

**Follow-up on Matters Raised at the Fifth Meeting
of the Bills Committee on Electronic Transactions Bill
Held on 18 November 1999**

Introduction

This paper addresses the issues raised by Members at the fifth meeting of the Bills Committee on Electronic Transactions Bill held on 18 November 1999.

Clause 4

2. We are examining the drafting of similar provisions in other legislation and will submit our comments separately.

Clauses 20(1)(b) and 21(5)

3. We shall propose Committee Stage Amendments to the effect that the Director of Information Technology Services (DITS) will give reasons for refusing an application for recognition under Clauses 20(1)(b) and 21(5) of the Bill.

Clauses 22 and 23

4. We note Members' concern that consumers should have up-to-date knowledge about any changes to the status of a recognised certification authority as a result of DITS's decision to suspend or revoke the concerned certification authority's recognition. To facilitate this, we shall propose Committee Stage Amendments so that -

- (a) if the Director decides to revoke the recognition, he must inform the certification authority concerned of the decision by notice in writing and immediately give notice of the revocation to the public in the on-line certification authority disclosure record maintained by the Director for that certification authority;
- (b) if the certification authority concerned appeals against the revocation, the Director, upon receiving the notice of appeal, must immediately give notice of the appeal to the public in the on-line certification authority disclosure record maintained by the Director for that certification

authority;

- (c) where the revocation of a recognition has taken effect, the Director must immediately give notice of the revocation to the public in the on-line certification authority disclosure record maintained for that certification authority and as soon as practicable give the same notice in one English language daily newspaper and one Chinese language daily newspaper in circulation in Hong Kong for at least 3 consecutive days;
- (d) if the Director serves a notice of suspension of recognition on a certification authority, the Director must immediately give notice of the suspension to the public in the on-line certification authority disclosure record maintained for that certification authority;
- (e) if the certification authority concerned appeals against the suspension, the Director, upon receiving the notice of appeal, must immediately give notice of the appeal to the public in the on-line certification authority disclosure record maintained for that certification authority;
- (f) where the suspension has taken effect, the Director must immediately give notice of the suspension to the public in the on-line certification authority disclosure record maintained for that certification authority and as soon as practicable give the same notice in one English language daily newspaper and one Chinese language daily newspaper in circulation in Hong Kong for at least 3 consecutive days; and
- (g) if a suspended recognition is reinstated, the Director must immediately give notice of the reinstatement to the public in the on-line certification authority disclosure record maintained for that certification authority.

5. We further propose that Clauses 22(9) and 23(7) be deleted.

6. We shall also propose a Committee Stage Amendment to the effect that the Director shall maintain an on-line and publicly accessible certification authority disclosure record, which contains information relevant for the purposes of the Bill, for each recognised certification authority.

7. With the above proposals, we consider that consumers will have sufficient and timely notice about the revocation or suspension of recognition of certification authorities so that they can take an informed decision as to whether to obtain or continue to obtain the certification services provided by the concerned certification authorities. Having regard to the nature of the proposed recognition scheme as a voluntary one rather than a mandatory one and from the consumer protection viewpoint, we consider that the above proposals would serve the same purpose of the issue of a restriction notice under the Securities and Futures Commission Ordinance (Cap. 24).

Clause 25(3) and 25(5)

8. We shall propose Committee Stage Amendments to Clauses 25(3) and 25(5) of the Bill to make them clearer and to the effect that -

- (a) the revocation of a recognition does not affect the valid use of the concerned certificates before the revocation takes effect; and
- (b) the suspension of a recognition does not affect the valid use of the concerned certificates before the suspension takes effect and after the reinstatement of the suspended recognition.

Clause 26(1)

9. We shall propose a Committee Stage Amendment to Clause 26(1) to the effect that a certification authority recognised under Clause 20 may apply for renewal of the recognition and an application for renewal must be made at least 30 days before but not earlier than 60 days before the expiry of the validity of the recognition.

Clause 27(1)

10. In respect of Members' view that Clause 27(1) should be re-drafted to tackle situations where the notice of the Director is unable to be served on the concerned certification authority, we shall propose a Committee Stage Amendment to Part VII of the Bill to the effect that if a notice or other document required to be given to a person is sent by post or registered post, it is taken to have been served at the time at which the notice or other document would be delivered in the ordinary course of post if the notice or other document is sent to the last known address of that person.

Clause 41

11. Examples of functions performed by a person under or for the purposes of the Bill referred to in Clause 41(1) are -

- (a) the Director and his staff examining the applications from certification authorities for recognition; or
- (b) the staff of recognised certification authorities examining the information of applicants for the purpose of issuing certificates to them.

12. Similar provisions as Clause 41(2) in respect of exceptions where the secrecy provision is dis-applied are found in the Securities and Futures Commission Ordinance (Cap. 24), Insurance Companies Ordinance (Cap. 41) or Banking Ordinance (Cap. 155), etc. The relevant provisions are set out in the Annex.

13. We shall propose a Committee Stage Amendment to tighten Clause 41(2)(a) to the effect that the provision of secrecy does not apply to disclosure which is necessary for performing or assisting in the performance of a function under or for the purposes of the Electronic Transactions Ordinance. This imposes a tighter requirement by introducing the test of necessity.

14. We have already undertaken to propose a Committee Stage Amendment to tighten Clause 41(2)(b) to the effect that the provision of secrecy is dis-applied in situations where information is disclosed for the purpose of any criminal proceedings in Hong Kong or for the purpose of complying with a requirement made under a rule of law with a view to instituting such proceedings.

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Section of Enactment

Chapter: 24	Title:	SECURITIES AND FUTURES COMMISSION ORDINANCE	Gazette Number:	L.N. 70 of 1999
Section: 59	Heading:	Preservation of secrecy, etc.	Version Date:	03/08/1999

(1) Except in the performance of a function under any of the relevant Ordinances, or in carrying out a provision of any of those Ordinances, a person who is appointed under any of those Ordinances or who performs or assists any other person in the performance of a function under any of those Ordinances- (a) shall, at all times subsequent to his appointment or after he has performed or so assisted in the performance of any such function (and whether or not his appointment continues or he may again perform or so assist in the performance of any such function), preserve and aid in preserving secrecy with regard to any matter coming to his knowledge in the performance of, or assisting in the performance of, any function under any of the relevant Ordinances;

(b) shall not at any such time communicate any such matter to any other person; and

(c) shall not at any such time suffer or permit any other person to have access to any record or other document which is in his possession or under his control by virtue of his being or having been so appointed or his performing or having performed, or assisting or having assisted any other person in the performance of a function under any of the relevant Ordinances.

(2) Notwithstanding subsection (1) the Commission may disclose information-

(a) in the form of a summary compiled from similar or related information provided by persons under any provision of the relevant Ordinances if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any such person being ascertained from it;

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings or any investigation, whether under the relevant Ordinances or otherwise, in Hong Kong;

(c) in connection with any civil proceedings to which the Commission is a party;

(d) to the Insider Dealing Tribunal constituted under section 15 of the Securities (Insider Dealing) Ordinance (Cap 395); (Amended 62 of 1990 s. 44)

(e) to the Financial Secretary, the Secretary for Financial Services, the Monetary Authority, the Insurance Authority, the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485), the Registrar of Companies, any public officer authorized by the Financial Secretary for the purpose of this paragraph or any inspector appointed by the Financial Secretary to investigate the affairs of a corporation, if in the opinion of the Commission- (Amended 82 of 1992 s. 8; L.N. 96 of 1993; 4 of 1998 s. 10)

(i) it is desirable or expedient that the information should be so disclosed in the interest of the investing public or the public interest; or

(ii) such disclosure will enable or assist the recipient of the information to perform his functions and it is not contrary to the interest of the investing public or the public interest that the information should be so disclosed;

(f) to-

(i) the Stock Exchange Company;

(ii) the Futures Exchange Company;

(iii) the Securities Compensation Fund Committee established under section 99 of the Securities Ordinance (Cap 333);

(iv) the Commodities Compensation Fund Committee established under section 78 of the Commodities Trading Ordinance (Cap 250); or

(v) a clearing house,

if in the opinion of the Commission the grounds specified in paragraph (e)(i) or (ii) are satisfied;

(g) to an authority or regulatory organization outside Hong Kong which, or to any companies inspector outside Hong Kong appointed to investigate the affairs of a corporation who, in the opinion of the Commission, satisfies the requirements referred to in subsection (2A)(a) and (b) if the Commission is satisfied that-

(i) it is desirable or expedient that the information should be so disclosed in the interest of the investing public or the public interest; or

(ii) such disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or the public interest that the information should be so disclosed; (Replaced 67 of 1991 s. 3)

(h) (Repealed 67 of 1991 s. 3)

(i) to such professional or semi-professional bodies in Hong Kong as may be specified for the purpose of this paragraph by the Commission in such a notice if, and only if, in the opinion of the Commission, it is desirable or expedient that the information should be so disclosed;

(ia) (without prejudice to paragraph (i)) to the Hong Kong Society of Accountants with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance or non-performance of the professional duties of an auditor or a former auditor appointed under the Securities Ordinance (Cap 333) or the Commodities Trading Ordinance (Cap 250); (Added 24 of 1992 s. 2)

(ib) to an auditor or a former auditor appointed under the Securities Ordinance (Cap 333) or the Commodities Trading Ordinance (Cap 250) for the purpose of enabling or assisting the Commission to discharge its functions under the relevant Ordinances; (Added 24 of 1992 s. 2)

(j) obtained by an inspector appointed under section 127(1) of the Securities Ordinance (Cap 333) (whether or not such information is included in notes under section 128 of that Ordinance of an examination under Part XI thereof or a report made under section 130 of that Ordinance) to-

(i) the Financial Secretary;

(ii) the Attorney General;

(iii) the police;

(iv) the Independent Commission Against Corruption;

(v) the Insider Dealing Tribunal;

(k) obtained by an investigator under section 33 to any person mentioned in paragraph (j)(i) to (v);

(l) for the purpose of, or otherwise in connection with, an audit required by section 16;

(m) with the consent of the person from whom the information was obtained and if the information relates to a different person, also with the consent of the person to whom the information relates; or (Added 67 of 1991 s. 3)

(n) if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section. (Added 67 of 1991 s. 3)

(2A) Where the Commission is satisfied that, for the purposes of subsection (2)(g), an authority, regulatory organization or companies inspector-

(a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and

(b) is subject to adequate secrecy provisions,

the Commission shall as soon as practicable cause the name of the authority, regulatory organization or companies inspector to be published in the Gazette. (Added 67 of 1991 s. 3)

(3) Where information is disclosed in any of the circumstances described in subsection (2), other than subsection (2)(a), (m) and (n), neither-

(a) the person to whom that information is disclosed; nor

(b) any person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),

shall disclose the information, or any part thereof, to any other person without the consent of the Commission.

(4) Subject to subsection (5), the chairman or any other director of the Commission or any person employed in the administration of any provision of the relevant Ordinances shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, any transaction regarding securities, a futures contract or property investment arrangements-

(a) which he knows to be the subject of an investigation or proceedings by the Commission under any of the relevant Ordinances or to be the subject of other proceedings under this Ordinance or is being otherwise considered by the Commission;

(b) which he knows to be connected with a matter which is either the subject of an investigation or proceedings mentioned in paragraph (a) or is being otherwise considered by the Commission; or

(c) in respect of which a prospectus or any take-over document is to his knowledge, being considered for registration under the Companies Ordinance (Cap 32). (Amended 87 of 1992 s. 7)

(5) Subsection (4) does not apply to, or in respect of, any right of the holder of securities by virtue of being

that holder-

- (a) to exchange the securities or convert them to another form of securities;
 - (b) to participate in a scheme of arrangement approved by the Court of First Instance under the Companies Ordinance (Cap 32); (Amended 25 of 1998 s. 2)
 - (c) to subscribe for other securities or dispose of a right to subscribe for other securities;
 - (d) to charge or pledge the securities to secure the repayment of money;
 - (e) to realize the securities for the purpose of repaying money referred to in paragraph (d);
- or
- (f) to realize the securities in the course of performing a duty imposed by law.

(6) Where the chairman or any other director of the Commission or any person employed in the administration of any of the relevant Ordinances is, in the course of his duties, required to consider any matter relating to-

- (a) any securities or futures contract or property investment arrangements in which he has an interest or any securities or futures contract or property investment arrangements of the same class or kind;
- (b) any securities or futures contract or property investment arrangements in which a company in which he has an interest has an interest;
- (c) a person-
 - (i) with whom he is or has been employed or associated;
 - (ii) of whom he is or has been a client or, in the case of an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap 155), a customer; or (Amended 49 of 1995 s. 53)
 - (iii) who is or was a client or, in the case of an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap 155), a customer of a person with whom he is or was employed or associated, (Amended 49 of 1995 s. 53)

he shall forthwith inform the Commission that the matter so relates.

(7) Any person who-

- (a) contravenes subsection (1) or (3); or
 - (b) without reasonable excuse, contravenes subsection (4) or fails to comply with any requirement of subsection (6),
- commits an offence.

(Enacted 1989. Amended 67 of 1991 s. 3)

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Section of Enactment

Chapter:	41	Title:	INSURANCE COMPANIES ORDINANCE	Gazette Number:	L.N. 70 of 1999
Section:	53A	Heading:	Secrecy	Version Date:	03/08/1999

PART VIIIA

**SECURITY, DISCLOSURE OF INFORMATION AND
EXAMINATIONS BY OUTSIDE AUTHORITIES**

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

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

(b) shall not communicate any such matter to any person other than the person to whom such matter relates; and

(c) shall not suffer or permit any person to have access to any records in his possession, custody or control or in the possession, custody or control of any other person so appointed or employed.

(IAA) Subsection (1) shall apply to any person who is or has been-

(a) a public officer;

(b) a person employed or authorized by or assisting the Insurance Authority;

(c) an Advisor appointed under section 35(2)(a);

(d) a Manager appointed under section 35(2)(b); and

(e) a person employed by or assisting a person to whom this subsection applies by virtue of paragraph (c) or (d),

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

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

(Added 51 of 1992 s. 14)

(2) No person who receives information, in whatever form, submitted under section 6, 7, 13A, 13B, 14, 17, 18, 19, 20, 32, 33, 34, 50, 53D, 53E or 61(1)(a) shall be required to produce to any court any document containing such information or to divulge or communicate to any court any matter or thing coming under his notice in the exercise of his functions under this Ordinance, except in the course of- (Amended 44 of 1990 s. 7; 50 of 1992 s. 7; 59 of 1993 s. 14)

(a) a prosecution for any offence;

(b) the determination by the Court of First Instance of an application under section 24; or

(c) a winding up by the Court of First Instance under Part VI. (Amended 25 of 1998 s. 2)

(3) Subsection (1) shall not apply to the disclosure of information-

(a) in the form of a summary compiled from similar or related information provided by insurers if the summary is so compiled as to prevent particulars relating to the business of any such insurer being ascertained from it;

(b) with a view to the institution of; or otherwise for the purposes of, any criminal proceedings or investigation, whether under this Ordinance or otherwise, in Hong Kong;

(c) in connection with any civil proceedings arising out of this Ordinance;

(d) by the Insurance Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance of his professional duties by a prescribed person; (Replaced 59 of 1993 s. 14)

- (da) by the Insurance Authority to a prescribed person for the purpose of enabling or assisting the Insurance Authority to discharge his functions under this Ordinance; (Added 59 of 1993 s. 14)
- (db) by a prescribed person where-
- (i) the information has been disclosed to that person under paragraph (da); and
 - (ii) that person has the consent of the Insurance Authority to do so; (Added 59 of 1993 s. 14)
- (e) to the Financial Secretary, the Secretary for Financial Services, an inspector appointed by the Financial Secretary to investigate the affairs of a company, a person holding an authorized statutory office or any public officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Insurance Authority-
- (i) it is desirable or expedient that the information should be so disclosed in the interests of existing or potential policy holders or the public interest; or
 - (ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of existing or potential policy holders or the public interest that the information should be so disclosed; (Replaced 75 of 1995 s. 7)
- (f) by the Insurance Authority to an auditor or actuary of an authorized insurer, an authorized insurance broker or a body of insurance brokers approved under section 70 if, in the opinion of the Insurance Authority, such information is necessary for the auditor or actuary, as the case may be, to perform his duties under this Ordinance; (Added 75 of 1995 s. 7)
- (g) subject to subsection (3A), by the Insurance Authority with the consent of the person from whom the information was obtained or received and if the information relates to a different person, also with the consent of the person to whom the information relates; or (Added 75 of 1995 s. 7)
- (h) by the Insurance Authority if it has been made available to the public by virtue of its being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section or section 53B. (Added 75 of 1995 s. 7)
- (3A) Subsection (3)(g) shall not operate to require the Insurance Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. (Added 75 of 1995 s. 7)
- (3B) For the purposes of subsection (3)(e), “authorized statutory office” (認可法定職位) means-
- (a) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66) in the exercise of his functions under the Banking Ordinance (Cap 155);
 - (b) the Securities and Futures Commission established under the Securities and Futures Commission Ordinance (Cap 24); or (Added 75 of 1995 s. 7. Amended 4 of 1998 s. 3)
 - (c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485). (Added 4 of 1998 s. 3)
- (3C) The Legislative Council may, by resolution, amend subsection (3B) by adding or deleting the authorized statutory offices defined therein. (Added 75 of 1995 s. 7)
- (3D) Where information is disclosed in any of the circumstances described in subsection (3), other than subsection (3)(a) and (h), neither-
- (a) the person to whom that information is disclosed; nor
 - (b) any person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),
- shall disclose the information, or any part thereof, to any other person without the consent of the Insurance Authority. (Added 75 of 1995 s. 7)
- (4) Any person who contravenes subsection (1) commits an offence and is liable-
- (a) on conviction upon indictment to a fine of \$200000 and, in the case of an individual, to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months. (Amended 35 of 1996 s. 26)
- (4A) Any person who contravenes subsection (3D) commits an offence and is liable-
- (a) on conviction upon indictment to a fine of \$200000 and, in the case of an individual, to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months. (Added 75 of 1995 s. 7)
- (5) This section shall apply to-
- (a) companies which make application under section 7;
 - (b) associations of underwriters; and
 - (c) Lloyd’s,
- as it applies to insurers.
- (6) For the purposes of this section, “function” includes a power and a duty.

(Added 34 of 1988 s. 6)

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Section of Enactment

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	L.N. 70 of 1999
Section:	120	Heading:	Official secrecy	Version Date:	03/08/1999

(1) Except as may be necessary for the exercise of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, every person to whom this subsection applies- (Amended 64 of 1987 s. 26)

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

(b) shall not communicate any such matter to any person other than the person to whom such matter relates; and

(c) shall not suffer or permit any person to have access to any records in the possession, custody or control of any person to whom this subsection applies.

(2) Subsection (1) shall apply to any person who is or has been-

(a) a public officer;

(b) a person authorized by the Monetary Authority; (Amended 82 of 1992 s. 20)

(c) the Advisor of an authorized institution; (Replaced 49 of 1995 s. 36)

(d) the Manager of an authorized institution; (Replaced 49 of 1995 s. 36)

(da) a person appointed under section 53G(5); (Added 49 of 1995 s. 36)

(e) a person appointed under section 117(2); and

(f) a person employed by or assisting a person to whom this subsection applies by virtue of paragraph (b), (c), (d), or (e),

who exercises or has exercised any function under this Ordinance.

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

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

(5) Subsection (1) shall not apply-

(a) to the disclosure of information in the form of a summary of similar information provided by a number of authorized institutions if the summary is so framed as to prevent particulars relating to the business of any particular authorized institution being ascertained from it;

(b) to the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Ordinance or otherwise;

(c) in connection with any other legal proceedings arising out of this Ordinance;

(d) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Attorney General, relevant to the proper investigation of any criminal complaint;

(e) to the disclosure of information by the Monetary Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor or former auditor of an authorized institution or former authorized institution, whether or not the auditor or former auditor, as the case may be, was appointed under section 50, 59 or 63;

(Replaced 43 of 1990 s. 9. Amended 67 of 1992 s. 9; 82 of 1992 s. 20)

(f) to the disclosure of information by the Monetary Authority to the Governor, the Financial Secretary, the Secretary for Financial Services, an inspector appointed by the Financial Secretary to investigate the affairs of a company, a person holding an authorized statutory office or any public officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Monetary Authority- (Amended 82 of 1992 s. 20; L.N. 96 of 1993)

(i) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or

(ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed; (Replaced 95 of 1991 s. 40)

(g) to the disclosure of information by the Monetary Authority to an auditor of an authorized institution or former authorized institution, or to a former auditor, for the purpose of enabling or assisting the Monetary Authority to discharge his functions under this Ordinance; (Replaced 43 of 1990 s. 9. Amended L.N. 276 of 1990; 95 of 1991 s. 40; 82 of 1992 s. 20)

(ga) to the disclosure of information-

(i) to any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap 66); and

(ii) where such disclosure will enable or assist such person to assist the Monetary Authority in the performance of any of the functions referred to in that section; (Added 49 of 1995 s. 36)

(h) subject to subsection (5D), to the disclosure of information by the Monetary Authority with the consent of-

(i) the person from whom the information was obtained or received; and

(ii) where the information does not relate to such person, the person to whom it relates; or (Added 95 of 1991 s. 40. Amended 82 of 1992 s. 20)

(i) to the disclosure of information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section or section 121. (Added 95 of 1991 s. 40)

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

(a) the Insurance Authority under the Insurance Companies Ordinance (Cap 41); (Amended 10 of 1989 s. 65)

(b) the Securities and Futures Commission; or (Replaced 10 of 1989 s. 65)

(c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485). (Added 4 of 1998 s. 7)

(d) (Repealed 10 of 1989 s. 65)

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

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

(5C) The Monetary Authority may attach a condition to any disclosure of information made pursuant to subsection (5)(b), (c), (d), (e), (f) or (ga) and shall attach a condition to any disclosure of information made pursuant to subsection (5)(g), that neither-

(a) the person to whom the information has been disclosed; nor

(b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a).

shall disclose that information to any other person without the consent of the Monetary Authority. (Added 95 of 1991 s. 40. Amended 82 of 1992 s. 20)

(5D) Subsection (5)(h) shall not operate to require the Monetary Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. (Added 95 of 1991 s. 40. Amended 82 of 1992 s. 20; 94 of 1993 s. 28)

(6) Any person who-

(a) contravenes subsection (1);

(b) aids, abets, counsels or procures any person to contravene subsection (1); or

(c) knowing that the condition referred to in subsection (5C) has been attached to a disclosure of information made pursuant to subsection (5), contravenes, or aids, abets, counsels or procures any person to contravene, that condition, (Added 95 of 1991 s. 40)

commits an offence and is liable-

(i) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (Amended 4 of 1997 s. 27)

(7) Subsection (5)(a), (e) and (g) shall apply to and in relation to approved money brokers and former approved money brokers as it applies to and in relation to authorized institutions and former authorized institutions respectively, and the other provisions of this Ordinance shall be construed accordingly. (Added 4 of 1997 s. 17)