

立法會資料摘要

《證券條例》 (第 333 章)

1998 年證券 (修訂) 條例草案

引言

在一九九八年七月二十一日之會議上，行政會議建議，行政長官指令《1998 年證券 (修訂) 條例草案》應提交立法會。

背景和論據

聯合交易所賠償基金

2. 《證券條例》(第 333 章)(下稱“該條例”)第 X 部規定證券及期貨事務監察委員會(下稱“證監會”)須設立及維持一個稱為「聯合交易所賠償基金」的賠償基金(下稱“該賠償基金”)。該條例並規定任何人士，如因香港聯合交易所(下稱“聯交所”)經紀會員的“失責”行為，而蒙受金錢損失時，該些客戶可向該賠償基金申索賠償。

3. 根據這些條款，聯交所須負責決定其經紀會員是否確有失責的情況出現，如有的話，亦須決定該經紀的客戶就失責行為而提出的賠償申索是否恰當。待接獲聯交所就索償審批結果的通知後，證監會便會根據有關的決定發放賠償款項。

4. 該條例第 109(3)條規定，所有由聯交所或原訴法庭¹批准、針對單一經紀的失責行為而提出的申索，由該賠償基金支付的賠償款額不得超逾 800 萬元之上限。假如所有賠償申索的款額總數超逾 800 萬元時，該條例第 120(2)條規定，須以客戶索償額多少，把 800 萬元的賠償款項，按比例分攤予獲批准申索的客戶。在發放有關賠償款項後，客戶無論獲得多少賠款，他們的索償申請也被視為完結。由於須進行分攤賠償的工作，賠償往往要在完

¹ 該條例規定原訴庭可就向賠償基金的索償發出命令。

成審核所有賠償申請後，才可以由賠償基金中支付，而有關過程一般亦需時甚長。

5. 根據該條例第 118 條，證監會在支付賠償後，可藉代位權而取得申索人在包括清盤程序中，向有關經紀索償的一切權利及補救。有關的代位權則以已支付的賠償額為限。證監會利用代位權討回的款項，會再次用來支付仍未付清的賠償。這些再賠償也是按照第四段所描述的方式分配。實際上，賠償基金為每一家失責的證券所發放的賠款，不會超過 800 萬元。但由於上述的循環機制，視乎清盤程序的結果，在某些個案中，申索人所獲得的賠償總數會較此為多。

6. 該賠償基金現時約有 4.9 億元的儲備，當中有大概一千五百萬元²來自聯交所會員按法例規定的供款。另外有 3.54 億元來自聯交所 1991 至 1994 年所收取的交易徵費的餘款。根據該條理第 107 條，證監會亦可要求聯交所補回發放了賠償款項。

正達集團的倒閉

7. 正達集團包括一家財務公司（正達財務）和一家證券公司（屬聯交所會員的正達證券）。正達集團由於財政和流動資金方面出現問題，在一九九八年一月十九日倒閉。事件中有逾一萬名投資者受影響，其中有很多人聲稱，在未完全清楚後果的情況下，受人引導在正達財務開設保證金（俗稱“孖展”）戶口。政府與證監會和聯交所在考慮過當時的市場情況，包括當時投資者信心普遍薄弱、事件對市場或會構成的系統性風險，以及可能向該公司提出的申索數額後，遂於一九九八年一月二十五日發表聯合公布，表示會彈性處理正達客戶的賠償安排。賠償安排的細節刊載於在聯合公布發表後所發出的新聞公報內，該公報的副本現復印在附件 B。

8. 接受根據該賠償基金提出申索的法定時間為三個月，並於一九九八年五月一日截止。聯交所共接獲 5,212 宗申索，申索總額為 24.12 億元。

² 扣除已經發放的賠款。

9. 證監會和聯交所其後根據附件 B 內公布的賠償原則，訂出了有關安排細節，並在六月十日的新聞公報內發表。該公報的副本現復印於附件 C。

修訂法例

10. 實施上述賠償安排，須要修訂《證券條例》有關聯合交易所賠償基金的現有條文。作出修訂的主要目的如下：

- (a) 使證監會可以動用其儲備向賠償基金注資；
- (b) 在按每名失責經紀為單位計算的 800 萬元法定賠償限額以外，實施一項按每名申索人計算賠償限額的機制；以及
- (c) 在核實和批准有關申索後隨即支付賠款，毋須等待所有申索的核實和攤分賠款工作完成。

11. 建議亦包括把再循環發放的賠款上限，定於證監會在行使代位索償權時，首先討回的首 800 萬元。另外也清晰地界定當有關客戶收到酌情賠款後，無論在攤分以後是否十足賠償，他們有關法定的責任將會被解除。

12. 有關法例的修訂將具追溯效力，由一九九八年一月二十七日起生效。

條例草案

13. 載於附件 A 的條例草案修訂《證券條例》（第 333 章），旨在：

- (a) 使證監會可以向聯合交易所賠償基金注資（第 2 及 3 條）；
- (b) 賦予聯交所賠償委員會權力，在若干情況下，在進行正常攤分款項程序之前，授權從賠償基金酌情撥出款項予申索人作為賠償（第 5 條）；
- (c) 規定在計算賠償基金可支付的賠款總額上限時，扣除酌情撥出的款額，並限制證監會通過運用代位權而收

回款項中可以用於支付予申索人作為賠償的款額（第 4 條）；以及

- (d) 明文訂定已獲支付酌情決定的款項的申索人即使在攤分程序中無權收到進一步付款，他的申索亦於總款額攤分時予以絕對解除（第 6 條）。

14. 本條例草亦會使修訂後的法例具有追溯力（第 7 條）。

15. 《證券條例》中的有關條文節錄於附件 D，以供參考。

立法程序時間表

16. 經行政局同意的立法程序時間表會如下：

刊登憲報	一九九八年七月二十四日
首讀和開始二讀辯論	一九九八年七月二十九日
恢復二讀辯論、委員會審議階段和三讀	另行通知

與基本法的關係

17. 本條例草案對《基本法》並無影響。

與人權法案的關係

18. 律政司表示建議的法例符合基本法內有關人權的條文。

約束力

19. 本條例草案及有關法例條文內並無特別條文對國家構成約束力。

對財政和人手的影響

20. 由於建議的賠償安排所需的額外資金將會來自證監會和聯交所，因此，條例草案對政府的財政或人手不會有任何直接影響。雖然政府方面承諾，在該賠償基金儲備降至低於穩健水平時，便會向立法會財務委員會申請撥款，以貸款形式提高賠償基

金儲備水平，不過，以該賠償基金目前的儲備水平（約為 5 億元，證監會和聯交所撥款後會增至 11 億元），假使決定引用正達事件的賠償方案處理其他已知的證券公司失責事件所引起的賠償問題，相信亦有足夠資源應付。

公眾諮詢

21. 公眾人士曾就賠償安排的原則展開廣泛的討論，普遍認為建議的賠償安排可以接受，而把賠償限額定為 15 萬元也並非不合理。根據特別賠償安排，有關客戶將會獲得的賠償，不會少於他們按原有賠償機制可得的款額。事實上，大部分的個案屬小額索償，這類申索人，即使在新賠償安排下未能獲得全數賠償，他們所得的款額亦會遠比原來可得的為多。

22. 由於有關建議早在一九九八年一月便已公布，並再於六月初作進一步闡釋，因此，我們認為毋須特別就此事諮詢公眾。

宣傳安排

23. 有關此事的新聞稿已在一九九八年七月二十二日發出，而本條例草案則會於七月二十四日在憲報刊登。有關當局已經與立法會財經事務委員會在七月二十三日安排了一個特別會議，以期在法案首讀和草案委員會成立以前，向有興趣的議員解釋有關法例的修改。

財經事務局

檔案號碼：SU B51/98 IV

本條例草案

旨在

修訂《證券條例》。

由立法會制定。

1. 簡稱

本條例可引稱為《1998年證券（修訂）條例》。

2. 賠償基金的設立

《證券條例》（第333章）第99條現予修訂—

（a） 將該條重編為第99（1）條；

（b） 加入—

“（2） 監察委員會經財政司司長批准，可從監察委員會的儲備金中撥出一筆其認為適合的款項， 付入賠償基金。”。

3. 構成賠償基金的款項

第101（1）條現予修訂，在（a）段之前加入—

“（aa） 監察委員會根據第99（2）條付入基金的所有款項；”。

4. 針對基金的申索

第 109 (3) 條現予修訂，廢除分號之後的所有字句而代以一

“但就本款的施行而言，以下款額不得計算在內一

- (a) 從賠償基金支付而該基金其後就之獲付還的任何款額（並非根據第 107 條作出的繳存），但只以如此付還的首 \$8,000,000 為限；及
- (b) 根據第 113 (5A) 條支付的任何款額。”。

5. 交易所公司委員會就申索而具有的權力

第 113 條現予修訂，在第 (4) 款之後加入一

“ (5A) 如交易所公司委員會覺得，若某股票經紀的失責所引致的所有申索均獲准予，其總和可能會超逾根據第 109 條或第 109 條所限定的總款額，而該委員會一

- (a) 在顧及該項失責的情況後，認為作出下述作為是適當的；及
- (b) 在考慮賠償基金的一切經確定及或有負債後，認為該基金的資產許可，

則該委員會可在事先經監察委員會批准下，就任何根據本部獲交易所公司或法院命令准予或局部准予的申索，准予在根據第 120 (2) 條作出攤分之前，支付一筆該委員會認為適合的款項，作為對申索人的賠償。”。

6. 基金不足以應付申索時或申索款額

超逾可予以支付總款額時的安排

第 120 條現予修訂—

- (a) 在第 (1) 款中，在 “ (視屬何情況而定) ” 之後加入—
 - “於顧及已根據第 113 (5A) 條支付予各申索人的款項 (如有的話) 後” ；
- (b) 在第 (2) 款中—
 - (i) 廢除 “本部” 而代以 “第 109 條” ；
 - (ii) 在 “ (視屬何情況而定) ” 之後加入—
 - “於顧及已根據第 113 (5A) 條支付予各申索人的款項 (如有的話) 後” ；
- (c) 加入—
 - “ (3) 為免生疑問，在根據第 (2) 款作出支付時，已根據第 113 (5A) 條獲賠償的申索人的申索以及任何關於該宗申索的法院命令均予以絕對解除，不論該申索人在攤分中有否已收到進一步付款。” 。

7. 過渡性條文

經本條例修訂的《證券條例》 (第 333 章) (“主體條例”) 第 109、113 及 120 條，對於就任何在 1998 年 1 月 27 日或之後根據主體條例第 112 條刊登的公告中所指明的人而提出的申索，亦具有效力。

摘要說明

本條例草案旨在修訂《證券條例》（第 333 章）—

- (a) 使證券及期貨事務監察委員會能夠向聯合交易所賠償基金（“賠償基金”）注入資金（草案第 2 及 3 條）；
- (b) 賦權交易所公司委員會在某些情況下批准在正常攤分程序進行之前，向針對賠償基金提出申索的人支付其酌情決定的款項作為賠償（草案第 5 條）；
- (c) 不將酌情決定的款項計算在可從賠償基金支付的總款額的限額內，並限制在證券及期貨事務監察委員會通過行使其代位權利而收回款項中可以用於支付予申索人作為賠償的款額（草案第 4 條）；及
- (d) 明文訂定已獲支付酌情決定的款項的申索人即使在攤分程序中無權收到進一步付款，他的申索亦於總款額攤分時予以絕對解除（草案第 6 條）。

2. 本條例草案亦使交易所公司委員會能夠就某些於本條例草案制定前所提出的申索，行使其准予在進行分攤前支付酌情決定的款項予申索人的權力（草案第 7 條）。

放寬證券賠償基金範圍及上限

就著正達證券清盤事件，政府同意放寬證券賠償基金範圍及上限。證監會及聯交所正成立特別專責小組，處理客戶申請賠償事宜。

財經事務局局長許仕仁，證券及期貨事務監察委員會（證監會）主席梁定邦及香港聯合交易所（聯交所）主席利漢釗今日（星期日）作上述宣佈。

由於今次正達事件中，可能有投資者在不知情或被誤導之下，在財務公司開設俗稱的「孖展」戶口，對於這些客戶，當局認為在發放賠償基金時應採取較彈性的處理。原則是，只要這些客戶在交易紀錄和戶口文件上都顯示從來沒有在有關財務公司從事「孖展」買賣活動，均可以向賠償基金申請賠償。

在現有法例下，就每一個出問題的經紀而發放的總賠償上限為八百萬元。如按以上原則，擴大可申請賠償基金的客戶，但維持原定的上限，則每人可分配的金額將會甚低。

有見及此，當局同意賠償金額上限應以客戶為單位，使每個符合上述條件的客戶，可以獲得不超過一定數額的賠償，而不受八百萬元整體上限的限制。相信按這方法釐定之賠償金額，會比按原來八百萬元上限攤分所得的為多。

政府在 1985 年立例設立這個賠償基金，目的是為一般證券投資者提供保障。賠償基金現有四億八千萬元。

許仕仁說：「為了使投資者安心，我們在作出以上彈性安排的同時，亦會馬上加大賠償基金儲備。首先由證監會及聯交所各注資一億五千萬元。如再有需要，雙方會再各注資一億五千萬元。」

政府方面也承諾，當賠償基金下降至某一風險水平時，會向財務委員會申請撥款，以貸款形式注入基金。」

梁定邦說：「證監會及聯交所會盡速與臨時清盤人聯絡，取得索償客戶的詳細資料及了解索償金額的分布，再經由精算師計算後，定出賠償數額上限。但無論如何，肯定會比按原來八百萬元上限攤分所得的為多。」

利漢釗說：「證監會和聯交所已成立一個專責小組協助正達證券客戶登記，向證券條例下的賠償基金申請賠償。

專責小組將會與正達臨時清盤人聯絡，以取得一份客戶名單，並會直接聯絡該等客戶，以協助他們填妥及遞交賠償申請。聯交所將會刊登廣告通知客戶呈交賠償申請。

聯交所亦已設立一條電話熱線回答正達證券客戶的查詢。電話號碼為 2840 3729。」

另外，至於其他與經紀有關的財務公司，證監會會繼續加緊監察其財政狀況，並加強對「孖展」活動的留意；必要時對有關經紀採取有效的措施，以保障投資者利益。

同時，政府會以最短時間進行立法，將「孖展」借貸活動納入監管範圍，以加強整個證券行業運作穩建和提高對投資者的保障。

完

一九九八年一月二十五日（星期日）

QAZWSXEDC1

證券及期貨事務監察委員會的信頭

致：財經版編輯
供即時發表

1998 年 6 月 10 日

聯合新聞稿

正達證券客戶的賠償安排

香港聯合交易所（聯交所）理事會今天議決，根據由政府、證券及期貨事務監察委員會（證監會）及聯交所在本年 1 月公布的政策，就正達證券的客戶賠償一事，每名客戶可獲得的賠償額，將以 15 萬元為限（附件 1 內有說明）。正如《證券條例》所規定，有關議決案須獲得證監會的批准，然後才可付諸實行。

《證券條例》第 109 條述明，凡任何人在某證券經紀經營的股票經紀業務過程中，就該股票經紀獲託付或所收取的任何金錢、證券或其他財產，有針對該股票經紀的訴訟因由，則該人有權就其所蒙受的任何金錢損失，從聯合交易所賠償基金申索賠償。

根據 1 月的公布，正達證券的現金客戶及那些與正達財務簽訂保證金借貸協議，但卻沒有使用其保證金協議所載的貸款安排的客戶，一般而言將符合索償資格。在決定保證金客戶有否動用其保證金貸款安排時，有關方面將會考慮的有關期間，是由 1997 年 6 月 1 日至 1998 年 1 月 19 日（即正達證券失責當日），為期約 7 個月。如客戶聲稱其沒有動用保證金貸款安排，須呈交其交易紀錄及戶口結單以支持其索償申請。

在 1 月，政府、證監會及聯交所同意就正達證券的失責事件，放寬賠償規定及提高賠償上限，因為它們認為如採納慣常的 800 萬元賠償上限，每位客戶所獲得的賠償金額很可能會非常有限（附件 2 為政府在 1 月 25 日發表的新聞稿）。

根據臨時清盤人所提供的正達證券及正達財務的簿冊及紀錄，該兩家公司共有超過 11,000 名客戶（包括長期未有交易及其戶口結存為零或負值的客戶），而這些客戶所持有的證券的價值，以 1998 年 1 月 19 日計算，約為 14 億元。

在呈交索償申請的 3 個月期限內，聯交所合共收到 5,212 宗索償申請。就證券而作出的索償的金額，已根據 1998 年 1 月 19 日的股份收市價調整。連同涉及現金的索償，索償總額合共約為 24 億元。從此可見，索償數額與根據這兩家公司的紀錄所顯示的數額有相當大的差距。

截至 1998 年 6 月 9 日，聯交所亦接獲 43 宗逾期提交的索償申請。聯交所的賠償委員會將會按照每宗個案本身的情況，決定是否受理有關索償申請。

假設所有可能符合資格的客戶的索償申請都獲得受理，則根據上述公司的紀錄，15 萬元賠償水平意味著有 81% 的申索人獲全數賠償（或賠償總額為 3.25 億元）；如根據客戶提交的索償數額及將有關股份以 1998 年 1 月 19 日的收市價作調整，該賠償水平意味著有 70% 的申索人獲全數賠償（或賠償總額為 4.12 億元）。

當聯交所及證監會完成初步各自注資 1.5 億元後，賠償基金在支付索償數額之前約有 8 億元款項，而關於進一步注資事宜，1 月的公布已有提及（附件 2）。

聯交所現已根據《證券條例》第 113 條著手處理索償申請。聯交所會根據申索人提供的證據及公司紀錄來處理每宗個案。法例規定，申索人就其索償申請負有舉證責任。

聯交所正盡快處理有關索償申請，務使賠償基金能夠在 1998 年秋季之前，向首批成功索償人士支付賠償款項。首先處理的將會是現金客戶的索償申請。

在賠償基金支付有關款項後，證監會作為賠償基金的法定受託人，將會以代位索償形式，取代客戶在清盤過程中的權利，但以客戶所收取的賠償款項為限。未能透過這個賠償程序獲得全數賠償的客戶，仍有權在清盤過程中，就賠償基金未有作出賠償的損失作出申索（附件 1 第 3 點內有說明）。

現行的賠償制度是以每位失責經紀的 800 萬元賠償上限作為基礎，而只有在個別情況下才可提高有關上限，因此，預計適用於正達證券客戶的賠償安排，仍有待有關法例作輕微修訂後方能實施。政府現正草擬有關法例修訂，並預計在 1998 年 7 月提交立法會審議。

此外，當法院委任清盤人後，清盤人將會在不久的將來，向法院申請作出指令，以確定不同債權人各自的權利，及某些申索人是否有權以實物形式取回其股票。如最終裁定可退回股票，會作安排可讓申索人退還其已收取的款項予賠償基金，然後取回其股票（見附件 1 第 4 點）。

申索人的索償申請如不獲批准或只獲得部分批准，可在法院展開法律程序，以確立其對賠償基金的索償申請。如個人申索人能通過《法律援助條例》內就有關個案的成功機會及資產審查的測試，則該等法律程序一般來說將可獲得法律援助。

如有進一步查詢，請與聯交所羅文慧(2840 3862)及證監會陳志強(2842 7624)或韋克志(2840 9289)聯絡。

解釋賠償基金的付款的例子

1. 申索人的索償申請如已獲聯交所批准，初步可獲分發的賠償數額將以 15 萬元為限。請注意，准予索償數額是根據 1998 年 1 月 19 日的股份價值計算的。

<u>准予索償數額</u>	<u>初步賠償金額</u>
10,000 元	10,000 元
50,000 元	50,000 元
150,000 元	150,000 元
200,000 元	150,000 元
1,000,000 元	150,000 元
10,000,000 元	150,000 元

2. 此外，每位申索人亦有權按比例獲得其原本根據《證券條例》規定的 800 萬元賠償上限計算的賠償款額。換言之，申索人獲得的賠償，將不會較其原本根據《證券條例》所規定的為少。然而，有關方面須處理所有索償要求及解決所有上訴後，方能計算出有關款額。

<u>准予索償數額</u>	<u>初步賠償金額</u>	<u>800 萬元*的按 比例攤分數額</u>	<u>額外的賠償金額</u>
10,000,000 元	150,000 元	200,000 元	50,000 元

- * 這個數額只供說明之用。實際按比例計算的數字要待一段時間後方能確定。有關比例是透過將 800 萬元除以准予索償總額來釐訂的。這個例子中所採用的 0.02 這個比例，是假設准予索償總額為 4 億元。

3. 除了賠償金額外，所有正達證券及正達財務的客戶都有權在清盤的法律程序中提出索償申請，並以債權人身分獲得若干分配數額。證監會作為賠償基金的受託人，將透過代位索償形式，取代申索人在清盤過程中的權利，但以每位申索人所獲得的賠償金額為限。以下例子說明上述過程如何運作，並假設清盤過程中的分配比率為 50%（只供說明之用）。申索人不會因已接受賠償而減少其在整體上應獲得的賠償。

<u>准予索償數額</u>	<u>清盤過程中的 假設分配 (A)</u>	<u>賠償金額 (B)</u>	<u>申索人在清盤過 程中獲支付的分 配數額 (A-B)</u>
10,000 元	5,000 元	10,000 元	不適用
50,000 元	25,000 元	50,000 元	不適用
150,000 元	75,000 元	150,000 元	不適用
200,000 元	100,000 元	150,000 元	不適用
1,000,000 元	500,000 元	150,000 元	350,000 元
10,000,000 元	5,000,000 元	150,000 元	4,850,000 元

4. 在某些個案，已獲賠償基金支付賠償金額的申索人，可能有權在清盤過程中獲發還其證券。有關原則是申索人不會因為曾向賠償基金索償而減少其可獲得的賠償。如有關證券的價值較賠償基金向申索人支付的數額為高，申索人可向賠償基金退還其已收取的款項，然後在清盤過程中取回證券。

<u>准予索償數額</u>	<u>賠償金額</u>	<u>清盤過程中 可提供的分配數額</u>
75,000 元（相等於在 1998 年 1 月 19 日計值的 2000 股 ABC 股份）	75,000 元	2000 股 ABC 股份（假設 價值已上升至 100,000 元）

在上述情況，申索人可向賠償基金退回 75,000 元，然後取回有關證券。

放寬證券賠償基金範圍及上限

就著正達證券清盤事件，政府同意放寬證券賠償基金範圍及上限。證監會及聯交所正成立特別專責小組，處理客戶申請賠償事宜。

財經事務局局長許仕仁、證券及期貨事務監察委員會（證監會）主席梁定邦及香港聯合交易所（聯交所）主席利漢釗今日（星期日）作上述宣布。

由於今次正達事件中，可能有投資者在不知情或被誤導之下，在財務公司開設俗稱的“孖展”戶口，對於這些客戶，當局認為在發放賠償基金時應採取較彈性的處理。原則是，只要這些客戶在交易紀錄和戶口文件上都顯示從來沒有在有關財務公司從事“孖展”買賣活動，均可以向賠償基金申請賠償。

在現有法例下，就每一個出問題的經紀而發放的總賠償上限為八百萬元。如按以上原則，擴大可申請賠償基金的客戶，但維持原定的上限，則每人可分配的金額將會甚低。

有見及此，當局同意賠償金額上限應以客戶為單位，使每個符合上述條件的客戶，可以獲得不超過一定數額的賠償，而不受八百萬元整體上限的限制。相信按這方法釐定之賠償金額，會比按原來八百萬元上限攤分所得的為多。

政府在 1985 年立例設立這個賠償基金，目的是為一般證券投資者提供保障。賠償基金現有四億八千萬元。

許仕仁說：“為了使投資者安心，我們在作出以上彈性安排的同時，亦會馬上加大賠償基金儲備。首先由證監會及聯交所各注資一億五千萬元。如再有需要，雙方會再各注資一億五千萬元。

政府方面也承諾，當賠償基金下降至某一風險水平時，會向財務委員會申請撥款，以貸款形式注入基金。”

梁定邦說：“證監會及聯交所會盡速與臨時清盤人聯絡，取得索償客戶的詳細資料及瞭解索償金額的分布，再經由精算師計算後，定出賠償數額上限。但無論如何，肯定會比按原來八百萬元上限攤分所得的為多。”

利漢釗說：“證監會和聯交所已成立一個專責小組協助正達證券客戶登記，向證券條例下的賠償基金申請賠償。

專責小組將會與正達臨時盤人聯絡，以取得一分客戶名單，並會直接聯絡該等客戶，以協助他們填妥及遞交賠償申請。聯交所將會刊登廣告通知客戶呈交賠償申請。

聯交所亦已設立一條電話熱線回答正達證券客戶的查詢，電話號碼為 2840—3729。”

另外，至於其他與經紀有關的財務公司，證監會會繼續加緊監察其財政狀況，並加強對“孖展”活動的留意；必要時對有關經紀採取有效的措施，以保障投資者利益。

同時，政府會以最短時間進行立法，將“孖展”借貸活動納入監管範圍，以加強整個證券行業運作穩健和提高對投資者的保障。

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the onus of proving that in so doing he did not act with intent to prevent, delay, or obstruct the carrying out of an examination and audit under this Part shall lie on him.

(3) Any person who, with intent to prevent, delay, or obstruct the carrying out of an examination and audit under this Part, leaves, or attempts to leave, Hong Kong shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

97. Right of committee to impose obligations, etc., on members of Exchange Company not affected by this Part

Nothing in this Part shall prevent the committee of the Exchange Company from imposing on members of the Exchange Company any further obligations or requirements which the committee thinks necessary with respect to—

- (a) the audit of accounts;
- (b) the information to be given in reports by auditors; or
- (c) the keeping of accounts, books, and records.

(Amended 58 of 1985 s. 60)

PART X

COMPENSATION FUND

98. Interpretation

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

“Committee” means the Securities Compensation Fund Committee established under section 100(1); *(Amended 10 of 1989 s. 65)*

“compensation fund” means the fund established under section 99;

“default”, in relation to the failure of a stockbroker to perform a legal obligation, means a default arising from—

- (a) the bankruptcy, winding up or insolvency of the stockbroker;
- (b) any breach of trust committed by the stockbroker; or
- (c) any defalcation, fraud or misfeasance committed by the stockbroker or partner, being a partner in a dealing partnership, or by the servant of the stockbroker or of a dealing partnership in which he is a partner; *(Replaced 58 of 1985 s. 61)*

“legal obligation” includes an obligation arising under a contract or quasi-contract or under a trust (including a constructive trust);

“stockbroking business” means

- (a) a business of dealing in securities listed or quoted on the Unified Exchange carried on by a member of the Exchange Company;
- (b) the administration of any trust, or the carrying on of the business of any company, in conjunction with, or as an adjunct to, a business specified in paragraph (a);
- (c) the retention of securities whether for safe keeping or otherwise, and whether for specific consideration or otherwise, in conjunction with, or as an adjunct to, a business specified in paragraph (a). *(Replaced 58 of 1985 s. 61)*

(2) A reference in this Part to a claimant or person making a claim includes, in the event of his death, insolvency, or other disability, a reference to his personal representative or any other person having authority to administer his estate.

99. Establishment of compensation fund

The Commission shall establish and maintain a compensation fund, to be known as the Unified Exchange Compensation Fund, for the purposes set out in this Part.

(Amended 58 of 1985 s. 62)

100. Securities Compensation Fund Committee

(1) There shall be a committee, to be known as the Securities Compensation Fund Committee, which shall be responsible, subject to this section, for the administration of the compensation fund.

(2) The Committee shall consist of 5 persons appointed by the Commission, of whom at least two shall be directors of the Commission and two shall be persons nominated by the Exchange Company. *(Amended 58 of 1985 s. 63)*

(3) The Commission shall nominate one of the members of the Committee who is also a director of the Commission to be chairman of the Committee.

(4) The Committee shall exercise on behalf of the Commission such of the powers, duties, and functions of the Commission under this Part as may from time to time be delegated to the Committee by the Commission; but the Commission may not delegate its power of delegation under this section or its powers under section 110.

(5) Any power, duty, or function delegated under this section may be exercised by members forming a majority of the Committee as if by this Part that power, duty, or function had been conferred on a majority of the members of the Committee.

(6) Any delegation under this section may at any time be varied or revoked.

(7) The Commission may at any time remove any member of the Committee appointed by it under this section and may fill any vacancy in the Committee however arising.

(8) Subject to any direction of the Commission, the Committee may regulate its procedure in such manner as it thinks fit.

(Amended 10 of 1989 s. 65)

101. Money constituting the compensation fund

(1) The compensation fund shall consist of—

(a) all money paid to or deposited with the Commission by the Exchange Company in accordance with the provisions of this Part; *(Amended 58 of 1985 s. 64)*

(b) *(Repealed 58 of 1985 s. 64)*

(c) all money recovered by or on behalf of the Commission by the exercise of any right of action conferred by this Part;

(d) all money borrowed under subsection (2);

(e) all other money lawfully paid into the fund.

(2) The Commission may from time to time borrow for the purpose of the compensation fund from any lender and may charge any investments acquired under section 105 by way of security for any such loan; but the aggregate sum owing at any one time in respect of any such loans shall not exceed \$1,000,000.

102. Money to be kept in bank account

The Commission shall open at one or more licensed banks a separate bank account or separate bank accounts and shall, pending its application in accordance with this Part, pay into or transfer to that account or those accounts all money forming part of the compensation fund.

103. Accounts of fund

(1) The Commission shall keep proper accounts of the compensation fund, and shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare a revenue and expenditure account, and a balance sheet made up to the last day of that year.

(2) The Commission shall appoint an auditor to audit the compensation fund.

(3) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each balance sheet and revenue and expenditure account prepared under subsection (1) and shall submit the report to the Commission.

(4) Not later than the 31st day of July in each year the Commission shall cause a copy of the audited balance sheet, revenue and expenditure account, and the auditor's report to be sent to the Exchange Company. *(Amended 58 of 1985 s. 65)*

104. Exchange Company to make deposits in respect of members

(1) The Exchange Company shall, subject to the provisions of this Part, deposit with the Commission and keep deposited in respect of each membership of the Exchange Company a sum of \$50,000 payable in cash.

(2) The amount referred to in subsection (1) shall be deposited—

(a) in respect of every membership held on the appointed day, not later than 1 month after that date; and

(b) in respect of every membership taken up after the appointed day, not later than 1 month after the date on which such membership is taken up.

(3) For the purposes of this section and section 106, each share in the Exchange Company held by a member shall be deemed to constitute a separate membership.

(4) Any amount due under this section may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction.

(Replaced 58 of 1985 s. 66)

105. Balance of sums in bank account may be invested

(1) The Commission may invest any money which forms part of compensation fund and is not immediately required for any other purposes provided for by this Part either—

(a) on fixed deposit with a licensed bank; or

(b) in securities in which trustees are authorized by law to invest trust funds.

(2) As soon as practicable after the end of each financial year, the Commission shall notify the Exchange Company in writing of— *(Amended 58 of 1985 s. 67)*

(a) the rate of interest to be paid for that financial year in respect of each sum deposited under section 104(1)(a);

(b) the manner and time of payment of that interest; and

(c) the amount to be charged to meet the expenses incurred or involved in the administration of the compensation fund.

(Replaced 62 of 1976 s. 28)

(3) Any fixed deposit receipts or documents relating to the investment of money in securities under subsection (1) may be kept in the office of the Commission or deposited by the Commission for safe-keeping with a licensed bank. *(Added 62 of 1976 s. 28)*

106. Repayment of deposits in certain cases

(1) Where the Exchange Company has deposited a sum of money with the Commission under section 104 in respect of any membership and that membership for any reason ceases, the Commission shall, unless the money is required to satisfy any claims or liabilities arising before such membership ceased, within 6 months after the cessation of such membership, deliver to the Exchange Company the sum deposited in respect thereof.

(2) If any money has been delivered to the Exchange Company pursuant to subsection (1) in respect of any membership, the Exchange Company shall, if the member has satisfied all financial obligations due in respect of such membership from the member to the Exchange Company and is otherwise in good standing with the Exchange Company, deliver the money

- (a) to the member;
- (b) where the member has died or is bankrupt, to his personal representative or trustee in bankruptcy, as the case may be; or
- (c) where the member is a corporation in liquidation, to the liquidator thereof.

(Replaced 58 of 1985 s. 68)

107. Replenishment of fund in certain cases

(1) Subject to subsection (2), if at any time resort has to be made to any money deposited under section 104 in order to satisfy any claim made against the compensation fund in relation to a stockbroker, the Exchange Company shall, on being required to do so by the Commission, replenish the fund by depositing with the Commission an amount that is equal to that paid in connection with the satisfaction of the claim, including any legal and other expenses paid or incurred in relation to the claim.

(2) The Commission may not require the Exchange Company to make a deposit under subsection (1) in respect of any payment made to satisfy a claim under this Part unless it has first exhausted all relevant rights of action and other legal remedies, conferred by section 118, against the stockbroker, in relation to whom the claim arose.

(3) Any amount required to be deposited under this section may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction.

(Replaced 58 of 1985 s. 68)

108. Payments out of the fund

(1) Subject to this Part, there shall from time to time be paid out of the compensation fund as required and in the following order

- (a) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the committee of the Exchange Company or the Commission of the rights, powers, and authorities vested in them by this Part in relation to the fund; *(Amended 58 of 1985 s. 69)*
- (b) the expenses incurred or involved in the administration of the fund;
- (c) the amounts of all claims, including costs, allowed by the committee of the Exchange Company or established against the Exchange Company under this Part; and *(Replaced 58 of 1985 s. 69)*
- (d) all other money payable out of the fund in accordance with this Part.

(2)-(3) (Repealed 58 of 1985 s. 69)

109. Claims against the fund

(1) Where, in consequence of any act done in the course of or in connection with the stockbroking business of a stockbroker, a person has a cause of action against that stockbroker in relation to any money, securities or other property entrusted to or received by the stockbroker or any partner of the stockbroker or any person employed by the stockbroker, that person shall be entitled, subject to this Part, to claim compensation from the compensation fund in respect of any pecuniary loss suffered by him. *(Replaced 58 of 1985 s. 70)*

(2) Subsection (1) does not entitle any stockbroker or recognized clearing house to make a claim against the compensation fund. *(Replaced 58 of 1985 s. 70. Amended 10 of 1989 s. 65; 68 of 1992 s. 20)*

(3) Except as otherwise provided in this Part, the total amount that may be paid under this Part to all persons who suffer loss through any default mentioned in subsection (1) shall not in any event exceed \$8,000,000 in respect of each stockbroker concerned in or connected with the default; but for the purposes of this subsection any amount paid from the compensation fund shall, to the extent that the fund is subsequently reimbursed in respect of any such payment (not being a deposit made under section 107), be disregarded. *(Amended L.N. 101 of 1980; 58 of 1985 s. 70; 68 of 1992 s. 20)*

(4) A person shall not have a claim against the compensation fund in respect of a default committed before the appointed day. *(Amended 58 of 1985 s. 70)*

(5) Subject to this Part, the amount which any claimant is entitled to claim as compensation from the compensation fund is the amount of the actual pecuniary loss suffered by him, including the reasonable costs of and incidental to the making and proving of his claim. *(Replaced 58 of 1985 s. 70. Amended L.N. 294 of 1988)*

113. Power of the committee of the Exchange Company in respect of claims

(1) Where the committee of the Exchange Company is satisfied that a claim made under section 109 is a proper claim, it shall, subject to this Part, make a determination allowing the claim.

(2) If the committee is not satisfied as to the propriety of a claim under section 109, it shall make a determination disallowing the claim or, if it is satisfied only as to the propriety of part of such a claim, it shall make a determination allowing the claim as to that part.

(3) Where the committee of the Exchange Company makes a determination under subsection (1) or (2), it shall forthwith serve notice of its determination in writing on the claimant or on his solicitor and deliver a copy of the notice to the Commission.

(4) If the committee of the Exchange Company disallows or only partially allows a claim against the compensation fund, the determination of the committee shall specify the reasons for the disallowance or, as the case may be, partial allowance.

(5) If, in the case of any particular claim, after taking into account all ascertained and contingent liabilities of the compensation fund, the committee of the Exchange Company considers that the assets of the fund so permit, it may, with the prior approval of the Commission, allow in respect of a claim which is in excess of the total amount limited by or under section 109 such additional sum in or towards the compensation of the claimant as it thinks fit.

(6) The receipt of a copy of a notice under subsection (3) notifying the allowance or partial allowance of a claim is sufficient authority for the Commission to pay to the claimant the amount allowed under this section.

(Amended 58 of 1985 s. 74)

114. Committee of the Exchange Company may require production of securities, etc.

(1) The committee of the Exchange Company may at any time require any person to produce any securities, documents, or statements of evidence necessary—

- (a) in order to substantiate any claim made against the compensation fund; or
- (b) for the purpose either of exercising its rights against a stockbroker or against any other person concerned; or
- (c) for the purpose of enabling criminal proceedings to be brought against any person in respect of a default, being a default which is or involves the commission of a criminal offence.

(2) Where any claimant required to produce any securities, documents, or statements of evidence under subsection (1) fails to produce them the committee

of the Exchange Company may, if it is satisfied that securities, documents, or statements are in the possession of, or available to, the claimant, refuse to allow the claimant's claim until such time as he produces them.

(Amended 58 of 1985 s. 75)

115. Court proceedings to establish a claim against the fund

(1) Subject to subsection (2), a person whose claim has been disallowed or only partially allowed, under section 113 may, at any time after the service under that section of the notice notifying the disallowance or partial allowance commence proceedings against the Exchange Company to establish his claim against the compensation fund.

(2) Except with leave of the Court, no proceedings against the Exchange Company in respect of a claim which has been disallowed, or only partially allowed, under section 113 may be commenced after the expiration of 3 months after the service of the notice under subsection (3) of that section.

(3) Any proceedings brought against the Exchange Company to establish a claim against the compensation fund shall be by action as for a debt due from the Exchange Company.

(Amended 58 of 1985 s. 76)

116. Supplementary provisions relating to proceedings brought under section 115

In any proceedings brought under section 115,—

- (a) all defences that would have been available to the person or persons in relation to whom the claim arose shall be available to the Exchange Company; *(Amended 58 of 1985 s. 77)*
- (b) all questions as to costs shall be in the discretion of the Court and
- (c) evidence which would be admissible against the stockbroker or any other person by whom it is alleged a default was committed is admissible to prove the commission of the default, notwithstanding that the stockbroker or other person is not the defendant in or a party to those proceedings.

117. Form of court order establishing claim

Where, in any proceedings brought against the Exchange Company to establish a claim against the compensation fund, the Court is satisfied that the default on which the claim is founded was actually committed and that the claimant otherwise has a valid claim, the Court shall by order—

- (a) allow the amount of the claim or such part of the claim as it thinks proper;
- (b) declare the fact and date of the default and the amount allowed under paragraph (a); and
- (c) direct the Commission to pay to the claimant the amount declared under paragraph (b).

(Amended 58 of 1985 s. 78)

8. Subrogation of the Commission to rights, etc., of claimant on payment from fund

On the Commission making any payment out of the compensation fund in respect of any claim under this Part,—

- (a) the Commission shall be subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss sustained by him by reason of the default on which the claim was based; and
- (b) the claimant shall have no right in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss any sum out of the assets of the stockbroker concerned or any dealing partnership in which he is a partner, or where the loss was caused by the defalcation, fraud or misfeasance of a servant or partner of the stockbroker, the assets of that servant or partner, until the Commission has been reimbursed the full amount of its payment. *(Replaced 58 of 1985 s. 79)*

9. Payment of claims only from the fund

No money or other property belonging to the Commission or to the Exchange Company, other than the compensation fund, shall be available for the payment of any claim under this Part, whether the claim is allowed by the committee of the Exchange Company or is made the subject of an order of the Court or otherwise.

(Amended 58 of 1985 s. 80)

10. Provision where fund is insufficient to meet claims or where claims exceed total amount payable

(1) Where the amount at credit in the compensation fund is insufficient to enable the payment of the whole amount of all claims against it which have been allowed or in respect of which orders have been made, then the amount at credit shall, subject to subsection (2), be apportioned between the claimants in such manner as the committee of the Exchange Company or, as the case may be, the Court thinks equitable; and any such claim, so far as it remains unpaid,

shall be charged against further receipts of the fund and paid out of the fund when there is again money available in the fund.

(2) Where the aggregate of all claims against the compensation fund which have been allowed, or in respect of which orders of the Court have been made, in relation to the default giving rise to the claims exceeds the total amount which may be paid under this Part in respect of the stockbroker or stockbrokers concerned in the default, that total amount shall be apportioned between the claimants in such manner as the committee of the Exchange Company or, as the case may be, the Court thinks equitable; and, on payment out of the fund of that total amount in accordance with that apportionment—

- (a) all such claims and any order of the Court relating to them; and
- (b) all other claims which may subsequently arise or be made in connection with the default,

shall be absolutely discharged.

(Amended 58 of 1985 s. 81)

121. Power of Commission to return contributions on winding up the Exchange Company

In the event of the Exchange Company being wound up under the Companies Ordinance (Cap. 32), the Commission may, in its absolute discretion, after the satisfaction of all outstanding liabilities against the compensation fund, pay to the liquidator of the Exchange Company the whole or any part of the amounts contributed by the Exchange Company under this Part, together with any income accrued in respect thereof; and on any such payment being made those amounts shall form part of the assets of the Exchange Company and be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

(Amended 58 of 1985 s. 82)

121A. Commission may act where committee fails to do so

Notwithstanding anything in this Part, where the Commission is satisfied that the committee of the Exchange Company has—

- (a) failed or refused to exercise any of its powers, functions or duties under this Part; or
- (b) unreasonably delayed the making of any determination under section 113,

it may exercise all or any of the powers, functions or duties of the committee of the Exchange Company under this Part, and any act done or determination made by the Commission pursuant to its powers under this section shall be deemed, for the purposes of this Part, to be an act done or determination made by the committee.

(Added 58 of 1985 s. 83. Amended 10 of 1989 s. 65)