

**Note on Legislative Provisions relating to the Regulation
of Banking Institutions engaging in the Sale of
Financial Products**

This paper seeks to provide a quick reference to legislative provisions relating to the regulation of banking institutions engaging in the sale of financial products. The provisions are extracted and attached as Appendix for Members' easy reference.

Functions of SFC

2. The Securities and Futures Commission (SFC) has been set up to, inter alia, maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry and to provide protection for members of the public investing in or holding financial products¹. Its functions include -

- (a) supervising, monitoring and regulating the activities carried on by persons carrying on activities regulated by SFC under the relevant provisions of SFO;
- (b) promoting, encouraging and enforcing the proper conduct, competence and integrity of persons carrying on activities regulated by SFC under SFO in the conduct of such activities; and
- (c) taking such steps as it considers appropriate to ensure that the relevant provisions are complied with².

The activities regulated by SFC are listed in Part 1 of Schedule 5 to SFO (regulated activities). In a sale of a financial product, two regulated activities may be involved, namely, dealing in securities and advising on securities.

¹ Section 4(a) and (c) of Securities and Futures Ordinance (Cap. 571) (SFO).

² Section 5(1)(b), (d) and (f) of SFO.

Authorization of collective investment schemes

3. SFC may, if it considers appropriate, authorize any collective investment scheme subject to such conditions as it may consider appropriate³. “Collective investment scheme (集體投資計劃)” is defined in Part 1 of Schedule 1 to SFO. Subject to stated exceptions, it chiefly covers any arrangements in respect of any property –

- (a) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;
- (b) under which -
 - (i) the property is managed as a whole by or on behalf of the person operating the arrangements;
 - (ii) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
 - (iii) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and
- (c) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive –
 - (i) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

³ Section 104(1) of SFO.

- (ii) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property.

4. No advertisement, invitation or document which is or contains an invitation to the public to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities or a regulated investment agreement may be issued without the authorization of SFC⁴. “Invitation” is defined in SFO to include an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means⁵. Any breach would be a criminal offence subject upon indictment to a fine of \$500,000 and to imprisonment for 3 years and upon summary conviction to a fine of \$100,000 and to imprisonment for 6 months⁶. Daily fine is also prescribed for continuing offence.

Regulation of registered institutions

Registration of banks as registered institutions

5. The regulation by SFC of persons carrying on regulated activities is effected through a licensing regime. The regime covers brokerage firms, which must be corporations (licensed corporations), and representatives (licensed representatives). The relevant provisions are contained in Part V of SFO. For Authorised Institutions (認可機構), i.e. banks, which carry on regulated activities, they are required to be registered with SFC under section 119 of SFO⁷. Upon completion of registration, the registered institution (註冊機構) (RI) will be issued a certificate of registration specifying the regulated activities for which it is registered⁸. It is a condition of the registration that for each regulated activity, there must be at least one executive officer of RI who is available at all times to supervise the business of the regulated activity for which the institution is registered and each individual engaged by RI in respect of the activity must be a fit and proper person⁹. In general, RIs are

⁴ Section 103(1) of SFO.

⁵ Section 102(1).

⁶ Section 103(4) of SFO.

⁷ Section 114(1) and (2)(b) of SFO.

⁸ Section 119(1) of SFO.

⁹ Section 119(8) of SFO.

subject to the provisions of SFO, and the subsidiary legislation made thereunder, in the same way as licensed corporations in respect of their regulated activities¹⁰. The major areas of difference are capital requirements and handling of client money. RIs are not subject to the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) and the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I), because these areas are already subject to the regulation of the Monetary Authority (MA).

Supervision of RIs and individuals engaged by RIs in carrying on regulated activities

6. Under section 20(1)(ea) of BO, a register is kept by MA of each individual who is engaged by a RI in a regulated activity. Each RI is required to submit to MA information relating to each individual so engaged by it¹¹.

7. By a Memorandum of Understanding dated 12 December 2002, SFC and the Hong Kong Monetary Authority (HKMA) agreed that whilst the ultimate responsibility for the regulation of intermediaries in the securities market rested with SFC, HKMA would remain the front-line supervisor for RIs and be responsible for the day-to-day supervision of the regulated activities of RIs. In the circumstances, RIs carrying on a regulated activity are legally required to be registered with SFC but not licensed under SFO and persons engaged by RIs in a regulated activity do not appear to be required to be licensed as representatives under SFO. Since it is a condition of registration that each individual engaged by RIs in a regulated activity must be a fit and proper person and the Supervisory Policy Manual of HKMA expressly provides that in determining whether such individual is and remains a fit or proper person, RIs should ensure that the Fit and Proper Guidelines, the Guidelines on Competence and the Guidelines on Continuous Professional Training issued by SFC are complied with¹², an individual engaged by a RI in a regulated activity should have the same qualification and competence as a representative licensed under SFO.

8. When a RI forms the view that an individual is no longer fit and proper to be engaged in the conduct of any regulated activity, it should promptly inform HKMA to remove the individual's name from the HKMA

¹⁰ Para. 3.2.1 of SB-1 of the Supervisory Policy Manual of HKMA.

¹¹ Section 20(3) of BO.

¹² Para. 3.1.7 of SB-1 of the Supervisory Policy Manual of HKMA.

register¹³. MA has power under section 58A(1) of BO to remove or suspend the name of an individual concerned from the HKMA register after consultation with SFC, if the individual is, or was at any time, guilty of misconduct or MA is of the opinion that the individual is not, or has ceased to be, a fit and proper person. If an individual is guilty of misconduct or SFC is of the opinion that the individual is not fit and proper to be, or to remain, entered in the register maintained by MA, SFC may impose such disciplinary action provided in SFO, including pecuniary penalty, as may be appropriate in the circumstances of the case¹⁴.

9. In the event of any misconduct of a RI or SFC having the opinion that a RI is not a fit and proper person to be, or remain, registered as RI for a regulated activity, SFC may revoke or suspend the registration of the RI or take other appropriate disciplinary actions as provided in SFO¹⁵. The registration of a RI may also be revoked if it has become insolvent or has been convicted of any offence that impugns the fitness and properness of the RI to remain registered¹⁶.

Standards of conduct for RIs

10. HKMA requires RIs to comply with all relevant legislation, rules and regulations and to conduct their regulated activities in a responsible, honest and business-like manner. Senior management should ensure that policies, procedures and controls are in place for such purposes. Failure of RIs or individuals to observe and abide by any applicable legal and regulatory requirement will call into question their fitness and propriety for the conduct of regulated activities, and may lead to disciplinary action¹⁷.

11. The Code of Conduct for Persons Licensed or Registered with SFC¹⁸ (the Conduct Code) is applicable to RIs, and individuals engaged by them, in the conduct of regulated activities. Under the general principle of honesty and fairness, a person engaged in a regulated activity when advising, or acting on behalf of a client, must ensure that any representation made and

¹³ Para.3.1.17 of SB-1 of the Supervisory Policy Manual of HKMA.

¹⁴ Section 196 of SFO.

¹⁵ Section 196 of SFO.

¹⁶ Section 197 of SFO.

¹⁷ Para. 4.1.1 of SB-1 of the Supervisory Policy Manual of HKMA.

¹⁸ The Conduct Code is made by SFC pursuant to its powers under section 169 of SFO.

information provided to the client are accurate and not misleading¹⁹. Under the general principle of diligence, such person must act in the best interests of the clients in providing services or recommending the services of an affiliated person to the clients²⁰. Under the general principle of know your client, when making a recommendation or solicitation, the person must ensure the suitability of the recommendation or solicitation for a client is reasonable in all the circumstances having regard to information about the client which the person is or should be aware through the exercise of due diligence²¹. When providing services in derivative products, the person must make sure that the client understands the nature and risks of the products and has sufficient net worth to be able to assume the risk and bear the potential loss of trading in the products²².

12. Section 169 of SFO stipulates that a failure by any intermediary or representative to comply with the provisions of any applicable code of conduct shall not by itself render it or him liable to any judicial or other proceedings, but may be considered, for the purposes of any provision of SFO, whether the intermediary or the representative is a fit and proper person to be, or to remain, licensed or registered, and in any proceeding under SFO before any court the code or the guideline shall be admissible in evidence, and if any provision of the code or guideline appears to the court to be relevant to any question in the proceedings, it shall be taken into account in determining that question.

Prepared by

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¹⁹ Para. 2.1 of the Conduct Code.

²⁰ Para. 3.10 of the Conduct Code.

²¹ Para. 5.2 of the Conduct Code.

²² Para. 5.3 of the Conduct Code.

**Extracts of Legislative Provisions relating to the Regulation
of Banking Institutions engaging in the Sales of
Financial Products**

Functions of SFC

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	4	Heading:	Regulatory objectives of Commission	Version Date:	01/04/2003

The regulatory objectives of the Commission are-

- (a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- (b) to promote understanding by the public of the operation and functioning of the securities and futures industry;
- (c) to provide protection for members of the public investing in or holding financial products;
- (d) to minimize crime and misconduct in the securities and futures industry;
- (e) to reduce systemic risks in the securities and futures industry; and
- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	5	Heading:	Functions and powers of Commission	Version Date:	01/04/2003

- (1) The functions of the Commission are, so far as reasonably practicable-
- (a) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
 - (b) to supervise, monitor and regulate-
 - (i) the activities carried on by recognized exchange companies, recognized clearing houses, recognized exchange controllers or recognized investor compensation companies, or by persons carrying on activities regulated by the Commission under any of the relevant provisions, other than registered institutions; and
 - (ii) such of the activities carried on by registered institutions as are required to be regulated by the Commission under any of the relevant provisions;
 - (c) to promote and develop an appropriate degree of self-regulation in the securities and futures industry;
 - (d) to promote, encourage and enforce the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;
 - (e) to encourage the provision of sound, balanced and informed advice regarding transactions or activities related to financial products;
 - (f) to take such steps as it considers appropriate to ensure that the relevant provisions are complied with;

Chapter: 571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 197 of 2005
Schedule: 5	Heading:	REGULATED ACTIVITIES	Version Date:	06/01/2006

[sections 114, 118, 139 &
142 & Schedule 1]

PART 1

The following are regulated activities-

- Type 1 : dealing in securities;
- Type 2 : dealing in futures contracts;
- Type 3 : leveraged foreign exchange trading;
- Type 4 : advising on securities;
- Type 5 : advising on futures contracts;
- Type 6 : advising on corporate finance;
- Type 7 : providing automated trading services;
- Type 8 : securities margin financing;
- Type 9 : asset management.

Authorization of collective investment schemes

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	104	Heading:	Commission may authorize collective investment schemes	Version Date:	01/04/2003

(1) On an application to the Commission, the Commission may, where it considers appropriate, authorize any collective investment scheme, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.

(2) It shall be a condition of authorization of a collective investment scheme under subsection (1) that at any time when the scheme is authorized-

(a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the scheme; and

(b) the Commission is informed of particulars-

(i) subject to subparagraph (ii), of the current contact details of the approved person referred to in paragraph (a), including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

(ii) where there is any change in the contact details referred to in subparagraph (i), of the change, within 14 days after the change takes place.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 154 of 2004
Section:	103	Heading:	Offence to issue advertisements, invitations or documents relating to investments in certain cases	Version Date:	03/12/2004

Division 2-Regulation of offers of investments, etc.

(1) Subject to subsections (2), (3) and (5) to (9), a person commits an offence if he issues, or has in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to the public-

(a) to enter into or offer to enter into-

(i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or

(ii) a regulated investment agreement; or

(b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

unless the issue is authorized by the Commission under section 105(1).

(2) Subsection (1) does not apply to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document-

(a) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of securities;

(b) made by or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent) in respect of futures contracts;

(c) made by or on behalf of-

(i) an authorized financial institution (whether acting as principal or agent); or

(ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent), in respect of leveraged foreign exchange contracts;

- (d) made by or on behalf of a recognized exchange company or recognized clearing house in respect of the provision of services by such recognized exchange company or recognized clearing house (as the case may be);
- (e) made by or on behalf of a corporation to holders of securities or creditors of, or employees employed by or agents acting in a professional capacity on behalf of, that corporation, or a related corporation of that corporation, in respect of securities of that corporation or that related corporation;
- (f) made by or on behalf of the Government in respect of securities issued by it;
- (g) made by or on behalf of a credit union in respect of shares in the credit union;
- (ga) to the extent that the advertisement, invitation or document relates to an offer falling within paragraph (b)(ii) of the definition of "prospectus" in section 2(1) of the Companies Ordinance (Cap 32); (Added 30 of 2004 s. 3)
- (h) made by or on behalf of a person acting as a trustee of a trust, not being a collective investment scheme, to beneficiaries under the trust; or
- (i) made by or on behalf of a person who is engaged in the business of selling and purchasing property other than securities (whether acting as principal or agent) in the ordinary course of that business.

(3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue-

- (a) of-
 - (i) a prospectus which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap 32);
 - (ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is exempt from compliance with Part XII of that Ordinance;
 - (iii) a publication falling within section 38B(2) of the Companies Ordinance (Cap 32); (Replaced 30 of 2004 s. 3)

(b) of a document relating to the securities of a body corporate incorporated in Hong Kong that is not a registered company, being a document which-

(i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies Ordinance (Cap 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and

(ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation;

(c) of a form of application for the shares or debentures of a corporation, where it is issued, or the possession is for the purposes of issue, together with-

(i) a prospectus with respect to those shares or debentures which complies with or is exempt from compliance with Part II of the Companies Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or

(ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation with respect to those shares or debentures;

(d) of a form of application for the securities of a corporation, where it is issued, or the possession is for the purposes of issue, in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;

(e) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;

(f) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit-

(i) the amount or denomination of which is not less than the sum specified in Part 1 of Schedule 4; and

(ii) by-

(A) a multilateral agency; or

(B) a bank incorporated outside Hong Kong and having no place of business in Hong Kong, where the Monetary Authority has declared in writing that he is satisfied that the bank is likely to be adequately supervised by the relevant authority of any place in which it is incorporated or has its principal place of business;

(g) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of any instrument specified in Part 2 of Schedule 4 (other than a certificate of deposit), where the amount or denomination of the instrument is not less than the sum specified in Part 1 of Schedule 4 and the instrument-

(i) is issued by an authorized financial institution or a multilateral agency, or by an exempted body which, if it is a corporation or a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4, complies with the relevant condition;

(ii) is issued by a corporation which complies with the relevant condition, and is guaranteed by an authorized financial institution or a multilateral agency, or by an exempted body (other than a corporation specified in item 11 of Part 3 of Schedule 4 which does not comply with the relevant condition, or a wholly owned subsidiary of the corporation); or

(iii) is issued by a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and which complies with the relevant condition;

(h) of any advertisement, invitation or document made in respect of the issue of securities the listing of which on a

recognized stock market has been approved by the recognized exchange company by which the recognized stock market is operated, where the advertisement, invitation or document complies with the rules made under section 23 or 36 governing the listing of securities, except to the extent that compliance is, in accordance with those rules, waived, modified or not required;

(i) of any advertisement, invitation or document made in respect of securities regulated in a jurisdiction outside Hong Kong which have been admitted to trading on a recognized stock market under or pursuant to rules made under section 23 or 36;

(j) of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme or regulated investment agreement, which are or are intended to be disposed of only to persons outside Hong Kong;

(k) of any advertisement, invitation or document made in respect of securities, or interests in any collective investment scheme or regulated investment agreement, which are or are intended to be disposed of only to professional investors.

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

(a) on conviction on indictment to a fine of \$500000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of \$20000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10000 for every day during which the offence continues.

(5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue-

(a) as or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of securities;

(b) as or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in

respect of futures contracts;

(c) as or on behalf of-

(i) an authorized financial institution (whether acting as principal or agent); or

(ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of leveraged foreign exchange contracts.

(6) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement, invitation or document, or has any advertisement, invitation or document in his possession for the purposes of issue-

(a) in the case of any advertisement, invitation or document made in respect of securities, to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary;

(b) in the case of any advertisement, invitation or document made in respect of futures contracts, to an intermediary licensed or registered for Type 2 or Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or

(c) in the case of any advertisement, invitation or document made in respect of leveraged foreign exchange contracts, to-

(i) an authorized financial institution; or

(ii) an intermediary licensed for Type 3 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	102	Heading:	Interpretation of Part IV	Version Date:	01/04/2003

PART IV

OFFERS OF INVESTMENTS

Division 1-Interpretation

(1) In this Part, unless the context otherwise requires-

"advertisement" (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

"approved person" (核准人士)-

(a) in relation to a collective investment scheme, means an individual approved by the Commission under section 104(3);
or

(b) in relation to the issue of an advertisement, invitation or document, means an individual approved by the Commission under section 105(3);

"document" (文件) means any publication (including a newspaper, magazine or journal, a poster or notice, a circular, brochure, pamphlet or handbill, or a prospectus)-

(a) directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public; and

(b) whether produced mechanically, electronically, magnetically, optically, manually or by any other means;

"exempted body" (獲豁免團體) means a body specified in Part 3 of Schedule 4;

"invitation" (邀請) includes an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

"issue" (發出), in relation to any material (including any advertisement, invitation or document), includes publishing, circulating, distributing or otherwise disseminating the material or the contents thereof, whether-

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures, pamphlets or handbills;
- (e) by an exhibition of photographs or cinematograph films;
- (f) by way of sound or television broadcasting;
- (g) by any information system or other electronic device; or
- (h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the material to be issued;

"relevant authority" (監管當局), in relation to a place outside Hong Kong, means an authority which the Monetary Authority is satisfied is a recognized banking supervisory authority of that place;

"representative" (代表)-

- (a) in relation to a licensed corporation, means an individual-
 - (i) who is licensed as a licensed representative for a regulated activity; and
 - (ii) who carries on that regulated activity for the licensed corporation as a licensed corporation to which he is accredited; or
- (b) in relation to a registered institution, means an individual-
 - (i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as that of a person engaged by the registered institution in respect of a regulated activity; and
 - (ii) who carries on that regulated activity for the registered institution.

Regulation of registered institutions

Chapter: 571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section: 114	Heading:	Restriction on carrying on business in regulated activities, etc.	Version Date:	01/04/2003

- (1) Subject to subsections (2), (5) and (6), no person shall-
- (a) carry on a business in a regulated activity; or
 - (b) hold himself out as carrying on a business in a regulated activity.
- (2) Subsection (1) shall not apply to-
- (a) a corporation licensed under section 116 or 117 for the regulated activity;
 - (b) an authorized financial institution registered under section 119 for the regulated activity; or
 - (c) a person authorized under section 95(2) for the regulated activity.
- (3) Without prejudice to subsection (1) but subject to subsection (4), no person shall-
- (a) perform any regulated function in relation to a regulated activity carried on as a business; or
 - (b) hold himself out as performing such function.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	119	Heading:	Registered institutions	Version Date:	01/04/2003

- (1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, register the applicant for one or more than one regulated activity (other than Type 3 and Type 8 regulated activities) and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.
- (2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).
- (3) Upon receiving an application for registration for a regulated activity referred to him under subsection (2), the Monetary Authority shall-
- (a) consider the application;
 - (b) consult the Commission upon the merits of the application;
 - and
 - (c) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be registered for that regulated activity.
- (4) In deciding whether to register or refuse to register an applicant under subsection (1), the Commission-
- (a) shall have regard to any advice given to it by the Monetary Authority pursuant to subsection (3)(c); and
 - (b) may rely wholly or partly on that advice in making that decision.
- (5) Any registration under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered institution concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (7) Without prejudice to the Commission's powers under Part IX, the registration of an authorized financial institution for Type 7 regulated activity shall be deemed to be

revoked in respect of that regulated activity upon the institution's being granted an authorization under section 95(2) to provide automated trading services.

(8) Without limiting the generality of subsection (5), it shall be a condition of any registration under subsection (1) for-

(a) a regulated activity, that-

(i) in relation to the regulated activity, there is at least one executive officer of the registered institution who is available at all times to supervise the business of the regulated activity for which the institution is registered; and

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

(b) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the registered institution shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the registration under section 197(2).

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

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	L.N. 16 of 2003
Section:	20	Heading:	Register of authorized institutions, etc.	Version Date:	01/04/2003

(1) The Monetary Authority shall maintain a register, in such form as he thinks fit, which shall contain-

- (a) the name and the address of the principal place of business in Hong Kong of every bank;
- (b) the name of every bank which has a local representative office and the address of the place of business in Hong Kong of every local representative office;
- (c) the name and the address of the principal place of business in Hong Kong of every deposit-taking company;
- (d) the name and the address of the principal place of business in Hong Kong of every restricted licence bank;
- (e) in the case of a bank (including a bank referred to in paragraph (b)), deposit-taking company or restricted licence bank, incorporated outside Hong Kong, the address of its principal place of business outside Hong Kong; (Amended 6 of 2002 s. 4)
- (ea) in the case of a registered institution, and not later than 12 months after the commencement of this paragraph-
 - (i) the name and business address of every relevant individual;
 - (ii) the capacity in which every relevant individual is engaged in relation to a regulated function in a regulated activity;
 - (iii) the date on which every relevant individual was first so engaged; and
 - (iv) such other particulars as the Monetary Authority thinks fit having regard to rules made under section 397 of the Securities and Futures Ordinance (Cap 571) for the purposes of section 136(2) of that Ordinance; and (Added 6 of 2002 s. 4)

(f) such other particulars of banks, local representative offices, deposit-taking companies or restricted licence banks as the Monetary Authority thinks fit (including particulars of any order of the Court of First Instance under section 53E(1)).

(Amended 25 of 1998 s. 2)

(2) The register shall be kept at the office of the Monetary Authority or at such other place as may be notified by the Monetary Authority in the Gazette.

(3) The Monetary Authority may require an authorized institution (including an authorized institution seeking to be a registered institution) or local representative office to submit such information for the purposes of subsection (1) as he may reasonably require in order to maintain the register in so far as it relates to that authorized institution or local representative office, as the case may be, and such information shall be submitted within such period and in such manner as the Monetary Authority may require. (Replaced 6 of 2002 s. 4)

(4) Where any information submitted to the Monetary Authority under subsection (3) changes subsequent to the submission, the authorized institution or local representative office which submitted the information shall give notice in writing to the Monetary Authority of such change-

(a) subject to paragraph (b), not later than 21 days after such change takes place;

(b) where subsection (1)(ea) is applicable, within 7 business days after such change takes place. (Replaced 6 of 2002 s. 4)

(4A) For the purposes of enabling any member of the public to ascertain whether a person he is dealing with is a relevant individual in relation to a registered institution and, if so, the capacity in which the relevant individual is engaged in relation to a regulated function in a regulated activity and the date on which the relevant individual was first so engaged, the information contained in the register under subsection (1)(ea) shall be made available to public inspection under subsection (5). (Added 6 of 2002 s. 4)

(4B) Without prejudice to the generality of any other provisions of this section, the Monetary Authority shall cause the register, to the extent to which it relates to subsection (1)(ea), to be made available to public inspection in the form of an on-line record. (Added 6 of 2002 s. 4)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	L.N. 148 of 2005
Section:	58A	Heading:	Disciplinary action in respect of relevant individuals	Version Date:	02/12/2005

(1) Where-

- (a) a relevant individual is, or was at any time, guilty of misconduct; or
- (b) the Monetary Authority is of the opinion that a relevant individual is not, or has ceased to be, a fit and proper person in his capacity as that type of relevant individual,

then the Monetary Authority may, after consultation with the Securities and Futures Commission-

- (c) remove all or part of the individual's relevant particulars from the register; or
- (d) suspend all or part of the individual's relevant particulars from the register for such period or until the occurrence of such event as the Monetary Authority specifies.

(2) Without limiting the generality of subsection (1) or the operation of any other provisions of this Ordinance, for the avoidance of doubt, it is hereby declared that the Monetary Authority may exercise his power under that subsection wholly or partly on the basis of information disclosed to the Monetary Authority by the Securities and Futures Commission, and whether or not the information arises from an investigation under section 182 of the Securities and Futures Ordinance (Cap 571).

(3) The Monetary Authority shall not exercise his power under subsection (1) against a relevant individual without first giving the individual an opportunity of being heard.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	196	Heading:	Disciplinary action in respect of registered institutions, etc.	Version Date:	01/04/2003

(1) Subject to section 198, where-

- (a) a regulated person is, or was at any time, guilty of misconduct; or
- (b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case-

- (i) where the regulated person is a registered institution-
 - (A) revoke its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered; or
 - (B) suspend its registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify;
- (ii) publicly or privately reprimand the regulated person;
- (iii) prohibit the regulated person from doing all or any of the following in relation to such regulated activity or regulated activities, and for such period or until the occurrence of such event, as the Commission may specify-
 - (A) applying to be licensed or registered;
 - (B) applying to be approved under section 126(1) as a responsible officer of a licensed corporation;
 - (C) applying to be given consent to act or continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance (Cap 155);
 - (D) seeking through a registered institution to have his

name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as that of a person engaged by the registered institution in respect of a regulated activity.

(2) Subject to sections 198 and 199, where-

(a) a regulated person is, or was at any time, guilty of misconduct; or

(b) the Commission is of the opinion that a regulated person is not a fit and proper person to be or to remain the same type of regulated person,

the Commission may, separately or in addition to any power exercisable under subsection (1), order the regulated person to pay a pecuniary penalty not exceeding the amount which is the greater of-

(i) \$10000000; or

(ii) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of his misconduct, or of his other conduct which leads the Commission to form the opinion (as the case may be).

(3) The Commission, in determining whether a regulated person is a fit and proper person within the meaning of subsection (1)(b) or (2)(b), may, among other matters (including those specified in section 129), take into account such present or past conduct of the regulated person as it considers appropriate in the circumstances of the case.

(4) A regulated person ordered to pay a pecuniary penalty under subsection (2) shall pay the penalty to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.

(5) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(6) Any pecuniary penalty paid to or recovered by the Commission pursuant to an order made under subsection (2) shall be paid by the Commission into the general revenue.

(7) Without prejudice to the exercise by the Monetary Authority of any powers under the Banking Ordinance (Cap 155), the Commission may make such recommendations

to the Monetary Authority in respect of the exercise by the Monetary Authority of any of his powers under sections 58A(1) and 71C(4) of that Ordinance as the Commission considers appropriate.

(8) In this section-

"regulated person" (受規管人士) means a person who is or at the relevant time was any of the following types of person-

- (a) a registered institution;
- (b) an executive officer of a registered institution;
- (c) a person involved in the management of the business constituting any regulated activity for which a registered institution is or was (as the case may be) registered; or
- (d) an individual whose name is or was (as the case may be) entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as that of a person engaged by a registered institution in respect of a regulated activity;

"relevant time" (有關時間), in relation to a person, means-

- (a) where subsection (1)(a) or (2)(a) applies, the time when the person is, or was, guilty of misconduct; or
- (b) where subsection (1)(b) or (2)(b) applies, the time of occurrence of any matter which, whether with any other matter or not, leads the Commission to form the opinion that the person is not a fit and proper person within the meaning of such subsection.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	197	Heading:	Other circumstances for disciplinary action in respect of registered institutions, etc.	Version Date:	01/04/2003

(1) Subject to section 198, the Commission may revoke a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered, or suspend a registered institution's registration, whether in relation to all or any, or any part of all or any, of the regulated activities for which it is registered for such period or until the occurrence of such event as the Commission may specify-

(a) if-

- (i) a receiver or manager of the property or business of the registered institution is appointed;
- (ii) the registered institution fails to satisfy a levy of execution;
- (iii) the registered institution enters into a compromise or scheme of arrangement with its creditors;
- (iv) the registered institution goes into liquidation or is ordered to be wound up;
- (v) the registered institution is convicted of an offence (other than an offence under any of the relevant provisions) in Hong Kong or elsewhere, which in the opinion of the Commission impugns the fitness and properness of the registered institution to remain registered;

(b) if the registered institution does not carry on the regulated activity or regulated activities, or the part of regulated activity or regulated activities, to which the revocation or suspension (as the case may be) relates; or

(c) if the registered institution requests the Commission to so revoke or suspend the registration.

(2) Subject to section 198, but without limiting the generality of subsection (1), the Commission may revoke a registered institution's registration in relation to Type 7 regulated activity or any part thereof if-

(a) the Commission has required under section 119(8)(b) that the registered institution should apply for an authorization under section 95(2) for that regulated activity; and

(b) (i) the registered institution has failed to make an application for the authorization under section 95(2) in accordance with the requirement, or has otherwise informed the Commission that it proposes not to make an application for the authorization under section 95(2); or

(ii) the registered institution has made an application for the authorization under section 95(2), but the application is not granted.

(3) The registration of a registered institution shall be deemed to be revoked if-

(a) the registered institution ceases to be an authorized financial institution; or

(b) the registered institution is wound up, struck off the register of companies or is otherwise dissolved.

(4) Subject to subsection (5), the registration of a registered institution shall be deemed to be suspended if the registered institution fails to make full payment of any annual fee payable by it under section 138, or any additional sum payable by it under that section as a result of any default in making full payment of any annual fee payable by it under that section, within 3 months after the due date for payment of the annual fee under that section, and, subject to subsection (6), the suspension shall remain in force until such time as the Commission considers it appropriate that the registration should no longer be suspended and informs the registered institution to that effect by notice in writing.

(5) Any registration shall not be regarded as suspended under subsection (4) by reference to any failure to make full payment of any annual fee or additional sum, unless and until the Commission has, by notice in writing given not less than 10 business days before the suspension is to take effect, informed the registered institution of the requirement to make full payment of the annual fee or additional sum (as the case may be), and of the consequence of the failure to comply with the requirement under this section.

(6) Where any registration is suspended under subsection (4) and the failure to make full payment of the annual fee or additional sum described in that subsection has not been remedied within 30 days after the day on which the suspension becomes

effective under that subsection, or such further period as the Commission may specify by notice in writing to the registered institution, the registration shall be deemed to be revoked.

Standards of conduct for RIs

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	169	Heading:	Codes for business conduct of intermediaries and their representatives	Version Date:	01/04/2003

(1) Without prejudice to the power of the Commission to make rules under section 168, the Commission may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or registered.

(2) Without limiting the generality of subsection (1), any code of conduct referred to in that subsection may, in giving guidance referred to in that subsection, refer to obligations to observe-

- (a) any other codes or requirements issued or imposed otherwise than by the Commission;
- (b) continuing obligations, including any such obligations-
 - (i) in the case of an intermediary, to provide for the continuous training of its representatives; or
 - (ii) in the case of a representative of an intermediary, to undergo continuous training;
- (c) practices and standards concerning any of the matters described in section 168(2).

(3) The Commission may from time to time amend the whole or any part of any code of conduct published under this section in a manner consistent with the power to publish the code of conduct under this section, and-

- (a) the other provisions of this section apply, with necessary modifications, to such amendments to the code as they apply to the code; and
- (b) any reference in this or any other Ordinance to the code (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code as so amended.

(4) A failure on the part of an intermediary, or a representative of an intermediary, to comply with the provisions set out in any code of conduct published under this section that apply to it or him shall not by itself render it or him liable to any judicial or other proceedings, but may be taken into account in considering, for the purposes of any provision of this Ordinance-

(a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;

(b) in the case of a representative of an intermediary that is a licensed corporation, whether he is a fit and proper person to be or to remain licensed as a representative; or

(c) in the case of a representative of an intermediary that is a registered institution, whether he is a fit and proper person to be or to remain a person whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap 155) as that of a person engaged by a registered institution in respect of a regulated activity,

and in any proceedings under this Ordinance before any court the code shall be admissible in evidence, and if any provision set out in the code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(5) Any code of conduct published under this section-

(a) may be of general or special application and, without limiting the generality of the foregoing, may be made so as to apply, or so as not to apply-

(i) to a specified extent in relation to any specified person or to members of a specified class of persons;

(ii) in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(6) Any code of conduct published under this section is not subsidiary legislation.

Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	399	Heading:	Codes or guidelines by Commission	Version Date:	01/04/2003

(1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, such codes and guidelines as it considers appropriate for providing guidance-

- (a) for the furtherance of any of its regulatory objectives;
- (b) in relation to any matter relating to any of the functions of the Commission under any of the relevant provisions;
- (c) in relation to the operation of any provision of this Ordinance.

(2) Without limiting the generality of subsection (1), the Commission may publish under that subsection-

- (a) a code to provide for matters concerning takeovers and mergers and matters incidental thereto;
- (b) a code to provide for matters concerning share repurchases and matters incidental thereto.

(3) Notwithstanding anything in this section-

- (a) the power of the Commission to publish codes or guidelines under this section in respect of any persons as intermediaries shall, where the intermediaries are registered institutions, be regarded as the power to publish codes or guidelines in respect of the intermediaries only in relation to the businesses which constitute any regulated activities for which they are registered;
- (b) the power of the Commission to publish codes or guidelines under this section in respect of any persons as associated entities shall, where the associated entities are authorized financial institutions, be regarded as the power to publish codes or guidelines in respect of the associated entities only in relation to their businesses of receiving or holding client assets of intermediaries of which they are associated entities.

(4) For the avoidance of doubt, the power of the Commission to publish codes or guidelines under this section is in addition to and not in derogation of any other power of the Commission to publish codes or guidelines under any provision of this or any other Ordinance.

(5) The Commission may from time to time amend the whole or any part of any code or guideline published under this section in a manner consistent with the power to publish the code or guideline under this section, and-

(a) the other provisions of this section apply, with necessary modifications, to such amendments to the code or guideline as they apply to the code or guideline; and

(b) any reference in this or any other Ordinance to the code or guideline (however expressed) shall, unless the context otherwise requires, be construed as a reference to the code or guideline as so amended.

(6) A failure on the part of any person to comply with the provisions set out in any code or guideline published under this section that apply to him shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under this Ordinance before any court the code or guideline shall be admissible in evidence, and if any provision set out in the code or guideline appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(7) Any code or guideline published under this section-

(a) may be of general or special application and may be made so as to apply only in specified circumstances;

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

(8) Any code or guideline published under this section is not subsidiary legislation.

(9) Notwithstanding any other provisions of this Ordinance, the Commission shall consult the Monetary Authority regarding codes or guidelines it proposes to publish under this section or any other provision of this Ordinance, or amendments it proposes to make to codes or guidelines published under this section or any other provision of this Ordinance, in so far as such codes or guidelines or such amendments (as the case may be) apply to authorized financial institutions by reason of their being registered institutions, or associated entities of intermediaries.