

## 《地下鐵路條例草案》

## 全體委員會審議階段

由運輸局局長動議的修正案條次建議修正案

詳題 在(a)段中，在“extension”之後加入“to the railway”。

2(1) (a) 在“延長部分”的定義中，刪去“鐵路的”。

(b) 刪去“營運協議”的定義而代以 —

““營運協議”(operating agreement)指不時具有效力，由局長代表政府與地鐵公司訂立的協議，而且其中的條款宣布其為為施行本條例而訂立的營運協議、或為修訂或補充該協議的協議；”。

4(1) 在(a)及(b)段中，在“extension”之後加入“to the railway”。

4 刪去第(2)款而代以 —

“(2)由政府與地鐵公司協定就專營權具有效力的條款及條件，即列於營運協議的條款及條件。”。

13 (a) 刪去第(2)款而代以 —

“(2)該等指示可屬一般或特定性質。”。

條次

建議修正案

- (b) 刪去第(5)款而代以 —

“(5)第(4)款所提述的損失或損害，包括因地鐵公司遵從根據本條作出而違反審慎商業原則的指示而引致的損失或損害，以及可歸因於地鐵公司遵從該等指示的損失或損害。”。

- 14 (a) 在標題中，刪去“財政罰則”而代以“罰款”。
- (b) 在第(1)款中，刪去“財政罰則”而代以“罰款”。
- (c) 在第(2)款中，刪去“罰則”而代以“罰款”。
- (d) 在第(3)款中，刪去所有“罰則”而代以“罰款”。
- (e) 在第(4)款中，刪去“罰則”而代以“罰款”。
- (f) 在第(5)款中，刪去所有“罰則”而代以“罰款”。
- 15(2) 刪去句號而代以“；局長並須使行政長官會同行政會議知悉地鐵公司在諮詢過程中所作出的申述。”。
- 15(5)(a) 在“情況下”之後加入“在該項暫時中止發生時”。
- 15(7) 刪去在“原則下，”之後的所有字句而代以“就根據第(5)款接管的財產在保存時所處的狀況或就該財產在歸還時所處的狀況而言，本條例或任何其他法律並無對政府施加任何義務。”。
- 18(5)(b) 在“其他”之後加入“失責行為的”。

條次建議修正案

- 19(1) 在“情況下”之後加入“在該項撤銷發生時或專營期屆滿時”。
- 19(4) (a) 刪去“向政府”而代以“向局長”。
- (b) 刪去“不得”而代以“無權根據第(3)款”。
- 20(4) 刪去在“因此，”之後的所有字句而代以“在計算就該通知書所指明的財產而根據本條須付的補償款額時，所用方式須猶如在無發出該通知書的情況下已根據第 19(3)條處置有關財產一樣。”。
- 20(5) 在英文文本中，刪去逗號。
- 21(1) (a) 刪去“向政府”而代以“向局長”。
- (b) 刪去“該等財產沒有如此接管”而代以“其他根據該款政府、政府的代名人或政府指定的第三者有權接管但沒有如此接管的財產”。
- 21(2) (a) 刪去“有關接管根據第 19(1)條進行”而代以“行使第 19(1)條所賦予的權力”。
- (b) 在(b)段中，刪去“該項接管進行”而代以“行使第 19(1)條所賦予的權力”。
- 21(3) 在“notice”之後加入“referred to in subsection (1)”。

條次

建議修正案

- 21(6) 在“該財產”之前加入“接管”。
- 27(3) 在“an extension”之後加入“to the railway”。
- 27(5) 刪去句號而代以“，但向局長披露該等資料則不受本條所限。”。
- 28(2) 刪去“送遞至地鐵公司的”而代以“向地鐵公司發出”。
- 29(1) 刪去在“即屬犯罪，”之後的所有字句而代以 —  
“並且 —
- (i) 除第(ii)段另有規定外，可處第 2 級罰款；  
或
  - (ii) 如(a)段所述的作出或不作出有關事情導致在鐵路上或在鐵路處所內的人嚴重受傷或死亡，可處第 2 級罰款及監禁 6 個月。”。
- 30 (a) 在(b)段中，在“人”之前加入“任何”。
- (b) 刪去“the person”而代以“the first-mentioned person”。
- 34(1)(d) 刪去“of”而代以“or”。
- (v)(A)
- 35(3) 刪去“to”。

條次建議修正案

- 41(2) (a) (i) 刪去“或酬金”而代以“、酬金及福利”。
- (ii) 在第一次出現的“及法律責任”之後加入“(包括地下鐵路公司所採用並在緊接指定日期前有效的薪酬檢討機制之下的該等權利及法律責任)”。
- (b) 刪去兩度出現的“酬金福利”而代以“酬金或福利”。
- 48 加入 —
- “(3A) 第(1)或(2)款並不視為影響任何外地財產、權利或法律責任憑藉第 37 條或本條轉歸予地鐵公司一事在香港法律之下的效力。”。
- 51(2) 刪去“55”而代以“46”。
- 53 加入 —
- “(4A) 如地鐵公司提出要求，任何作出本條所適用的決定的人，須在在有關情況下屬合理的期間內，向地鐵公司提供作出該決定的原因。”。
- 54(2) 刪去“某些他認為合適的”而代以“任何”。
- 57 刪去第(2)款而代以 —
- “(2) 如地鐵公司因疏忽或其他情況而在本條例以外的法律規則下負有民事法律責任，則不論引致該民事法律責任的情況是否同時違反任何本條例所設定或依據本條例所設定的責任，第(1)款亦不影響該民事法律責任。”。

條次

建議修正案

59(2)(b) 刪去“普通股”。

62 (a) 刪去“為施行《釋義及通則條例》(第 1 章)第 34(1)條，”。

(b) 刪去“而為施行《釋義及通則條例》(第 1 章)第 34(1)條或就任何其他方面而言，”。

新條文 加入 —

“62A. 通知書的送達

(1) 在本條例下向局長發出的通知書，可送遞至局長或以郵遞寄予局長。

(2) 就在本條例下發出通知書而言，局長的地址即營運協議指明為供在該協議下向局長送達通知書用的地址。

(3) 在本條例下向地鐵公司發出的通知書，須註明地鐵公司的主席為收件人，並可送遞至地鐵公司或以郵遞寄予該公司。

(4) 就在本條例下發出通知書而言，地鐵公司的地址即營運協議指明為供在該協議下向地鐵公司送達通知書用的地址。

(5) 就本條而言，只要將通知書送遞局長或地鐵公司的地址，並將該通知書留交任何表面看來有權收取擬給予局長或地鐵公司的通訊的人，即為將通知書送遞至局長或地鐵公司。”。

條次建議修正案

- 63(1) 在“（第 270 章）”之後加入“、任何根據該條例訂立的附屬法例及任何其他根據該條例發出並在憲報刊登的文書均”。
- 附表2 刪去第 5 條。
- 附表6 在第 4 條中，刪去“普通股”。

《地下鐵路條例草案》

**全體委員會審議階段**

由劉千石議員動議的修正案

條次

建議修正案

5 (a) 在第(4)款中，在“行政長官會同行政會議可”之後加入  
“藉命令”。

(b) 刪去第(5)款而代以 —

“(5) 根據本條批准延續專營權的命令須經立法會批准。”。

6 在“批准”之前加入“建議及經立法會決議”。

8 刪去第(1)款而代以 —

“(1) 行政長官可藉憲報公告委任不超過 4 人為地鐵公司的增補董事（在本條中稱為“增補董事”），任期由行政長官指示。

(1A) 第(1)款所指的 4 人須包括由地鐵公司僱員透過選舉提名的人。”。

29 刪去該條。

34(1) 加入 —

“(aa) 訂明鐵路乘客應付的車費；”。



條次建議修正案

41 加入 —

“(2A) 在緊接指定日期前受僱於地下鐵路公司的僱員均可繼續留任，其年資須以保留，薪金、津貼、福利待遇和服務條件不得低於原來的標準。”。

《地下鐵路條例草案》

**全體委員會審議階段**

由陳婉嫻議員動議的修正案

條次

建議修正案

- 7 (a) 將該條重編為草案第 7(1)條。
- (b) 加入 —

“(2) 其中一位地鐵公司的董事必須是由地鐵公司僱員直接選出的員工代表。”。

## 《地下鐵路條例草案》

**全體委員會審議階段**由何俊仁議員動議的修正案條次建議修正案

13 加入 —

“(1A) 在不影響第(1)款公眾利益的範疇的一般性原則下，行政長官會同行政會議在行使第(1)款的權力時，須考慮公眾就維持及促進公共交通工具市場競爭方面的公眾利益，並為公眾提供其他價格可負擔而又具競爭性的交通模式。”。

《地下鐵路條例草案》

**全體委員會審議階段**

由鄭家富議員動議的修正案

條次

建議修正案

- 14(3) (a) 在(a)段中 —
- (i) 在第(i)節中，刪去“3級”而代以“4級”；
  - (ii) 在第(ii)節中，刪去“4級”而代以“5級”；
  - (iii) 在第(iii)節中，刪去“5級”而代以“6級”；
- (b) 在(b)段中，刪去“\$10,000”而代以“\$25,000”。

## MASS TRANSIT RAILWAY BILL

## COMMITTEE STAGE

Amendments to be moved by the Secretary for Transport

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	In paragraph (a), by adding "to the railway" after "extension".
2(1)	(a) In the definition of "extension", by deleting "to the railway" where it secondly appears.  (b) By deleting the definition of "operating agreement" and substituting -  ""operating agreement" (營運協議) means any agreement entered into between the Corporation and the Secretary acting on behalf of the Government which is declared by its terms to be an operating agreement for the purposes of this Ordinance or to be an agreement amending or supplementing such an agreement, as having effect from time to time;".
4(1)	In paragraphs (a) and (b), by adding "to the railway" after "extension".
4(2)	By deleting everything after "in" and substituting "the operating agreement."

<u>Clause</u>	<u>Amendment Proposed</u>
13	<p>(a) In subclause (2), by deleting everything after "general" and substituting "or specific nature."</p> <p>(b) In the Chinese text, by deleting subclause (5) and substituting -</p> <p style="text-align: center;">"(5) 第(4)款所提述的損失或損害，包括因地鐵公司遵從根據本條作出而違反審慎商業原則的指示而引致的損失或損害，以及可歸因於地鐵公司遵從該等指示的損失或損害。"</p>
14	<p>(a) In the heading, by deleting "財政罰則" and substituting "罰款".</p> <p>(b) In subclause (1), by deleting "財政罰則" and substituting "罰款".</p> <p>(c) In subclause (2), by deleting "罰則" and substituting "罰款".</p> <p>(d) In subclause (3), by deleting "罰則" wherever it appears and substituting "罰款".</p> <p>(e) In subclause (4), by deleting "罰則" and substituting "罰款".</p> <p>(f) In subclause (5), by deleting "罰則" wherever it appears and substituting "罰款".</p>
15(2)	By deleting the full stop and substituting "; and the Secretary shall bring to the attention of the Chief Executive in Council any representations made by the Corporation during the consultation."
15(5)(a)	By adding "which at the time of such suspension is property" after "any property".

<u>Clause</u>	<u>Amendment Proposed</u>
15(7)	By deleting everything after "原則下，" and substituting "就根據第(5)款接管的財產在保存時所處的狀況或就該財產在歸還時所處的狀況而言，本條例或任何其他法律並無對政府施加任何義務。".
18(5)(b)	By adding "of default" after "case".
19(1)	By adding "which at the time of such revocation or expiry is property" after "any property".
19(4)	(a) By deleting "to the Government" and substituting "to the Secretary".  (b) By deleting "shall not return the property to the Corporation" and substituting "is not entitled to return the property to the Corporation under subsection (3)".
20(4)	By deleting everything after "this section" where it secondly appears and substituting "in respect of property specified in such a notice shall be calculated as if the property had been disposed of under section 19(3) without that notice having been given.".
20(5)	By deleting the comma.
21(1)	(a) By deleting "to the Government" and substituting "to the Secretary".  (b) By deleting everything after "possession of" where it secondly appears and substituting "any other property which the Government, its nominee or a third party designated by the Government was entitled to take possession of, but did not

<u>Clause</u>	<u>Amendment Proposed</u>
21(2)	<p>take possession of, under that subsection on that occasion."</p> <p>(a) By deleting "有關接管根據第 19(1)條進行" and substituting "行使第 19(1)條所賦予的權力".</p> <p>(b) In paragraph (b), by deleting "該項接管進行" and substituting "行使第 19(1)條所賦予的權力".</p>
21(3)	By adding "referred to in subsection (1)" after "notice".
21(6)	By deleting ", in respect of any property taken possession of under this section," and substituting "in respect of the taking of possession of any property under this section".
27(3)	By adding "to the railway" after "an extension".
27(5)	By adding ", except to the Secretary," after "disclose".
28(2)	By deleting "delivered" and substituting "given".
29(1)	By deleting everything after "liable" and substituting -  "-  (i) except as provided in paragraph (ii), to a fine at level 2; or  (ii) if the act or omission results in serious injury to or the death of a person being on the railway or railway premises, to a fine at level 2 and to imprisonment for 6



<u>Clause</u>	<u>Amendment Proposed</u>
	months."
30	(a) In paragraph (b), by deleting "a" and substituting "any".  (b) By deleting "the person" and substituting "the first-mentioned person".
34(1)(d)(v)	By deleting "of" and substituting "or". (A)
35(3)	By deleting "to".
41(2)	(a) By deleting "for the payment of pensions, allowances or gratuities" and substituting "(including under the pay review mechanism which has been adopted by MTRC and effective immediately before the appointed day) for the payment of pensions, allowances, gratuities and benefits".  (b) In paragraph (b), by deleting "gratuity" and substituting "gratuities or".
48	By adding -  "(3A) Nothing in subsection (1) or (2) shall be taken as prejudicing the effect under the laws of Hong Kong of the vesting in the Corporation by virtue of section 37 or this section of any foreign property, right or liability."
51(2)	By deleting "section 55" and substituting "section 46".

<u>Clause</u>	<u>Amendment Proposed</u>
53	By adding -  "(4A) Any person who has made a decision to which this section applies shall, if so requested by the Corporation, and within a period that is reasonable in the circumstances, furnish the Corporation with reasons for his decision."
54(2)	By deleting "as he thinks fit".
57(2)	By deleting everything after "arises" and substituting "independently of a breach of any duty of the Corporation created by or pursuant to this Ordinance, regardless whether the circumstances giving rise to such civil liability would also be a breach of any duty created by or pursuant to this Ordinance."
59(2)(b)	By deleting "ordinary".
62	(a) By deleting "for the purposes of section 34(1) of the Interpretation and General Clauses Ordinance (Cap. 1)".  (b) By deleting "for those or any other purposes".
New	By adding -  <b>"62A. Service of notices</b>  (1) A notice to be given to the Secretary under this Ordinance may be delivered to the Secretary or sent to him by post.

ClauseAmendment Proposed

(2) The address of the Secretary for the purposes of the giving of any notice under this Ordinance is the address specified in the operating agreement as the address for the service of notices on the Secretary under that agreement.

(3) A notice to be given to the Corporation under this Ordinance shall be marked for the attention of the chairman of the Corporation and may be delivered to the Corporation or sent to it by post.

(4) The address of the Corporation for the purposes of the giving of any notice under this Ordinance is the address specified in the operating agreement as the address for the service of notices on the Corporation under that agreement.

(5) For the purposes of this section, a notice is delivered to the Secretary or the Corporation if it is delivered to the address of the Secretary or the Corporation and left with a person apparently authorized to receive communications intended for the Secretary or the Corporation."

63(1) By deleting "is" and substituting ", any subsidiary legislation made under that Ordinance and any other instrument issued under that Ordinance and published in the Gazette are".

Schedule 2 By deleting section 5.

Schedule 6 In section 4, by deleting "ordinary".



ClauseAmendment Proposed

34(1)

By adding -

"(aa) prescribing the fares payable by persons travelling on the railway;"

41

By adding -

"(2A) Persons with contract of employment with MTRC in force immediately before the appointed day may all remain in employment and their seniority shall be retained with pay, allowances, benefits and conditions of service no less favourable than before."



## MASS TRANSIT RAILWAY BILL

**COMMITTEE STAGE**Amendments to be moved by the Honourable Albert HO Chun-yanClauseAmendment Proposed

13

By adding -

"(1A) Without affecting the generality of the scope of public interest under subsection (1), the Chief Executive in Council, when exercising the power under subsection (1), shall consider the public interest in preserving and promoting competition in the market for public transport and the availability of competing modes of transport at affordable prices."

MASS TRANSIT RAILWAY BILL

**COMMITTEE STAGE**

Amendments to be moved by the Honourable Andrew CHENG Kar-foo

<u>Clause</u>	<u>Amendment Proposed</u>
14(3)	<p>(a) In paragraph (a) -</p> <p>(i) in subparagraph (i), by deleting "level 3" and substituting "level 4";</p> <p>(ii) in subparagraph (ii), by deleting "level 4" and substituting "level 5";</p> <p>(iii) in subparagraph (iii), by deleting "level 5" and substituting "level 6".</p> <p>(b) In paragraph (b), by deleting "\$10,000" and substituting "\$25,000".</p>



## 附件II

## 《交易所及結算所（合併）條例草案》

## 全體委員會審議階段

由財經事務局局長動議的修正案條次建議修正案

- 1 (a) 在第(2)款中，在“本”之前加入“除第(3)款另有規定外，”。
- (b) 加入 —

“(3)第22(1)及(2)條自本條例於憲報刊登當日起實施。”。

- 2 (a) 在第(1)款中 —
- (i) 在“有聯繫者”的定義中 —
- (A) 在(a)段中 —
- (I) 在“指”之前加入“在不抵觸(c)段的情況下，”；
- (II) 刪去末處的“及”；
- (B) 刪去(b)段而代以 —
- “(b) 在不抵觸(c)段的情況下，就附表1第1部指明的本條例條款而言，包括該部指明為有聯繫者的人，或屬於該部指明為有聯繫者的任何類別人士的人；

條次

建議修正案

- (c) 就附表1第2部指明的本條例條款而言，不包括該部指明為不是有聯繫者的人，或屬於該部指明為不是有聯繫者的任何類別人士的人；”；
- (ii) 刪去“間接控制人”的定義而代以 —
- ““間接控制人”(indirect controller)就任何公司而言 —
- (a) 在不抵觸(b)段的情況下，指所發出的指示或指令慣常獲得該公司的董事(或以該公司為附屬公司的另一間公司的董事)遵照行事的人；
- (b) 就附表1第3部指明的本條例條款而言，不包括該部指明為不是間接控制人的人，或屬於該部指明為不是間接控制人的任何類別人士的人；”；
- (iii) 刪去“工作天”的定義；
- (iv) 在“結算所”的定義中，在“的”之後加入“認可”。
- (b) 刪去第(2)款。
- (c) 在第(6)款中，刪去“(2)或”。

條次建議修正案

- 3 (a) 在第(5)(b)款中，刪去“一切應盡”而代以“合理”。
- (b) 加入 —

“(6A) 在不損害根據第(6)款送達某人的通知書中指明的步驟的一般性的原則下，該等步驟可全部或部分由該人以書面向證監會建議的步驟組成。”。

- (c) 在第(11)款中，刪去“一切應盡”而代以“合理”。
- (d) 在第(12)款中，刪去“表1”而代以“表2”。

- 4 (a) 加入 —

“(2A) 在不損害根據第(1)(ii)款送達某公司的通知書中指明的步驟的一般性的原則下，該等步驟可全部或部分由該公司以書面向證監會建議的步驟組成。”。

- (b) 刪去第(7)款而代以 —

“(7) 凡任何人被控以第(6)款所訂罪行，他如證明他已盡了合理的努力以遵從根據第(1)款發出的關乎該罪行的通知書，即可以此作為免責辯護。”。

- (c) 在第(8)款中，刪去“表1”而代以“表2”。

- 6 (a) 刪去第(1)及(2)款而代以 —

“(1) 在本條中，“次要控制人”(minority controller)就任何認可控制人、交易所或結算所而言 —

條次

建議修正案

- (a) 在不抵觸(b)段的情況下，指在該認可控制人、交易所或結算所（視屬何情況而定）的成員大會上，或在以該認可控制人、交易所或結算所（視屬何情況而定）為附屬公司的另一間公司的成員大會上，單獨或連同任何一名或多於一名的有聯繫者有權行使不少於5%表決權或有權控制不少於5%表決權的行使的任何人；
- (b) 不包括下述人士 —
  - (i) 認可控制人；或
  - (ii) 附表3第1部指明為就本條例而言不是次要控制人的人，或屬於該部指明為不是次要控制人的任何類別人士的人。

(2) 在不抵觸第(2A)及(12)款的條文下，在本條生效日期當日及之後 —

- (a) 任何人除非得到證監會在諮詢司長後給予的書面批准，否則不得擔任或成為認可控制人、交易所或結算所的次要控制人；及

條次建議修正案

- (b) 任何人如獲得該批准，則在不抵觸任何在該批准中指明的、使本段全部或部分條文不適用於該批准的條件的情況下，該人除非得到證監會在諮詢司長後給予的進一步書面批准，否則不得增加以次要控制人的身分持有的認可控制人、交易所或結算所的權益。

(2A) 除非證監會信納，為維護投資大眾的利益或公眾利益，根據第(2)(a)或(b)款給予批准是適當的，否則不得如此給予批准。

(2B) 凡證監會拒絕根據第(2)(a)或(b)款給予批准，則證監會須向有關人士發出書面通知，說明拒絕批准的理由。”。

- (b) 在第(4)款中 —

- (i) 刪去(a)段而代以 —

“(a) 凡任何人被控以第(3)(a)款所訂罪行 —

- (i) 而該人是憑藉某作為或情況而致成為有關認可控制人、交易所或結算所的次要控制人，或增加其以次要控制人的身分持有的認可控制人、交易所或結算所的權益（視屬何情況而定），他如證明他不知道該作為或情況

條次

建議修正案

會有使他成為有關次要控制人，或增加其以次要控制人的身分持有的有關權益（視屬何情況而定）的效果，即可以此作為免責辯護；或

(ii) 他如證明他已盡了合理的努力以避免違反第(2)款，即可以此作為免責辯護；”；

(ii) 在(b)段中，刪去“一切應盡”而代以“合理”；

(c) 加入 —

“(5A) 在不損害根據第(5)款送達某人的通知書中指明的步驟的一般性的原則下，該等步驟可全部或部分由該人以書面向證監會建議的步驟組成。”。

(d) 在第(10)款中，刪去“一切應盡”而代以“合理”。

(e) 在第(11)款中，刪去“表1”而代以“表2”。

7 (a) 在第(4)款中，刪去“一切應盡”而代以“合理”。

(b) 加入 —

“(4A) 在不損害第(1)款賦予司長的權力的一般性的原則下，附表3第2部指明的人在該部指明的情況下，不受第3(1)條的規限。”。

條次建議修正案

8 刪去該條而代以 —

“8. 確保市場有秩序和公平等的責任

(1) 任何 —

- (a) 交易所及身為交易所或結算所的控制人的認可控制人，各有責任確保在合理切實可行的範圍內，在每個交易所或透過每個交易所買賣證券或期貨合約是在有秩序和公平的市場中進行；
- (b) 交易所、結算所及身為交易所或結算所的控制人的認可控制人，各有責任確保在合理切實可行的範圍內審慎管理有關風險；及
- (c) 身為交易所或結算所的控制人的認可控制人，有責任確保在合理切實可行的範圍內，該交易所或結算所(視屬何情況而定)遵從根據任何成文法則或法律規則施加於該交易所或結算所(視屬何情況而定)的合法要求或規定，及遵從施加於該交易所或結算所(視屬何情況而定)的其他法律規定。

(2) 任何認可控制人、交易所及結算所在履行第(1)(a)或(b)款所規定的義務時，各須 —

- (a) 以維護公眾利益為原則而行事，尤其須顧及投資大眾的利益；及
- (b) 確保一旦(a)段所提述的利益與任何其他法律規定其須維護的其他利益有衝突時，優先照顧前者。

條次

建議修正案

(3) 在不損害《證券及期貨事務監察委員會條例》(第24章)第56(1)條的一般性的原則下，下述人士在履行或其意是履行第(1)款(包括與第(2)款一併理解的第(1)款)所規定的義務時，如出於真誠而作出或不作出任何作為，則無須就該等作為或不作為承擔任何法律責任 —

- (a) 任何認可控制人、交易所或結算所；
- (b) 任何代表認可控制人、交易所或結算所行事的人，包括 —
  - (i) 該認可控制人、交易所或結算所的董事局的任何成員；
  - (ii) 該認可控制人、交易所或結算所成立的任何委員會的任何成員。

(4) 凡任何認可控制人是交易所或結算所(“有關團體”)的控制人，如有關團體因為該認可控制人為履行或其意是履行第(1)款所規定的該認可控制人的義務，而相應地出於真誠而作出或不作出的任何作為，則該有關團體須根據該款履行的義務就該作為或不作為而言，不適用於該有關團體。”。

- 9
- (a) 在第(1)款中，在“策”之後加入“方案，並將該等政策方案提交該認可控制人考慮”。
  - (b) 刪去第(4)及(5)款而代以 —

“(4) 在第(2)(b)款提述的成員中，1至2名須由認可控制人委任；其中最少一名須為認可控制人董事局的成員，而該名成員須 —



條次建議修正案

- (a) 不是根據第20(1)條獲委任為該董事局成員的；並且
- (b) 不是該認可控制人的最高行政人員。”。
- 10 (a) 在第(3)款中，在“分”之後加入“；如證監會拒絕批准，須在有關書面通知中說明拒絕批准的理由”。
- (b) 在第(5)款中，刪去“根據證監會的意見，一般地或就任何特定個案”而代以“在諮詢證監會及有關的認可控制人後，”。
- 15(2)(a) 在“爭”之後加入“(如有的話)”。
- 16 (a) 在標題中，在“表1”之後加入“、2或3”。
- (b) 在“表1”之後加入“、2或3”。
- 18 刪去“期交所”、“期貨結算公司”、“期權結算公司”及“聯交所”的定義。
- 20 刪去該條而代以 —

**“20. 司長可委任不超過8人進入  
交易結算公司的董事局**

(1) 即使其他成文法則或法律規則另有規定，在不抵觸第(2)款的情況下，凡司長信納作出有關委任就維護投資大眾的利益或公眾利益而言是適當的，則可委任不超過8名人士為交易結算公司董事局的成員。

條次

建議修正案

(2) 司長行使第(1)款的權力，須達致下述的效果：在緊接交易結算公司在2003年舉行的成員大會之後，在當時根據第(1)款獲委任的董事局成員的數目，不得超過並非根據該款獲委任的該公司董事局成員（但不包括交易結算公司的最高行政人員）的最高人數限額。

(3) 除第(4)款另有規定外，任何根據第(1)款獲委任的交易結算公司董事局成員，在任何成文法則或法律規則下享有及承擔的權利、特權、義務及責任，與並非根據該款獲委任的該公司董事局成員所享有及承擔者相同。

(4) 即使其他成文法則或法律規則另有規定，根據第(1)款獲委任的交易結算公司董事局成員不可藉該董事局其他成員通過的決議或該公司通過的特別決議而免任。”。

21 刪去該條。

22 (a) 在第(3)款中 —

(i) 刪去(d)(ii)段而代以 —

“(ii) 該擔保獲證監會信納為實質上與第(i)節所提述的擔保相符，或以經證監會書面批准的其他形式作出；”；

(ii) 在(e)段中，刪去“5個工作”而代以“7”。

(b) 在第(4)款中，加入 —

“(ca) 《公司條例》（第32章）第57B條不適用於根據第(3)(b)款所作的股份發行；”。

條次建議修正案

(c) 加入 —

“(5) 證監會可在香港結算公司的請求下，延長第(3)(e)款指明的限期，而不論該限期是否已屆滿。”。

24 刪去“表2”而代以“表4”。

新條文 在緊接第24條之後加入 —

“附表1 [第2(1)及16條]

就本條例指明條文指明為有聯繫者、  
 不是有聯繫者及  
 不是間接控制人  
 的人

第1部

指明為有聯繫者的人

第2部

指明為不是有聯繫者的人

1. 就本條例所有條文而言，凡 —

- (a) 一間結算所或其代名人以其身分行事，則該結算所或該代名人（視屬何情況而定）不是任何人的有聯繫者；

條次

建議修正案

- (b) 某間公司某次成員大會上的主席由於某人委任其為投票代表以致有權就該公司行使表決權，而該委任 —

(i) 只就該大會有效；及

(ii) 不牽涉任何有值代價，

則該主席並非該人的有聯繫者；

- (c) 某人（“前者”）與另一人（“後者”）如均委任某間公司某次成員大會上的主席為投票代表，就該公司行使表決權，而前者及後者所作的委任 —

(i) 均只就該大會有效；及

(ii) 不牽涉任何有值代價，

則前者並非後者的有聯繫者。

2. 就本條例第6條而言，在下述情況下，某人（“前者”）不會僅因為其與另一人（“後者”）均委任同一第三者為投票代表，在某間公司某次成員大會上就該公司行使表決權而成為後者的有聯繫者 —

- (a) 前者及後者所作的委任只就該大會有效；及

- (b) 上述每一項委任均不牽涉任何有值代價。

條次建議修正案

## 第3部

## 指明為不是間接控制人的人

就本條例所有條文而言，如任何人所發出的指示或指令慣常獲得任何公司的董事（或以該公司為附屬公司的另一間公司的董事）遵照行事，僅是因為該等董事按照該人以專業身分所提供的意見而行事，則該人不屬該公司的間接控制人。”。

- 附表1
- (a) 將附表1重編為附表2。
  - (b) 在附表2中 —
    - (i) 在標題中，在“據”之後加入“本條例”；
    - (ii) 在第1條中 —
      - (A) 在第(2)款中 —
        - (I) 在(d)段中，刪去“付。”而代以“付；”；
        - (II) 加入 —
          - “(e) 該等股份的持有人須致使該等股份在該通知指明的限期內轉讓給該通知指明的證監會代名人。”；
      - (B) 在第(8)款中，在“須”之前加入“除原訟法庭另有指明外，”；

條次

建議修正案

(C) 加入 —

“(12) 現宣布任何人不會僅因為第(2)(b)或(e)款的施行而違反本條例第3(1)或6(2)條。”；

(iii) 在第2(1)條中 —

(A) 刪去(a)及(b)段而代以 —

“(a) 行使或其意是行使任何權利，以處置任何股份或處置獲發該等股份的權利，而該人知道如此行事是會違反根據第1(2)條加於該等股份的限制的；

(b) 以持有人或投票代表的身分就任何該等股份投票，而該人知道如此行事是違反(a)段所述的限制的；

(ba) 就任何該等股份委任投票代表，而該人知道就任何該等股份投票是違反(a)段所述的限制的；”；

(B) 在(c)段中，刪去末處的“或”；

(C) 在(d)段中，刪去“議，”而代以“議；或”；

(D) 加入 —

“(e) 在無合理辯解的情況下，沒有遵守根據第1(2)(e)條加於該等股份的限制，”；

條次建議修正案

(iv) 在第3條中，加入 —

“(1A) 凡任何人是或可能成為就一間公司而言屬受禁制的人，證監會須向該公司送達根據本條例第3(6)或4(1)條發出的有關通知書的副本。”。

新條文 在緊接附表2之後加入 —

“附表3 [第6(1)、7(4A)  
及16條]

不是次要控制人的人及本條例  
第3(1)條的豁免

## 第1部

就本條例指明為不是  
次要控制人的人

1. 就本條例而言，凡 —

- (a) 任何結算所或其代名人以其身分行事，則該結算所或該代名人（視屬何情況而定）不是次要控制人；
- (b) 某間公司某次成員大會上的主席由於被委任為投票代表以致有權就該公司行使表決權，而該委任 —

(i) 只就該大會有效；及

條次

建議修正案

(ii) 不牽涉任何有值代價，

則該主席不是次要控制人。

2. 就本條例所有條文而言，在下述情況下，任何人不會僅因為其被委任為投票代表以致有權就某間公司行使表決權，而成為該公司的次要控制人 —

- (a) 該委任只就該公司某一次的成員大會有效；及
- (b) 該委任不牽涉任何有值代價。

第2部

本條例第3(1)條的豁免

凡 —

- (a) 一間結算所或其代名人以其身分行事，則該結算所或該代名人（視屬何情況而定）不受本條例第3(1)條所規限；
- (b) 某間公司某次成員大會上的主席僅因為其被委任為投票代表以致有權就該公司行使表決權，而成為該公司的控制人，且該委任 —

(i) 只就該大會有效；及

(ii) 不牽涉任何有值代價，

則該主席不受本條例第3(1)條所規限。”。



條次建議修正案

- 附表2 (a) 將附表2重編為附表4。
- (b) 在附表4中 —
- (i) 加入 —

## “《印花稅條例》

## 13A. 釋義

《印花稅條例》（第117章）第2(1)條現予修訂 —

- (a) 廢除“經紀”的定義；
- (b) 在“證券經銷業務”的定義中，廢除“經紀”而代以“交易所參與者”；
- (c) 加入 —

“ “交易所參與者” (exchange participant) 指《證券交易所合併條例》（第361章）第2(1)條所指的交易所參與者；”。

## 13B. 關於香港證券的售賣及購買的成交單據等

第19條現予修訂 —

- (a) 在第(1F)款中，廢除所有“經紀”而代以“交易所參與者”；

條次

建議修正案

- (b) 在第(16)款中，在“規則”的定義中，在(b)段中，廢除“聯合交易所會員”而代以“交易所參與者”。

13C. 香港證券的交易並不構成證券經銷業務時所須繳付的印花稅

第20條現予修訂，廢除“經紀”而代以“交易所參與者”。

13D. 修訂附表1

附表1現予修訂，在第2(2)類中，廢除“經紀”而代以“交易所參與者”。

13E. 為施行本條例第19(1D)條指明的獲豁免交易

附表4現予修訂 —

- (a) 在第1條中，廢除兩度出現的“經紀”而代以“交易所參與者”；
- (b) 在第3條中，在“規則”的定義中，廢除“或成員”而代以“、成員或交易所參與者”。

條次建議修正案

## (ii) 加入 —

“17A. 批准交易所公司等章程、  
規則的修訂

第14條現予修訂 —

- (a) 在第(3)款中，在“分”之後加入“；監察委員會如拒絕批准，則須在有關書面通知中說明拒絕批准的理由”；
- (b) 在第(5)款中，廢除“按監察委員會的意見，而一般地或在任何個別情況下”而代以“在諮詢監察委員會及交易所公司後，”。

## (iii) 在第 44 條中，刪去(b)及(c)段而代以 —

“(b) 廢除第(2)及(3)款而代以 —

“(2) 根據第(1)款須就每份交易權繳付的款額，須在該款適用於有關的交易權後1個月內繳付。”。

## (iv) 刪去第 62 條而代以 —

“62. 無效協議

第26條現予廢除。”

條次

建議修正案

(v) 加入 —

“63A. 確保市場公平的責任

第27A條現予廢除。”；

(vi) 刪去第 65 條而代以 —

“65. 聯合交易所規則

第34條現予修訂 —

(a) 廢除第(1)(b)款而代以 —

“(b) 確保其交易所參與者遵從財政資源規則，而在不減損本段一般性的原則下，該等規則可 —

(i) 訂明交易所參與者須呈交的報表、該等報表的格式，報表所須包括的資料，以及核實該等資料的方式；

(ii) 就對任何資產進行估值的方

條次建議修正案

式和由交易所參與者支付估值費用作出規定；

(iii) 訂明交易所參與者備存資產紀錄的方式和保存該等紀錄的地方，而該等資產就財政資源規則而言，是可計算在內的；

(iv) 就由交易所公司任何獲妥為授權的人員查閱紀錄作出規定；

(ba) 處理凡任何相關公司或相關認可控制人（指《交易所及結算所（合併）條例》（2000 年第 號）第 13(1) 條界定的相關公司或相關認可控制人）尋

條次

建議修正案

求成為或本身已屬該條界定的上市公司時，可能產生的利益衝突；及”；

(b) 加入 —

“(2A) 財經事務局局長可藉憲報公告廢除第(1)(b)款。

(2B) 監察委員會可修改交易所公司根據第(1)(ba)款所訂立(或監察委員會依據本款所訂立)的規則；為該目的，監察委員會可取代交易所公司行使該款所規定的權力。

(2C) 第35條對監察委員會根據與第(2B)款一併理解的第(1)(ba)款訂立的規則不適用。”。

65A. 監察委員會批准所建議的規則和對章程的修訂等

第35條現予修訂 —

- (a) 在第(3)款中，在“事”之後加入“(連同不獲批准的理由)”；

條次建議修正案

## (b) 加入 —

“ (5) 在本條中，“規則”(rules)不包括第34(2C)條所提述的規則。” ；

## (vii) 加入 —

“《證券及期貨（結算所）條例》

## 70A. 認可結算所的規則等

《證券及期貨（結算所）條例》（第420章）第4條現予修訂 —

- (a) 在第(7)款中，在“分”之後加入“；監察委員會如不批准，須在書面通知中說明不批准的理由”；
- (b) 在第(9)款中，廢除“按照監察委員會的意見，全面或按個別情況”而代以“在諮詢監察委員會及有關認可結算所後，”。

《個人資料（私隱）條例》

## 70B. 釋義

《個人資料（私隱）條例》（第486章）第2(1)條現予修訂，在“財經規管者”的定義中，加入 —

條次

建議修正案

“(ea) 《交易所及結算所（合併）條例》（2000年第 號）第2(1)條所指的認可控制人；” ；

(viii) 加入 —

“《印花稅（證券經銷業務）（期權莊家）規例》

83A. 釋義

《印花稅（證券經銷業務）（期權莊家）規例》（第117章，附屬法例）現予修訂 —

(a) 在“規則”的定義中，廢除“聯合交易所會員”而代以“交易所參與者”；

(b) 在“期權莊家”的定義中，廢除“經紀”而代以“交易所參與者”。”；

(ix) 在第 85(b)(ii)(B) 條中，刪去 “participant” 而代以 “participantship” 。



**Annex II**

**EXCHANGES AND CLEARING HOUSES (MERGER) BILL**

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) In subclause (2), by deleting "This" and substituting "Subject to subsection (3), this".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(3) Section 22(1) and (2) shall come into operation on the day this Ordinance is published in the Gazette."</p>
2	<p>(a) In subclause (1) -</p> <p style="padding-left: 40px;">(i) in the definition of "associate" -</p> <p style="padding-left: 80px;">(A) in paragraph (a) -</p> <p style="padding-left: 120px;">(I) by adding "subject to paragraph (c)," before "means";</p> <p style="padding-left: 120px;">(II) by deleting "and" at the end;</p> <p style="padding-left: 80px;">(B) by deleting paragraph (b) and substituting -</p> <p style="padding-left: 120px;">"(b) subject to paragraph (c), includes, in relation to such</p>

Clause

Amendment Proposed

provisions of this Ordinance as are specified in Part 1 of Schedule 1, a person, or a person belonging to a class of persons, specified in that Part to be an associate;

- (c) excludes, in relation to such provisions of this Ordinance as are specified in Part 2 of Schedule 1, a person, or a person belonging to a class of persons, specified in that Part, not to be an associate;"

- (ii) by deleting the definition of "indirect controller" and substituting -

"indirect controller" (間接控制人), in relation to a company -

- (a) subject to paragraph (b), means any person in accordance with whose directions or instructions the directors of the company or of another company of which it is a subsidiary are accustomed to act;

- (b) excludes, in relation to such provisions of this

ClauseAmendment Proposed

Ordinance as are specified in Part 3 of Schedule 1, a person, or a person belonging to a class of persons, specified in that Part, not to be an indirect controller;"

(iii) by deleting the definition of "working day";

(iv) in the definition of "結算所", by adding "認可" after "的".

(b) By deleting subclause (2).

(c) In subclause (6), by deleting "(2) or".

3 (a) In subclause (5)(b), by deleting "all due" and substituting "reasonable".

(b) By adding -

"(6A) Without prejudice to the generality of steps referred to in subsection (6) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person."

(c) In subclause (11), by deleting "all due" and substituting "reasonable".

(d) In subclause (12), by deleting "Schedule 1" and substituting

Clause

Amendment Proposed

- 4 (a) "Schedule 2".  
By adding -
- "(2A) Without prejudice to the generality of steps referred to in subsection (1)(ii) which may be specified in a notice under that subsection to be served on a company referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that company."
- (b) By deleting subclause (7) and substituting -
- "(7) It shall be a defence for a person charged with an offence under subsection (6) to prove that the person exercised reasonable diligence to comply with the notice under subsection (1) to which the offence relates."
- (c) In subclause (8), by deleting "Schedule 1" and substituting "Schedule 2".
- 6 (a) By deleting subclauses (1) and (2) and substituting -
- "(1) In this section, "minority controller" (次要控制人), in relation to a recognized exchange controller, Exchange Company or clearing house -
- (a) subject to paragraph (b), means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the recognized exchange controller, Exchange Company or

ClauseAmendment Proposed

clearing house, as the case may be, or of a company of which the recognized exchange controller, Exchange Company or clearing house, as the case may be, is a subsidiary;

(b) does not include -

(i) a recognized exchange controller; or

(ii) a person, or a person belonging to a class of persons, specified in Part 1 of Schedule 3 not to be a minority controller for the purposes of this Ordinance.

(2) Subject to subsections (2A) and (12), on and after the commencement of this section, a person shall not -

(a) be or become a minority controller of a recognized exchange controller, Exchange Company or clearing house except with the approval in writing of the Commission after consultation with the Financial Secretary; and

(b) if such approval is given, and subject to any condition specified in the approval disapplying this paragraph in whole or in part, increase the interest the person has

Clause

Amendment Proposed

as such minority controller except with the further approval in writing of the Commission after consultation with the Financial Secretary.

(2A) The Commission shall not give an approval under subsection (2)(a) or (b) unless it is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(2B) Where the Commission refuses to give an approval under subsection (2)(a) or (b), it shall give notice in writing of its reasons for the refusal to the person concerned."

(b) In subclause (4) -

(i) by deleting paragraph (a) and substituting -

"(a) in the case of subsection (3)(a), that the person -

(i) did not know that the acts or circumstances by virtue of which the person became a minority controller, or increased the interest the person has as a minority controller, as the case may be, of the recognized exchange controller, Exchange Company or clearing house concerned were

ClauseAmendment Proposed

such as to have that effect; or

(ii) exercised reasonable diligence to avoid contravening subsection (2);";

(ii) in paragraph (b), by deleting "all due" and substituting "reasonable".

(c) By adding -

"(5A) Without prejudice to the generality of steps referred to in subsection (5) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.".

(d) In subclause (10), by deleting "all due" and substituting "reasonable".

(e) In subclause (11), by deleting "Schedule 1" and substituting "Schedule 2".

7

(a) In subclause (4), by deleting "all due" and substituting "reasonable".

(b) By adding -

"(4A) Without prejudice to the generality of the Financial Secretary's power under subsection (1), a person is exempt from section 3(1) in the cases specified in Part 2 of Schedule 3.".

Clause

Amendment Proposed

8 By deleting the clause and substituting -

**"8. Duty to ensure orderly  
and fair market, etc.**

(1) It shall be the duty of -

- (a) a recognized exchange controller which is the controller of an Exchange Company or clearing house, and an Exchange Company, to each ensure, so far as is reasonably practicable, an orderly and fair market in securities or futures contracts traded on or through each Exchange Company;
- (b) a recognized exchange controller which is the controller of an Exchange Company or clearing house, an Exchange Company, and a clearing house, to each ensure, so far as is reasonably practicable, that risks are managed prudently; and
- (c) a recognized exchange controller which is the controller of an Exchange Company or clearing house to ensure, so far as is reasonably practicable, that the Exchange Company or clearing house, as the case may be, complies with any lawful requirement placed on it under any enactment or rule of law and with any other legal requirement placed on it.



ClauseAmendment Proposed

(2) In discharging its obligation under subsection (1)(a) or (b), a recognized exchange controller, Exchange Company and clearing house shall each -

- (a) act in the interests of the public, having particular regard to the interests of the investing public; and
- (b) ensure that where the interests referred to in paragraph (a) conflict with any other interests that it is required to serve under any other law, the former shall prevail.

(3) Without prejudice to the generality of section 56(1) of the Securities and Futures Commission Ordinance (Cap. 24), no liability shall be incurred by -

- (a) a recognized exchange controller, Exchange Company or clearing house; or
- (b) any person acting on behalf of a recognized exchange controller, Exchange Company or clearing house, including -
  - (i) any member of the board of directors of the recognized exchange controller, Exchange Company or clearing house; or
  - (ii) any member of any committee established by the recognized exchange controller, Exchange Company or clearing house,

in respect of anything done or omitted to be done in good

Clause

Amendment Proposed

faith in the discharge or purported discharge of the obligation under subsection (1), including that subsection as read with subsection (2).

(4) Where a recognized exchange controller is the controller of an Exchange Company or clearing house ("relevant body"), the relevant body's obligation under subsection (1) is not applicable to the relevant body in respect of anything done or omitted to be done in good faith by the relevant body in consequence of the discharge or purported discharge by the recognized exchange controller of the recognized exchange controller's obligation under that subsection."

9 (a) In subclause (1), by adding "and to submit such policies to the recognized exchange controller for its consideration" after "the controller".

(b) By deleting subclauses (4) and (5) and substituting -

"(4) The recognized exchange controller shall appoint not more than 2 of the members referred to in subsection (2)(b) of whom not less than one shall be a member of the board of directors of the recognized exchange controller who -

(a) is such a member otherwise than by virtue of an appointment under section 20(1); and

(b) is not the chief executive of the recognized exchange controller."

10 (a) In subclause (3), by adding "(together with its reasons for the refusal)" after "refuse to give its approval".

<u>Clause</u>	<u>Amendment Proposed</u>
	(b) In subclause (5), by deleting "on the advice of the Commission and generally or in a particular case" and substituting "after consultation with the Commission and the recognized exchange controller concerned".
15(2)(a)	By adding ", if any," after "competition".
16	(a) In the heading, by adding ", 2 or 3" after " <b>Schedule 1</b> ". (b) By adding ", 2 or 3" after "Schedule 1".
18	By deleting the definitions of "HKFE", "HKFECC", "SEHK" and "SEOCH".
20	By deleting the clause and substituting -  <b>"20. Financial Secretary may appoint not more than 8 persons to board of directors of HKEC</b>  (1) Notwithstanding any enactment or rule of law but subject to subsection (2), the Financial Secretary may appoint not more than 8 persons to be members of the board of directors of the HKEC where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.  (2) The Financial Secretary shall exercise his power under subsection (1) in such a way that, immediately

Clause

Amendment Proposed

following the annual general meeting of the HKEC held in 2003 and thereafter, the number of members of the board of directors of the HKEC who are such members by virtue of an appointment under that subsection is not more than the maximum number of members of that board who may be such members otherwise than by virtue of such an appointment (but excluding the chief executive of the HKEC).

(3) Subject to subsection (4), a member of the board of directors of the HKEC who is such a member by virtue of an appointment under subsection (1) shall have the same rights, privileges, obligations and liabilities under any enactment or rule of law as a member of that board who is such a member otherwise than by virtue of such an appointment.

(4) Notwithstanding any enactment or rule of law, no person appointed under subsection (1) as a member of the board of directors of the HKEC may be removed from that office by a resolution of the other directors of the board or a special resolution of the HKEC. "

21 By deleting the clause.

22 (a) In subclause (3) -

(i) in paragraph (d)(ii), by deleting "in a" and substituting "substantially in conformity with the guarantee referred to in subparagraph (i) to the satisfaction of the Commission or in another";

(ii) in paragraph (e), by deleting "5 working" and substituting "7".

ClauseAmendment Proposed

(b) In subclause (4), by adding -

"(ca) section 57B of the Companies Ordinance (Cap. 32) shall not apply to an issue of shares made pursuant to subsection (3)(b);".

(c) By adding -

"(5) The Commission may, at the request of the HKSCC, extend the period specified in subsection (3)(e) and whether or not the period has expired.".

24 By deleting "Schedule 2" and substituting "Schedule 4".

New By adding immediately after clause 24 -

"SCHEDULE 1 [ss. 2(1) & 16]

SPECIFICATION OF PERSONS WHO ARE ASSOCIATES,  
SPECIFICATION OF PERSONS WHO ARE NOT  
ASSOCIATES, AND SPECIFICATION OF  
PERSONS WHO ARE NOT INDIRECT  
CONTROLLERS, FOR SPECIFIED  
PROVISIONS OF THIS  
ORDINANCE

PART 1

SPECIFICATION OF PERSONS WHO ARE ASSOCIATES

Clause

Amendment Proposed

PART 2

SPECIFICATION OF PERSONS WHO ARE NOT ASSOCIATES

1. A person ("first person") is not an associate of another person ("second person") for all the provisions of this Ordinance insofar as -

(a) the first person or the second person is a clearing house (or its nominee) acting in its capacity as such;

(b) the first person is the chairman of a general meeting of a company entitled to exercise voting rights in the company due to his appointment as a proxy by the second person where the appointment -

(i) is for that meeting only; and

(ii) does not involve any valuable consideration; or

(c) the first person and the second person are persons who have appointed the chairman of the general meeting of a company as a proxy to exercise voting rights in the company where each appointment -

(i) is for that meeting only; and

(ii) does not involve any valuable consideration.

ClauseAmendment Proposed

2. A person is not an associate of another person for the purposes of section 6 of this Ordinance by reason only of each person having appointed the same person as a proxy to exercise voting rights in a company at a general meeting of the company where each appointment -

- (a) is for that meeting only; and
- (b) does not involve any valuable consideration.

## PART 3

SPECIFICATION OF PERSONS WHO ARE NOT  
INDIRECT CONTROLLERS

A person is not an indirect controller for all the provisions of this Ordinance insofar as the person is a person in accordance with whose directions or instructions the directors of a company or of another company of which it is a subsidiary are accustomed to act by reason only that they act on advice given by the person in the person's professional capacity."

Schedule 1 (a) By renumbering Schedule 1 as Schedule 2.

(b) In Schedule 2 -

- (i) in the heading, by adding "OF THIS ORDINANCE" after "6(5)";

Clause

Amendment Proposed

(ii) in section 1 -

(A) in subsection (2) -

(I) in paragraph (d), by deleting "otherwise." and substituting "otherwise;"

(II) by adding -

"(e) that the holder of the shares shall cause the shares to be transferred to a nominee of the Commission specified in the notice and within the period specified in the notice.";

(B) in subsection (8), by adding ", unless otherwise specified by the Court of First Instance," after "shall";

(C) by adding -

"(12) It is hereby declared that the operation of subsection (2)(b) or (e) shall not of itself cause any person to contravene section 3(1) or 6(2) of this Ordinance.";

(iii) in section 2(1) -

(A) by deleting paragraphs (a) and (b) and substituting -



ClauseAmendment Proposed

- "(a) exercises or purports to exercise any right to dispose of any shares, or of any right to be issued with any such shares, knowing that to do so contravenes any restrictions under section 1(2) to which the shares are subject;
- (b) votes in respect of any such shares as holder or proxy knowing that to do so contravenes any such restrictions;
- (ba) appoints a proxy in respect of any such shares knowing that to vote in respect of any such shares would contravene any such restrictions;"
- (B) in paragraph (c), by deleting "proxy; or" and substituting "proxy;"
- (C) in paragraph (d), by deleting "or (4)," and substituting "or (4); or"
- (D) by adding -
  - "(e) without reasonable excuse, fails to comply with a restriction under section 1(2)(e) to which any such shares are subject,"

Clause

Amendment Proposed

(iv) in section 3, by adding -

"(1A) Where a person is or may become a prohibited person in respect of a company, the Commission shall serve on the company a copy of the notice concerned under section 3(6) or 4(1) of this Ordinance."

New By adding immediately after Schedule 2 -

"SCHEDULE 3 [ss. 6(1), 7(4A) & 16]

PERSONS WHO ARE NOT MINORITY CONTROLLERS  
AND EXEMPTION FROM SECTION 3(1)  
OF THIS ORDINANCE

PART 1

SPECIFICATION OF PERSONS WHO ARE NOT  
MINORITY CONTROLLERS FOR THE  
PURPOSES OF THIS ORDINANCE

1. A person is not a minority controller for the purposes of this Ordinance insofar as the person is -

- (a) a clearing house (or its nominee) acting in its capacity as such; or
- (b) the chairman of a general meeting of a company entitled to exercise voting rights in the company due to his appointment as a

ClauseAmendment Proposed

proxy where the appointment -

- (i) is for that meeting only; and
- (ii) does not involve any valuable consideration.

2. A person is not a minority controller for all the provisions of this Ordinance by reason only of being entitled to exercise voting rights in a company due to his appointment as a proxy where the appointment -

- (a) is for only one general meeting of the company; and
- (b) does not involve any valuable consideration.

## PART 2

EXEMPTION FROM SECTION 3(1)  
OF THIS ORDINANCE

A person is exempt from section 3(1) of this Ordinance insofar as the person is -

- (a) a clearing house (or its nominee) acting in its capacity as such; or
- (b) the controller of a company by reason only of being the chairman of a general meeting of the company entitled to exercise voting rights in the company due to his appointment as a proxy where the

Clause

Amendment Proposed

appointment -

- (i) is for that meeting only; and
- (ii) does not involve any valuable consideration."

Schedule 2 (a) By renumbering Schedule 2 as Schedule 4.

(b) In Schedule 4 -

(i) by adding -

**"Stamp Duty Ordinance**

**13A. Interpretation**

Section 2(1) of the Stamp Duty Ordinance  
(Cap. 117) is amended -

- (a) by repealing the definition of "broker";
- (b) in the definition of "jobbing business", by repealing "a broker" and substituting "an exchange participant";
- (c) by adding -

"exchange  
participant" (交  
易 所 參 與 者 )  
means an

ClauseAmendment Proposed

exchange  
 participant within  
 the meaning of  
 section 2(1) of  
 the Stock  
 Exchanges  
 Unification  
 Ordinance (Cap.  
 361);".

**13B. Contract notes, etc. in  
 respect of sale and  
 purchase of  
 Hong Kong stock**

Section 19 is amended -

(a) in subsection (1F) -

(i) in paragraph (a),  
 by repealing "a  
 broker" and  
 substituting "an  
 exchange  
 participant";

(ii) by repealing "the  
 broker" where it  
 twice appears  
 and substituting  
 "the exchange  
 participant";

(b) in subsection (16), in the  
 definition of "rules", in  
 paragraph (b), by repealing

Clause

Amendment Proposed

"its members" and substituting "the exchange participants".

**13C. Stamp duty payable where transaction in respect of Hong Kong stock does not amount to jobbing business**

Section 20 is amended by repealing "broker" and substituting "exchange participant".

**13D. First Schedule amended**

The First Schedule is amended, in head 2(2), by repealing "broker" and substituting "exchange participant".

**13E. Exempted transaction specified for the purposes of section 19(1D) of this Ordinance**

The Fourth Schedule is amended -

- (a) in section 1, by repealing "a broker" where it twice appears and substituting "an exchange participant";
- (b) in section 3, in the definition of "rules", by adding "or the exchange participants" after

ClauseAmendment Proposed

"members".";

(ii) by adding -

**"17A. Approval of amendments to  
the constitution, rules  
of the Exchange Company,  
etc.**

Section 14 is amended -

(a) in subsection (3), by adding  
"together with, where  
paragraph (b) is applicable,  
its reasons for the refusal"  
after "thereof";

(b) in subsection (5), by  
repealing "on the advice of  
the Commission and either  
generally or in a particular  
case" and substituting "after  
consultation with the  
Commission and the  
Exchange Company".";

(iii) in section 44, by deleting paragraphs (b) and (c) and  
substituting -

"(b) by repealing subsections (2) and (3) and  
substituting -

"(2) The amount referred to  
in subsection (1) shall be deposited  
in respect of a trading right not later

Clause

Amendment Proposed

than 1 month after that subsection becomes applicable to the trading right.".";

(iv) by deleting section 62 and substituting -

**"62. Void agreements**

Section 26 is repealed.";

(v) by adding -

**"63A. Duty to ensure fair market**

Section 27A is repealed.";

(vi) by deleting section 65 and substituting -

**"65. Rules of the Unified Exchange**

Section 34 is amended -

(a) by repealing subsection (1)(b) and substituting -

"(b) to ensure compliance by its exchange participants with financial resources rules and, without derogation from



ClauseAmendment Proposed

the generality  
hereof such rules  
may -

(i) prescribe  
the returns  
to be made  
by exchange  
participants,  
the form of  
such  
returns, the  
information  
to be  
included  
therein and  
the manner  
in which  
such  
information  
is to be  
verified;

(ii) provide for  
the manner  
in which  
any assets  
are to be  
valued and  
for the  
payment by  
exchange  
participants  
of the costs  
of

Clause

Amendment Proposed

valuation;

(iii) prescribe the manner in which records are to be kept by exchange participants of any assets which may be taken into account for the purposes of financial resources rules and the places at which such records are to be maintained;

(iv) provide for the inspection of records by any duly authorized officer of the Exchange Company;

(ba) to deal with

ClauseAmendment Proposed

possible conflicts of interest that might arise where a relevant company or a relevant recognized exchange controller, within the meaning of section 13(1) of the Exchanges and Clearing Houses (Merger) Ordinance ( of 2000), seeks to be or is a listed company within the meaning of that section; and";

(b) by adding -

"(2A) The Secretary for Financial Services may, by notice in the Gazette, repeal subsection (1)(b).

(2B) The Commission may amend any rules made under subsection (1)(ba) by the Exchange Company (or

Clause

Amendment Proposed

by the Commission pursuant to this subsection) and, for that purpose, the Commission may exercise the power under that subsection instead of the Exchange Company.

(2C) Section 35 shall not apply to any rules made by the Commission under subsection (1)(ba) as read with subsection (2B)."

**65A. Commission to approve proposed rules and amendments to constitution, etc.**

Section 35 is amended -

(a) in subsection (3), by adding "  
", together with the reasons for the disallowance" after "constitution";

(b) by adding -

"(5) In this section, "rules" (規則) excludes rules referred to in section 34(2C).";

ClauseAmendment Proposed

(vii) by adding -

**"Securities and Futures (Clearing Houses) Ordinance**

**70A. Rules of recognized clearing houses, etc.**

Section 4 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) is amended -

- (a) in subsection (7), by adding "together with, where paragraph (b) is applicable, its reasons for the refusal" after "the submission";
- (b) in subsection (9), by repealing "on the advice of the Commission and either generally or in a particular case" and substituting "after consultation with the Commission and the recognized clearing house concerned".

**Personal Data (Privacy) Ordinance**

**70B. Interpretation**

Section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486) is amended, in

Clause

Amendment Proposed

the definition of "financial regulator", by adding

-

"(ea) a recognized exchange controller within the meaning of section 2(1) of the Exchanges and Clearing Houses (Merger) Ordinance ( of 2000);".

(viii) by adding -

**"Stamp Duty (Jobbing Business)  
(Options Market Makers)  
Regulation**

**83A. Interpretation**

Section 2 of the Stamp Duty (Jobbing Business) (Options Market Makers) Regulation (Cap. 117 sub. leg.) is amended -

(a) in the definition of "options market maker", by repealing "a broker" and substituting "an exchange participant";

(b) in the definition of "rules", by repealing "its members" and substituting "the exchange participants".

(ix) in section 85(b)(ii)(B), by deleting "participant" and substituting "participation".

附件 III

《1999年火器及彈藥（修訂）條例草案》

全體委員會審議階段

由保安局局長動議的修正案

條次

建議修正案

3 刪去(a)段。

新條文 加入 —

“4A. 對過境槍械及彈藥的管有

第 8 條現予修訂 —

(a) 將其重編為第 8(1)條；

(b) 加入 —

“ (2) 如任何人管有或經營的槍械或彈藥只限於下述者，則第 13 及 14 條並不適用於該等管有或經營

(a) 以下述方式帶進及運離香港的槍械或彈藥 —

(i) 由船隻帶進香港，再由另一船隻或飛機將其作為貨物運往其他地方；或

條次

建議修正案

- (ii) 由飛機帶進香港，再由船隻將其作為貨物運往其他地方，

而且 —

- (A) 在將該等槍械或彈藥帶進香港的船隻或飛機（“來港船隻或飛機”）的貨單上及在將該等槍械或彈藥運離香港的船隻或飛機（“離港船隻或飛機”）的貨單上，該等槍械或彈藥均記錄為貨物；及

- (B) 除在從來港船隻或飛機轉移至離港船隻或飛機的期間外，該等槍械或彈藥在停留香港的整段期間內，只留在來港船隻或飛機上或留在離港船隻或飛機上；及



條次建議修正案

- (C) 在該等槍械或彈藥轉移至離港船隻或飛機前，已將關於該等槍械或彈藥的詳情、來港船隻或飛機抵達香港的日期、時間及地點，以及離港船隻或飛機離開香港的日期、時間及地點通知處長；或
- (b) 由一架飛機（“前者”）帶進香港，再由另一架飛機（“後者”）運往其他地方的槍械或彈藥，而
- 
- (i) 在前者的貨單上及在後者的貨單上，該等槍械或彈藥均記錄為貨物；及
- (ii) 該等槍械或彈藥 —

條次

建議修正案

- (A) 除在從前者轉移至後者的期間外，其在停留香港的整段期間內，只留在前者上或留在後者上；或
  
- (B) 是從前者轉移至《航空保安條例》（第 494 章）第 2 條所指的禁區內一個由海關關長指定作存放用途的地點，並一直留在該處直至轉移至後者以便運離香港。”。

條次建議修正案

## 4B. 加入條文

現加入 —

“9A. 由承運人、承運人的代理人或  
僱員管有

如承運人或承運人的代理人或僱員，在有關槍械或彈藥的持牌人或其認可代理人在場的情況下管有或運送該等槍械或彈藥，而該等槍械或彈藥是該承運人、代理人或僱員在通常業務運作中從該持牌人或認可代理人處收取的，則第 13 或 14 條不適用於該等管有或運送。”。

## 6(c) 加入 —

“(5A) 處長在根據本條行使給予或撤銷授權的權力時，除考慮他可合理地考慮的任何其他有關事宜外，還須顧及 —

- (a) 有關的人是否屬擔任獲授權槍械導師的適當人選，或是否已不再是擔任獲授權槍械導師的適當人選；及
- (b) 讓該人擔任獲授權槍械導師一事，會否因為公眾安全及保安理由而遭非議。”。

## 7 (a) 在建議的第 12A 條中，加入 —

“(5A) 處長在根據本條行使給予或撤銷認可的權力時，除考慮他可合理地考慮的任何其他有關事宜外，還須顧及 —

條次

建議修正案

(a) 有關的人是否擔任認可代理人的適當人選，或是否已不再是擔任認可代理人的適當人選；及

(b) 讓該人擔任認可代理人一事，會否因為公眾安全及保安理由而遭非議。”。

(b) 刪去建議的第 12B 條而代以 —

“12B. 為申請牌照而進行測試時管有  
以及為測試或查驗而在運送  
過程中管有槍械或彈藥

(1) 第 13 條不適用於任何人在參加處長主持的關於使用或處理槍械或彈藥的測試過程中，管有進行測試時使用的槍械或彈藥。

(2) 第 13 及 14 條不適用於持牌人或其認可代理人為讓處長測試或查驗牌照所關乎的槍械或彈藥，而在運送該等槍械或彈藥往返進行測試或查驗的地方的過程中，管有該等槍械或彈藥。”。

11 加入 —

“(aa) 加入 —

“(3A) 處長在根據第(2)或(3)款行使批給牌照的權力時，除考慮他可合理地考慮的任何其他有關事宜外，還須顧及 —

(a) 申請人是否獲批給牌照的適當人選；

條次建議修正案

- (b) 是否有好的理由讓該申請人持有牌照；及
- (c) 向該申請人批給牌照一事，會否因為公眾安全及保安理由而遭非議。”；”。

16(c) 加入 —

“(3) 處長在根據第(1)款行使將牌照續期或拒絕將牌照續期的權力時，除考慮他可合理地考慮的任何其他有關事宜外，還須顧及 —

- (a) 有關的人是否持有牌照的適當人選，或是否已不再是持有牌照的適當人選；
- (b) 有好的理由讓該人持有牌照，還是沒有好的理由讓該人持有牌照；及
- (c) 讓該人持有牌照一事，會否因為公眾安全及保安理由而遭非議。”。

17 (a) 在(b)段中，廢除句號而代以分號。

(b) 加入 —

“(c) 加入 —

“(3) 處長在根據第(1)款行使取消牌照的權力時，除考慮他可合理地考慮的任何其他有關事宜外，還須顧及 —

條次

建議修正案

- (a) 有關的人是否已不再是持有牌照的適當人選；
- (b) 是否沒有好的理由讓該人持有牌照；及
- (c) 讓該人持有牌照一事，會否因為公眾安全及保安理由而遭非議。” 。” 。

18 (a) 在(a)段中，在建議的第 34(1AA)條中，在(a)段之前加入 —

“(aa) 根據第 4(3)條拒絕批給豁免，或更改或撤銷豁免；” 。

(b) 刪去(c)段而代以 —

“(c) 廢除第(2)款而代以 —

“(2) 除第(2A)款另有規定外，持牌人須於接獲根據第(1)款發出的通知書後的 28 天內，向處長交出牌照或將牌照交付處長供修訂（視情況所需而定）。

(2A) 如第(1)款提述的持牌人根據第 35 條就有關決定提出上訴，他須於該上訴已獲處置（他獲判上訴得直的情況除外）、撤銷或放棄之後，在切實可行的範圍內盡快向處長交出牌照或將牌照交付處長（視情況所需而定）。” 。” 。

條次建議修正案

- 19 (a) 在(a)(iv)段中，在“12(4)”之前加入“4(3)、”。
- (b) 刪去(b)段而代以 —
- “(b) 廢除第(2)款。”。
- 23 在建議的第 46C 條中 —
- (a) 在第(1)款中，刪去“以書面為以下目的並就某類型的射擊場認可該申請人”而代以“認可該人為射擊場主任，其職能是確保射擊場的安全使用，並尤可為以下目的而認可該人”；
- (b) 加入 —
- “(1A) 根據第(1)款給予的認可必須以書面作出，並且必須關乎某特定類型的射擊場。”；
- (c) 加入 —
- “(4A) 處長在根據本條行使給予或撤銷認可的權力時，除考慮他可合理地考慮的任何其他有關事直外，還須顧及 —
- (a) 有關的人是否擔任射擊場主任的適當人選，或是否已不再是擔任射擊場主任的適當人選；及
- (b) 讓該人擔任射擊場主任一事，會否因為公眾安全及保安理由而遭非議。”。

條次

建議修正案

27 在建議的第 58 條中，加入 —

“(3) 處長須在憲報刊登根據本條指明的格式。

(4) 根據本條指明的格式並非附屬法例。

(5) 《釋義及通則條例》(第 1 章)第 37 條適用於根據本條指明的格式。”。

新條文 加入 —

“《行政上訴委員會條例》

31. 修訂附表

《行政上訴委員會條例》(第 442 章)的附表的第 14 項現予修訂，在第 3 欄中加入 —

“(d) 第 34(1AA)條所提述的處長所作的決定。

(e) 根據第 4(3)、12(4)、12A(3)、27A(1)、29 或 46C(2)條施加被認為是不合理的條款或條件。”。



## Annex III

## FIREARMS AND AMMUNITION (AMENDMENT) BILL 1999

## COMMITTEE STAGE

Amendments to be moved by the Secretary for SecurityClauseAmendment Proposed

3 By deleting paragraph (a).

New By adding -

**"4A. Possession of arms and ammunition  
in transit**

Section 8 is amended -

(a) by renumbering it as section 8(1);

(b) by adding -

"(2) Sections 13 and 14 do not apply to the possession of or dealing in arms or ammunition by a person whose possession or dealing is limited to arms or ammunition -

(a) which are brought into Hong Kong on board -

(i) a vessel to be transported as cargo to some other place in another vessel or aircraft; or

Clause

Amendment Proposed

(ii) an aircraft to be transported as cargo to some other place in a vessel,

if -

(A) the arms or ammunition are recorded as cargo in the manifest of the vessel or aircraft in which they are brought into Hong Kong and the manifest of the vessel or aircraft in which they are transported out of Hong Kong; and

(B) the arms or ammunition remain on board either the vessel or aircraft in which they are brought into Hong Kong or the vessel or aircraft in which they are to be transported out of Hong Kong, at all

ClauseAmendment Proposed

times, except during the transfer to that vessel or aircraft, while the arms or ammunition are in Hong Kong; and

- (C) the Commissioner is given notice before the arms or ammunition are transferred to the vessel or aircraft in which they are to be transported out of Hong Kong, of the particulars of the arms or ammunition and the date, time and place of arrival in Hong Kong of the vessel or aircraft in which they are brought into Hong Kong and the date, time and place of departure from Hong Kong of the vessel or aircraft in which they are to be transported out of Hong Kong; or

Clause

Amendment Proposed

(b) which are brought into Hong Kong on board an aircraft ("the first aircraft") to be transported as cargo to some other place in another aircraft ("the second aircraft"), if -

(i) the arms or ammunition are recorded as cargo in the manifest of the first aircraft and the manifest of the second aircraft; and

(ii) the arms or ammunition -

(A) remain on board either the first aircraft or the second aircraft, at all times, except during the transfer to the second aircraft, while the arms or ammunition are in Hong

ClauseAmendment Proposed

Kong; or

- (B) are transferred from the first aircraft to a place of storage designated for the purpose by the Commissioner of Customs and Excise in the restricted area, within the meaning of section 2 of the Aviation Security Ordinance (Cap. 494), and remain there until they are transferred to the second aircraft to be transported out of Hong Kong."

Clause

Amendment Proposed

**4B. Section added**

The following is added -

**"9A. Possession by carriers, their agents or employees**

Sections 13 and 14 do not apply to the possession or transport of arms or ammunition by a carrier or an agent or employee of a carrier if the possession or transport is in the presence of the licensee of the arms or ammunition concerned or the approved agent of that licensee and the arms or ammunition was received in the ordinary course of business by the carrier or the agent or employee of the carrier from that licensee or approved agent."."

6(c) By adding -

"(5A) In exercising the powers under this section to grant or revoke an authorization, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

- (a) whether the person concerned is or has ceased to be a fit and proper person to be an authorized arms instructor; and
- (b) whether it is objectionable, for reasons of public safety and security, for that person to be an authorized arms instructor."

ClauseAmendment Proposed

7 (a) In the proposed section 12A by adding -

"(5A) In exercising the powers under this section to grant or revoke an approval, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to

-

(a) whether the person concerned is or has ceased to be a fit and proper person to be an approved agent; and

(b) whether it is objectionable, for reasons of public safety and security, for that person to be an approved agent."

(b) By deleting the proposed section 12B and substituting -

**"12B. Possession of arms or ammunition  
for being tested on application  
for licence, or while  
transporting for  
testing or inspection**

(1) Section 13 does not apply to the possession by a person, in the course of taking a test conducted by the Commissioner on the use or handling of arms or ammunition, of the arms or ammunition with which the test is conducted.

(2) Sections 13 and 14 do not apply to the possession by a licensee or his approved agent of arms or ammunition to which the licence relates, in the course of transporting the arms or ammunition, for the purpose of testing or inspection by the Commissioner,

Clause

Amendment Proposed

to and from the place at which the testing or inspection is to take place."

11 By adding -

"(aa) by adding -

"(3A) In exercising the powers under subsection (2) or (3) to grant a licence, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

- (a) whether the applicant is a fit and proper person to be granted a licence;
- (b) whether there is good reason for that applicant to hold a licence; and
- (c) whether it is objectionable, for reasons of public safety and security, to grant the licence to that applicant.";

16(c) By adding -

"(3) In exercising the powers under subsection (1) to renew or refuse to renew a licence, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

- (a) whether the person concerned is or has ceased to be a fit and proper person to hold



<u>Clause</u>	<u>Amendment Proposed</u>
	a licence;
	(b) whether there is good reason for that person to hold a licence or no such good reason; and
	(c) whether it is objectionable, for reasons of public safety and security, for that person to hold a licence."
17	(a) In paragraph (b) by repealing the full stop and substituting a semicolon.
	(b) By adding -
	"(c) by adding -
	"(3) In exercising the powers under subsection (1) to cancel a licence, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -
	(a) whether the person concerned has ceased to be a fit and proper person to hold a licence;
	(b) whether there is no good reason for that person to hold a licence; and

Clause

Amendment Proposed

- (c) whether it is objectionable, for reasons of public safety and security, for that person to hold a licence."."
- 18 (a) In paragraph (a), in the proposed section 34(1AA) by adding before paragraph (a) -
- "(aa) refuses to grant an exemption or varies or revokes such an exemption under section 4(3);".
- (b) By deleting paragraph (c) and substituting -
- "(c) by repealing subsection (2) and substituting -
- "(2) Subject to subsection (2A), a licensee to whom notice is given under subsection (1) shall, within 28 days after the notice is given, surrender the licence to the Commissioner or deliver it to him for amendment, as the case may require.
- (2A) If a licensee referred to in subsection (1) appeals under section 35 against the decision, he shall surrender or deliver the licence, as the case may require, as soon as practicable after the appeal is disposed of (except where the decision is in his favour), withdrawn or abandoned."."

ClauseAmendment Proposed

- 19           (a)    In paragraph (a)(iv) by adding "4(3)," before "12(4)".
- (b)    By deleting paragraph (b) and substituting -
- "(b) by repealing subsection (2).".
- 23           In the proposed section 46C -
- (a)    in subsection (1) by deleting "in writing the applicant, in relation to a particular type of shooting range," and substituting "the person as a range officer with the function of ensuring the safe use of a shooting range, and in particular,";
- (b)    by adding -
- "(1A) An approval under subsection (1) must be in writing and relate to a particular type of shooting range.";
- (c)    by adding -
- "(4A) In exercising the powers under this section to grant or revoke an approval, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -
- (a)    whether the person concerned is or has ceased to be a fit and proper person to be a range officer; and

Clause

Amendment Proposed

- (b) whether it is objectionable, for reasons of public safety and security, for that person to be a range officer."

27 In the proposed section 58 by adding -

"(3) The Commissioner shall publish in the Gazette forms specified under this section.

(4) Forms specified under this section are not subsidiary legislation.

(5) Section 37 of the Interpretation and General Clauses Ordinance (Cap. 1) applies to forms specified under this section."

New By adding -

**"Administrative Appeals Board  
Ordinance**

**31. Schedule amended**

Item 14 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended in column 3 by adding -

"(d) A decision of the Commissioner referred to in section 34(1AA).

(e) The imposition of a term or condition under section 4(3), 12(4), 12A(3), 27A(1), 29 or

ClauseAmendment Proposed

46C(2), which is considered to be unreasonable."."