporation and a partnership.

(2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.

(3) In this Ordinance, a reference to the interest of the investing public does not include any interest the taking into consideration of which is or is likely to be contrary to the public interest.

### **3. Listed entity**

(1) In this Ordinance –

“listed collective investment scheme” (上市集體投資計劃) means a collective investment scheme that is or has been listed and includes the collective investment scheme before it is or was listed;

“listed corporation” (上市法團) means a corporation that is or has been listed

and includes the corporation before it is or was listed;

“listed entity” (上市實體) means a listed corporation or a listed collective investment scheme.

- (2) For the purposes of this Ordinance –
  - (a) a corporation is listed if any securities issued by the corporation are listed on a recognized stock market; and
  - (b) a collective investment scheme is listed if any interests in the scheme are listed on a recognized stock market.
- (3) For the purposes of subsection (2)(a) –
  - (a) the securities issued by a corporation are taken to be listed on a recognized stock market if, on the application of the corporation or of a holder of the securities, the company operating the market has agreed to allow, subject to the requirements of the Securities and Futures Ordinance (Cap. 571), dealings in those securities to take place on the market; and
  - (b) if, after the securities are taken to be listed on a recognized stock market by virtue of paragraph (a), dealings in those securities on the market are suspended, the suspension does not affect the operation of that paragraph in relation to those securities.
- (4) For the purposes of subsection (2)(b) –
  - (a) the interests in a collective investment scheme are taken to be listed on a recognized stock market if, on the application of a responsible person of the scheme, the company operating the market has agreed to allow, subject to the requirements of the Securities and Futures Ordinance (Cap. 571), dealings in those interests to take place on the market; and
  - (b) if, after the interests are taken to be listed on a recognized

stock market by virtue of paragraph (a), dealings in those interests on the market are suspended, the suspension does not affect the operation of that paragraph in relation to those interests.

(5) In this section –

“dealing” (交易), in relation to securities issued by a corporation or interests in a collective investment scheme, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement –

- (a) for or with a view to acquiring, disposing of, subscribing for or underwriting such securities or interests; or
- (b) the purpose or pretended purpose of which is to secure a profit to any of the parties –
  - (i) from the yield of such securities or interests; or
  - (ii) by reference to fluctuations in the value of such securities or interests;

“recognized stock market” (認可證券市場) means a stock market operated by a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance (Cap. 571).

#### **4. Relevant irregularity**

(1) In this Ordinance, “relevant irregularity” (有關不當行為) means an auditing irregularity or a reporting irregularity.

(2) For the purposes of this Ordinance –

- (a) there is an auditing irregularity in relation to a listed entity if, in respect of the audit of the accounts of the entity set out in subsection (7), a specified event under subsection (3), (4), (5) or (6) has occurred in relation to the auditor of the entity at the material time; and

- (b) there is a reporting irregularity in relation to a listed entity if, in respect of the preparation of a specified report required for a listing document issued at the relevant time by or on behalf of the entity, a specified event under subsection (3), (4), (5) or (6) has occurred in relation to the reporting accountant of the entity at the material time.

(3) A specified event has occurred in relation to an auditor or reporting accountant of a listed entity, if the auditor or reporting accountant –

- (a) falsified or caused to be falsified a document;
- (b) made a statement, in respect of a document, that was material and that he knew to be false or did not believe to be true;
- (c) has been negligent in the conduct of his profession;
- (d) has been guilty of professional misconduct; or
- (e) did or omitted to do something that, were the auditor or reporting accountant an individual certified public accountant, would reasonably be regarded as bringing or likely to bring discredit upon the auditor or reporting accountant himself, the HKICPA or the accountancy profession.

(4) Without prejudice to the generality of subsection (3), where the auditor or reporting accountant is a corporate practice, a specified event has also occurred in relation to the auditor or reporting accountant if –

- (a) the auditor or reporting accountant –
  - (i) failed to comply with a requirement referred to in section 28D(6)(a) or (7) of the Professional Accountants Ordinance (Cap. 50);
  - (ii) ceased or failed to comply with a requirement of section 28D(2)(b) or (c) of that Ordinance applicable to the practice;

- (iii) rendered any service under a company name other than the name that then appeared in relation to the practice in the CPA register;
  - (iv) practised accountancy as such a practice without being covered by professional indemnity insurance at all or to the extent required by that Ordinance;
  - (v) failed or neglected to observe, maintain or otherwise apply a professional standard; or
  - (vi) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the HKICPA Council; or
- (b) a director (who is a certified public accountant) of the auditor or reporting accountant –
- (i) rendered any service as, or purporting to be, a director of a company whose name did not, at the time when the service was rendered, appear in Part II of the CPA register; or
  - (ii) practised accountancy as such a director at a time when the auditor or reporting accountant was covered by professional indemnity insurance either not at all or not to the extent required by the Professional Accountants Ordinance (Cap. 50).

(5) Without prejudice to the generality of subsection (3), where the auditor or reporting accountant is a certified public accountant, a specified event has also occurred in relation to the auditor or reporting accountant if the auditor or reporting accountant –

- (a) failed or neglected to observe, maintain or otherwise apply a professional standard; or
- (b) refused or neglected to comply with the provisions of any



bylaw or rule made or any direction lawfully given by the HKICPA Council.

(6) Without prejudice to the generality of subsection (3), where the auditor or reporting accountant is a firm of certified public accountants (practising), a specified event has also occurred in relation to the auditor or reporting accountant if the auditor or reporting accountant –

- (a) failed or neglected to observe, maintain or otherwise apply a professional standard;
- (b) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the HKICPA Council; or
- (c) rendered any service under a firm name other than the name that then appeared in relation to the firm in the CPA register.

(7) The accounts of a listed entity referred to in subsection (2)(a) are –

- (a) in the case where the entity was a listed corporation, those a copy of the auditor’s report on which –
  - (i) was sent at the relevant time under section 129G(1) of the Companies Ordinance (Cap. 32); or
  - (ii) was issued, circulated, published or distributed at the relevant time for the purposes of the Listing Rules;
- (b) in the case where the entity was a listed collective investment scheme, those a copy of the auditor’s report on which was issued, circulated, published or distributed at the relevant time for the purposes of the relevant code or the Listing Rules.

(8) In this section –

“certified public accountant” (會計師) means a certified public accountant

within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

“certified public accountant (practising)” (執業會計師) means a certified public accountant (practising) within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

“corporate practice” (執業法團) means a corporate practice within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

“CPA register” (註冊紀錄冊) means the register of certified public accountants kept under section 22 of the Professional Accountants Ordinance (Cap. 50);

“HKICPA Council” (理事會) means the Council of the HKICPA established by section 10(1) of the Professional Accountants Ordinance (Cap. 50);

“professional indemnity insurance” (專業彌償保險) means a professional indemnity insurance within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

“professional standard” (專業標準) means any of the professional standards within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50).

## **5. Relevant non-compliance**

(1) For the purposes of this Ordinance (except section 50), there is a relevant non-compliance in relation to a listed entity if a relevant financial report, within the meaning of Part 1 of Schedule 1, of the entity has not complied with a relevant requirement within the meaning of Part 1 of that Schedule.

(2) For the purposes of section 50, there is a relevant non-compliance in relation to a listed corporation if a relevant financial report, within the meaning of Part 2 of Schedule 1, of the corporation has not complied with a relevant requirement within the meaning of Part 2 of that Schedule.

PART 2  
FINANCIAL REPORTING COUNCIL

**6. Establishment of Financial Reporting Council**

(1) There is established by this section a body corporate with the corporate name of “Financial Reporting Council” in English and “財務匯報局” in Chinese.

(2) The Council –

- (a) has perpetual succession under its corporate name;
- (b) shall provide itself with a common seal; and
- (c) is capable of suing and being sued in its corporate name.

(3) The Council is not a servant or agent of the Government and does not enjoy any status, immunity or privilege of the Government.

**7. Composition of Council**

(1) The Council is to consist of –

- (a) the Registrar of Companies, or a person appointed by the Registrar, in writing, as his representative, as an ex officio member;
- (b) the Chief Executive Officer of the Council, as an ex officio member; and
- (c) subject to subsection (2), the following members –
  - (i) one member appointed by the Chief Executive on the nomination of the Securities and Futures Commission;
  - (ii) one member appointed by the Chief Executive on the nomination of the HKEC;
  - (iii) one member appointed by the Chief Executive on the nomination of the HKICPA; and
  - (iv) not fewer than 4, and not more than 6, other

members appointed by the Chief Executive.

(2) The number of members of the Council who are lay persons is to exceed the number of those who are not.

(3) A public officer is not eligible for appointment under subsection (1)(c).

(4) The Chief Executive shall appoint, from amongst the appointed members of the Council who are lay persons, the Chairman of the Council.

(5) The Chief Executive shall give notice of each appointment under subsection (1)(c) or (4) by notice published in the Gazette.

(6) Schedule 2 has effect with respect to the Council and its members.

## **8. Chief Executive Officer**

(1) The Chief Executive shall appoint a person to be the Chief Executive Officer of the Council.

(2) A public officer is not eligible for appointment under subsection (1).

(3) The Chief Executive shall give notice of an appointment under subsection (1) by notice published in the Gazette.

(4) The Chief Executive Officer of the Council –

(a) is the administrative head of the Council and is responsible, subject to the direction of the Council, for administering the affairs of the Council; and

(b) has, subject to that direction, such other responsibilities as may be assigned by the Council.

(5) Schedule 3 has effect with respect to the Chief Executive Officer of the Council.

## **9. Functions of Council**

The functions of the Council are –

(a) to receive complaints concerning –

- (i) relevant irregularities in relation to listed entities;  
and
  - (ii) relevant non-compliances in relation to listed entities;
- (b) to investigate, in response to a complaint or otherwise –
  - (i) relevant irregularities in relation to listed entities;  
and
  - (ii) the question whether or not there are any relevant irregularities in relation to listed entities;
- (c) to enquire, in response to a complaint or otherwise, into –
  - (i) relevant non-compliances in relation to listed entities; and
  - (ii) the question whether or not there are any relevant non-compliances in relation to listed entities;
- (d) with respect to each of the investigations or enquiries, to decide on, and carry out, the appropriate action in accordance with this Ordinance;
- (e) to approve and oversee the policies and activities of the Investigation Board, a Review Committee, and a committee established by the Council;
- (f) to refer to a specified body any case or complaint concerning –
  - (i) a relevant irregularity in relation to a listed entity;  
or
  - (ii) a relevant non-compliance in relation to a listed entity;
- (g) to provide assistance to a specified body on the body's investigation or enquiry into, or dealing with, any case or complaint concerning –
  - (i) a relevant irregularity in relation to a listed entity;

or

- (ii) a relevant non-compliance in relation to a listed entity; and
- (h) to perform such other functions as are imposed on the Council under this or any other Ordinance.

## **10. Powers of Council**

(1) The Council may do all such things as are necessary for, or incidental or conducive to, the performance of its functions.

(2) Without prejudice to the generality of subsection (1), the Council may –

- (a) employ persons to assist the Council, the Investigation Board, a Review Committee, or any or all of them, in the performance of its or their functions;
- (b) appoint persons as consultants, agents or advisers to assist the Council in the performance of its functions;
- (c) hold, acquire, lease, sell, charge, dispose of or otherwise deal with all kinds of property, whether movable or immovable;
- (d) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement, memorandum of understanding or other obligation;
- (e) with the approval of the Secretary, borrow money on security or other conditions;
- (f) accept gifts;
- (g) receive and expend moneys;
- (h) publish or otherwise make available materials indicating to the public any matter relating or incidental to the performance by the Council of any of its functions;
- (i) do all such things as the Council thinks fit in respect of its

- administration and management; and
- (j) exercise such other powers as are conferred on the Council under this or any other Ordinance.

## **11. Delegations**

(1) Subject to subsection (2), the Council may delegate, in writing, any of its functions to –

- (a) a member of the Council;
- (b) a committee established by the Council; or
- (c) an employee of the Council, whether by reference to his name or to the office held by him.

(2) The Council shall not delegate any of its functions under subsection (1), sections 9(b), (c), (d), (e), (f) and (g), 10(2)(e), 12, 13, 17(2) and (3), 18(2), 20(1) and 52(5), Parts 3 and 4, and section 8(1), (2) and (3) of Schedule 2.

(3) If the Council delegates a function under this section, it may at the same time authorize the delegate to sub-delegate the function.

(4) The Council may –

- (a) revoke a delegation, or an authorization in respect of a sub-delegation, under this section;
- (b) attach restrictions or conditions to a delegation under this section; or
- (c) attach restrictions or conditions to an authorization in respect of a sub-delegation under this section, including those on the exercise of power to sub-delegate.

(5) A delegation or sub-delegation under this section does not prevent the Council or its delegate from concurrently performing the function delegated or sub-delegated.

(6) If a person purports to act pursuant to a delegation or sub-delegation under this section, he is presumed, unless the contrary is proved, to be

acting in accordance with the terms of the delegation or sub-delegation.

(7) Without prejudice to subsection (5), if there is a delegation or sub-delegation under this section in respect of a function of the Council, any reference in this or any other Ordinance to the Council in connection with the performance of the function is, unless the context otherwise requires, to be construed accordingly.

**12. Assistance, etc. to specified authorities under certain circumstances**

(1) If the Council is of the opinion that the conditions in subsection (2) are satisfied, it may, subject to subsections (4) and (5) –

- (a) refer to a specified authority any case or complaint concerning –
  - (i) a relevant irregularity in relation to a listed entity; or
  - (ii) a relevant non-compliance in relation to a listed entity; and
- (b) provide assistance to a specified authority on the authority's investigation or enquiry into, or dealing with, any case or complaint concerning –
  - (i) a relevant irregularity in relation to a listed entity; or
  - (ii) a relevant non-compliance in relation to a listed entity.

(2) The conditions are –

- (a) the referral, or the provision of assistance, will enable or assist the specified authority to perform its functions; and
- (b) it is not contrary to the interest of the investing public or to the public interest that the case or complaint should be referred or the assistance should be provided.



(3) In forming an opinion on the conditions set out in subsection (2) for the purposes of subsection (1)(b), the Council shall take into account –

- (a) whether or not the specified authority will pay to the Council any of the costs and expenses incurred in providing the assistance; and
- (b) whether or not the specified authority will be able and willing to provide reciprocal assistance.

(4) If the specified authority falls within paragraph (a)(i) of the definition of “specified authority” in section 2(1), the Council shall satisfy itself that –

- (a) the authority –
  - (i) performs any function similar to a function of the Council under section 9(a), (b), (c) or (d); or
  - (ii) regulates, supervises or investigates –
    - (A) accountants;
    - (B) banking, insurance or other financial services; or
    - (C) the affairs of corporations;
- (b) the authority is subject to adequate secrecy provisions; and
- (c) the case or complaint is referred, or the assistance is provided –
  - (i) with a view to the authority’s performance of any of its regulatory, supervisory or investigatory function; or
  - (ii) otherwise for the purpose of such function.

(5) If the specified authority falls within paragraph (a)(ii) of the definition of “specified authority” in section 2(1), the Council shall satisfy itself that –

- (a) the authority is subject to adequate secrecy provisions;

and

- (b) the case or complaint is referred, or the assistance is provided –
  - (i) with a view to the authority's taking of any disciplinary action, or conducting of any investigation, against any of the members of the authority; or
  - (ii) otherwise for the purpose of such action or investigation.

(6) If the Council has, for the purposes of subsection (4) or (5), satisfied itself that a specified authority falls within subsection (4)(a) and (b) or (5)(a), the Council shall as soon as practicable thereafter cause the name of the authority to be published in the Gazette.

(7) Despite anything in this Ordinance, if –

- (a) a person is required –
  - (i) to give an explanation, or make a statement, under section 27;
  - (ii) to give an answer or response to any question under section 28;
  - (iii) to give an explanation or further particulars under section 28;
  - (iv) to give any information or explanation under section 43(1); and
- (b) the explanation, particulars, information or statement, or the answer or response, might tend to incriminate the person, and the person so claims before giving the explanation, particulars or information, or making the statement, or giving the answer or response,

the Council shall not provide evidence of the requirement, as well as the explanation, particulars, information or statement, or the question and the answer

or response, to a specified authority in a jurisdiction outside Hong Kong for use in criminal proceedings against the person in that jurisdiction.

### **13. Council may issue guidelines**

(1) The Council may issue guidelines not inconsistent with this Ordinance –

- (a) indicating the manner in which it proposes to perform its functions; or
- (b) providing guidance on the operation of any provision of this Ordinance.

(2) The Council shall publish the guidelines in the Gazette.

(3) The Council may amend or revoke any of the guidelines. Subsection (2) applies to such an amendment or revocation in the same way as it applies to the issue of a guideline.

(4) A person does not incur any civil or criminal liability only because the person has contravened any of the guidelines. If, in any legal proceedings, the court or magistrate is satisfied that such a guideline is relevant to determining a matter that is in issue –

- (a) the guideline is admissible in evidence in the proceedings; and
- (b) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(5) A guideline issued under this section is not subsidiary legislation.

### **14. Directions of Chief Executive**

(1) After consultation with the Chairman of the Council, the Chief Executive may, on being satisfied that it is in the public interest to do so, give the Council such written directions as he thinks fit with respect to the performance of any of the Council's functions.

(2) The Council shall comply with any direction given under subsection (1).

(3) If a direction is given under subsection (1), a requirement under an Ordinance that the Council shall, for the purpose of performing any of the functions to which the direction relates –

- (a) form any opinion;
- (b) be satisfied as to any matter (including the existence of particular circumstances); or
- (c) consult any person,

does not apply for any purpose connected with the performance of functions pursuant to, or consequent upon, the direction.

#### **15. Council to furnish information**

When required by the Secretary, the Council shall furnish to him –

- (a) such information as he specifies on the principles, practices and policy the Council is pursuing or adopting, or proposes to pursue or adopt, in performing any of the Council's functions; and
- (b) the reasons for pursuing or adopting, or proposing to pursue or adopt, those principles, practices and policy.

#### **16. Exemption from taxation**

The Council is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

#### **17. Financial years and estimates**

(1) The Council may, with the prior approval of the Secretary, fix a period to be the financial year of the Council.

(2) As soon as practicable after the commencement of this section, the Council shall submit to the Secretary, for his approval, estimates of the income

and expenditure of the Council for the first financial year of the Council.

(3) In each financial year of the Council, the Council shall, before a date to be fixed by the Secretary, submit to the Secretary, for his approval, estimates of the income and expenditure of the Council for the next financial year of the Council.

## **18. Accounts**

(1) The Council shall keep proper accounts and records of its transactions.

(2) As soon as practicable after the end of each financial year of the Council, the Council shall cause to be prepared for the financial year a statement of accounts of the Council that –

- (a) gives a true and fair view of –
  - (i) the state of affairs of the Council as at the end of that financial year; and
  - (ii) the results of the operations and cash flows of the Council in that financial year; and
- (b) is signed by the Chairman, and the Chief Executive Officer, of the Council.

## **19. Director of Audit as auditor**

(1) The statement of accounts prepared under section 18(2) is to be audited by the Director of Audit who shall make a report to the Council on the audit of that statement.

(2) A report made under subsection (1) is to contain a statement by the Director of Audit as to whether in his opinion the statement of accounts gives a true and fair view of the matters set out in section 18(2)(a)(i) and (ii).

(3) The Director of Audit is entitled to have access to such books of account and other records of the Council as he considers necessary to perform his functions as the auditor of the Council.

(4) The Director of Audit is entitled to require from any person holding, or accountable for, those books of account and records such information and explanation as he considers necessary to perform his functions as the auditor of the Council.

## **20. Reports and statement to be laid before Legislative Council**

(1) As soon as practicable after the end of each financial year of the Council, the Council shall submit to the Secretary –

- (a) a report on the activities of the Council for that financial year;
- (b) a copy of the statement of accounts prepared under section 18(2) for that financial year; and
- (c) a copy of the report made under section 19(1) on the audit of that statement.

(2) The Secretary shall cause the reports and statement received by him under subsection (1) to be laid on the table of the Legislative Council.

## **PART 3**

### **RELEVANT IRREGULARITIES**

#### **Division 1 – Preliminary**

## **21. Interpretation**

(1) In this Part –

“authorized officer” (獲授權人員) means a person authorized by the investigator under section 28(6);

“investigator” (調查機構) means, subject to subsections (2), (3) and (4), the Council.

(2) If the Investigation Board is directed under section 23(1)(b) to

conduct an investigation concerning an auditing irregularity, a reference to “investigator” in sections 25 and 27 and Division 3, means, for the purpose of the irregularity, the Board.

(3) If the Investigation Board is directed under section 23(2)(b) to conduct an investigation concerning a reporting irregularity, a reference to “investigator” in sections 26 and 27 and Division 3, means, for the purpose of the irregularity, the Board.

(4) If the Investigation Board is directed under section 23(3)(b) to conduct an investigation concerning a relevant irregularity, a reference to “investigator” in section 28 and Division 3, means, for the purpose of the irregularity, the Board.

## **22. Audit Investigation Board**

(1) There is established by this section a board called the “Audit Investigation Board” in English and “審計調查委員會” in Chinese.

(2) The Investigation Board is to consist of –

- (a) the Chief Executive Officer of the Council, as an ex officio member and chairman; and
- (b) at least one other member appointed by the Council.

(3) The Council shall give notice of an appointment under subsection (2)(b) by notice published in the Gazette.

(4) Schedule 4 has effect with respect to the Investigation Board and its members.

## **23. Initiating investigation concerning relevant irregularity**

(1) If it appears to the Council that there are circumstances suggesting that there is an auditing irregularity in relation to a listed entity, and the Council certifies in writing to that effect –

- (a) the Council may, for the purpose of investigating the

irregularity or the question whether or not there is such an irregularity, exercise the powers under sections 25 and 27 and Division 3; or

- (b) the Council may, in writing, direct the Investigation Board to investigate, with those powers, the irregularity and the question whether or not there is such an irregularity.

(2) If it appears to the Council that there are circumstances suggesting that there is a reporting irregularity in relation to a listed entity, and the Council certifies in writing to that effect –

- (a) the Council may, for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers under sections 26 and 27 and Division 3; or
- (b) the Council may, in writing, direct the Investigation Board to investigate, with those powers, the irregularity and the question whether or not there is such an irregularity.

(3) If the Council has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that there is or may be a relevant irregularity in relation to a listed entity –

- (a) the Council may, for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers under section 28 and Division 3; or
- (b) the Council may, in writing, direct the Investigation Board to investigate, with those powers, the irregularity and the question whether or not there is such an irregularity.

(4) After having directed the Investigation Board to conduct an investigation under subsection (1)(b), (2)(b) or (3)(b), the Council may direct the Board to cease the investigation.

(5) The Investigation Board shall comply with a direction under



subsection (1)(b), (2)(b), (3)(b) or (4).

(6) If the Investigation Board is directed under paragraph (b) of subsection (1), (2) or (3) to conduct an investigation concerning a relevant irregularity, the Council shall not, for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers referred to in paragraph (a) of that subsection.

**24. Council to notify certain bodies of powers under Divisions 2 and 3 being exercisable**

- (1) If the Council certifies under section 23 that –
- (a) it appears to the Council that there are circumstances suggesting that there is an auditing irregularity in relation to a listed entity to which this section applies;
  - (b) it appears to the Council that there are circumstances suggesting that there is a reporting irregularity in relation to a listed entity to which this section applies; or
  - (c) the Council has reasonable cause to believe that there is or may be a relevant irregularity in relation to a listed entity to which this section applies,

the Council shall give a written notice in accordance with subsections (3) and (4).

- (2) This section applies to a listed entity –
- (a) that –
    - (i) is an authorized institution; or
    - (ii) to the Council's knowledge –
      - (A) is a controller of an authorized institution;
      - (B) has as its controller an authorized institution; or
      - (C) has a controller that is also a controller of an authorized institution;

- (b) that is an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
  - (c) that is –
    - (i) a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or
    - (ii) a collective investment scheme authorized under section 104 of that Ordinance; or
  - (d) that is an approved trustee within the meaning of section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).
- (3) The notice is to be given to –
- (a) in the case of a listed entity that falls within subsection (2)(a), the Monetary Authority;
  - (b) in the case of a listed entity that falls within subsection (2)(b), the Insurance Authority;
  - (c) in the case of a listed entity that falls within subsection (2)(c), the Securities and Futures Commission;
  - (d) in the case of a listed entity that falls within subsection (2)(d), the Mandatory Provident Fund Schemes Authority.
- (4) The notice is to specify that the powers under Division 3 and –
- (a) in the case of subsection (1)(a), sections 25 and 27;
  - (b) in the case of subsection (1)(b), sections 26 and 27;
  - (c) in the case of subsection (1)(c), section 28,

are exercisable for the purpose of investigating the relevant irregularity or the question whether or not there is such an irregularity.

## **Division 2 – Powers for the purpose of investigation**

### **25. Powers to require production of records and documents relating to auditing irregularity**

(1) The investigator may, in writing, require a person who is, or was at the material time, the auditor of the listed entity, or of a relevant undertaking of the entity, to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that –

- (a) the person is in possession of records or documents that –
  - (i) may be in the nature of audit working papers; and
  - (ii) relate to the audit of the accounts of the entity or undertaking; and
- (b) the record or document specified in the requirement –
  - (i) relates to the audit of the accounts of the entity or undertaking; and
  - (ii) is relevant to the auditing irregularity or to the question whether or not there is such an irregularity.

(2) The investigator may, in writing, require –

- (a) where the listed entity is a listed corporation, the listed corporation;
- (b) where the listed entity is a listed collective investment scheme, a person who is, or was at the material time, a responsible person of the listed collective investment scheme; or
- (c) a relevant undertaking of the listed entity,

to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has

reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that the conditions in subsection (3) are satisfied.

- (3) The conditions are –
- (a) the listed corporation, person or relevant undertaking is in possession of records or documents that relate to the audit of the accounts of the listed entity or undertaking; and
  - (b) the record or document specified in the requirement –
    - (i) relates to the audit of the accounts of the entity or undertaking; and
    - (ii) is relevant to the auditing irregularity or to the question whether or not there is such an irregularity.

(4) The investigator may, in writing, require an authorized institution to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that –

- (a) the institution is in possession of records or documents that relate to the audit of the accounts of the listed entity, or of a relevant undertaking of the entity; and
- (b) the record or document specified in the requirement –
  - (i) relates to the audit of the accounts of the entity or undertaking; and
  - (ii) is relevant to the auditing irregularity or to the question whether or not there is such an irregularity.

(5) The investigator may, in writing, require any person to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that –

- (a) the person –
  - (i) has directly or indirectly dealt with, or has had dealings directly or indirectly with, the listed entity or a relevant undertaking of the entity; or
  - (ii) is otherwise in possession of records or documents that relate to the audit of the accounts of the entity or undertaking;
- (b) the person –
  - (i) is not, or was not at the material time, the auditor referred to in subsection (1);
  - (ii) is not the listed corporation, responsible person or relevant undertaking referred to in subsection (2); and
  - (iii) is not an authorized institution; and
- (c) the record or document specified in the requirement –
  - (i) relates to the audit of the accounts of the entity or undertaking;
  - (ii) is relevant to the auditing irregularity or to the question whether or not there is such an irregularity; and
  - (iii) cannot be obtained by the investigator under subsection (1), (2) or (4).

**26. Powers to require production of records and documents relating to reporting irregularity**

(1) The investigator may, in writing, require a person who is, or was at the material time, the reporting accountant of the listed entity, or an auditor of a relevant undertaking of the entity, to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in

writing that it has reasonable cause to believe, that –

- (a) the person is in possession of records or documents that relate to the preparation of a specified report required for a listing document issued by or on behalf of the entity; and
  - (b) the record or document specified in the requirement –
    - (i) relates to the preparation of a specified report required for a listing document issued by or on behalf of the entity; and
    - (ii) is relevant to the reporting irregularity or to the question whether or not there is such an irregularity.
- (2) The investigator may, in writing, require –
- (a) where the listed entity is a listed corporation, the listed corporation;
  - (b) where the listed entity is a listed collective investment scheme, a person who is, or was at the material time, a responsible person of the listed collective investment scheme; or
  - (c) a relevant undertaking of the listed entity,

to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that the conditions in subsection (3) are satisfied.

- (3) The conditions are –
- (a) the listed corporation, person or relevant undertaking is in possession of records or documents that relate to the preparation of a specified report required for a listing document issued by or on behalf of the listed entity; and
  - (b) the record or document specified in the requirement –

- (i) relates to the preparation of a specified report required for a listing document issued by or on behalf of the entity; and
- (ii) is relevant to the reporting irregularity or to the question whether or not there is such an irregularity.

(4) The investigator may, in writing, require an authorized institution to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that –

- (a) the institution is in possession of records or documents that relate to the preparation of a specified report required for a listing document issued by or on behalf of the listed entity; and
- (b) the record or document specified in the requirement –
  - (i) relates to the preparation of a specified report required for a listing document issued by or on behalf of the entity; and
  - (ii) is relevant to the reporting irregularity or to the question whether or not there is such an irregularity.

(5) The investigator may, in writing, require any person to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that –

- (a) the person –
  - (i) has directly or indirectly dealt with, or has had dealings directly or indirectly with, the listed entity or a relevant undertaking of the entity; or

- (ii) is otherwise in possession of records or documents that relate to the preparation of a specified report required for a listing document issued by or on behalf of the entity;
- (b) the person –
  - (i) is not, or was not at the material time, the reporting accountant or auditor referred to in subsection (1);
  - (ii) is not the listed corporation, responsible person or relevant undertaking referred to in subsection (2); and
  - (iii) is not an authorized institution; and
- (c) the record or document specified in the requirement –
  - (i) relates to the preparation of a specified report required for a listing document issued by or on behalf of the entity;
  - (ii) is relevant to the reporting irregularity or to the question whether or not there is such an irregularity; and
  - (iii) cannot be obtained by the investigator under subsection (1), (2) or (4).

**27. Provisions supplementary to sections 25 and 26:  
powers to require additional information, etc.**

(1) If a person does not produce a record or document pursuant to a requirement imposed on him under section 25 or 26, the investigator may, in writing, require the person to state where the record or document is.

(2) If a person produces a record or document pursuant to a requirement imposed on him under section 25 or 26, the investigator may –

- (a) make copies, or otherwise record the details, of the record



or document; and

- (b) in writing, require the person or, where the person is a corporation, an existing, or past, officer or employee of that person, to give an explanation, or make a statement, on –
  - (i) the circumstances under which the record or document was prepared or made;
  - (ii) the instructions given or received in connection with the record or document;
  - (iii) the reasons for the making of entries in, or the omission of entries from, the record or document; and
  - (iv) such other matter regarding the record or document as the investigator may think fit.

(3) If a person gives an explanation, or makes a statement, pursuant to a requirement imposed on him under subsection (1) or (2), the investigator may, in writing, require the person to verify, within the time specified in the requirement, the explanation or statement by a statutory declaration.

(4) If, for the reason that the information concerned is not within his knowledge or possession, a person does not give an explanation, or make a statement, pursuant to a requirement imposed on him under subsection (1) or (2), the investigator may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.

## **28. Powers to require production of records and documents, and to require attendances and answers, etc.**

(1) The investigator may, in writing, require the auditor or reporting accountant of the listed entity, or a person whom the investigator has reasonable cause to believe to be in possession of records or documents that contain, or are likely to contain, information relevant to the relevant irregularity or to the

question whether or not there is such an irregularity, or a person whom the investigator has reasonable cause to believe to be otherwise in possession of such information, to –

- (a) produce, within the time and at the place specified in the requirement, any record or document (including any audit working paper) specified in the requirement that –
  - (i) is or may be relevant to the relevant irregularity or to the question whether or not there is such an irregularity; and
  - (ii) is in his possession;
- (b) attend before the investigator or an authorized officer at the time and place specified in the requirement, and answer any question relating to any matter under investigation that the investigator or officer may raise with him;
- (c) respond to any written question relating to any matter under investigation that the investigator may raise with him;
- (d) give the investigator all other assistance in connection with the investigation that he is reasonably able to give.

(2) If a person produces a record or document pursuant to a requirement imposed on him under subsection (1)(a), the investigator may require the person to give an explanation or further particulars in respect of the record or document.

(3) If a person gives any answer, response, explanation or particulars pursuant to a requirement imposed on him under subsection (1) or (2), the investigator or, where the answer is given to an authorized officer's question under subsection (1)(b), the officer may, in writing, require the person to verify, within the time specified in the requirement, the answer, response, explanation or particulars by a statutory declaration.

(4) If, for the reason that the information concerned is not within his knowledge or possession, a person does not give any answer, response, explanation or particulars pursuant to a requirement imposed on him under subsection (1) or (2), the investigator or, where the answer is given to an authorized officer's question under subsection (1)(b), the officer may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.

(5) The investigator or an authorized officer shall not require an authorized institution to disclose any information, or produce any record or document, relating to the affairs of a customer of the institution under this section unless –

- (a) the customer is a person whom the investigator or officer has reasonable cause to believe may be able to give information relevant to the investigation; and
- (b) the investigator or officer is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purpose of the investigation.

(6) The investigator may, in writing, authorize a person who is a member of the investigator, or who is employed by the Council to assist the investigator, for the purposes of subsection (1)(b).

### **Division 3 – Provisions supplementary to Division 2**

#### **29. Investigator to consult before imposing certain requirements under Division 2**

The investigator or an authorized officer shall not impose a requirement on a person under section 25, 26 or 28 unless, before doing so, the investigator has consulted –

- (a) if the person –
  - (i) is an authorized institution; or

- (ii) to the Council's knowledge –
  - (A) is a controller of an authorized institution;
  - (B) has as its controller an authorized institution; or
  - (C) has a controller that is also a controller of an authorized institution,
 the Monetary Authority;
- (b) if the person is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the Insurance Authority;
- (c) if the person is –
  - (i) a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or
  - (ii) a responsible person of a collective investment scheme authorized under section 104 of that Ordinance,
 the Securities and Futures Commission; and
- (d) if the person is an approved trustee within the meaning of section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Mandatory Provident Fund Schemes Authority.

### **30. Use of incriminating evidence in proceedings**

- (1) If the investigator or an authorized officer requires a person –
  - (a) to give an explanation, or make a statement, under section 27;
  - (b) to give an answer or response to any question under section 28; or
  - (c) to give an explanation or further particulars under section 28,

the investigator or officer shall ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the explanation, particulars or statement, or the question and the answer or response.

- (2) Despite anything in this Ordinance, if –
- (a) the investigator or an authorized officer requires a person –
    - (i) to give an explanation, or make a statement, under section 27;
    - (ii) to give an answer or response to any question under section 28; or
    - (iii) to give an explanation or further particulars under section 28; and
  - (b) the explanation, particulars or statement, or the answer or response, might tend to incriminate the person, and the person so claims before giving the explanation or particulars, or making the statement, or giving the answer or response,

the requirement, as well as the explanation, particulars or statement, or the question and the answer or response, are not admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 31(1), (2), (3), (4), (5), (6), (7) or (8), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation, particulars or statement, or the answer or response.

### **31. Offences relating to requirements under Division 2**

(1) A person commits an offence if he, without reasonable excuse, fails to comply with a requirement imposed on him under section 25, 26, 27 or 28.

(2) A person commits an offence if he, with intent to defraud, fails to comply with a requirement imposed on him under section 25, 26, 27 or 28.

- (3) A person commits an offence if, being –
- (a) an officer or employee of a listed corporation;
  - (b) an officer or employee of a responsible person of a listed collective investment scheme; or
  - (c) an officer or employee of a relevant undertaking of a listed entity,

he, with intent to defraud, causes or allows the corporation, responsible person or undertaking to fail to comply with a requirement imposed on the corporation, responsible person or undertaking under section 25, 26, 27 or 28.

- (4) A person commits an offence if he –
- (a) in purported compliance with a requirement imposed on him under section 25, 26 or 27, produces any record or document, or gives an explanation, or makes a statement, that is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether or not, the record or document, or the explanation or statement, is false or misleading in a material particular.
- (5) A person commits an offence if he –
- (a) in purported compliance with a requirement imposed on him under section 28, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that is false or misleading in a material particular; and
  - (b) knows that, or is reckless as to whether or not, the record or document, or the answer or response, or the explanation or particulars, is false or misleading in a material particular.
- (6) A person commits an offence if he, with intent to defraud –

- (a) in purported compliance with a requirement imposed on him under section 25, 26 or 27, produces any record or document, or gives an explanation, or makes a statement, that is false or misleading in a material particular; or
  - (b) in purported compliance with a requirement imposed on him under section 28, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that is false or misleading in a material particular.
- (7) A person commits an offence if, being –
- (a) an officer or employee of a listed corporation;
  - (b) an officer or employee of a responsible person of a listed collective investment scheme; or
  - (c) an officer or employee of a relevant undertaking of a listed entity,

he, with intent to defraud, causes or allows the corporation, responsible person or undertaking to, in purported compliance with a requirement imposed on the corporation, responsible person or undertaking under section 25, 26 or 27, produce any record or document, or give an explanation, or make a statement, that is false or misleading in a material particular.

- (8) A person commits an offence if, being –
- (a) an officer or employee of a listed corporation;
  - (b) an officer or employee of a responsible person of a listed collective investment scheme; or
  - (c) an officer or employee of a relevant undertaking of a listed entity,

he, with intent to defraud, causes or allows the corporation, responsible person or undertaking to, in purported compliance with a requirement imposed on the corporation, responsible person or undertaking under section 28, produce any

record or document, or give an answer or response, or give any explanation or particulars, that is false or misleading in a material particular.

(9) A person is not excused from complying with a requirement imposed on him under section 25, 26, 27 or 28 only on the ground that to do so might tend to incriminate him.

(10) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3), (4), (5), (6), (7) or (8) in respect of a conduct if –

- (a) proceedings have previously been instituted against the person for the purposes of section 32(2)(b) in respect of the same conduct; and
- (b) those proceedings remain pending, or by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person for the purposes of section 32(2)(b) in respect of the same conduct.

(11) A person who commits an offence under subsection (1) is liable –

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(12) A person who commits an offence under subsection (4) or (5) is liable –

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(13) A person who commits an offence under subsection (2), (3), (6), (7) or (8) is liable –

- (a) on conviction on indictment to a fine of \$1,000,000 and to



imprisonment for 7 years; or

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

**32. Court of First Instance to inquire into failure to comply with requirements under Division 2**

(1) If a person fails to comply with a requirement imposed on him under section 25, 26, 27 or 28, the investigator may, by originating summons, apply to the Court of First Instance for an inquiry into the failure.

(2) On such application, the Court of First Instance may –

- (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and
- (b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, if applicable, that other person had been guilty of contempt of court.

(3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(4) Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)(b) in respect of a conduct if –

- (a) criminal proceedings have previously been instituted against the person under section 31(1), (2), (3), (4), (5), (6), (7) or (8) in respect of the same conduct; and
- (b) those criminal proceedings remain pending, or by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted

against that person under section 31(1), (2), (3), (4), (5), (6), (7) or (8) in respect of the same conduct.

### **33. Inspection of records or documents seized, etc.**

If the investigator has taken possession of any record or document under Division 2, the investigator shall, subject to any reasonable conditions the investigator imposes as to security or otherwise, permit any person who would be entitled to inspect the record or document had the investigator not taken possession of it under that Division, to inspect it and to make copies or otherwise record details of it at all reasonable times.

### **34. Magistrate's warrants**

(1) If a magistrate is satisfied on information on oath laid by the investigator that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under Division 2, the magistrate may issue a warrant authorizing a person specified in it, and such other person as may be necessary to assist in the execution of the warrant, to –

- (a) enter the premises, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
- (b) search for, seize and remove any record or document that the person so specified has reasonable cause to believe may be required to be produced under Division 2.

(2) If an authorized person has reasonable cause to believe that another person on the premises is employed, or engaged to provide a service, in connection with a business that is or has been conducted on the premises, the authorized person may require that other person to produce for examination any record or document that –

- (a) is in the possession of that other person; and

- (b) the authorized person has reasonable cause to believe may be required to be produced under Division 2.
- (3) An authorized person may, in relation to any record or document required to be produced under subsection (2) –
  - (a) prohibit any person found on the premises from –
    - (i) removing the record or document from the premises;
    - (ii) erasing anything from, adding anything to or otherwise altering anything in, the record or document; or
    - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; or
  - (b) take any other step that appears to the authorized person to be necessary for –
    - (i) preserving the record or document; or
    - (ii) preventing interference with the record or document.
- (4) Any record or document removed under this section may be retained for –
  - (a) a period not exceeding 6 months beginning on the day of its removal; or
  - (b) if the record or document is or may be required for criminal proceedings or for any proceedings under this Ordinance, for such longer period as may be necessary for the purpose of those proceedings.
- (5) If an authorized person removes any record or document under this section, he –
  - (a) shall as soon as practicable after the removal give a receipt for the record or document; and

- (b) may permit any person who would be entitled to inspect the record or document but for the removal –
  - (i) to inspect it; and
  - (ii) to make copies or otherwise record details of it at all reasonable times.

(6) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has by virtue of this section come into the possession of the investigator, as it applies to property that has come into the possession of the police.

- (7) A person commits an offence if he –
  - (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (2) or (3); or
  - (b) obstructs an authorized person exercising a power conferred by subsection (2) or (3).

- (8) A person who commits an offence under subsection (7) is liable –
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(9) In this section, “authorized person” (獲授權人) means a person authorized by a warrant issued under subsection (1) to carry out the act set out in paragraphs (a) and (b) of that subsection.

#### **Division 4 – Cases under investigation**

##### **35. Investigation Board’s reports**

(1) If the Council has directed the Investigation Board to conduct an investigation under section 23(1)(b), (2)(b) or (3)(b), the Board shall, as soon as practicable after the completion of the investigation, submit a written report to the Council on the findings of the investigation.

(2) If so required by the Council, the Investigation Board shall submit an interim report on the investigation.

(3) The Council may cause to be published a report submitted under subsection (1) or (2) or any part of such a report.

(4) In deciding whether or not to cause a report, or part of a report, to be published under subsection (3), the Council shall take into account –

- (a) whether or not the publication may adversely affect –
  - (i) any criminal proceedings before a court or magistrate;
  - (ii) any proceedings before the Market Misconduct Tribunal; or
  - (iii) any proceedings under Part V or VA of the Professional Accountants Ordinance (Cap. 50), that has been or is likely to be instituted;
- (b) whether or not the publication may adversely affect any person named in the report; and
- (c) whether or not the report, or that part of the report, should be published in the interest of the investing public or in the public interest.

(5) In any proceedings before a court or magistrate or the Market Misconduct Tribunal or any proceedings under Part V or VA of the Professional Accountants Ordinance (Cap. 50), a copy of a report of the Investigation Board under subsection (1) or (2) that is signed by the Chief Executive Officer of the Council, and counter-signed by the Chairman of the Council, is admissible as evidence of the facts stated in the report.

### **36. Council's powers to close case, suspend investigation and follow up, etc.**

(1) The Council may, in relation to an investigation under this Part concerning a relevant irregularity –

- (a) close the case without further action;
- (b) suspend the investigation for such period as the Council thinks fit; or
- (c) carry out such other follow-up action in accordance with this Ordinance as the Council thinks fit.

(2) If the Council has directed the Investigation Board to conduct an investigation under section 23(1)(b), (2)(b) or (3)(b), the Council shall not exercise a power under subsection (1) in relation to the investigation unless the Board has submitted a report under section 35(1) or (2), and the Council has considered the report.

(3) As soon as practicable after deciding to exercise a power under subsection (1), the Council shall give written notice of the decision to –

- (a) in the case where the relevant irregularity is an auditing irregularity, the auditor concerned; or
- (b) in the case where the relevant irregularity is a reporting irregularity, the reporting accountant concerned,

unless the Council is satisfied that the notification may prejudice the investigation, or any other action by the Council, or a specified body, relating to the investigation.

### **37. Costs and expenses of investigation**

(1) If, on a prosecution instituted as a result of an investigation under this Part, a person is convicted by a court or magistrate, the court or magistrate may order the person to pay to the Council the sum the court or magistrate considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the Council.

(2) The Council may recover the sum so ordered as a civil debt due to it.

PART 4  
RELEVANT NON-COMPLIANCES

**Division 1 – Preliminary**

**38. Interpretation**

(1) In this Part, “enquirer” (查訊機構) means, subject to subsection (2), the Council.

(2) If a Review Committee is appointed under section 40(1)(b) to make an enquiry concerning a relevant non-compliance, a reference to “enquirer” means, for the purpose of the non-compliance, the Committee.

**39. Financial Reporting Review Panel**

(1) The Chief Executive shall, in consultation with the Council, appoint a Financial Reporting Review Panel of at least 20 persons, whom the Chief Executive considers suitable for appointment under section 40(1)(b) as members of a Review Committee.

(2) The Chief Executive shall appoint, from amongst the members of the Review Panel, 3 Panel Convenors.

(3) The Chief Executive shall give notice of each appointment under subsection (1) or (2) by notice published in the Gazette.

(4) Schedule 5 has effect with respect to the Review Panel and its members.

**40. Initiating enquiry concerning relevant non-compliance**

(1) If it appears to the Council that there is or may be a question whether or not there is a relevant non-compliance in relation to a listed entity, and the Council certifies in writing to that effect –

(a) the Council may, for the purpose of enquiring into the

non-compliance or the question, exercise the powers under Division 2; or

- (b) the Council may appoint a Financial Reporting Review Committee in accordance with section 41(1) to enquire, with those powers, into the non-compliance and the question.

(2) A Review Committee shall comply with the terms of the appointment.

(3) If a Review Committee is appointed to make an enquiry concerning a relevant non-compliance, the Council shall not, for the purpose of enquiring into the non-compliance or the question whether or not there is such a non-compliance, exercise the powers under Division 2.

#### **41. Financial Reporting Review Committee**

(1) A Review Committee is to consist of at least 5 members of the Review Panel. One of the members is to be a Panel Convenor appointed under section 39(2), who is to be the Chairman of the Review Committee.

(2) Schedule 6 has effect with respect to a Review Committee and its members.

#### **42. Council to notify certain bodies of powers under Division 2 being exercisable**

(1) If the Council certifies under section 40(1) that it appears to the Council that there is or may be a question whether or not there is a relevant non-compliance in relation to a listed entity to which this section applies, the Council shall give a written notice in accordance with subsections (3) and (4).

(2) This section applies to a listed entity –

(a) that –

(i) is an authorized institution; or

(ii) to the Council's knowledge –

(A) is a controller of an authorized institution;



- (B) has as its controller an authorized institution; or
    - (C) has a controller that is also a controller of an authorized institution;
  - (b) that is an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
  - (c) that is –
    - (i) a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or
    - (ii) a collective investment scheme authorized under section 104 of that Ordinance; or
  - (d) that is an approved trustee within the meaning of section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).
- (3) The notice is to be given to –
  - (a) in the case of a listed entity that falls within subsection (2)(a), the Monetary Authority;
  - (b) in the case of a listed entity that falls within subsection (2)(b), the Insurance Authority;
  - (c) in the case of a listed entity that falls within subsection (2)(c), the Securities and Futures Commission;
  - (d) in the case of a listed entity that falls within subsection (2)(d), the Mandatory Provident Fund Schemes Authority.
- (4) The notice is to specify that the powers under Division 2 are exercisable for the purpose of enquiring into the relevant non-compliance or the question whether or not there is such a non-compliance.

## Division 2 – Powers for the purpose of enquiry

### 43. Powers to require production of records and documents and provision of information and explanation

- (1) The enquirer may, in writing, require –
- (a) where the listed entity is a listed corporation, the listed corporation;
  - (b) where the listed entity is a listed collective investment scheme, a person who is, or was at the material time, a responsible person of the listed collective investment scheme;
  - (c) a relevant undertaking of the listed entity;
  - (d) a person who is, or was at the material time, an auditor of the corporation, scheme or undertaking; or
  - (e) a person who is, or was at the material time, an officer or employee of the corporation, responsible person or undertaking,

to produce or give, within the time and at the place specified in the requirement, any record or document, or any information or explanation, specified in the requirement if the enquirer has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that the record or document, or the information or explanation, is relevant to the relevant non-compliance or to the question whether or not there is such a non-compliance.

(2) The enquirer shall not impose a requirement on a person under subsection (1) unless, before doing so, the enquirer has consulted –

- (a) if the person –
  - (i) is an authorized institution; or
  - (ii) to the Council’s knowledge –
    - (A) is a controller of an authorized institution;
    - (B) has as its controller an authorized

- institution; or
- (C) has a controller that is also a controller of an authorized institution,
- the Monetary Authority;
- (b) if the person is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the Insurance Authority;
- (c) if the person is –
- (i) a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or
- (ii) a responsible person of a collective investment scheme authorized under section 104 of that Ordinance,
- the Securities and Futures Commission; and
- (d) if the person is an approved trustee within the meaning of section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Mandatory Provident Fund Schemes Authority.

(3) A person is not excused from complying with a requirement imposed on him under subsection (1) only on the ground that to do so might tend to incriminate him.

#### **44. Use of incriminating evidence in proceedings**

(1) If the enquirer requires a person to give any information or explanation under section 43(1), the enquirer shall ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the information or explanation.

- (2) Despite anything in this Ordinance, if –
- (a) the enquirer requires a person to give any information or

explanation under section 43(1);

- (b) the information or explanation might tend to incriminate the person, and the person so claims before giving the information or explanation,

the requirement, as well as the information or explanation, are not admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the information or explanation.

#### **45. Court of First Instance to inquire into failure to comply with requirements under section 43**

(1) If a person fails to comply with a requirement imposed on him under section 43, the enquirer may, by originating summons, apply to the Court of First Instance for an inquiry into the failure.

(2) On such application, the Court of First Instance may –

- (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and
- (b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, if applicable, that other person had been guilty of contempt of court.

(3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

#### **46. Inspection of records or documents seized, etc.**

If the enquirer has taken possession of any record or document under this

Division, the enquirer shall, subject to any reasonable conditions the enquirer imposes as to security or otherwise, permit a person who would be entitled to inspect the record or document had the enquirer not taken possession of it under this Division, to inspect it and to make copies or otherwise record details of it at all reasonable times.

### **Division 3 – Cases under enquiry**

#### **47. Review Committee's reports**

(1) If the Council has appointed a Review Committee to make an enquiry under section 40(1)(b), the Committee shall, as soon as practicable after the completion of the enquiry, submit a written report to the Council on the findings of the enquiry.

(2) If so required by the Council, a Review Committee shall submit an interim report on the enquiry.

(3) The Council may cause to be published a report submitted under subsection (1) or (2) or any part of such a report.

(4) In deciding whether or not to cause a report, or part of a report, to be published under subsection (3), the Council shall take into account –

- (a) whether or not the publication may adversely affect –
  - (i) any criminal proceedings before a court or magistrate;
  - (ii) any proceedings before the Market Misconduct Tribunal; or
  - (iii) any proceedings under Part V or VA of the Professional Accountants Ordinance (Cap. 50), that has been or is likely to be instituted;
- (b) whether or not the publication may adversely affect any person named in the report; and
- (c) whether or not the report, or that part of the report, should

be published in the interest of the investing public or in the public interest.

(5) In any proceedings before a court or magistrate or the Market Misconduct Tribunal or any proceedings under Part V or VA of the Professional Accountants Ordinance (Cap. 50), a copy of a report of the Review Committee under subsection (1) or (2) that is signed by the Chairman of the Committee, and counter-signed by the Chairman of the Council, is admissible as evidence of the facts stated in the report.

**48. Council's powers to close case, suspend enquiry and follow up, etc.**

(1) The Council may, in relation to an enquiry under this Part concerning a relevant non-compliance –

- (a) close the case without further action;
- (b) suspend the enquiry for such period as the Council thinks fit;
- (c) secure the removal of the non-compliance in accordance with Division 4; or
- (d) carry out such other follow-up action in accordance with this Ordinance as the Council thinks fit.

(2) If the Council has appointed a Review Committee to make an enquiry under section 40(1)(b), the Council shall not exercise a power under subsection (1) in relation to the enquiry unless the Committee has submitted a report under section 47(1) or (2), and the Council has considered the report.

(3) As soon as practicable after deciding to exercise a power under subsection (1), the Council shall give written notice of the decision to the listed entity concerned unless the Council is satisfied that the notification may prejudice the enquiry, or any other action by the Council, or a specified body, relating to the enquiry.

#### **Division 4 – Council’s powers to secure removal of relevant non-compliance**

##### **49. Council to give notice to operator of listed entities to secure removal of relevant non-compliance**

(1) If it appears to the Council that there is a relevant non-compliance in relation to a listed entity, the Council may, by a written notice to the operator of the entity –

- (a) specify why, in the Council’s opinion, there is a relevant non-compliance in relation to the entity; and
- (b) request the operator to –
  - (i) cause the relevant financial report of the entity to be revised in such manner as the Council considers necessary; or
  - (ii) take such other remedial action concerning that report as the Council considers necessary, within the period specified in the notice.

(2) In this section, “operator” (營辦人) –

- (a) in relation to a listed corporation, means the directors of the corporation;
- (b) in relation to a listed collective investment scheme, means the manager of the scheme.

##### **50. Council may apply to Court of First Instance to secure removal of relevant non-compliance**

(1) This section applies if –

- (a) the Council makes a request to the directors of a listed corporation under section 49(1)(b); and
- (b) those directors fail to comply with the request.

(2) The Council may, by originating summons, apply to the Court of First Instance for –

- (a) a declaration that there is a relevant non-compliance in relation to the listed corporation; and
  - (b) an order requiring the directors of the corporation to –
    - (i) cause the relevant financial report of the corporation to be revised in such manner as the Court considers necessary; or
    - (ii) take such other remedial action concerning that report as the Court considers necessary, within the period specified in the order.
- (3) An originating summons under subsection (2) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (4) On making an application under subsection (2), the Council shall deliver –
- (a) a copy of the notice of application; and
  - (b) a statement setting out the grounds for the application and the matter at issue in the proceedings,
- to the Securities and Futures Commission, and to the Registrar of Companies for registration.
- (5) If the Court of First Instance makes an order under subsection (2)(b), it may also give directions with respect to –
- (a) the audit of the accounts constituting the relevant financial report that has been revised pursuant to the order;
  - (b) the revision of the directors' report, or summary financial report, relating to the relevant financial report;
  - (c) the steps to be taken by the directors of the listed corporation to bring the order to the attention of those who are likely to rely on, or have relied on, the relevant financial report; or
  - (d) such other matters as the Court thinks fit.
- (6) If the Court of First Instance makes a declaration and order under



subsection (2), it may also order all or part of any of the costs and expenses set out in subsection (7) –

- (a) to be borne by the directors of the listed corporation who were party to the approval of the relevant financial report; and
  - (b) to be recoverable from those directors as a civil debt.
- (7) The costs and expenses referred to in subsection (6) are –
  - (a) the costs and expenses of and incidental to the application;
  - (b) in the case where the Council has enquired into, or has appointed a Review Committee to enquire into, the relevant non-compliance or the question whether or not there is such a non-compliance, the costs and expenses of and incidental to the enquiry; and
  - (c) the costs and expenses incurred by the listed corporation in connection with, or in consequence of, revising the relevant financial report or carrying out remedies to the report.
- (8) If the Court of First Instance makes an order under subsection (6) –
  - (a) it shall have regard to whether each of the directors who were party to the approval of the relevant financial report knew, or ought to have known, that the report did not comply with any relevant requirement; and
  - (b) it may exclude one or more directors from the order or order the payment of different amounts by different directors.
- (9) On the conclusion of proceedings on an application under subsection (2), the Council shall deliver –
  - (a) a sealed copy of the declaration, order, direction or other determination made by the Court of First Instance; or
  - (b) a notice that the application has failed or been withdrawn,

to the Securities and Futures Commission, and to the Registrar of Companies for registration.

(10) For the purposes of this section, the directors of a listed corporation at the time when the relevant financial report of the corporation was approved by them, except any of those who shows that he took all reasonable steps to prevent the report from being so approved, were party to the approval of that report.

## PART 5

### MISCELLANEOUS

#### **51. Preservation of secrecy**

(1) Except in 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) Despite subsection (1), a specified person may –

- (a) disclose information that has already been made available to the public;
- (b) disclose information for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to bringing any such proceedings;
- (c) disclose 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 this Ordinance;
- (d) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and
  - (e) disclose information in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.
- (3) Despite subsection (1), the Council may –
- (a) subject to subsection (4), disclose information to a specified authority for the purpose of referring a case or complaint, or providing assistance, to the authority under section 12;
  - (b) subject to subsection (4), disclose information to –
    - (i) the Chief Executive;
    - (ii) the Financial Secretary;
    - (iii) the Secretary for Justice;
    - (iv) the Secretary for Financial Services and the Treasury;
    - (v) the Commissioner of Police of Hong Kong;
    - (vi) the Commissioner of the Independent Commission Against Corruption;
    - (vii) the Commissioner of Inland Revenue;
    - (viii) the Registrar of Companies;
    - (ix) the Official Receiver;
    - (x) the Monetary Authority;
    - (xi) the Securities and Futures Commission;
    - (xii) the Market Misconduct Tribunal;
    - (xiii) the Insurance Authority;
    - (xiv) the Mandatory Provident Fund Schemes Authority;

- (xv) the HKICPA;
  - (xvi) an inspector appointed by the Financial Secretary under section 142 or 143 of the Companies Ordinance (Cap. 32) to investigate the affairs of a corporation;
  - (xvii) a public officer authorized by the Secretary under subsection (12); or
  - (xviii) a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance (Cap. 571);
- (c) disclose information to a person who –
- (i) is a liquidator or provisional liquidator appointed under the Companies Ordinance (Cap. 32); or
  - (ii) acts in a similar capacity under any law of a place outside Hong Kong,
- for the purpose of enabling or assisting the person to perform his functions as such liquidator or provisional liquidator or in such similar capacity;
- (d) disclose information with the consent of –
- (i) the person from whom the information was obtained or received; and
  - (ii) if the information does not relate to such person, the person to whom it relates;
- (e) disclose information in summary form that is so framed as to prevent particulars relating to any person from being ascertained from it; and
- (f) disclose information for the purpose of, or in connection with, an audit under section 19.

(4) The Council shall not disclose information under subsection (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.

(5) Subject to subsection (6), if information is disclosed pursuant to subsection (1), (2) or (3) (other than subsection (2)(a) or (3)(e)) –

- (a) the person to whom the information is so disclosed; or
- (b) any other person obtaining or receiving the information from that person,

shall not disclose the information to any other person.

(6) Subsection (5) does not prohibit the person referred to in subsection (5)(a) or (b) from disclosing the information to any other person if –

- (a) the Council consents to the disclosure;
- (b) the information has already been made available to the public;
- (c) 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 this Ordinance;
- (d) the disclosure is in connection with any judicial or other proceedings to which the person so referred to is a party; or
- (e) the disclosure is in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.

(7) The Council may attach such conditions as it considers appropriate to –

- (a) a disclosure of information made by it pursuant to

subsection (3); or

(b) a consent granted by it pursuant to subsection (6)(a).

(8) Subsection (1) does not affect the operation of section 13(3) of The Ombudsman Ordinance (Cap. 397) or section 44(8) of the Personal Data (Privacy) Ordinance (Cap. 486).

(9) Any specified person who contravenes subsection (1) commits an offence and is liable –

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

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

(10) A person commits an offence if –

(a) he discloses any information in contravention of subsection (5); and

(b) at the time of the disclosure –

(i) he knew, or ought to have known, that the information was previously disclosed to him or any other person pursuant to subsection (1), (2) or (3) (other than subsections (2)(a) or (3)(e)); and

(ii) he had no reasonable grounds to believe that subsection (5) does not apply to him by virtue of subsection (6).

(11) A person who commits an offence under subsection (10) is liable –

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

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

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

(13) In this section, “specified person” (指明人士) means –

- (a) the Council; or
- (b) any person who –
  - (i) is or has been –
    - (A) a member of the Council, the Investigation Board, a Review Committee or a committee established by the Council;
    - (B) a related person of the Council; or
    - (C) a person employed by or assisting a related person of the Council; and
  - (ii) performs or has performed any function under this Ordinance.

## **52. Avoidance of conflict of interests**

- (1) This section applies to a person who –
  - (a) is a member of the Council, the Investigation Board, a Review Committee or a committee established by the Council; or
  - (b) performs a function under this Ordinance.

(2) If, in the course of performing a function under this Ordinance, 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 Council.

(3) For the purposes of subsection (2), 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) another 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 third person

–

- (A) by whom he is or was employed; or
- (B) who is or was his associate.

(4) The Council shall record, in a record kept for the purpose, the particulars of any disclosure made under this section.

(5) After a person has disclosed the nature of any interest in any matter, he shall not, unless the Council otherwise determines –

- (a) be present during any deliberation of the Council, Investigation Board or Review Committee, or a committee established by the Council, with respect to the matter; or
- (b) take part in any decision of the Council, Investigation Board or Review Committee, or such a committee, with respect to the matter.

(6) For the purpose of the making of a determination by the Council under subsection (5), a person who has an interest in a matter to which the disclosure relates shall not –

- (a) be present during any deliberation of the Council for the purpose of making the determination; or
- (b) take part in the making of the determination by the Council.

(7) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable –

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) A contravention of this section does not invalidate a decision of the Council, Investigation Board or Review Committee, or a committee established by the Council.

(9) In this section –



“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) if 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; or

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

“related corporation” (有連繫法團) means a related corporation within the meaning of section 3 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

### **53. Immunity**

The Council, or a person who is, or is acting as, a member, or a related person, of the Council, 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 Council.

### **54. Immunity in respect of communication with Council by auditors of listed entities**

- (1) Without prejudice to section 53, if a person who is or was –
  - (a) an auditor or reporting accountant of a listed entity;
  - (b) an auditor of –

- (i) an associated undertaking of a listed entity;
- (ii) an undertaking that was formerly an associated undertaking of a listed entity,

communicates in good faith to the Council any information or opinion on a specified matter in relation to the entity of which he becomes or became aware in his capacity as such auditor or reporting accountant, he does not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, by reason only of the communication.

(2) Subsection (1) applies even though the person has previously communicated the information or opinion to any other person.

(3) In this section, “specified matter” (指明事宜), in relation to a listed entity –

- (a) means a matter, whether occurring before, during or after the entity is or was listed, that, in the person’s opinion, suggests that –
  - (i) there is a relevant irregularity in relation to the entity; or
  - (ii) there is a relevant non-compliance in relation to the entity; and
- (b) if the person is or was an auditor of an undertaking referred to in subsection (1)(b)(ii), includes any matter occurring before, during or after the undertaking ceased to be an associated undertaking of the listed entity that, in the person’s opinion, suggests that before the cessation –
  - (i) there is a relevant irregularity in relation to the entity; or
  - (ii) there is a relevant non-compliance in relation to the entity.

**55. Legal professional privilege**

(1) Subject to subsection (2), this Ordinance does not affect any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege.

(2) Subsection (1) does not affect 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).

**56. Production of information in information systems**

(1) If –

- (a) a person may require the production of any record or document under Part 3 or 4; and
- (b) any information or matter contained in the record or document is recorded otherwise than in a legible form but is capable of being reproduced in a legible form,

the person may also require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form.

(2) If –

- (a) a person may require the production of any record or document under Part 3 or 4; and
- (b) any information or matter contained in the record or document is recorded in an information system,

the person may also require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.

**57. Lien claimed on records or documents**

If a person claims a lien on any record or document in his possession that is required to be produced under Part 3 or 4 –

- (a) the lien does not affect the requirement to produce the record or document;
- (b) no fee is payable for or in respect of the production; and
- (c) the production does not affect the lien.

**58. Destruction of documents, etc.**

(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 Part 3 or 4, 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 \$1,000,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

**59. Service of notice, etc.**

- (1) This section applies to –
- (a) a notice under section 24, 36(3), 42, 48(3) or 49(1); or
  - (b) a requirement under section 25, 26, 27, 28 or 43.
- (2) Such a notice or requirement is taken to be given or issued to a person if –
- (a) in the case of an individual, it is –
    - (i) delivered to him by hand;
    - (ii) left at, or sent by post to, his last known business or residential address;
    - (iii) sent by facsimile transmission to his last known facsimile number; or

- (iv) sent by electronic mail transmission to his last known electronic mail address;
- (b) in the case of a company, it is –
  - (i) delivered to any officer of the company by hand;
  - (ii) left at, or sent by post to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 32);
  - (iii) sent by facsimile transmission to its last known facsimile number; or
  - (iv) sent by electronic mail transmission to its last known electronic mail address;
- (c) in the case of a non-Hong Kong company within the meaning of section 2(1) of the Companies Ordinance (Cap. 32), it is –
  - (i) delivered by hand to, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the purposes of Part XI of that Ordinance at his address delivered to the Registrar of Companies under that Ordinance;
  - (ii) sent by facsimile transmission to the last known facsimile number of the person; or
  - (iii) sent by electronic mail transmission to the last known electronic mail address of the person;
- (d) in the case of a partnership, it is –
  - (i) delivered to any partner of the partnership by hand;
  - (ii) left at, or sent by post to, the last known principal place of business of the partnership;
  - (iii) sent by facsimile transmission to the last known

- facsimile number of the partnership; or
- (iv) sent by electronic mail transmission to the last known electronic mail address of the partnership;
- (e) in the case of a body corporate (other than a company or a non-Hong Kong company) or an unincorporated association (other than a partnership), it is –
  - (i) delivered to any officer of the body or association by hand;
  - (ii) left at, or sent by post to, the last known principal place of business of the body or association;
  - (iii) sent by facsimile transmission to the last known facsimile number of the body or association; or
  - (iv) sent by electronic mail transmission to the last known electronic mail address of the body or association.

#### **60. Amendment of Schedules**

(1) The Secretary may, by notice published in the Gazette, amend Schedule 1.

(2) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 2, 3, 4, 5 or 6.

### **PART 6**

## **CONSEQUENTIAL AND RELATED AMENDMENTS**

### **Companies Ordinance**

#### **61. Sections added**

The Companies Ordinance (Cap. 32) is amended by adding immediately after section 141D –

**“Revision of defective accounts or reports**

**141E. Voluntary revision of accounts, summary financial reports or directors’ reports**

(1) If it appears to the directors of a company that any accounts of the company did not comply with this Ordinance, the directors may –

- (a) cause the accounts to be revised; and
- (b) make necessary consequential revisions to the summary financial report or directors’ report concerned.

(2) If the accounts, or a copy of the accounts, have been laid before the company in its general meeting under section 122 or 124 or forwarded to the Registrar under section 109, such revision of the accounts is to be confined to –

- (a) the correction of those aspects in which the accounts did not comply with this Ordinance; and
- (b) the making of necessary consequential revisions.

(3) If –

- (a) the directors of a company decide to cause any accounts of the company to be revised under subsection (1); and
- (b) a copy of the accounts has been forwarded to the Registrar under section 109,

the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.

(4) If a company fails to comply with subsection (3), the company, and every officer of the company who authorizes or permits the default, shall be guilty of an offence and liable to a fine.”.



**62. Section added**

The following is added –

**“336A. Voluntary revision of accounts**

- (1) If –
- (a) a certified copy of any accounts of a non-Hong Kong company registered under this Part have been delivered to the Registrar for registration under section 336; and
  - (b) it appears to the directors of the company that the accounts did not comply with the relevant requirements,

the directors may cause the accounts to be revised.

- (2) Such revision of the accounts is to be confined to –
- (a) the correction of those aspects in which the accounts did not comply with the relevant requirements; and
  - (b) the making of necessary consequential revisions.

(3) If the directors of a non-Hong Kong company decide to cause any accounts of the company to be revised under subsection (1), the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.

(4) In this section, “relevant requirements” (有關規定), in relation to the accounts of a non-Hong Kong company, means –

- (a) in the case where section 336(1) applies to the company, the law of the place of incorporation of that company;
- (b) in the case where section 336(2) applies to the company –

- (i) the laws of any other jurisdictions where that company is registered as a company; or
- (ii) the rules of any stock exchange or similar regulatory bodies in those jurisdictions.”.

### **63. Power to make regulations**

Section 359A is amended by adding –

“(3) Without prejudice to the power conferred under subsection (1), the Chief Executive in Council may make regulations providing for the application of this Ordinance in relation to –

- (a) the accounts, summary financial report or directors’ report that has been revised under section 141E; and
  - (b) the accounts that have been revised under section 336A.
- (4) Regulations made under subsection (3)(a) may –
- (a) make different provision according to whether the accounts, summary financial report or directors’ report has been revised by –
    - (i) supplementing the accounts or report with another document that shows the revisions; or
    - (ii) replacing the accounts or report;
  - (b) provide for the functions of the auditors of the company in relation to the accounts, summary financial report or directors’ report that has been revised;
  - (c) where –
    - (i) the accounts or directors’ report, or a copy of the accounts or report, has, before the

revision, been sent to members and other persons under section 129G, laid before the company in its general meeting under section 122, 124 or 129D, or forwarded to the Registrar under section 109; or

- (ii) a copy of a summary financial report has, before the revision, been sent to a person under section 141CA,

require the directors of the company to take such steps as may be specified in the regulations in relation to the accounts or report that has been revised;

- (d) apply this Ordinance to the accounts, summary financial report or directors' report that has been revised subject to such additions, exceptions and modifications as specified in the regulations; and
- (e) provide for incidental, consequential and transitional provisions.

(5) Regulations made under subsection (3)(b) may –

- (a) make different provision according to whether the accounts have been revised by –
  - (i) supplementing the accounts with another document that shows the revisions; or
  - (ii) replacing the accounts;
- (b) require the non-Hong Kong company to take such steps as may be specified in the regulations in relation to the accounts that have been revised;
- (c) apply this Ordinance to the accounts that have been revised subject to such additions, exceptions and modifications as specified in the regulations; and

- (d) provide for incidental, consequential and transitional provisions.”.

#### **64. Punishment of offences under this Ordinance**

The Twelfth Schedule is amended by adding –

- “141E(4) Company failing to deliver to Registrar warning statement Summary level 5 \$700”.

### **Insurance Companies Ordinance**

#### **65. Secrecy**

Section 53A(3B) of the Insurance Companies Ordinance (Cap. 41) is amended –

- (a) in paragraph (b), by repealing “or”;
- (b) in paragraph (c), by repealing the full stop at the end and substituting “; or”;
- (c) by adding –
- “(d) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance ( of 2005).”.

### **Professional Accountants Ordinance**

#### **66. Interpretation**

Section 2 of the Professional Accountants Ordinance (Cap. 50) is amended by adding –

- ““FRC” (財務匯報局) means the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance ( of 2005);”.

**67. Section added**

The following is added –

**“7A. Power of Institute to make contributions to FRC**

The Institute may contribute to the FRC such amount, as the Institute thinks fit, of the costs and expenses reasonably incurred by the FRC for the performance of the FRC’s functions.”.

**68. Particular powers of Council**

Section 18 is amended –

(a) in subsection (1)(aa), by adding “, including those payable by the practice units, or a class of the practice units, to the Institute for the purpose of the contribution under section 7A” before the semicolon;

(b) by adding –

“(1A) For the purposes of subsection (1)(aa), the Council may, in order to provide for particular circumstances or cases, fix different fees for the same matter, service or facility.”.

**69. Council’s power to give directions**

Section 18B is amended by adding –

“(1A) Without prejudice to the generality of subsection (1), the Council may, in connection with the payment by a practice unit of any fees fixed under section 18(1)(aa) for the purpose of the contribution under section 7A, give directions to practice units requiring the production or provision to the Institute by a practice unit of any document or information to enable the Institute to ascertain whether or not the practice unit falls within a particular class for the purpose of such payment.”.

**70. Secrecy**

Section 32H(2) is amended by repealing everything after “apply in relation” and substituting –

“to –

- (a) any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings; or
- (b) any disclosure to the FRC for the purpose of enabling or assisting the FRC to perform its functions under the Financial Reporting Council Ordinance ( of 2005).”.

**71. Disciplinary powers of Disciplinary Committee**

Section 35(1)(d) is amended by repealing everything after “certified public” and substituting –

“accountant –

- (i) pay the costs and expenses of and incidental to an investigation against him under Part VA; and
- (ii) where the disciplinary proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance ( of 2005), pay to the FRC the sum the Disciplinary Committee considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC;”.

**72. Consent order**

Section 35B(1) is amended by adding –

- “(ba) an order that the certified public accountant pay to the FRC the sum the Disciplinary Committee considers appropriate for the costs and expenses in relation or incidental to an investigation under the Financial Reporting Council Ordinance ( of 2005) reasonably incurred by the FRC;”.

**73. Secrecy**

Section 42G(2) is amended by repealing everything after “apply in relation” and substituting –

“to –

- (a) any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings; or
- (b) any disclosure to the FRC for the purpose of enabling or assisting the FRC to perform its functions under the Financial Reporting Council Ordinance ( of 2005).”.

### **Banking Ordinance**

**74. Official secrecy**

Section 120 of the Banking Ordinance (Cap. 155) is amended –

- (a) in subsection (5), by adding after paragraph (gaa) –
  - “(gab) to the disclosure of information by the Monetary Authority to the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance ( of 2005) for the purpose of enabling or assisting the Council to exercise its functions under that Ordinance;”;
- (b) in subsection (5C), by adding “, (gab)” after “(gaa)”.

### **Prevention of Bribery Ordinance**

**75. Public bodies**

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended

by adding –

“106. Financial Reporting Council.”.

### **The Ombudsman Ordinance**

#### **76. Organizations to which this Ordinance applies**

Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended, in Part I,

by adding –

“Financial Reporting Council.”.

### **Companies Registry Trading Fund**

#### **77. Services to be provided by the Trading Fund**

Schedule 1 to the Companies Registry Trading Fund (Cap. 430 sub. leg. B)

is amended by adding –

“6A. Supporting the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance ( of 2005) in the performance of its functions by –

- (a) providing the service of the Registrar of Companies as an ex officio member of the Council; and
- (b) sponsoring the performance by the Council of any of its functions.”.

### **Mandatory Provident Fund Schemes Ordinance**

#### **78. Authority may disclose certain information despite section 41**

Section 42(1)(d) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by repealing “or the Securities and Futures Commission” and substituting “, the Securities and Futures Commission, or the Financial



Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance ( of 2005)”.

### **Personal Data (Privacy) Ordinance**

#### **79. Interpretation**

Section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486) is amended, in the definition of “financial regulator”, by adding –

“(gb) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance ( of 2005);”.

### **Securities and Futures Ordinance**

#### **80. Orders, etc. of Tribunal**

Section 257(1) of the Securities and Futures Ordinance (Cap. 571) is amended by adding –

“(fa) where the proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance ( of 2005), an order that the person pay to the Financial Reporting Council established by section 6(1) of that Ordinance the sum the Tribunal considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the Council;”.

#### **81. Preservation of secrecy, etc.**

Section 378(3)(f) is amended by adding –

“(xia) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance ( of 2005);”.

## SCHEDULE 1

[ss. 2, 5 &amp; 60]

DEFINITIONS OF “RELEVANT FINANCIAL REPORT”  
AND “RELEVANT REQUIREMENT”

## PART 1

In this Ordinance (except sections 5(2) and 50 of this Ordinance) –  
“relevant financial report” (有關財務報告) –

- (a) in relation to a listed corporation, means –
  - (i) a balance sheet of the corporation, together with any accounts annexed to it for the purposes of section 129C(1) of the Companies Ordinance (Cap. 32), a copy of which was sent at the relevant time under section 129G of that Ordinance to a person entitled to be sent the copy;
  - (ii) the accounts of the corporation, a certified copy of which was delivered at the relevant time to the Registrar of Companies for registration under section 336 of the Companies Ordinance (Cap. 32);
  - (iii) a summary financial report of the corporation, a copy of which was sent at the relevant time in compliance with section 141CA of the Companies Ordinance (Cap. 32) to a person entitled to be sent the copy;
  - (iv) a set of financial statements of the corporation –
    - (A) providing information on the results of the operations or cash flows of the corporation in a period of at least 3

- months;
- (B) providing information on the state of affairs of the corporation as at the end of that period; and
- (C) issued, circulated, published or distributed at the relevant time for the purposes of the Listing Rules; or
- (v) a specified report required for a listing document issued at the relevant time by or on behalf of the corporation;
- (b) in relation to a listed collective investment scheme, means –
  - (i) a set of financial statements of the scheme –
    - (A) providing information on the results of the operations or cash flows of the scheme in a period of at least 3 months;
    - (B) providing information on the state of affairs of the scheme as at the end of that period; and
    - (C) issued, circulated, published or distributed at the relevant time for the purposes of the relevant code or the Listing Rules; or
  - (ii) a specified report required for a listing document issued at the relevant time by or on behalf of the scheme;

“relevant requirement” (有關規定) –

- (a) in relation to a relevant financial report of a listed corporation, means an accounting requirement as to the matters or information to be included in the report, as provided in –

- (i) the Companies Ordinance (Cap. 32), as in force at the material time;
  - (ii) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
  - (iii) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
  - (iv) the Listing Rules; or
  - (v) any generally acceptable accounting principles allowed for usage under the Listing Rules;
- (b) in relation to a relevant financial report of a listed collective investment scheme, means an accounting requirement as to the matters or information to be included in the report, as provided in –
- (i) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
  - (ii) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
  - (iii) the Listing Rules;
  - (iv) any generally acceptable accounting principles allowed for usage under the Listing Rules; or
  - (v) the relevant code.

## PART 2

In sections 5(2) and 50 of this Ordinance –

“relevant financial report” (有關財務報告), in relation to a listed corporation, means –

- (a) a balance sheet of the corporation, together with any accounts annexed to it for the purposes of section 129C(1) of the Companies Ordinance (Cap. 32), a copy of which was sent at the relevant time under section 129G of that Ordinance to a person entitled to be sent the copy;
- (b) a summary financial report of the corporation, a copy of which was sent at the relevant time in compliance with section 141CA of the Companies Ordinance (Cap. 32) to a person entitled to be sent the copy; or
- (c) a specified report required for a prospectus issued at the relevant time by or on behalf of the corporation;

“relevant requirement” (有關規定), in relation to a relevant financial report of a listed corporation, means an accounting requirement as to the matters or information to be included in the report, as provided in the Companies Ordinance (Cap. 32), as in force at the material time.

## SCHEDULE 2

[ss. 7, 11 & 60]

### PROVISIONS RELATING TO COUNCIL AND ITS MEMBERS

#### 1. Seal

(1) The affixing of the common seal of the Council is to be authenticated by the signature of –

- (a) the Chairman of the Council; or
- (b) such other member of the Council authorized by it for the

purpose.

(2) Any document purporting to be a document duly executed under the seal of the Council is to be received in evidence and is, unless the contrary is proved, to be deemed to be a document so executed.

## **2. Tenure of appointed members**

(1) An appointed member of the Council is to be appointed for a term not exceeding 3 years.

(2) On the expiry of his period of appointment or reappointment, an appointed member of the Council is eligible for reappointment.

(3) An appointed member of the Council may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.

## **3. Temporary Chairman or member**

(1) If, because of absence from Hong Kong or any other reason, the Chairman of the Council is unable to perform the functions of his office as Chairman, the Chief Executive may appoint, from amongst the other appointed members of the Council who are lay persons, a temporary Chairman to act in his place during his absence or incapacity.

(2) If, because of absence from Hong Kong or any other reason, an appointed member of the Council, other than the Chairman, is unable to perform the functions of his office as member, the Chief Executive may, subject to subsection (3), appoint another person to be a temporary member in his place during his absence or incapacity.

(3) If the Chief Executive is to appoint a person to be a temporary member in the place of an appointed member of the Council who was appointed under section 7(1)(c)(i), (ii) or (iii) of this Ordinance on the nomination of another person, the Chief Executive shall make the appointment on the

nomination of that other person.

(4) If a person is appointed as the temporary Chairman, or a temporary member, of the Council, the person may perform all the functions of the Chairman, or member, in whose place the person is appointed.

#### **4. Terms and conditions of appointment of members**

All matters relating to the terms and conditions of the appointment of an appointed member of the Council are to be determined by the Chief Executive.

#### **5. Removal of appointed members**

(1) If the Chief Executive is satisfied that an appointed member of the Council –

- (a) has become a public officer;
- (b) has become bankrupt;
- (c) is incapacitated by physical or mental illness;
- (d) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable; or
- (e) is otherwise unable or unfit to perform the functions of a member of the Council,

the Chief Executive may declare his office as member of the Council to be vacant, and upon such declaration the office becomes vacant.

(2) The Chief Executive shall give notice of a declaration under subsection (1) in such manner as he thinks fit.

#### **6. Meetings and proceedings of Council**

(1) Meetings are to be held as often as necessary to enable the Council to perform its functions.

(2) A meeting of the Council may be convened by the Chairman of the Council. The Chairman of the Council is to convene a meeting of the Council on being given a notice for that purpose by 2 or more other members of the Council.

(3) The procedure for convening meetings of the Council and for the conduct of business at those meetings is, subject to this Schedule, to be determined by the Council.

(4) The quorum for a meeting of the Council is two thirds of the members of the Council.

(5) A member of the Council is regarded as being present at a meeting of the Council if –

- (a) he participates in the meeting by telephone, video conferencing or other electronic means; and
- (b) he is able to communicate with the other members present at the meeting and they are able to communicate with him.

(6) The Chairman of the Council shall preside at all meetings of the Council. Subject to section 3(1), if the Chairman is absent from any meeting or any part of the meeting, he may nominate an appointed member of the Council who is a lay person to preside in his absence as Chairman at the meeting or that part of the meeting.

(7) At a meeting of the Council, each member of the Council present has one vote.

(8) Subject to subsection (9), every matter for decision at a meeting of the Council is to be determined by a majority of the votes of the members of the Council present. In the case of an equality of votes, the Chairman of the Council, or the member of the Council nominated by the Chairman to preside at the meeting, has a casting vote.

(9) For the purposes of subsection (8), the number of the votes that constitutes the majority, apart from the casting vote (if any), is to be 4 or more.



## **7. Transaction of business by circulation of papers**

(1) The Council may transact any of its business by circulation of papers.

(2) A written resolution that is approved in writing by all the members of the Council present in Hong Kong (being not less than the number required to constitute two thirds of the members of the Council) is as valid and effectual as if it had been duly passed at a meeting of the Council by the votes of the members of the Council so approving the resolution.

## **8. Committees**

(1) The Council may establish committees for any general or special purposes as it thinks fit.

(2) The Council shall appoint one of its members to be the chairman of such a committee.

(3) The Council may appoint other members of such a committee. The number of such other members who are members of the Council is to exceed the number of those who are not.

(4) The procedure for convening meetings of such a committee and for the conduct of business at those meetings is, subject to any direction of the Council, to be determined by the committee.

### **SCHEDULE 3**

[ss. 8 & 60]

### **PROVISIONS RELATING TO CHIEF EXECUTIVE OFFICER OF COUNCIL**

#### **1. Tenure of Chief Executive Officer**

(1) The Chief Executive Officer of the Council is to be appointed for a term not exceeding 3 years.

(2) On the expiry of his period of appointment or reappointment, the

Chief Executive Officer of the Council is eligible for reappointment.

(3) The Chief Executive Officer of the Council may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.

## **2. Acting Chief Executive Officer**

(1) If, because of absence from Hong Kong or any other reason, the Chief Executive Officer of the Council is unable to perform the functions of his office as Chief Executive Officer, the Chief Executive may appoint another person to act in the place of the Chief Executive Officer during his absence or incapacity.

(2) If a person is appointed to act in the place of the Chief Executive Officer of the Council, the person may perform all the functions of the Chief Executive Officer.

## **3. Terms and conditions of appointment of Chief Executive Officer**

All matters relating to the terms and conditions of the appointment of the Chief Executive Officer of the Council are to be determined by the Chief Executive.

## **4. Removal of Chief Executive Officer**

(1) If the Chief Executive is satisfied that the Chief Executive Officer of the Council –

- (a) has become a public officer;
- (b) has become bankrupt;
- (c) is incapacitated by physical or mental illness;
- (d) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence

that, if committed in Hong Kong, would be an offence so punishable; or

- (e) is otherwise unable or unfit to perform the functions of the Chief Executive Officer of the Council,

the Chief Executive may declare his office as Chief Executive Officer of the Council to be vacant, and upon such declaration the office becomes vacant.

(2) The Chief Executive shall give notice of a declaration under subsection (1) in such manner as he thinks fit.

#### SCHEDULE 4

[ss. 22 & 60]

### PROVISIONS RELATING TO INVESTIGATION BOARD AND ITS MEMBERS

#### 1. **Appointment of members**

(1) A member appointed to the Investigation Board under section 22(2)(b) of this Ordinance is to be appointed for a term fixed by the Council at the time of his appointment.

(2) On the expiry of his period of appointment or reappointment, a member of the Investigation Board is eligible for reappointment.

(3) All matters relating to the terms and conditions of the appointment of a member of the Investigation Board are to be determined by the Council.

(4) A member of the Investigation Board may resign from office by giving notice in writing to the Council. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Council of the notice.

#### 2. **Meetings and proceedings of Investigation Board**

(1) The chairman of the Investigation Board shall convene such meetings of the Board as he considers necessary for the Board to perform its

functions.

(2) The procedure for convening meetings of the Investigation Board and for the conduct of business at those meetings is, subject to any direction of the Council, to be determined by the Board.

## SCHEDULE 5

[ss. 39 & 60]

### PROVISIONS RELATING TO REVIEW PANEL AND ITS MEMBERS

#### 1. Tenure of members

(1) A member of the Review Panel is to be appointed for a term not exceeding 3 years.

(2) On the expiry of his period of appointment or reappointment, a member of the Review Panel is eligible for reappointment.

(3) A member of the Review Panel may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.

#### 2. Removal of members

(1) If the Chief Executive is satisfied that a member of the Review Panel –

- (a) has become bankrupt;
- (b) is incapacitated by physical or mental illness;
- (c) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable; or

- (d) is otherwise unable or unfit to perform the functions of a member of the Review Panel,

the Chief Executive may declare his office as member of the Review Panel to be vacant, and upon such declaration the office becomes vacant.

(2) The Chief Executive shall give notice of a declaration under subsection (1) in such manner as he thinks fit.

## SCHEDULE 6

[ss. 41 & 60]

### PROVISIONS RELATING TO REVIEW COMMITTEE AND ITS MEMBERS

#### 1. **Meetings and proceedings of Review Committee**

(1) The Chairman of a Review Committee shall convene such meetings of the Committee as he considers necessary for the Committee to perform its functions.

(2) The procedure for convening meetings of the Review Committee and for the conduct of business at those meetings is, subject to any direction of the Council, to be determined by the Committee.

#### 2. **Resignation of members**

(1) A member of a Review Committee may resign from office by giving notice in writing to the Council. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Council of the notice.

(2) If a member of a Review Committee ceases to be a member of the Review Panel, he ceases to be such member of the Committee.

#### 3. **Council may fill vacancy**

If a vacancy occurs among the members of a Review Committee by reason

of death, resignation or otherwise, the Council may appoint –

- (a) subject to paragraph (b), another member of the Review Panel; or
- (b) in the case of a vacancy in the office of the Chairman of the Committee, another Panel Convenor appointed under section 39(2) of this Ordinance,

to fill the vacancy.

#### 4. **Temporary Chairman or member**

(1) If, because of absence from Hong Kong or any other reason, the Chairman of a Review Committee is unable to perform the functions of his office as Chairman, the Council may appoint, from amongst the Panel Convenors appointed under section 39(2) of this Ordinance, a temporary Chairman to act in his place during his absence or incapacity.

(2) If, because of absence from Hong Kong or any other reason, a member of a Review Committee, other than the Chairman, is unable to perform the functions of his office as member, the Council may appoint another member of the Review Panel to be a temporary member in his place during his absence or incapacity.

(3) If a person is appointed as the temporary Chairman, or a temporary member, of a Review Committee, the person may perform all the functions of the Chairman, or member, in whose place the person is appointed.

### **Explanatory Memorandum**

The principal object of this Bill is to provide for –

- (a) the establishment of a Financial Reporting Council (“Council”) –
  - (i) to investigate –
    - (A) irregularities committed by auditors of listed entities (i.e. listed corporations and

- listed collective investment schemes) in respect of the audit of accounts; and
- (B) irregularities committed by reporting accountants of listed entities in respect of the preparation of financial reports required for prospectuses or other listing documents; and
- (ii) to enquire into instances of non-compliances with legal, accounting or regulatory requirements in the financial reports of listed entities;
- (b) the establishment of an Audit Investigation Board (“Investigation Board”) to conduct such investigation; and
- (c) the appointment by the Council of a Financial Reporting Review Committee (“Review Committee”) to make such enquiries.

2. Part 1 contains preliminary provisions. Clause 2 defines the terms as used in the Bill. In particular, the terms “relevant financial report” and “relevant requirement” are defined by reference to Schedule 1. Clause 3 defines “listed entity” as used in the Bill. Clauses 4 and 5 set out when there is a relevant irregularity, or relevant non-compliance, in relation to a listed entity.

3. Part 2 deals with the establishment of the Council. In particular –

- (a) clauses 6 and 7 establish the Council and set out its composition and membership;
- (b) clause 8 provides for the appointment of a Chief Executive Officer of the Council;
- (c) clauses 9 and 10 set out the functions and powers of the Council;
- (d) clause 11 deals with the delegation of functions and powers of the Council;
- (e) clause 12 sets out the circumstances in which the Council

may refer cases or complaints, or provide assistance, to certain persons;

- (f) clause 13 empowers the Council to issue guidelines;
- (g) clause 14 empowers the Chief Executive to give the Council written directions with respect to the performance of the Council's functions;
- (h) clause 15 requires the Council to furnish information to the Secretary for Financial Services and the Treasury on the performance of its functions; and
- (i) clauses 17 to 20 deal with the financial provisions in relation to the Council.

4. Part 3 deals with relevant irregularities. Division 1 (clauses 21 to 24) contains preliminary provisions. Division 2 (clauses 25 to 28) sets out the powers that are exercisable for the purpose of an investigation concerning a relevant irregularity. Division 3 (clauses 29 to 34) contains provisions that are supplementary to those powers. Division 4 (clauses 35 to 37) contains provisions on cases under investigation. In particular –

- (a) clause 22 establishes the Investigation Board and sets out its composition and membership;
- (b) clause 23 specifies when the Council may –
  - (i) exercise the powers under clauses 25 to 28 for the purpose of investigations concerning relevant irregularities; or
  - (ii) direct the Investigation Board to conduct such investigations with those powers;
- (c) clause 24 requires that in the event of relevant irregularities in relation to certain listed entities, the Council shall notify the supervisory bodies concerned of the powers under Divisions 2 and 3 of Part 3 being exercisable for the purpose of the irregularities;



- (d) clauses 25 and 26 set out the powers to require production of records and documents from –
  - (i) auditors, and reporting accountants, of the listed entities concerned;
  - (ii) the listed corporations concerned;
  - (iii) subsidiaries of the listed corporations concerned and of the listed collective investment schemes concerned;
  - (iv) managers, and trustees, of the listed collective investment schemes concerned;
  - (v) authorized institutions; and
  - (vi) other persons;
- (e) clause 27 sets out the supplementary powers to require additional information;
- (f) clause 28 sets out the powers to require production of records and documents and to require attendances and answers;
- (g) clause 31 sets out the offences for failures to comply with requirements imposed under Division 2;
- (h) clause 32 empowers the Council or Investigation Board to apply to the Court of First Instance for inquiries into such failures;
- (i) clause 34 provides for magistrate's warrants to be issued to search for, seize and remove certain records and documents;
- (j) clause 35 requires the Investigation Board to submit to the Council written reports on the findings of investigations;
- (k) clause 36 sets out what the Council may do in relation to cases under investigation; and
- (l) clause 37 empowers the courts and magistrates to order

persons convicted on prosecutions instituted as a result of investigations under Part 3 to pay the costs and expenses of the investigations.

5. Part 4 deals with relevant non-compliances. Division 1 (clauses 38 to 42) contains preliminary provisions. Division 2 (clause 43 to 46) sets out the powers that are exercisable for the purpose of an enquiry concerning a relevant non-compliance. Division 3 (clauses 47 and 48) contains provisions on cases under enquiry. Division 4 (clauses 49 and 50) sets out the Council's power to secure removal of relevant non-compliances. In particular –

- (a) clause 39 provides for the appointment of the Financial Reporting Review Panel (“Review Panel”) and sets out its composition and membership;
- (b) clause 40 specifies when the Council may –
  - (i) exercise the powers under clause 43 for the purpose of enquires concerning relevant non-compliances; or
  - (ii) appoint Review Committees to make such enquiries with those powers;
- (c) clause 41 sets out the composition and membership of Review Committees;
- (d) clause 42 requires that in the event of relevant non-compliances in relation to certain listed entities, the Council shall notify the supervisory bodies concerned of the powers under Division 2 of Part 4 being exercisable for the purpose of the non-compliances;
- (e) clause 43 sets out the powers to require production of records and documents, and to require provision of information or explanation, from –
  - (i) the listed corporations concerned, their subsidiaries, and officers, employees and auditors

- of such corporations and subsidiaries; and
- (ii) managers, trustees and auditors of the listed collective investment schemes concerned, subsidiaries of such schemes, auditors of such schemes and subsidiaries, and officers and employees of such managers, trustees and subsidiaries;
- (f) clause 45 empowers the Council or Review Committees to apply to the Court of First Instance for inquiries into failures to comply with requirements imposed under clause 43;
  - (g) clause 47 requires Review Committees to submit to the Council written reports on the findings of enquiries;
  - (h) clause 48 sets out what the Council may do in relation to cases under enquiry;
  - (i) clause 49 empowers the Council to request a voluntary rectification of financial reports; and
  - (j) clause 50 empowers the Council to seek a court order to compel such a rectification under certain circumstances.
6. Part 5 deals with miscellaneous matters. In particular –
- (a) clauses 51 to 55 contain provisions on confidentiality, conflict of interest, immunity and legal professional privilege; and
  - (b) clauses 56 to 59 contain other miscellaneous provisions.
7. Part 6 contains the consequential and related amendments to several Ordinances.
8. Schedule 2 contains the provisions relating to the Council. Those provisions deal with the tenure of certain members, procedures of proceedings and other related matters.
9. Schedule 3 contains the provisions relating to the Chief Executive Officer

of the Council. Those provisions deal with the tenure of the Chief Executive Officer and other related matters.

10. Schedule 4 contains the provisions relating to the Investigation Board. Those provisions deal with the tenure of members, procedures of proceedings and other related matters.

11. Schedule 5 contains the provisions relating to the Review Panel. Those provisions deal with the tenure of members and other related matters.

12. Schedule 6 contains the provisions relating to Review Committees. Those provisions deal with the procedures of proceedings and other related matters.

Chapter:	32	COMPANIES ORDINANCE	Gazette Number	Version Date
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Section:	359A	Power to make regulations	L.N. 298 of 2001	04/01/2002
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**General provisions as to Chief Executive in Council**

(Amended 23 of 1999 s. 3)

(1) The Chief Executive in Council may make regulations in respect of any matter required or permitted to be prescribed by the Chief Executive in Council under this Ordinance. (Amended 23 of 1999 s. 3; 27 of 2001 s. 7)

(2) Without prejudice to the power conferred under subsection (1), the Chief Executive in Council may make regulations-

- (a) specifying the period for the purposes of section 141CB;
- (b) specifying the periods after which a copy of a summary financial report and a copy of the relevant financial documents of a listed company may be sent under section 141CC;
- (c) providing for any matter in relation to the determination of the effect of a notice of intent sent by an entitled person of a listed company, including providing for the circumstances under which such a notice of intent shall be treated as a request under section 141CD;
- (d) providing for the form and contents of a summary financial report of a listed company (including empowering a listed company to determine certain aspects of the form of its summary financial report);
- (e) providing for the means to ascertain the wishes of an entitled person of a listed company in relation to the sending of a copy of a summary financial report to the person in place of a copy of the relevant financial documents from which the report is derived (including providing for the sending of a notification by the company to the person for the purposes);
- (f) providing for the form and contents of a notification referred to in paragraph (e), including-
  - (i) providing for the form and contents of any card or document attached to such a notification; and
  - (ii) providing that any of such card or document shall be postage prepaid; and
- (g) providing for any incidental, consequential and transitional provision that is necessary or expedient for the purposes of the matters provided for by this subsection. (Added 27 of 2001 s. 7)

(Added 6 of 1984 s. 250)

Chapter:	32	COMPANIES ORDINANCE	Gazette Number	Version Date
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Schedule:	12	PUNISHMENT OF OFFENCES UNDER THIS ORDINANCE	L.N. 154 of 2004	03/12/2004
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Expanded Cross Reference:

342, 342A, 342B, 342C



Section creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (if applicable)
8(8)	Company failing to deliver to the Registrar notice or other document following alteration to its objects	Summary	level 3	\$300
10(3)	Company without a share capital failing to give notice of an increase of number of members beyond the registered number	Summary	level 3	\$300
13(4)	Company failing to deliver to the Registrar document following alteration to its articles (Added 30 of 1999 s. 38)	Summary	level 3	\$300
21(9)	Failure by a body to alter its name on the revocation of a licence to use the words "Chamber of Commerce", etc. in its name	Summary	level 3	\$700
22(1B)	Company failing to give the Registrar notice of change of company name (Added 28 of 2003 s. 119)	Summary	level 3	\$300
22(6)	Company failing to change name on the direction of the Registrar (Replaced 60 of 1990 s. 10)	Summary	level 6 and 6 months	\$700
22A(4)	Company failing to change name on the direction of the Registrar on the grounds that the name is misleading	Summary	level 4	\$700
26(2)	Company failing to send to one of its members a copy of the memorandum or articles when required by the member	Summary	level 3	-
27(2)	When a company's memorandum is altered, issuing a copy of the memorandum without alteration	Summary	level 3	-
30(2)	Failing to give notice, register prospectus or otherwise failing to comply with section 30(1) or (1A) on ceasing to be a private company	Summary	level 5	-
30(2A)	Authorizing a statement in lieu of prospectus under	On indictment	\$150000 and 2 years	-

	section 30(1) containing an untrue statement	Summary	level 5 and 6 months	-
38(1B)	Issuing a company prospectus that does not comply with section 38(1) and (1A)	Summary	level 5	-
38(3)	Issuing a company prospectus that does not comply with section 38	Summary	level 6	-
38B(3)	Advertising an abstract from or an abridged version of a company prospectus	Summary	level 6	-
38C(2)	Issuing a company prospectus with an expert's statement in it, he not having given his consent	Summary	level 6	-
38D(8)	Issuing a company prospectus without delivering a copy to the Registrar or without the requisite endorsements (Amended 86 of 1992 s. 20)	Summary	level 6	\$300
39A(3)	Amendment of prospectus consisting of one document not done in compliance with Part 1 of the Twentieth Schedule (Added 30 of 2004 s. 2)	Summary	level 6	-
39B(4)	Amendment of prospectus consisting of more than one document not done in compliance with Part 1 of the Twenty-first Schedule (Added 30 of 2004 s. 2)	Summary	level 6	-
40A(1)	Authorizing the issue of a prospectus containing an untrue statement	On indictment	\$700000 and 3 years	-
		Summary	\$150000 and 12 months	-
43(4)	Allotting shares before the 3rd day after delivering a statement in lieu of prospectus to the Registrar	Summary	level 6	-
43(5)	Authorizing a statement in lieu of prospectus under section 43(1) containing an untrue statement	On indictment	\$350000 and 2 years	-
		Summary	\$150000 and 12 months	-
44A(4)	Allotting shares before the 3rd day after the issue of a prospectus	Summary	level 6	-
44B(3)	Company failing to keep money in separate bank	Summary	level 5	-



	account when received under a prospectus stating that stock exchange listing is being applied for			
45(3)	Company failing to deliver return of allotments, etc., to the Registrar	Summary	level 5	\$700
46(5)	Company failing to deliver to the Registrar the specified form disclosing the amount or rate of share commission	Summary	level 4	-
47A(3)	Company giving financial assistance for the acquisition of its own shares	Summary	\$125000 and 12 months	-
47F(4)	Company failing to register statement made by directors under section 47E(6) (Amended 28 of 2003 s. 119)	Summary	level 5	\$1300
47F(5)	Director signing a statement made under section 47E(6) without having reasonable grounds for the opinion expressed in it (Amended 28 of 2003 s. 119)	Summary	level 5 and 6 months	-
47G(10)	Company failing to give the Registrar notice, or copy of court order, of application under section 47G	Summary	level 3	\$250
49G(6)	Default by company's officer in registering return disclosing purchase by company of own shares	On indictment Summary	level 6 level 4	\$650 \$250
49G(7)	Default by company to keep copy contract, etc., at registered office; refusal of inspection to person demanding it	Summary	level 4	\$250
49K(6)	Director signing a statement under section 49K without having reasonable grounds for the opinion expressed in it (Amended 28 of 2003 s. 119)	On indictment Summary	\$125000 and 2 years level 5 and 6 months	- -
49M(6)	Refusal of inspection of directors' statement and auditors' report under section 49K (Amended 28 of 2003 s. 119)	Summary	level 4	\$650
49N(4)	Company failing to give the Registrar notice, or copy	Summary	level 3	\$250

	of court order, of application under section 49N			
50(3)	Company failing to disclose in a prospectus particulars of discount allowed on the issue of shares	Summary	level 3	\$300
54(2)	Company failing to give notice of reorganization of share capital	Summary	level 3	\$300
55(3)	Company failing to give notice of increase of share capital	Summary	level 3	\$300
57A(3)	Company failing to disclose on share certificates the class of share or the prohibition or restrictions of voting rights for the share	Summary	level 3	\$300
57B(6)	Director knowingly and wilfully allotting shares without the company's prior approval in general meeting	Summary	level 5 and 6 months	-
58(1B)	Company reducing share capital in breach of section 58	On indictment	\$1250000 and 5 years	-
		Summary	\$125000 and 12 months	-
63	Officer of a company concealing the name of a creditor entitled to object to a reduction of capital, or wilfully misrepresenting the nature or amount of the debt or claim	On indictment	\$150000 and 2 years	-
		Summary	level 5 and 6 months	-
64(5)	Company failing to forward a copy of an order of the court to the Registrar under section 64 within 21 days	Summary	level 3	\$300
69(2)	Company failing to forward notice of refusal to register a transfer to the parties or otherwise failing to comply with section 69	Summary	level 3	\$300
70(2)	Company failing to issue certificates or debentures on allotment or transfer (Amended 28 of 2003 s. 119)	Summary	level 3	\$300
71A(9)	Company failing to publish notice of issue of replacement certificate	Summary	level 3	\$300

74A(4)	Company failing to keep register of debentures or to give notice of the place where it is kept	Summary	level 5	\$700
75(4)	Company refusing to allow inspection or copy of register of debenture holders	Summary	level 3	\$300
81(3)	Company failing to register particulars of charge	Summary	level 5	\$1500
82(2)	Company failing to register particulars of an existing charge over property acquired	Summary	level 5	\$1500
87(7)	Person appointing or ceasing to act as receiver or manager, or entering into or going out of possession as mortgagee, etc., failing to give notice to the Registrar (Amended 28 of 2003 s. 119)	Summary	level 3	\$300
88(4)	Company failing to keep a copy of a charge at the registered office or failing to notify the Registrar where charges are kept	Summary	level 5	\$700
89(4)	Company failing to keep a register of charges or failing to notify the Registrar where the register of charges is kept	Summary	level 5	\$700
89(5)	Officer knowingly and wilfully permitting the omission of an entry in the register of charges	Summary	level 5 and 6 months	-
90(2)(a)	Officer refusing to allow inspection of the register of charges or instruments of charge	Summary	level 3	\$300
91(4)	Company incorporated outside Hong Kong failing to register a Hong Kong property charge	Summary	level 5	\$1500
92(3)	Company failing to notify the Registrar of registered office	Summary	level 3	\$300
93(3)	Company failing to affix its name outside its place of business, etc.	Summary	level 3	\$300
93(4)	Company failing to use its company name, seal, etc., correctly	Summary	level 3	-
93(5)	Officer or other person authorizing the use of	Summary	level 3	-

95(4)	improper seal, etc. Company failing to keep a register of members or failing to notify place where register is kept	Summary	level 4	\$700
95A(3)	Company failing to enter the required statement in the company's register of members (Added 28 of 2003 s. 119)	Summary	level 4	\$700
96(3)	Company failing to maintain index to register of members	Summary	level 3	\$300
98(3)	Company refusing inspection of register of members	Summary	level 3	\$300
99(4)	Company failing to supply certificate as to closure of the register of members	Summary	level 3	-
103(7)	Company keeping register of members outside Hong Kong without licence	Summary	level 3	\$300
104(7)	Company failing to keep a copy of the branch register with the principal register or that copy up to date	Summary	level 3	\$300
109(4)	Company failing to comply with requirements for completing and filing annual returns	Summary	level 5	\$700
111(5) (relating to subsections (1) and (2))	Company failing to hold Annual General Meeting	Summary	level 5	-
111(5) (relating to subsection (4))	Company failing to notify the Registrar of resolution by company to treat a meeting as an Annual General Meeting	Summary	level 3	\$300
114C(3)	Officer failing to give notice of the right to proxies with notice of meeting	Summary	level 3	-
114C(5)	Officer authorizing an invitation to appoint proxies at company expense to only some of the members	Summary	level 3	-
115A(7)	Officer failing to circulate members' resolutions, etc.	Summary	level 5	-
116B(10)	Company failing to enter record of resolutions agreed in accordance with section 116B (Added 46 of 2000 s. 39)	Summary	Level 3	\$300
116BA(2)	Director or secretary failing to notify company's	Summary	Level 3	-

	auditor of matters under section 116B (Added 46 of 2000 s. 39)			
116BC(5)	Sole member failing to provide the company with a written record of his decision (Added 28 of 2003 s. 119)	Summary	Level 3	\$300
116BC(6)	Company failing to enter record of written record of decision provided in accordance with section 116BC (Added 28 of 2003 s. 119)	Summary	Level 3	\$300
117(5)	Company failing to lodge copies of special resolutions, etc., with the Registrar	Summary	level 3	\$300
117(6)	Company failing to lodge copies of special resolutions, etc., with the Registrar	Summary	level 3 per copy	-
119(4)	Company failing to enter minutes of certain meetings	Summary	level 3	\$300
119A(3)	Company failing to keep minutes, etc., at its registered office or failing to notify the Registrar where they are kept	Summary	level 5	\$700
120(3)	Company failing to allow minutes, etc., to be inspected	Summary	level 3	\$300
121(4)	Director failing to take reasonable steps to ensure that proper books of account are kept	Summary	\$300000 and 12 months	-
122(3)	Director failing to take reasonable steps to ensure that accounts are tabled at the Annual General Meeting	Summary	\$300000 and 12 months	-
123(6)	Director failing to take reasonable steps to ensure that accounts tabled at the Annual General Meeting comply with section 123	Summary	\$300000 and 12 months	-
124(3)	Director failing to take reasonable steps to ensure that group accounts tabled at the Annual General Meeting comply with section 124	Summary	\$300000 and 12 months	-
128(6)	Company failing to satisfy obligation imposed under	Summary	level 6	\$300

	section 128(5) or (5A) (Amended 28 of 2003 s. 119)			
129(6)	Company failing to satisfy obligation imposed under section 129(5) or (5A) (Amended 28 of 2003 s. 119)	Summary	level 6	\$300
129B(3)	Company failing to have balance sheet signed before issue, etc.	Summary	level 4	-
129C(3)	Company failing to annex required documents to balance sheet before issue, etc.	Summary	\$150000	-
129F	Director failing to take reasonable steps to secure compliance with sections 129D and 129E	Summary	\$150000 and 6 months	-
129G(3) (relating to subsection (1) or (2A))	Company failing to circulate balance sheet, etc., to members or to supply a copy of a statement	Summary	level 3	-
129G(3) (relating to subsection (2))	Company failing to supply a copy of last balance sheet on request of a member, etc.	Summary	level 5	\$300
131(7)	Company failing to give notice of resolution to remove an auditor	Summary	level 3	\$300
133(2)	Subsidiary or holding company failing to give auditors information	Summary	level 3	-
134(1)	Officer recklessly or knowingly making false statements, etc., to auditors	On indictment Summary	\$150000 and 2 years level 5 and 6 months	- -
140A(7)	Company failing to give notice of resignation, etc., of auditor	On indictment Summary	\$150000 and 2 years level 5 and 6 months	- -
140B(3)	Director failing to convene a meeting on the requisition of the auditor	On indictment Summary	\$150000 and 2 years level 5 and 6 months	- -
141CA(2)	Company sending copy of summary financial report in place of copy of relevant financial documents in contravention of section 141CA(1) (Added 27 of 2001 s. 8)	Summary	level 3	-
141CC(3)	Company sending copy of summary financial report	Summary	level 3	-

	in contravention of section 141CC(1) (Added 27 of 2001 s. 8)			
141CC(3)	Company sending copy of relevant financial documents in contravention of section 141CC(2) (Added 27 of 2001 s. 8)	Summary	level 3	-
141CD(3)	Company failing to comply with request for copy of relevant financial documents (Added 27 of 2001 s. 8)	Summary	level 5	\$300
141CE(2)	Company sending copy of summary financial report where there is in existence any of the events mentioned in section 141CE(1) (Added 27 of 2001 s. 8)	Summary	level 5	-
141CF(3)(a)	Company circulates, issues or publishes copy of summary financial report which does not comply with requirements referred to in section 141CF(1) (Added 27 of 2001 s. 8)	Summary	\$300000	-
141CF(3)(b)	Officer circulates, issues or publishes copy of summary financial report which does not comply with requirements referred to in section 141CF(1) (Added 27 of 2001 s. 8)	Summary	\$300000 and 12 months	-
141D(4)	Director failing to take reasonable steps to ensure directors' report is attached to balance sheet	Summary	level 5 and 6 months	-
152A(4)	Company, etc., failing to produce books, etc., to Financial Secretary when required under section 152A	Summary	level 5 and 6 months	-
152B(4)	Person interfering with execution of a search warrant issued under section 152B	Summary	level 5 and 6 months	-
152C(2)	Person disclosing information gathered under section 152A contrary to section 152C	On indictment	\$150000 and 2 years	-
		Summary	level 5 and 6 months	-
152D(1)	Person destroying, etc., documents required under section 152A	On indictment	\$1500000 and 3 years	-
		Summary	\$150000	-

152E	Person falsifying documents required under section 152A	On indictment Summary	and 12 months \$1500000 and 3 years \$150000 and 12 months	- -
153(3)	Company (not being a private company) failing to have at least 2 directors (Amended 28 of 2003 s. 119)	Summary	level 3	\$300
153A(3)	Private company failing to have at least one director (Added 28 of 2003 s. 119)	Summary	level 3	\$300
153C(4)	Sole director failing to provide the company with a written record of his decision (Added 28 of 2003 s. 119)	Summary	level 3	\$300
153C(5)	Company failing to enter record of written record of decision provided in accordance with section 153C (Added 28 of 2003 s. 119)	Summary	level 3	\$300
155(5)	Unqualified person acting as a director	Summary	level 3	\$300
155A(5)	Director failing to take reasonable steps to prevent the carrying into effect of proposals specified in section 155A without the approval of the company in general meeting	Summary	level 5 and 6 months	-
155B(3)	Director failing to give notice of material interest in a matter, the subject of a resolution to be discussed at a general meeting or meeting of a class of members, which affects the matter differently from the interest of the company	Summary	level 6	-
155B(4)	Company failing to give notice of a director's material interest in a matter, the subject of a resolution to be discussed at a general meeting or meeting of a class of members, which affects the matter differently from	Summary	level 6	-



	the interest of the company			
156(1)	Undischarged bankrupt acting as a director, etc.	On indictment	\$700000	-
		Summary	and 2 years \$150000 and 12 months	-
157J(3)	Company entering into a transaction or arrangement contrary to section 157H (Amended 28 of 2003 s. 119)	On indictment	\$150000	-
		Summary	and 2 years level 5 and 6 months	-
158(8)	Company refusing to permit inspection of register of directors and secretaries or failing to keep or maintain the register	Summary	level 3	\$300
158A(3)	Company failing to keep register of directors and secretaries at registered office or failing to notify the Registrar of place where register is kept	Summary	level 5	\$700
158B(2)	Director, etc., defaulting in giving notice to the company of such matters required under section 158 (Amended 75 of 1993 s. 23)	Summary	level 6	\$550
159(3)	Director, etc., defaulting in giving notice that liability of a director, etc., is, by provision in the memorandum, unlimited before the position is filled	Summary	level 4	-
161A(2)	Director failing to take all reasonable steps to ensure amounts required to be included in the company's accounts, etc., show the previous year's equivalent amount	Summary	level 5 and 6 months	-
161BA(7)	Director failing to take all reasonable steps to ensure the company, if an authorized financial institution, maintains a register of agreements	Summary	level 5 and 6 months	-
161BA(11)	Company failing to permit inspection or to send a copy as required of the register of agreements for an authorized financial	Summary	level 3	\$300

161BB(3)	institution Director failing to take all reasonable steps to ensure the company keeps a register of particulars relating to quasi-loans and credit transactions, etc. (Added 28 of 2003 s. 119)	Summary	level 5 and 6 months	-
161BB(7)	Company failing to permit inspection or to send a copy as required of the register of particulars relating to quasi-loans and credit transactions, etc. (Added 28 of 2003 s. 119)	Summary	level 3	\$300
161C(3)	Director or shadow director failing to disclose matters required under section 161 or 161B (Amended 28 of 2003 s. 119)	Summary	level 5	-
162(3)	Director failing to disclose material interest in a contract	Summary	level 5	-
162A(2)	Company failing to disclose, etc., management contract relating to the management of the whole or a substantial part of company business	Summary	level 3	\$300
162B(3)	Company having one member who is also a director failing to set out in a written memorandum the terms of a contract with that member (Added 28 of 2003 s. 119)	Summary	level 3	\$300
163B(2)	Director, etc., failing to disclose payment for loss of office, etc., in connection with transfer of shares in company	Summary	level 5	-
166(4)	Company failing to deliver order sanctioning compromise to the Registrar	Summary	level 1 per copy	-
166A(4)	Company failing to give statement of effect of compromise, etc., with notice of meeting or where notice is by advertisement, failing to give notice of place of meeting or place where such details may be obtained	Summary	level 5	-

166A(5)	Director, etc., failing to give details of matters relating to himself relevant to section 166A	Summary	level 5	-
167(3)	Company failing to give notice of an order under section 167 to the Registrar	Summary	level 3	\$300
168A(4)	Company failing to give the Registrar an office copy of an order altering, etc., the company's memorandum or articles on petition of a minority group	Summary	level 3	\$300
168M	Person contravening a disqualification order (Added 30 of 1994 s. 12)	On indictment	\$100000 and 2 years	-
		Summary	\$25000 and 6 months	-
190(5)	Person failing to comply with requirements to give information, etc., to liquidator under section 190 (Amended 46 of 2000 s. 39)	Summary	level 5	\$300
227(3)	Liquidator failing to deliver dissolution order to the Registrar	Summary	level 5	\$300
228A(4)	Director signing a winding-up statement without having reasonable grounds for the opinion that the company cannot by reason of its liabilities continue its business, or to consider that the winding up should be commenced under section 228A because it is not reasonably practicable for it to be commenced under another section of the Ordinance (Added 28 of 2003 s. 119)	Summary	level 5 and 6 months	-
228A(6) (relating to subsection (5)(b))	Director failing to appoint a provisional liquidator forthwith after delivery of winding-up statement to the Registrar (Added 28 of 2003 s. 119)	Summary	level 5	-
228A(6) (relating to subsection (5)(c))	Director failing to cause meetings of the company or creditors to be summoned within 28 days after delivery of winding-up statement (Added 28	Summary	level 5	-

228A(13) (relating to subsection (10))	of 2003 s. 119) Provisional liquidator failing to deliver to the Registrar the notice of appointment required under section 228A(10) (Added 28 of 2003 s. 119)	Summary	level 3	\$200
228A(13) (relating to subsection (11)(a))	Person ceasing to act as provisional liquidator failing to publish in the Gazette the notice required under section 228A(11)(a) (Added 28 of 2003 s. 119)	Summary	level 3	\$200
228A(13) (relating to subsection (11)(b))	Person ceasing to act as provisional liquidator failing to deliver to the Registrar the notice required under section 228A(11)(b) (Added 28 of 2003 s. 119)	Summary	level 3	\$200
228A(13) (relating to subsection (12))	Provisional liquidator failing to deliver to the Registrar the notice of change of particulars required under section 228A(12) (Added 28 of 2003 s. 119)	Summary	level 3	\$200
229(2)	Company failing to advertise in the Gazette notice of resolution to wind up voluntarily	Summary	level 3	\$300
233(3)	Director signing a certificate that company being wound up voluntarily can meet its debts within the time set out in the certificate without having reasonable grounds to do so (Amended 28 of 2003 s. 119)	Summary	level 5 and 6 months	-
237A(3)	Liquidator failing to call a meeting on forming the opinion that a company in voluntary liquidation will not be able to meet its debts within the time stated in the certificate of solvency issued under section 233 (Amended 28 of 2003 s. 119)	Summary	level 3	-
238(2)	Liquidator failing to call a general meeting at the end of any year	Summary	level 3	-
239(3)	Liquidator failing to send the Registrar a copy of accounts, etc., on	Summary	level 3	\$300

	completion of the winding up			
239(5)	Person failing to deliver an office copy of an order under section 239 to the Registrar for registration	Summary	level 3	\$300
239(6)	Liquidator failing to call a final general meeting under section 239	Summary	level 3	-
241(6)	Company, etc., failing to comply with the requirements to call creditors' meeting, etc., after a meeting which proposes to wind up the company voluntarily	Summary	level 5	-
247(2)	Liquidator failing to call annual meeting of creditors	Summary	level 3	-
248(3)	Liquidator failing to send copy account or return of holding of final meeting to the Registrar	Summary	level 3	\$300
248(5)	Person failing to deliver an office copy of an order under section 248 to the Registrar for registration	Summary	level 3	\$300
248(6)	Liquidator failing to call a general meeting of the company or of creditors as required by section 248	Summary	level 3	-
253(4) (relating to subsection (1)(a))	Liquidator failing to publish in the Gazette the notice of appointment required under section 253(1)(a) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
253(4) (relating to subsection (1)(b))	Liquidator failing to deliver to the Registrar the notice of appointment required under section 253(1)(b) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
253(4) (relating to subsection (2)(a))	Person ceasing to act as liquidator failing to publish in the Gazette the notice required under section 253(2)(a) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
253(4) (relating to subsection (2)(b))	Person ceasing to act as liquidator failing to deliver to the Registrar the notice required under section 253(2)(b) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
253(4) (relating to	Liquidator failing to deliver to the Registrar the notice	Summary	level 3	\$300

subsection (3))	of change of particulars required under section 253(3) (Added 28 of 2003 s. 119)			
271(1) (relating to paragraph (o))	Officer, etc., failing to comply with section 271 (offences by officers of companies in liquidation)	On indictment Summary	5 years 2 years	- -
271(1) (relating to any other paragraph)	Officer, etc., failing to comply with section 271 (offences by officers of companies in liquidation)	On indictment Summary	\$150000 and 2 years level 5 and 6 months	- -
272	Officer, etc., falsifying, etc., books, etc.	On indictment Summary	\$150000 and 2 years level 5 and 6 months	- -
273	Officer acting with intent to defraud creditors by giving, etc., or concealing, etc., property of company in liquidation	On indictment Summary	\$150000 and 2 years level 5 and 6 months	- -
274(1)	Officer failing to keep books for the 2 years prior to winding up of company	On indictment Summary	\$150000 and 2 years level 5 and 6 months	- -
275(3)	Person being a party to carrying on the business of a company with intent to defraud creditors	On indictment Summary	Fine (unlimited) and 5 years \$150000 and 12 months	- -
278	Undischarged bankrupt or body corporate acting as liquidator	Summary	\$150000	-
278A	Person corruptly inducing appointment of liquidator	Summary	\$150000	-
280(2)	Company, etc., failing to notify on invoice, etc., that it is in liquidation	Summary	level 3	-
283(4)	Person contravening general rules made for the destruction, etc., of books, etc., of liquidated company	Summary	level 3	-
284(3)	Liquidator failing to send prescribed particulars with respect to the proceedings in and position of the liquidation during the liquidation to the Registrar	Summary	level 3	\$700
290(2)	Person failing to deliver an office copy of an order under section 290 to the Registrar for registration	Summary	level 3	\$300
291AA(14)	Person giving false or	Summary	level 6	-

	misleading information in connection with application for deregistration (Added 30 of 1999 s. 38)		and 6 months	
292(5)	Former director failing to keep books and papers of dissolved company (Added 30 of 1999 s. 38)	Summary	level 3	-
297(2)	Body corporate acting as a receiver	Summary	level 5	-
297A	Undischarged bankrupt acting as a receiver	On indictment	\$150000	-
		Summary	and 2 years level 5 and 6 months	-
299(2)	Company, etc., authorizing, etc., the issue of invoices, etc., without reference to its being in receivership, etc.	Summary	level 3	-
300A(7)	Receiver failing to give notices, etc., as required under section 300A	Summary	level 3	\$300
300B(5)	Persons defaulting in complying with requirements of section 300B (special provisions as to statement submitted to receiver)	Summary	level 3	\$300
301(2)	Receiver, etc., failing to deliver accounts to the Registrar	Summary	level 3	\$300
337B(7)	Overseas company carrying on business after being given notice under section 337B (Replaced 60 of 1990 s. 10)	Summary	level 6 and 6 months	\$700
340	Overseas company failing to comply with Part XI	Summary	level 5	\$700
342CA(3)	Amendment of prospectus consisting of one document not done in compliance with Part 2 of the Twentieth Schedule (Added 30 of 2004 s. 2)	Summary	level 6	-
342CB(4)	Amendment of prospectus consisting of more than one document not done in compliance with Part 2 of the Twenty-first Schedule (Added 30 of 2004 s. 2)	Summary	level 6	-
342D	Person responsible for issue, etc., of prospectus, etc., contravening sections 342 to 342C	Summary	\$150000	-

342F(1)	Authorizing the issue, circulation or distribution in Hong Kong of a prospectus relating to shares in or debentures of an overseas company containing an untrue statement (Added 86 of 1992 s. 20)	On indictment Summary	\$550000 and 3 years \$150000 and 12 months	- -
348C(4)	Company failing to take adequate precautions against falsification, etc., of registers, etc.	Summary	level 3	\$300
349	Person making a false statement	Summary	level 6 and 6 months	-
349A(1)	Person dishonestly destroying, etc., registers	On indictment	7 years	-
349A(2)	Person wilfully or maliciously destroying, etc., registers	On indictment Summary	\$150000 and 2 years level 5 and 6 months	- -
350	Person improperly using "Limited", etc.	Summary	level 3	\$300
350A	Company failing to state paid-up capital at the time of stating authorized capital	Summary	level 3	-
360J	Person obstructing Official Receiver	Summary	\$150000 and 6 months	-

(Twelfth Schedule added 7 of 1990 s. 4. Amended 77 of 1991 s. 8; 30 of 1994 s. 12; 84 of 1995 s. 8; L.N. 306 of 1996; 3 of 1997 s. 62; 28 of 2003 s. 119)

Chapter:	41	INSURANCE COMPANIES ORDINANCE	Gazette Number	Version Date
Section:	53A	Secrecy	L.N. 12 of 2003	01/04/2003

## PART VIII A

### SECRECY, DISCLOSURE OF INFORMATION AND EXAMINATIONS BY OUTSIDE AUTHORITIES

(1) Except in the exercise of any function under this Ordinance or for the carrying into effect of the provisions of this Ordinance, every person to whom this subsection applies- (Amended 75 of 1995 s. 7)

- (a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any insurer that may come to his knowledge in the exercise of any function under this Ordinance;



- (b) shall not communicate any such matter to any person other than the person to whom such matter relates; and
  - (c) shall not suffer or permit any person to have access to any records in his possession, custody or control or in the possession, custody or control of any other person so appointed or employed.
- (1AA) Subsection (1) shall apply to any person who is or has been-
- (a) a public officer;
  - (b) a person employed or authorized by or assisting the Insurance Authority;
  - (c) an Advisor appointed under section 35(2)(a);
  - (d) a Manager appointed under section 35(2)(b); and
  - (e) a person employed by or assisting a person to whom this subsection applies by virtue of paragraph (c) or (d),

and who exercises or has exercised any function under this Ordinance. (Added 75 of 1995 s. 7)

(1A) Subsection (1) shall not apply if the Manager of an insurer is required to comply with a notice to furnish returns and information under section 51 of the Inland Revenue Ordinance (Cap 112). (Added 51 of 1992 s. 14)

(2) No person who receives information, in whatever form, submitted under section 6, 7, 13A, 13B, 14, 17, 18, 19, 20, 32, 33, 34, 50, 53D, 53E or 61(1)(a) shall be required to produce to any court any document containing such information or to divulge or communicate to any court any matter or thing coming under his notice in the exercise of his functions under this Ordinance, except in the course of-

- (a) a prosecution for any offence;
  - (b) the determination by the Court of First Instance of an application under section 24; or
  - (c) a winding up by the Court of First Instance under Part VI. (Amended 25 of 1998 s. 2)
- (3) Subsection (1) shall not apply to the disclosure of information-
- (a) in the form of a summary compiled from similar or related information provided by insurers if the summary is so compiled as to prevent particulars relating to the business of any such insurer being ascertained from it;
  - (b) with a view to the institution of; or otherwise for the purposes of, any criminal proceedings or investigation, whether under this Ordinance or otherwise, in Hong Kong;
  - (c) in connection with any civil proceedings arising out of this Ordinance;
  - (d) by the Insurance Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance of his professional duties by a prescribed person; (Replaced 59 of 1993 s. 14)
  - (da) by the Insurance Authority to a prescribed person for the purpose of enabling or assisting the Insurance Authority to discharge his functions under this Ordinance; (Added 59 of 1993 s. 14)
  - (db) by a prescribed person where-
    - (i) the information has been disclosed to that person under paragraph (da); and
    - (ii) that person has the consent of the Insurance Authority to do so; (Added 59 of 1993 s. 14)
  - (e) to the Financial Secretary, an inspector appointed by the Financial Secretary to investigate the affairs of a company, a person holding an authorized statutory office or any public officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Insurance Authority- (Amended L.N. 106 of 2002)
    - (i) it is desirable or expedient that the information should be so disclosed in the interests of existing or potential policy holders or the public interest; or
    - (ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of existing or potential policy holders or the public interest that the information should be so disclosed; (Replaced 75 of 1995 s. 7)

- (f) by the Insurance Authority to an auditor or actuary of an authorized insurer, an authorized insurance broker or a body of insurance brokers approved under section 70 if, in the opinion of the Insurance Authority, such information is necessary for the auditor or actuary, as the case may be, to perform his duties under this Ordinance; (Added 75 of 1995 s. 7)
- (g) subject to subsection (3A), by the Insurance Authority 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; (Added 75 of 1995 s. 7. Amended 31 of 2000 s. 3)
- (h) by the Insurance Authority if it has been made available to the public by virtue of its being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section or section 53B; or (Added 75 of 1995 s. 7. Amended 31 of 2000 s. 3)
- (i) by the Insurance Authority if-
  - (i) the information is in the form of-
    - (A) such accounts, statements and information relating to the business of an insurer as have been submitted to the Insurance Authority under section 17(1);
    - (B) such accounts, statements, reports and information relating to the business of Lloyd's as have been submitted to the Insurance Authority under section 50C(1)(a), (b), (c) and (d); or
    - (C) such accounts, statements and other statistical and financial information relating to the long term business carried on in Hong Kong by an insurer or Lloyd's (as the case may be), as have been provided by the insurer or Lloyd's to the Insurance Authority on a voluntary basis; and
  - (ii) in the opinion of the Insurance Authority, it is desirable that the information should be so disclosed in the interests of existing or potential policy holders or in the public interest. (Added 31 of 2000 s. 3)

(3A) Subsection (3)(g) shall not operate to require the Insurance Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. (Added 75 of 1995 s. 7)

(3B) For the purposes of subsection (3)(e), "authorized statutory office" (認可法定職位) means-

- (a) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66) in the exercise of his functions under the Banking Ordinance (Cap 155);
- (b) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap 571); or (Added 75 of 1995 s. 7. Amended 4 of 1998 s. 3; 5 of 2002 s. 407)
- (c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485). (Added 4 of 1998 s. 3)

(3C) The Legislative Council may, by resolution, amend subsection (3B) by adding or deleting the authorized statutory offices defined therein. (Added 75 of 1995 s. 7)

(3D) Where information is disclosed in any of the circumstances described in subsection (3), other than subsection (3)(a), (h) and (i), neither- (Amended 31 of 2000 s. 3)

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

shall disclose the information, or any part thereof, to any other person without the consent of the Insurance Authority. (Added 75 of 1995 s. 7)

(3E) Subject to subsections (2) and (3)(b) and (c), a person who is the Insurance Authority, and a person employed or authorized by or assisting the Insurance Authority, shall not disclose any information under this section relating to the affairs of any individual policy holder of an insurer. (Added 31 of 2000 s. 3)

- (4) Any person who contravenes subsection (1) commits an offence and is liable-
- (a) on conviction upon indictment to a fine of \$200000 and, in the case of an individual, to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months. (Amended 35 of 1996 s. 26)
- (4A) Any person who contravenes subsection (3D) commits an offence and is liable-
- (a) on conviction upon indictment to a fine of \$200000 and, in the case of an individual, to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months. (Added 75 of 1995 s. 7)
- (5) This section shall apply to-
- (a) companies which make application under section 7;
  - (b) associations of underwriters; and
  - (c) Lloyd's,
- as it applies to insurers.
- (6) For the purposes of this section, "function" includes a power and a duty.  
(Part VIIIA added 34 of 1988 s. 6)

Chapter:	50	PROFESSIONAL ACCOUNTANTS ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation	L.N. 152 of 2004	26/11/2004
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- In this Ordinance, unless the context otherwise requires-
- \*\*"appointed day" (指定日期) means the day appointed by the Secretary for Financial Services and the Treasury under section 1(3) of the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004); (Added 23 of 2004 s. 3)
- "appointed member" (委任理事) means a member of the Council appointed by the Chief Executive under section 10(2)(e); (Added 23 of 2004 s. 3)
- "certified public accountant" (會計師) means a person registered as a certified public accountant by virtue of section 22; (Replaced 23 of 2004 s. 3)
- "certified public accountant (practising)" (執業會計師) means a certified public accountant holding a practising certificate; (Added 23 of 2004 s. 3)
- "co-opted member" (增選理事) means a member of the Council co-opted under section 10(4); (Added 96 of 1994 s. 2)
- "corporate practice" (執業法團) means a company which is for the time being registered under section 28E; (Added 85 of 1995 s. 2)
- "Council" (理事會) means the Council of the Institute established under section 10; (Amended 23 of 2004 s. 54)
- "Disciplinary Committee" (紀律委員會) means a Disciplinary Committee constituted under section 33(3); (Replaced 96 of 1994 s. 2)
- "Disciplinary Committee Convenor" (紀律委員會召集人) means the Disciplinary Committee Convenor appointed under section 33(1)(a); (Added 23 of 2004 s. 3)
- "Disciplinary Panels" (紀律小組) means the Disciplinary Panel A and Disciplinary Panel B constituted under section 33(1) and "Disciplinary Panel A" and "Disciplinary Panel B" shall be construed accordingly; (Added 23 of 2004 s. 3)
- "elected member" (當選理事) means a member of the Council elected under section 10(2)(c);
- "firm name" (事務所名稱) means, in relation to a certified public accountant (practising)

- practising on his own account, the name or style under which he practises if that name or style is otherwise than his own name without any addition as registered under section 22(2), and in relation to a certified public accountant (practising) practising in partnership, the name or style under which the partnership practises; (Added 96 of 1994 s. 2. Amended 23 of 2004 s. 3)
- "Institute" (公會) means the Hong Kong Institute of Certified Public Accountants (香港會計師公會) incorporated by section 3; (Added 23 of 2004 s. 3)
- "Investigation Committee" (調查委員會) means the committee appointed under section 42C; (Added 96 of 1994 s. 2)
- "Investigation Committee Convenor" (調查委員會召集人) means the Investigation Committee Convenor appointed under section 42B(1)(a); (Added 23 of 2004 s. 3)
- "Investigation Panels" (調查小組) means the Investigation Panel A and Investigation Panel B constituted under section 42B(1) and "Investigation Panel A" and "Investigation Panel B" shall be construed accordingly; (Added 23 of 2004 s. 3)
- "lay person" (業外人士) means a person who is not-
- (a) a certified public accountant; or
  - (b) a member of an accountancy body which is a member of the International Federation of Accountants; (Added 23 of 2004 s. 3)
- "practice review" (執業審核), in relation to a practice unit, means an examination or a review described in section 32B(1)(b);
- "Practice Review Committee" (執業審核委員會) means the committee established under section 32A; (Added 14 of 1992 s. 2)
- "practice unit" (執業單位) means-
- (a) a firm of certified public accountants (practising) practising accountancy pursuant to this Ordinance; (Replaced 23 of 2004 s. 3)
  - (b) a certified public accountant (practising) practising accountancy on his own account pursuant to this Ordinance; or (Added 14 of 1992 s. 2. Amended 85 of 1995 s. 2; 23 of 2004 s. 3)
  - (c) a corporate practice; (Added 85 of 1995 s. 2)
- "practising certificate" (執業證書) means a current practising certificate issued under section 30;
- "President" (會長) means the President of the Institute elected under section 4 and any person acting as President; (Amended 23 of 2004 s. 54)
- "professional accountant" (專業會計師) means a person registered as a professional accountant before the relevant day; (Replaced 23 of 2004 s. 3)
- "professional indemnity insurance" (專業彌償保險) includes insurance indemnifying a certified public accountant, a firm of certified public accountants (practising) or a corporate practice against liability to compensate a third party who has sustained financial loss or any other damage or injury due to a breach of professional duty by or to professional negligence of such accountant, firm or practice (including such negligence by any director of the practice) or fraud or dishonesty; (Added 85 of 1995 s. 2. Amended 23 of 2004 s. 3)
- "professional standards" (專業標準) means any-
- (a) statement of professional ethics; or
  - (b) standards of accounting, auditing and assurance practices, (Amended 23 of 2004 s. 3)
- issue or specified or deemed to be issued or specified under section 18A; (Added 14 of 1992 s. 2)
- "public accountant" (註冊核數師) means a person registered as a professional accountant by virtue of the repealed section 24(2) before the relevant day; (Replaced 23 of 2004 s. 3)
- "register" (註冊紀錄冊) means the register of certified public accountants kept under section 22; (Amended 23 of 2004 s. 54)
- "registered address" (註冊地址) means any address of a certified public accountant which is

entered in the register under section 22(2); (Amended 23 of 2004 s. 54)

"registered office" (註冊辦事處) means the registered office referred to in section 31;

"Registrar" (註冊主任) means the Registrar appointed under section 21;

"relevant day" (有關日期) means the day on which the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004) comes into operation\* under section 1(2) of that Ordinance; (Added 23 of 2004 s. 3)

"repealed section 24(2)" (已废除的第24(2)条) means section 24(2) of this Ordinance repealed by the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004); (Added 23 of 2004 s. 3)

"reviewer" (審核人員) means any person appointed or engaged by the Council under section 32B(1)(d); (Added 14 of 1992 s. 2)

"Vice-President" (副會長) means the Vice-President of the Institute elected under section 4 and any person acting as Vice-President. (Amended 23 of 2004 s. 54)  
(Amended 8 of 1993 s. 8; 96 of 1994 s. 2; 23 of 2004 s. 3)

**Note:**

\*\* appointed day : 26 November 2004.

\* In operation date : 8 September 2004

Chapter:	50	PROFESSIONAL ACCOUNTANTS ORDINANCE	Gazette Number	Version Date
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Section:	18	Particular powers of Council	23 of 2004	08/09/2004
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(1) Without derogating from the generality of the power conferred by section 17(1), the Council may-

- (a) do anything necessary for the better carrying out of the objects of the Institute; (Amended 23 of 2004 s. 54)
- (aa) fix registration and other fees; (Added 22 of 1977 s. 4)
- (b) appoint such employees and agents as it deems necessary;
- (c) appoint the bankers of the Institute; (Amended 23 of 2004 s. 54)
- (d) purchase, take on lease or in exchange, hire or otherwise acquire any movable or immovable property, and erect any buildings;
- (e) sell, lease, mortgage, dispose of or otherwise deal with any movable or immovable property of the Institute; (Amended 23 of 2004 s. 54)
- (f) invest moneys of the Institute; (Amended 23 of 2004 s. 54)
- (g) borrow moneys upon security or otherwise;
- (h) exchange information with similar bodies and with members of the profession in places outside Hong Kong and arrange with such bodies for the reciprocal recognition of accountants; (Amended 31 of 1999 s. 3)
- (i) establish and maintain branches of the Institute, whether in Hong Kong or elsewhere, and delegate the powers, duties and functions of the Institute to such branches; (Amended 23 of 1998 s. 2; 23 of 2004 s. 54)
- (j) institute, conduct, defend, compound or abandon any legal proceedings by or against the Institute or its office or otherwise concerning the affairs of the Institute and compound or allow time for payment or satisfaction of any debts due or of any claims or demands made by or against the Institute; (Amended 23 of 2004 s. 54)
- (k) refer any claim or demand by or against the Institute to arbitration and comply with any award made as a result of such arbitration; (Amended 23 of 2004 s. 54)

- (l) make and give receipts, releases and other discharges for moneys payable to and for claims and demands of the Institute; (Amended 23 of 2004 s. 54)
  - (m) appoint committees to assist or advise the Council in the exercise of its powers and delegate to such committees such of its powers as it may from time to time determine; and
  - (n) publish periodicals, booklets or other written material, and produce or sponsor the production of documentary films or other audio-visual material, and distribute the same by sale, loan, hire or otherwise, with or without charge, as the Council thinks fit.
- (2) A committee appointed under subsection (1)(m) may, subject to the by-laws of the Institute, include persons who are not certified public accountants. (Amended 23 of 2004 s. 54)

Chapter:	50	PROFESSIONAL ACCOUNTANTS ORDINANCE	Gazette Number	Version Date
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Section:	18B	Council's power to give directions	23 of 2004	08/09/2004
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(1) The Council may, in connection with the discharge of any of its functions or duties or the exercise of any of its powers, give directions either generally to certified public accountants or to any one or more certified public accountants-

- (a) requiring the production or provision to the Institute by a certified public accountant of any document or information in connection with the registration of any certified public accountant or firm name, or the issue of a practising certificate;
- (b) requiring a certified public accountant to deliver up to the Institute any certificate of registration or practising certificate in the possession, custody or control of the certified public accountant if the registration to which the certificate relates has ceased or the practising certificate has been cancelled or ceased to be valid;
- (c) requiring a certified public accountant to give to the Institute an explanation of any act or omission of the certified public accountant which appears to the Council to be conduct unbecoming of a certified public accountant, or conduct which may affect the reputation, integrity and status of the Institute or of the accountancy profession or conduct which may fall within section 34(1)(a)(iii) to (xii).

(2) A direction given under this section shall be a direction lawfully given by the Council for the purpose of section 34(1)(a)(ix).

(3) The Council may prescribe penalties of an amount not exceeding \$50000 to be imposed for failure by a certified public accountant to comply with a direction given to him but no penalty shall be imposed on a certified public accountant unless he admits to the failure and agrees to the penalty and any penalty so imposed may be recovered by the Institute from the certified public accountant as a civil debt.

(4) Subsections (1), (2) and (3) apply mutatis mutandis in relation to a firm of certified public accountants (practising) and to a corporate practice as they apply to a certified public accountant.

(Added 23 of 2004 s. 16)

Chapter:	50	PROFESSIONAL ACCOUNTANTS ORDINANCE	Gazette Number	Version Date
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Section:	32H	Secrecy		30/06/1997
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(1) Subject to subsection (2), and except in the performance, or assisting in the

performance, of a function under this Part, the Registrar, any reviewer, member of the Practice Review Committee or the Council or a person holding any other position who assists the Registrar, reviewer or a member of the Practice Review Committee or the Council in the performance of a function under this Part-

- (a) shall at all times after his appointment as the Registrar, a reviewer, or a member of the Practice Review Committee or the Council or to such other position, as the case may be, or during or after the performance of or assisting in the performance of such function, preserve and aid in preserving secrecy with regard to any matter coming to his knowledge in the performance or in assisting in the performance of any such function;
- (b) shall not at any time communicate any such matter to any other person; and
- (c) shall not at any such time suffer or permit any other person to have any access to any record, document or other thing which is in his possession or under his control by virtue of his being or having been so appointed or his having performed or having assisted any other person in the performance of such a function.

(2) Subsection (1) shall not apply in relation to any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings.

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$100000 and to imprisonment for 6 months.

(Part IVA added 14 of 1992 s. 4)

Chapter:	50	PROFESSIONAL ACCOUNTANTS ORDINANCE	Gazette Number	Version Date
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Section:	35	Disciplinary powers of Disciplinary Committee	23 of 2004	08/09/2004
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(1) If a Disciplinary Committee is satisfied that a complaint referred to it under section 34 is proved, the Disciplinary Committee may, in its discretion make any one or more of the following orders-

- (a) an order that the name of the certified public accountant be removed from the register, either permanently or for such period as it may think fit; (Amended 23 of 2004 s. 54)
- (b) an order that the certified public accountant be reprimanded; (Amended 23 of 2004 s. 54)
- (c) an order that the certified public accountant pay a penalty not exceeding \$500000 to the Institute; (Amended 23 of 2004 s. 54)
- (d) an order that the certified public accountant pay the costs and expenses of and incidental to an investigation against him under Part VA; (Amended 23 of 2004 s. 54)
- (da) an order that the practising certificate issued to the certified public accountant be cancelled; (Added 23 of 2004 s. 37)
- (db) an order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit, (Added 23 of 2004 s. 37)
- (e) (Repealed 23 of 2004 s. 37)

and the Disciplinary Committee may in any case- (Amended 23 of 2004 s. 37)

- (i) provide for an order to take effect on such date as the Disciplinary Committee thinks fit;
- (ii) provide for an order to take effect only upon the happening or non-happening of such event within such period as may be specified by the Disciplinary Committee;
- (iii) make such order as the Disciplinary Committee thinks fit with regard to the

payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, and any costs and expenses or penalty ordered to be paid may be recovered as a civil debt. (Replaced 96 of 1994 s. 23. Amended 23 of 2004 s. 37)

(1A) Where any rules made under section 51 provide for a re-hearing by a Disciplinary Committee of a complaint referred to it under section 34, any order or decision made under subsection (1) shall, if a Disciplinary Committee re-hears the complaint, cease to have effect and subsection (1) shall apply to such re-hearing as if it were the original hearing. (Added 14 of 1985 s. 11. Amended 85 of 1995 s. 17)

(2) Nothing in this section shall be deemed to require a Disciplinary Committee to inquire into the question whether a professional accountant was properly convicted but the Committee may consider the record of a case in which such conviction was recorded and such other evidence as may show the nature and gravity of the offence.

(3) A Disciplinary Committee shall cause a copy of any order made under subsection (1)(a), or of any such order as varied on appeal by the Court of Appeal, as the case may be, to be published in the Gazette together with a summary of the nature of the complaint to which the order relates:

Provided that no order shall be so published before the expiry of 30 days after the date of service of the order on the professional accountant under section 38(1) or, in the case of an appeal under section 41, before the decision of the Court of Appeal on such appeal.

(Amended 96 of 1994 s. 23)

Chapter:	50	PROFESSIONAL ACCOUNTANTS ORDINANCE	Gazette Number	Version Date
Section:	35B	Consent order	L.N. 152 of 2004	26/11/2004

(1) Where a complaint that section 34(1)(a)(vi), (viii), (ix) or (x) applies to a certified public accountant is referred to the Disciplinary Committee and the Disciplinary Committee, without hearing either the complainant or the certified public accountant, is of the view that the complaint is of such a nature that if the complaint is proved, the appropriate order or orders to be made should fall within one or more of the following orders under section 35-

- (a) an order that the certified public accountant be reprimanded;
- (b) an order that the certified public accountant pay a penalty not exceeding \$50000 to the Institute;
- (c) an order that the certified public accountant pay the costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of the complainant,

the Disciplinary Committee may give notice to the complainant and the certified public accountant.

(2) A notice given by the Disciplinary Committee under subsection (1) shall state-

- (a) the order or orders, being order or orders no more than those referred to in subsection (1), which the Disciplinary Committee proposes to make if the certified public accountant admits to the complaint; and
- (b) the time (being not earlier than 14 days from the date when the notice was given, or such further time as the Disciplinary Committee may allow) within which each of the complainant and the certified public accountant is required to inform the Disciplinary Committee as to whether he will consent to the proposed order or orders.

(3) If the complainant and the certified public accountant consent to the proposed order or orders, the Disciplinary Committee shall make an order or orders in terms of the proposed order or orders and such order and orders shall be deemed to be an order or orders made under section 35,



save that sections 38(2) and 41(1)(b)(iii) shall not apply to such order or orders.

(4) If the complainant or the certified public accountant informs the Disciplinary Committee that he does not consent to the proposed order or orders, or if the Disciplinary Committee considers that the consent of either the complainant or the certified public accountant is not forthcoming notwithstanding the notice under subsection (2)(b), the Disciplinary Committee shall inform the Council and the following shall apply-

- (a) the Disciplinary Committee shall be dissolved;
- (b) the Council shall constitute a new Disciplinary Committee to deal with the complaint with which the dissolved committee was concerned by directing the Disciplinary Committee Convenor to appoint the chairman and other members of the new Disciplinary Committee;
- (c) a person who was a member of the dissolved committee shall not be eligible for membership of the new Disciplinary Committee; and
- (d) the new Disciplinary Committee shall deal with the complaint afresh without regard to this section and, accordingly, it shall not have any regard to any proceedings of the dissolved committee, including the proposed order or orders of the dissolved committee or any failure or refusal of the complainant or the certified public accountant to consent to the proposed order or orders.

(Added 23 of 2004 s. 38)

Chapter:	50	PROFESSIONAL ACCOUNTANTS ORDINANCE	Gazette Number	Version Date
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Section:	42G	Secrecy		30/06/1997
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(1) Subject to subsection (2), and except in the performance, or assisting in the performance, of a function under this Part, the Registrar, any member of the Investigation Committee or the Council, any person to whom any of the powers of the Investigation Committee is delegated under section 42E(1) or any person holding any other position who assists any of such persons in the performance of a function under this Part-

- (a) shall at all times after his appointment as the Registrar, a member of the Investigation Committee or the Council, a person to whom any of the powers of the Investigation Committee is delegated under section 42E(1) or to such other position, as the case may be, or during or after the performance of or assisting in the performance of such function, preserve and aid in preserving secrecy with regard to any matter coming to his knowledge in the performance or in assisting in the performance of any such function;
- (b) shall not at any time communicate any such matter to any other person; and
- (c) shall not at any such time suffer or permit any other person to have any access to any record, document or other thing which is in his possession or under his control by virtue of his being or having been so appointed or his having performed or having assisted any other person in the performance of such a function.

(2) Subsection (1) shall not apply in relation to any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings.

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(Part VA added 96 of 1994 s. 29)

Chapter:	155	BANKING ORDINANCE	Gazette Number	Version Date
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Section:	120	Official secrecy	L.N. 101 of 2004	22/05/2004
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(1) Except as may be necessary for the exercise of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, every person to whom this subsection applies- (Amended 64 of 1987 s. 26)

- (a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the exercise of any function under this Ordinance;
  - (b) shall not communicate any such matter to any person other than the person to whom such matter relates; and
  - (c) shall not suffer or permit any person to have access to any records in the possession, custody or control of any person to whom this subsection applies.
- (2) Subsection (1) shall apply to any person who is or has been-
- (a) a public officer;
  - (b) a person authorized by the Monetary Authority;
  - (c) the Advisor of an authorized institution; (Replaced 49 of 1995 s. 36)
  - (d) the Manager of an authorized institution; (Replaced 49 of 1995 s. 36)
  - (da) a person appointed under section 53G(5); (Added 49 of 1995 s. 36)
  - (e) a person appointed under section 117(2); and
  - (f) a person employed by or assisting a person to whom this subsection applies by virtue of paragraph (b), (c), (d), or (e),

who exercises or has exercised any function under this Ordinance.

(3) Subsection (1) shall not apply if the Manager of an authorized institution is required to comply with a notice to furnish returns and information under section 51 of the Inland Revenue Ordinance (Cap 112). (Replaced 49 of 1995 s. 36)

(4) No person who exercises any function in the course of an examination or investigation under section 47, 50, 55 or 117 or who receives reports, returns or information submitted under section 47, 50, 55, 56, 59, 63 or 64 shall be required to produce in any court any book, account or other document whatsoever or to divulge or communicate to any court any matter or thing coming under his notice in the exercise of his functions under this Ordinance, except as may be necessary in the course of a prosecution for any offence or of a winding-up by the Court of First Instance under section 122. (Amended 67 of 1992 s. 9; 25 of 1998 s. 2)

- (5) Subsection (1) shall not apply-
- (a) to the disclosure of information in the form of a summary of similar information provided by a number of authorized institutions if the summary is so framed as to prevent particulars relating to the business of any particular authorized institution being ascertained from it;
  - (b) to the disclosure of information with a view to the institution of, or otherwise for the purposes 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; (Amended L.N. 362 of 1997)
  - (e) to the disclosure of information by the Monetary Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor or former auditor of an authorized institution or former authorized institution, whether or not the auditor or former auditor, as the case may be, was appointed under section 50, 59 or 63; (Replaced 43 of 1990 s. 9. Amended 67 of 1992 s. 9)
  - (f) to the disclosure of information by the Monetary Authority to the Chief Executive, the Financial Secretary, an inspector appointed by the Financial Secretary to investigate the affairs of a company, a person holding an authorized statutory

office or any public officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Monetary Authority- (Amended L.N. 96 of 1993; 68 of 1999 s. 3; L.N. 106 of 2002)

- (i) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or
  - (ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed; (Replaced 95 of 1991 s. 40)
- (fa) to the disclosure of information by the Monetary Authority to the Securities and Futures Commission relating to-
- (i) the carrying on of a regulated activity by a registered institution; or
  - (ii) the carrying on by an authorized institution of the business of receiving or holding client assets, within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap 571), of intermediaries, within the meaning of Schedule 1 to that Ordinance, of which the institution is an associated entity within the meaning of Schedule 1 to that Ordinance; (Added 6 of 2002 s. 12)
- (g) to the disclosure of information by the Monetary Authority to an auditor of an authorized institution or former authorized institution, or to a former auditor, for the purpose of enabling or assisting the Monetary Authority to discharge his functions under this Ordinance; (Replaced 43 of 1990 s. 9. Amended L.N. 276 of 1990; 95 of 1991 s. 40)
- (gaa) to the disclosure of information by the Monetary Authority 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 exercise its functions under that Ordinance; (Added 7 of 2004 s. 55)
- (ga) to the disclosure of information-
- (i) to any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap 66); and
  - (ii) where such disclosure will enable or assist such person to assist the Monetary Authority in the performance of any of the functions referred to in that section; (Added 49 of 1995 s. 36)
- (h) subject to subsection (5D), to the disclosure of information by the Monetary Authority 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; or (Added 95 of 1991 s. 40)
- (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 section 121. (Added 95 of 1991 s. 40)

(5A) For the purposes of subsection (5)(f), "authorized statutory office" (認可法定職位) means-

- (a) the Insurance Authority under the Insurance Companies Ordinance (Cap 41); (Amended 10 of 1989 s. 65)
- (b) the Securities and Futures Commission; or (Replaced 10 of 1989 s. 65)
- (c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485). (Added 4 of 1998 s. 7)
- (d) (Repealed 10 of 1989 s. 65)

(Added 68 of 1988 s. 2. Amended 4 of 1998 s. 7)

(5B) The Legislative Council may, by resolution, amend subsection (5A). (Added 68 of 1988 s. 2)

(5C) The Monetary Authority may attach a condition to any disclosure of information made pursuant to subsection (5)(b), (c), (d), (e), (f), (fa), (gaa) or (ga), and shall attach a condition to any

disclosure of information made pursuant to subsection (5)(g), that neither- (Amended 49 of 1995 s. 36; 6 of 2002 s. 12; 7 of 2004 s. 55)

- (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 Monetary Authority. (Added 95 of 1991 s. 40)

(5D) Subsection (5)(h) shall not operate to require the Monetary Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. (Added 95 of 1991 s. 40. Amended 94 of 1993 s. 28)

- (6) Any person who-
  - (a) contravenes subsection (1);
  - (b) aids, abets, counsels or procures any person to contravene subsection (1); or
  - (c) knowing that the condition referred to in subsection (5C) has been attached to a disclosure of information made pursuant to subsection (5), contravenes, or aids, abets, counsels or procures any person to contravene, that condition, (Added 95 of 1991 s. 40)

commits an offence and is liable-

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

(7) Subsection (5)(a), (e) and (g) shall apply to and in relation to approved money brokers and former approved money brokers as it applies to and in relation to authorized institutions and former authorized institutions respectively, and the other provisions of this Ordinance shall be construed accordingly. (Added 4 of 1997 s. 17)

(Amended 3 of 1990 s. 46; 82 of 1992 s. 20)

Chapter:	201	PREVENTION OF BRIBERY ORDINANCE	Gazette Number	Version Date
Schedule:	1	PUBLIC BODIES	L.N. 4 of 2005	14/01/2005

[sections 2(1) & 35]  
(Amended 20 of 1999 s. 6)

1. Hong Kong Telecom International Limited. (Replaced 20 of 1999 s. 6)
2. China Light and Power Company Limited.
3. (Repealed 20 of 1999 s. 6)
4. The Chinese University of Hong Kong. (Replaced 20 of 1999 s. 6)
5. Hong Kong Arts Development Council. (Replaced 26 of 1995 s. 19)
6. (Repealed L.N. 198 of 1999)
7. Fish Marketing Organization.
8. Hong Kong and China Gas Company Limited.
9. Hong Kong and Yaumati Ferry Company Limited.
10. Hong Kong Air Cargo Terminals Limited.
11. Hong Kong Building and Loan Agency.
12. Hong Kong Commercial Broadcasting Company Limited.
13. Hong Kong Electric Company Limited.
14. Hong Kong Export Credit Insurance Corporation.
15. Hong Kong Housing Authority.
16. Hong Kong Housing Society.

17. (Repealed 50 of 1987 s. 13)
18. The Hong Kong Polytechnic University. (Replaced 94 of 1994 s. 23)
19. Hong Kong Productivity Council.
20. Hong Kong Settlers Housing Corporation Limited.
21. Hong Kong Telephone Company Limited.
22. Hong Kong Tourism Board. (Replaced 3 of 2001 s. 45)
23. Hong Kong Trade Development Council.
24. Hong Kong Tramways Limited.
25. Kowloon Motor Bus Company (1933) Limited.
26. (Repealed L.N. 249 of 1990)
27. Ocean Park Corporation. (Amended 35 of 1987 s. 40)
28. Peak Tramways Company Limited.
29. Asia Television Limited. (Replaced L.N. 31 of 1983)
30. Hong Kong Jockey Club. (Amended 20 of 1999 s. 6)
31. The Hong Kong Jockey Club (Charities) Limited. (Replaced L.N. 512 of 1994)
32. "Star" Ferry Company Limited.
33. Television Broadcasts Limited.
34. The Community Chest of Hong Kong.
35. University of Hong Kong.
36. Vegetable Marketing Organization.
37. MTR Corporation Limited. (Added 36 of 1975 s. 31. Amended 13 of 2000 s. 65)
38. (Repealed 5 of 2001 s. 40)
39. The Hong Kong Examinations and Assessment Authority. (Added 23 of 1977 s. 17. Amended 23 of 2002 s. 26)
40. Consumer Council. (Added 56 of 1977 s. 22)
41. (Repealed 20 of 1999 s. 6)
42. The Vocational Training Council. (Added 6 of 1982 s. 25)
43. The Kowloon-Canton Railway Corporation. (Added 73 of 1982 s. 39)
44. New Lantao Bus Company (1973) Limited. (Added L.N. 160 of 1983)
45. Hong Kong Baptist University. (Added 50 of 1983 s. 34. Amended 93 of 1994 s. 39)
46. City University of Hong Kong. (Added 65 of 1983 s. 25. Amended 92 of 1994 s. 32)
47. The Hong Kong Academy for Performing Arts. (Added 38 of 1984 s. 28)
48. The Hong Kong University of Science and Technology. (Added 47 of 1987 s. 25)
49. Broadcasting Authority. (Added 49 of 1987 s. 17)
50. Hong Kong Council on Smoking and Health. (Added 56 of 1987 s. 21)
51. Urban Renewal Authority. (Replaced 63 of 2000 s. 38)
52. Securities and Futures Commission. (Added 10 of 1989 Schedule 2)
53. The Open University of Hong Kong. (Replaced 50 of 1997 s. 29)
54. (Repealed 11 of 2004 s. 17)
55. Travel Industry Council of Hong Kong. (Added L.N. 62 of 1990)
56. (Repealed 20 of 1999 s. 6)
57. Hong Kong Council for Academic Accreditation. (Added 15 of 1990 s. 26)
58. The Hospital Authority (including any committee established by the Hospital Authority). (Added 68 of 1990 s. 24)
59. The Airport Authority. (Replaced 71 of 1995 s. 49)
60. Metro Broadcast Corporation Limited. (Added L.N. 184 of 1991)
61. Hong Kong Academy of Medicine. (Added 55 of 1992 s. 16)
62. Lingnan University. (Added 72 of 1992 s. 29. Replaced 54 of 1999 s. 29)
63. Citybus Limited. (Added L.N. 330 of 1992)
64. New Hong Kong Tunnel Company Limited. (Added L.N. 382 of 1992)
65. Tate's Cairn Tunnel Company Limited. (Added L.N. 382 of 1992)
66. (Repealed 5 of 2001 s. 40)
67. (Repealed 134 of 1997 s. 85)
68. Tradelink Electronic Commerce Limited. (Replaced L.N. 125 of 1998)
69. Travel Industry Compensation Fund Management Board. (Added 51 of 1993 s. 8)

70. Western Harbour Tunnel Company Limited. (Added 72 of 1993 s. 71)
  71. Wharf Cable Limited. (Added L.N. 384 of 1993)
  72. The Legislative Council Commission. (Added 14 of 1994 s. 24)
  73. The Hong Kong Institute of Education. (Added 16 of 1994 s. 25)
  74. Hong Kong Quality Assurance Agency. (Added L.N. 409 of 1994)
  75. Equal Opportunities Commission. (Added 67 of 1995 s. 91)
  76. The Security and Guarding Services Industry Authority. (Added 97 of 1994 s. 34)
  77. Legal Aid Services Council. (Added 17 of 1996 s. 14)
  78. Route 3 (CPS) Company Limited. (Added 33 of 1995 s. 65)
  79. Privacy Commissioner for Personal Data. (Added 81 of 1995 s. 72)
  80. Authorized Persons Registration Committee. (Added 54 of 1996 s. 27)
  81. Structural Engineers Registration Committee. (Added 54 of 1996 s. 27)
  82. Contractors Registration Committee. (Added 54 of 1996 s. 27)
  83. The Estate Agents Authority. (Added 48 of 1997 s. 57)
  84. Long Win Bus Company Limited. (Replaced 20 of 1999 s. 6)
  - 84A. Long-term Prison Sentences Review Board. (Added 86 of 1997 s. 44. Amended 20 of 1999 s. 6)
  85. Electoral Affairs Commission. (Added 129 of 1997 s. 24)
  86. Mandatory Provident Fund Schemes Authority. (Added 4 of 1998 s. 8)
  87. New World First Bus Services Limited. (Added L.N. 239 of 1998)
  88. The Hong Kong Mortgage Corporation Limited. (Added L.N. 313 of 1998)
  89. Hong Kong Note Printing Limited. (Added L.N. 313 of 1998)
  90. Exchange Fund Investment Limited. (Added L.N. 16 of 1999)
  91. The Stock Exchange of Hong Kong Limited. (Added 20 of 1999 s. 6)
  92. Hong Kong Futures Exchange Limited. (Added 20 of 1999 s. 6)
  93. Hong Kong Securities Clearing Company Limited. (Added 20 of 1999 s. 6)
  94. The SEHK Options Clearing House Limited. (Added 20 of 1999 s. 6)
  95. HKFE Clearing Corporation Limited. (Added 20 of 1999 s. 6)
  96. Hong Kong Exchanges and Clearing Limited. (Added 12 of 2000 s. 23)
  97. Hong Kong Science and Technology Parks Corporation. (Added 5 of 2001 s. 40)
  98. The Ombudsman. (Added 30 of 2001 s. 24)
  - \*99. A company recognized as an investor compensation company under section 79(1) of the Securities and Futures Ordinance (Cap 571). (Added L.N. 226 of 2002 and 5 of 2002 s. 407)
  100. Construction Workers Registration Authority. (Added 18 of 2004 s. 66)
  101. Hong Kong Deposit Protection Board. (Added 7 of 2004 s. 55)
  102. Geotechnical Engineers Registration Committee. (Added 15 of 2004 s. 61)
  103. Hong Kong Sports Institute Limited. (Added L.N. 4 of 2005)
- (Replaced L.N. 272 of 1974)

Chapter:	397	THE OMBUDSMAN ORDINANCE	Gazette Number	Version Date
Schedule:	1	ORGANIZATIONS TO WHICH THIS ORDINANCE APPLIES	L.N. 5 of 2005	14/01/2005

[sections 2 & 24]

#### PART I#

(Amended 44 of 1994 s. 17; 74 of 1996 s. 9)

Agriculture, Fisheries and Conservation Department. (Replaced L.N. 331 of 1999)

Airport Authority. (Added L.N. 155 of 1996)

All registries and administrative offices of courts and tribunals for which the Judiciary

Administrator has responsibility. (Replaced L.N. 155 of 1996)  
Architectural Services Department.  
Audit Commission. (Amended L.N. 362 of 1997)  
\*Auxiliary Medical Service (department). (Added L.N. 155 of 1996. Amended 57 of 1997 s. 34)  
Buildings Department. (Replaced L.N. 282 of 1993)  
Census and Statistics Department.  
+Civil Aid Service (department). (Added L.N. 155 of 1996. Amended 58 of 1997 s. 34)  
Civil Aviation Department.  
Civil Engineering and Development Department. (Replaced L.N. 183 of 1992. Amended L.N. 104 of 2004)  
Civil Service Training and Development Institute. (Added L.N. 155 of 1996)  
Companies Registry. (Added 8 of 1993 s. 28)  
Correctional Services Department.  
Customs and Excise Department.  
Department of Health. (Added L.N. 414 of 1989)  
Department of Justice. (Amended L.N. 362 of 1997)  
Drainage Services Department. (Added L.N. 357 of 1989)  
Electrical and Mechanical Services Department.  
Employees Retraining Board. (Added L.N. 139 of 1999)  
Environmental Protection Department.  
Equal Opportunities Commission. (Added 30 of 2001 s. 19)  
Fire Services Department.  
Food and Environmental Hygiene Department. (Added 78 of 1999 s. 7)  
General Office of the Chief Executive's Office. (Added L.N. 155 of 1996. Amended 25 of 1998 s. 2)  
Government Flying Service. (Added L.N. 242 of 1993)  
Government Laboratory.  
Government Logistics Department. (Replaced L.N. 164 of 2003)  
Government Property Agency. (Added L.N. 181 of 1991)  
Government Secretariat.  
Highways Department.  
Home Affairs Department. (Replaced L.N. 155 of 1996)  
Hong Kong Arts Development Council. (Added 26 of 1995 s. 20)  
Hong Kong Housing Authority. (Added 44 of 1994 s. 17)  
Hong Kong Housing Society. (Added L.N. 155 of 1996)  
Hong Kong Monetary Authority. (Added L.N. 97 of 1993)  
Hong Kong Sports Institute Limited. (Added L.N. 5 of 2005)  
Hospital Authority. (Added L.N. 420 of 1991)  
Hospital Services Department. (Added L.N. 414 of 1989)  
Housing Department.  
Immigration Department.  
Information Services Department.  
Information Technology Services Department. (Added L.N. 373 of 1989)  
Inland Revenue Department.  
Intellectual Property Department. (Added L.N. 236 of 1990)  
Invest Hong Kong. (Added L.N. 152 of 2000)  
Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service. (Added L.N. 253 of 2001)  
Kowloon-Canton Railway Corporation. (Added 44 of 1994 s. 17)  
Labour Department.  
Land Registry. (Added 8 of 1993 s. 28)  
Lands Department. (Added L.N. 282 of 1993)  
Legal Aid Department.  
Legislative Council Secretariat. (Replaced 14 of 1994 s. 24)  
Leisure and Cultural Services Department. (Added 78 of 1999 s. 7)

Management Services Agency. (Added L.N. 383 of 1993)  
 Mandatory Provident Fund Schemes Authority. (Added L.N. 139 of 1999)  
 Marine Department.  
 Observatory. (Amended 25 of 1998 s. 2)  
 Office of the Telecommunications Authority. (Added L.N. 242 of 1993)  
 Official Languages Agency. (Added L.N. 155 of 1996)  
 Official Receiver's Office. (Added L.N. 183 of 1992)  
 Planning Department. (Added L.N. 414 of 1989)  
 Post Office.  
 Privacy Commissioner for Personal Data. (Added 30 of 2001 s. 19)  
 Radio Television Hong Kong.  
 Rating and Valuation Department.  
 Registration and Electoral Office. (Added L.N. 251 of 1994)  
 Registry of Trade Unions.  
 Securities and Futures Commission. (Added 44 of 1994 s. 17)  
 Social Welfare Department.  
 Technical Education and Industrial Training Department.  
 Television and Entertainment Licensing Authority.  
 The Hong Kong Examinations and Assessment Authority. (Replaced 23 of 2002 s. 27)  
 Trade and Industry Department. (Replaced L.N. 173 of 2000)  
 Transport Department.  
 Treasury.  
 University Grants Committee, Secretariat. (Amended L.N. 35 of 1995)  
 Urban Renewal Authority (Replaced 63 of 2000 s. 38)  
 Vocational Training Council. (Added L.N. 155 of 1996)  
 Water Supplies Department.  
 (Enacted 1988. Amended L.N. 76 of 1989; L.N. 373 of 1989; 8 of 1993 s. 28; 78 of 1999 s. 7; 13 of 2000 s. 65; L.N. 152 of 2000; 63 of 2000 s. 38; L.N. 253 of 2001; 3 of 2003 s. 28; L.N. 164 of 2003; L.N. 104 of 2004; 11 of 2004 s. 18)

## PART II

Independent Commission Against Corruption.  
 Hong Kong Auxiliary Police Force. (Amended 25 of 1998 s. 2)  
 Hong Kong Police Force. (Amended 25 of 1998 s. 2)  
 Secretariat of the Independent Police Complaints Council.  
 Secretariat of the Public Service Commission.

(Part II added 74 of 1996 s. 9)

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**Note:**

# "Education Department" was repealed from Part I of this Schedule by the Education Reorganization (Miscellaneous Amendments) Ordinance 2003 (3 of 2003). For the related saving and transitional provisions, see section 29 of the Ordinance.

\*—Please see the saving provisions contained in section 33(4) of Cap 517.

+ Please see the saving provisions contained in section 33(4) of Cap 518.

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**Note:**

\* The Investor Compensation Company Limited has been recognised as an investor compensation company (please see G.N. 1220 of 2003).

Chapter:	430B	COMPANIES REGISTRY TRADING FUND	Gazette Number	Version Date
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Schedule:	1	SERVICES TO BE PROVIDED BY THE TRADING FUND		30/06/1997
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[paragraph (b)]

1. Administering and enforcing the provisions of the Companies Ordinance (Cap 32), including facilitating the incorporation of new companies and maintaining registers of companies and charges.
2. Administering and enforcing the provisions of the Limited Partnerships Ordinance (Cap 37), including maintaining the register of limited partnerships.
3. Administering and enforcing the provisions of Part VIII of the Trustee Ordinance (Cap 29), including maintaining the Register of Trust Companies.
4. Administering and enforcing the provisions of the Registered Trustees Incorporation Ordinance (Cap 306), including maintaining the register of incorporated trustees.
5. Making available, where the Registrar of Companies is so required or permitted by law, information registered or filed with the Registrar.
6. Monitoring the adequacy of the regulatory framework embodied in any Ordinance referred to in this Schedule and in other Ordinances where the Registrar of Companies has been specified, and advising the Government on any need for change.
7. Any service that the Registrar of Companies may be authorized to provide under or by virtue of any other Ordinance.
8. Providing advice or information on any matter that lies within the expertise of the Registrar of Companies.
9. Any service incidental to or conducive to the provision of any of the services specified in this Schedule.

(Enacted 1993)

Chapter:	485	MANDATORY PROVIDENT FUND SCHEMES ORDINANCE	Gazette Number	Version Date
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Section:	42	Authority may disclose certain information despite section 41	L.N. 106 of 2002	01/07/2002
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(1) Section 41 does not prevent the Authority from doing any of the following with respect to information obtained by it under this Ordinance-

- (a) disclose the information as a summary compiled from information provided by persons in accordance with this Ordinance but only if the summary is compiled so as to prevent the identities and businesses of those persons from being ascertained from the summary;
- (b) disclose the information for the purposes of any criminal proceedings in Hong Kong or an investigation conducted with a view to bringing any such proceedings;
- (c) disclose the information in connection with any civil proceedings to which the Authority is a party or with a view to bringing any such proceedings;

- (d) subject to subsection (2), disclose the information to the Chief Executive, the Financial Secretary, the Commissioner of Inland Revenue, the Registrar of Occupational Retirement Schemes, the Insurance Authority, the Monetary Authority or the Securities and Futures Commission, but only if the Authority reasonably believes that the disclosure- (Amended L.N. 106 of 2002)
  - (i) is in the interests of the scheme members concerned; or
  - (ii) is in the public interest; or
  - (iii) is necessary to enable the exercise or performance of a function imposed or conferred by law;
- (e) disclose the information to a body specified in accordance with subsection (4), but only if the Authority-
  - (i) is satisfied that the information will be used only in disciplinary proceedings brought or proposed to be brought against a member of the body; and
  - (ii) considers that the disclosure is appropriate.

(2) The Authority may disclose information under subsection (1) to the Commissioner of Inland Revenue only if it is satisfied that the information is required in order to assist the Commissioner in determining a matter that the Commissioner is required or empowered to determine under the Inland Revenue Ordinance (Cap 112).

(3) Subsection (1) does not authorize the disclosure of information contained in a report referred to in section 7C(4) to a person or body specified in subsection (1)(d) or (e).

(4) The Authority may, by notice published in the Gazette, specify a body for the purposes of subsection (1)(e).

(5) If-

- (a) the Authority discloses information to a body specified in subsection (1)(e); and
- (b) the body or a member of the body, or a person who obtains or receives the information (directly or indirectly) from the body or such a member, discloses the information to another person,

the body, member or person commits an offence and is liable on conviction to a fine at level 4.

(6) Section 41 does not prevent the Authority from disclosing to a person located in a place outside Hong Kong information obtained by it under this Ordinance if-

- (a) the person exercises or performs in that place functions that correspond to those of the Authority or a person or body specified in subsection (1)(d); and
- (b) the Authority is satisfied that-
  - (i) the person is subject to adequate secrecy provisions imposed by the law of that place; or
  - (ii) the disclosure will enable or assist the person to exercise or perform the person's official functions,

and that it is not contrary to the interests of any scheme members or the public interest that the information should be disclosed to the person.

(7) The information that may be disclosed under subsection (6) includes (but is not limited to) information on matters relating to the affairs of an approved trustee or a service provider-

- (a) that is incorporated, or that has its principal place of business, in a place outside Hong Kong; or
- (b) that is incorporated in or outside Hong Kong and that is an associate of an approved trustee that is incorporated, or has its principal place of business, in that place; or
- (c) that is incorporated in Hong Kong and that has, or is proposing to establish, in that place an associate that is or would be subject to supervision by that person.

(Replaced 4 of 1998 s. 2)

Chapter:	486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation	L.N. 12 of 2003	01/04/2003
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- (1) In this Ordinance, unless the context otherwise requires-
- "act" (作為) includes a deliberate omission;
- "adverse action" (不利行動), in relation to an individual, means any action that may adversely affect the individual's rights, benefits, privileges, obligations or interests (including legitimate expectations);
- "appointed day" (指定日) means the day appointed under section 1(2);
- "approved code of practice" (核准實務守則) means a code of practice approved under section 12;
- "code of practice" (實務守則) includes-
- (a) a standard;
  - (b) a specification; and
  - (c) any other documentary form of practical guidance;
- "Commissioner" (專員) means the Privacy Commissioner for Personal Data established under section 5(1);
- "Committee" (諮詢委員會) means the Personal Data (Privacy) Advisory Committee established under section 11(1);
- "complainant" (投訴人) means the individual, or the relevant person on behalf of an individual, who has made a complaint;
- "complaint" (投訴) means a complaint under section 37;
- "correction" (改正), in relation to personal data, means rectification, erasure or completion;
- "daily penalty" (每日罰款) means a penalty for each day on which the offence is continued after conviction therefor;
- "data" (資料) means any representation of information (including an expression of opinion) in any document, and includes a personal identifier;
- "data access request" (查閱資料要求) means a request under section 18;
- "data correction request" (改正資料要求) means a request under section 22(1);
- "data protection principle" (保障資料原則) means any of the data protection principles set out in Schedule 1;
- "data subject" (資料當事人), in relation to personal data, means the individual who is the subject of the data;
- "data user" (資料使用者), in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data;
- "data user return" (資料使用者申報表) means a data user return referred to in section 14(4);
- "disclosing" (披露), in relation to personal data, includes disclosing information inferred from the data;
- "document" (文件) includes, in addition to a document in writing-
- (a) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and
  - (b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;
- "employment" (僱用) means employment under-
- (a) a contract of service or of apprenticeship; or
  - (b) a contract personally to execute any work or labour,
- and related expressions shall be construed accordingly;
- "enforcement notice" (執行通知) means a notice under section 50(1);

"financial regulator" (財經規管者) means any of-

- (a) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);
- (b) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap 571); (Replaced 5 of 2002 s. 407)
- (c) a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Replaced 5 of 2002 s. 407)
- (d) a person authorized under Part III of the Securities and Futures Ordinance (Cap 571) to provide automated trading services as defined in Schedule 5 to that Ordinance; (Replaced 5 of 2002 s. 407)
- (e)-(ea) (Repealed 5 of 2002 s. 407)
- (f) the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap 41);
- (g) the Registrar of Occupational Retirement Schemes appointed under section 5 of the Occupational Retirement Schemes Ordinance (Cap 426);
- (ga) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 14)
- (h) a person specified in a notice under subsection (7) to be a regulator for the purposes of this definition;

"inaccurate" (不準確), in relation to personal data, means the data is incorrect, misleading, incomplete or obsolete;

"inspection" (視察) means an inspection under section 36;

"investigation" (調查) means an investigation under section 38;

"log book" (紀錄簿), in relation to a data user, means the log book kept and maintained by the data user under section 27(1);

"matching procedure" (核對程序) means any procedure whereby personal data collected for 1 or more purposes in respect of 10 or more data subjects are compared (except by manual means) with personal data collected for any other purpose in respect of those data subjects where the comparison-

- (a) is (whether in whole or in part) for the purpose of producing or verifying data that;  
or
- (b) produces or verifies data in respect of which it is reasonable to believe that it is practicable that the data,

may be used (whether immediately or at any subsequent time) for the purpose of taking adverse action against any of those data subjects;

"matching procedure request" (核對程序要求) means a request under section 31(1);

"personal data" (個人資料) means any data-

- (a) relating directly or indirectly to a living individual;
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- (c) in a form in which access to or processing of the data is practicable;

"personal data system" (個人資料系統) means any system, whether or not automated, which is used, whether in whole or in part, by a data user for the collection, holding, processing or use of personal data, and includes any document and equipment forming part of the system;

"personal identifier" (個人身分標識符) means an identifier-

- (a) that is assigned to an individual by a data user for the purpose of the operations of the user; and
- (b) that uniquely identifies that individual in relation to the data user, but does not include an individual's name used to identify that individual;

"practicable" (切實可行) means reasonably practicable;

"prescribed officer" (訂明人員) means a person employed or engaged under section 9(1);

"processing" (處理), in relation to personal data, includes amending, augmenting, deleting or rearranging the data, whether by automated means or otherwise;

"register" (登記冊) means the register of data users kept and maintained by the Commissioner under section 15(1);

"relevant data user" (有關資料使用者), in relation to-

- (a) an inspection, means the data user who uses the personal data system which is the subject of the inspection;
- (b) a complaint, means the data user specified in the complaint;
- (c) an investigation-
  - (i) in the case of an investigation initiated by a complaint, means the data user specified in the complaint;
  - (ii) in any other case, means the data user the subject of the investigation;
- (d) an enforcement notice, means the data user on whom the notice is served;

"relevant person" (有關人士), in relation to an individual (howsoever the individual is described), means-

- (a) where the individual is a minor, a person who has parental responsibility for the minor;
- (b) where the individual is incapable of managing his own affairs, a person who has been appointed by a court to manage those affairs;
- (c) in any other case, a person authorized in writing by the individual to make a data access request, a data correction request, or both such requests, on behalf of the individual;

"requestor" (提出要求者), in relation to-

- (a) a data access request or data correction request, means the individual, or the relevant person on behalf of an individual, who has made the request;
- (b) a matching procedure request, means the data user who has made the request;

"specified" (指明), in relation to a form, means specified under section 67;

"third party" (第三者), in relation to personal data, means any person other than-

- (a) the data subject;
- (b) a relevant person in the case of the data subject;
- (c) the data user; or
- (d) a person authorized in writing by the data user to collect, hold, process or use the data-
  - (i) under the direct control of the data user; or
  - (ii) on behalf of the data user;

"use" (使用), in relation to personal data, includes disclose or transfer the data;

"would be likely to prejudice" (相當可能損害) includes would prejudice.

(2) For the avoidance of doubt, it is hereby declared that paragraph (c) of the definition of "relevant person" shall not be construed-

- (a) to entitle a person who has only been authorized to make a data access request on behalf of an individual to make a data correction request on behalf of the individual;
- (b) to entitle a person who has only been authorized to make a data correction request on behalf of an individual to make a data access request on behalf of the individual.

(3) Where under this Ordinance an act may be done with the prescribed consent of a person (and howsoever the person is described), such consent-

- (a) means the express consent of the person given voluntarily;
- (b) does not include any consent which has been withdrawn by notice in writing served on the person to whom the consent has been given (but without prejudice to so much of that act that has been done pursuant to the consent at any time before the notice is so served).

(4) Subject to section 64(10), it is hereby declared that any reference in this Ordinance to the effect that a data user (howsoever described)-

- (a) has contravened a requirement under this Ordinance; or
- (b) is contravening a requirement under this Ordinance,

includes-

- (i) where paragraph (a) is applicable, any case where the data user has done an act, or engaged in a practice, in contravention of a data protection principle;
- (ii) where paragraph (b) is applicable, any case where the data user is doing an act, or engaging in a practice, in contravention of a data protection principle.

(5) Notwithstanding any other provisions of this Ordinance, a complaint may be made (and an investigation, if any, initiated by the complaint may be carried out) in relation to a person who has ceased to be a data user except any such person who has not at any time been a data user during the period of 2 years immediately preceding the date on which the Commissioner receives the complaint and, accordingly, a person in relation to whom such a complaint is made shall for the purposes of such complaint (and an investigation, if any, initiated by such complaint) be deemed to be a data user, and the other provisions of this Ordinance shall be construed accordingly.

(6) Any reference in this Ordinance to a data protection principle followed by a number is a reference to the principle bearing that number set out in Schedule 1.

(7) The Chief Executive may, by notice in the Gazette, specify a person to be a regulator for the purposes of the definition of "financial regulator". (Amended 34 of 1999 s. 3)

(8) It is hereby declared that a notice under subsection (7) is subsidiary legislation.

(9) Where a person-

- (a) holds any office, engages in any profession or carries on any occupation; and
- (b) is required by any law, or by any rules made under or by virtue of any law, to be a fit and proper person (or words to the like effect) to hold that office, engage in that profession or carry on that occupation,

then, for the purposes of this Ordinance, any conduct by that person by virtue of which he ceases, or would cease, to be such a fit and proper person shall be deemed to be seriously improper conduct.

(10) Subsection (9) shall not operate to prevent seriously improper conduct including, for the purposes of this Ordinance, conduct by virtue of which a person ceases, or would cease, to be a fit and proper person notwithstanding that the conduct is not conduct to which that subsection applies.

(11) Words and expressions importing the neuter gender in relation to any data user shall include the masculine and feminine genders.

(12) A person is not a data user in relation to any personal data which the person holds, processes or uses solely on behalf of another person if, but only if, that first-mentioned person does not hold, process or use, as the case may be, those data for any of his own purposes.

(13) For the avoidance of doubt, it is hereby declared that, for the purposes of this Ordinance, any conduct by a person by virtue of which he has or could become a disqualified person or a suspended person under the Rules of Racing and Instructions by the Stewards of the Hong Kong Jockey Club, as in force from time to time, is seriously improper conduct. (Amended 34 of 1999 s. 3)

(Enacted 1995)

Chapter:	571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
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Section:	257	Orders, etc. of Tribunal	L.N. 12 of 2003	01/04/2003
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(1) Subject to subsection (3), the Tribunal may at the conclusion of any proceedings

instituted under section 252 make one or more of the following orders in respect of a person identified as having engaged in market misconduct pursuant to section 252(3)(b)-

- (a) an order that the person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;
  - (b) an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;
  - (c) an order that the person shall not again perpetrate any conduct which constitutes such market misconduct as is specified in the order (whether the same as the market misconduct in question or not);
  - (d) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question;
  - (e) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government, whether in relation or incidental to the proceedings or in relation or incidental to any investigation of his conduct or affairs carried out for the purposes of the proceedings;
  - (f) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to any investigation of his conduct or affairs carried out before the matter was referred to the Tribunal by the Financial Secretary or in relation or incidental to the proceedings;
  - (g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.
- (2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which-
- (a) previously resulted in the person being convicted of an offence in Hong Kong;
  - (b) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 252(3)(b); or
  - (c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.
- (3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.
- (4) Where the Tribunal makes an order under subsection (1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.
- (5) The Tribunal may, in relation to any person, specify any market misconduct in an order under subsection (1)(c), whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.
- (6) Where the Tribunal makes an order under subsection (1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap 4 sub. leg. A) applies to the taxation of the costs.
- (7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).

(8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.

(9) Where the Tribunal makes an order under subsection (1)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.

(10) A person commits an offence if he fails to comply with an order made under subsection (1)(a), (b) or (c) 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.

Chapter:	571	SECURITIES AND FUTURES ORDINANCE	Gazette Number	Version Date
Section:	378	Preservation of secrecy, etc.	23 of 2004	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.

## **Financial Implications**

The Companies Registry Trading Fund (CRTF) would be one of the four funding parties of the proposed Financial Reporting Council (FRC). In this regard, for the first three years of the operation of the FRC, the CRTF would need to provide a recurrent funding of \$2.5 million per year. On top of this recurrent funding, CRTF would also need to provide a one-off amount of up to \$2.5 million to set up a Reserve Fund to cater for contingencies such as a "mega" investigation case, and to provide free accommodation for the FRC which is estimated to be equivalent to about \$1.8 million per annum<sup>1</sup> in dollar terms. The total amount of recurrent funding and cost of free accommodation is estimated to be about 2% of the annual expenditure of the CRTF. Thus, it is not expected to have any significant impact on the operation of the CRTF, nor would it lead to any increases in the fees charged for the CRTF.

## **Economic Implications**

2. The Bill when enacted will provide for the legislative framework for the establishment of the FRC, which would further enhance the regulation of auditors and the quality of financial reporting of listed entities. Thus, it would have a significant bearing on the upholding of Hong Kong's corporate governance regime and the maintenance of investor confidence. It would also be conducive to the maintenance of Hong Kong's position as an international financial centre and the premier capital formation centre for China.

3. The Bill would also highlight to the market Government's commitment to ensure an effective, transparent and accountable regulatory regime for the accounting profession in Hong Kong.

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<sup>1</sup> This is a broad-bush estimate. The actual value will depend on the size of office to be taken up by the FRC, which will depend on factors such as the operational need of the Council.