

香港特別行政區政府  
財經事務及庫務局  
財經事務科  
香港金鐘添美道二號  
政府總部二十四樓



**CB(1)1803/11-12(02)**  
**FINANCIAL SERVICES BRANCH**  
**FINANCIAL SERVICES AND**  
**THE TREASURY BUREAU**  
**GOVERNMENT OF THE HONG KONG**  
**SPECIAL ADMINISTRATIVE REGION**  
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香港中區立法會道 1 號  
立法會綜合大樓  
法案委員會秘書  
(經辦人:薛鳳鳴女士)

薛女士:

《2011 年強制性公積金計劃 (修訂)  
(第 2 號) 條例草案》委員會

二零一二年四月二十三日會議的跟進事項

在二零一二年四月二十三日會議跟進事項開列的事宜，政府當局和強制性公積金計劃管理局(“積金局”)就第一至三項及第五項的回應載於附件。積金局較早時回應了第四項事宜(見立法會 CB(1)1697/11-12(03)號文件)。

財經事務及庫務局局長  
(余懷誠 余懷誠 代行)

二零一二年五月八日

《2011年強制性公積金計劃(修訂)(第2號)條例草案》委員會  
因應二零一二年四月二十三日會議上的討論而須採取的跟進行動

**第1項 — 就投訴個案結果提供書面資料的預計時間**

以書面通知投訴人投訴個案結果的時間，預計為有關調查完結後的十個工作天，或在就紀律行動有最終決定後(如適用)的十個工作天。

**第2及第3項 — 英國金融服務管理局有關要求復還(restitution)權力的立法條文，以及其就一間銀行向長者不當銷售產品施加罰款的個案**

2. 因應一名議員的要求，我們現提供英國《2000年金融服務及市場法》下，有關金融服務管理局要求復還(restitution)權力的相關條文於附錄<sup>1</sup>。

3. 就有關金融服務管理局施加罰款的個案，強制性公積金計劃管理局現正向金融服務管理局查證，在個案中所引用《2000年金融服務及市場法》的特定條文。我們會在獲得有關資料後，隨即將之提供予法案委員會。

**第5項 — 建議的34ZZF(1)(b)條的中文草擬方式**

4. 我們會提出委員會階段修正案，以改善建議的34ZZF(1)(b)條的草擬(下文*斜體字*)：

“(1) 裁判官如根據第(2)款指明的人經宣誓而作的告發，信納有合理理由懷疑在該項告發所指明的處所內，有或相當可能有任何紀錄或文件是可根據第34P、34ZR 或34ZU條被要求交出的，則該裁判官可發出手令，授權該手令所列明的人及為協助執行該手令而需要的其他人—

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<sup>1</sup> 有關法例上載於 <http://www.legislation.gov.uk/ukpga/2000/8/contents>。

- (a) ...
- (b) 搜尋、檢取和移走 下述紀錄或文件:該手令所列明的人有合理因由相信是根據第34P、34ZR或34ZU條(視屬何情況而定)可被要求交出的~~任何~~紀錄或文件。”

財經事務及庫務局  
強制性公積金計劃管理局  
二零一二年五月八日



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXV

#### INJUNCTIONS AND RESTITUTION

##### *Restitution required by Authority*

#### **384 Power of Authority to require restitution.**

- (1) The Authority may exercise the power in subsection (5) if it is satisfied that an authorised person (“the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
  - (a) that profits have accrued to him as a result of the contravention; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The Authority may exercise the power in subsection (5) if it is satisfied that a person (“the person concerned”)—
  - (a) has engaged in market abuse, or
  - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,and the condition mentioned in subsection (3) is fulfilled,
- (3) The condition is—
  - (a) that profits have accrued to the person concerned as a result of the market abuse; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse.
- (4) But the Authority may not exercise that power as a result of subsection (2) if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—

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- (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of that subsection; or
  - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.
- (5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—
- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the Authority to have accrued;
  - (b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;
  - (c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.
- (6) “Appropriate person” means a person appearing to the Authority to be someone—
- (a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or
  - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).
- (7) “Relevant requirement” means—
- (a) a requirement imposed by or under this Act [<sup>F1</sup>or by any directly applicable Community regulation [<sup>F2</sup>or decision] made under the markets in financial instruments directive [<sup>F3</sup>or the UCITS directive]]; and
  - (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence in relation to which this Act confers power to prosecute on the Authority.
- (8) In the application of subsection (7) to Scotland, in paragraph (b) for “in relation to which this Act confers power to prosecute on the Authority” substitute “mentioned in paragraph (a) or (b) of section 402(1)”.

#### Annotations:

#### Amendments (Textual)

- F1** Words in s. 384(7)(a) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 15**
- F2** Words in s. 384(7)(a) definition of “relevant requirement” inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(29)(a)**
- F3** Words in s. 384(7)(a) definition of “relevant requirement” inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(29)(b)**

#### Modifications etc. (not altering text)

- C1** S. 384 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, 12(1)
- C2** S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/2657, arts. 1(1), 3 (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23; S.I. 2001/3538, art. 2(1)

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S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/3083, arts. 1(2), 3; S.I. 2001/3538, art. 2(1)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 427A(3) by 2002 c. 40 s. 248 Sch. 17 para. 59 (Amendment not carried through. The Financial Services and Markets Act 2000 does not contain a section 427A.)