

CB(1)1614 /99-00

(ii) by adding after the proposed section 14(5)

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“(5A) In any arbitration proceedings for the purposes of subsection (5) (b) -

(a) regard shall be given to

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(i) the principle that the fee to be paid shall be fair and reasonable in all the circumstances of the case, including, but not limited to, factors relating to cost, property-value and the benefits to

be derived
from the
authorization
concerned
referred to in
subsection

(1A);

(ii) the
guidelines
issued by the
Authority
under section
6D(2) (b) on
the
application of
the principle
referred to in
paragraph (a)
in any such
proceedings;
and

(iii) the reasons
and technical
requirements
concerned, if

any, referred

to in

subsection

(1B) (d);

(b) regard shall not be given to the amount of any interim fee specified by virtue of the operation of subsection (1D).

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By deleting the proposed section 36D and substituting -

“36D. Authority may obtain

information

(1) If the Authority is satisfied that there are reasonable grounds for believing that a person, other than a licensee, is, or is likely to be, in possession of information or a document that is relevant to the Authority’s investigation of a breach or suspected breach of a provision of this Ordinance, or of a determination or direction of the Authority or of a licence condition, the Authority may serve a notice in writing on the person -

(a) requesting the person to -

(i) give the information or document in writing to the Authority; or

(ii) produce the document to the Authority,

as the case requires, before a date (“the relevant date”) specified in the notice, being a date reasonable in all

the circumstances of the case;

- (b) stating that if the person is of the view that he cannot, or does not wish to, comply with the request, then he may make representations in writing to the Authority as to why he is of that view before the relevant date; and
- (c) accompanied by a copy of this section in the Chinese and English languages.

(2) Where the Authority receives representations referred to in subsection (1) (b) from a person, the Authority shall -

- (a) consider them; and
- (b) serve a notice in writing on the person stating that the Authority has considered the representations and that -
 - (i) the notice under subsection (1) served on the person is withdrawn with effect from the date of service of the notice under this subsection; or
 - (ii) the notice under subsection (1) served on the person remains in force and the Authority will on a date

specified in the notice under this subsection seek an order under subsection (3) unless the person has, before that date, complied with the notice under subsection (1) served on the person.

(3) Where a notice under subsection (1) served on a person has not been withdrawn under subsection (2) (a) and the person has not complied with the notice before the relevant date, or before the date specified in the notice under subsection (2) served on the person, as the case requires, then a magistrate may -

- (a) if satisfied by information on oath that there are reasonable grounds for believing that the person is, or is likely to be, in possession of the information or document to which the first-mentioned notice relates and that the information or document is relevant to the Authority's investigation of a breach or suspected breach of a provision of this Ordinance, or of a determination or direction of the Authority or of a

licence condition; and

- (b) after considering the representations, if any, referred to in subsection (1) (b) received by the Authority in consequence of the service of the notice,

issue an order that the person shall, within the time specified in the order, give the information or document in writing to the Authority or produce the document to the Authority, as the case requires.

(4) Any information or document to be given or produced to the Authority by a person in compliance with a notice under subsection (1) or an order under subsection (3) shall be so given or produced by reference to the information or document at the time of service of that notice except that the information or document may take account of any processing -

- (a) made between that time and the time when the information or document is so given or produced;
- and

- (b) that would have been made irrespective of the service of that notice.

(5) The Authority shall not disclose any information or document given or produced to him under this section except subject to the requirement in subsection (6) and if the Authority considers that it is in the public interest to disclose that

information or document, as the case may be.

(6) The Authority shall give a person giving or producing any information or document under this section a reasonable opportunity to make representations on a proposed disclosure of the information or document, as the case may be, and shall consider all representations made before the Authority makes a final decision to disclose the information or document, as the case may be.

(7) For the avoidance of doubt, it is hereby declared that where a person gives or produces any information or document under this section notwithstanding that the information or document is the subject of a confidentiality agreement with another person that prevents the first-mentioned person from releasing the information or document, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the giving or production of that information or document contrary to that agreement.

(8) Nothing in this section shall require a person to give any information or document, or to produce any document, which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance.

(9) A person commits an offence if he, without reasonable excuse -

- (a) fails to comply with an order under subsection (3);
- (b) fails to comply with subsection (4); or
- (c) in purported compliance with a notice under subsection (1) or an order under subsection (3), knowingly gives information that is false or misleading,

and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(10) In this section, “processing” (), in relation to any information or document, includes amending, augmenting, deleting or rearranging all or any part of the information or document, whether by automated means or otherwise.”.