

律政司法律草擬科的信頭
Letterhead of DEPARTMENT OF JUSTICE Law Drafting Division

本司檔號 Our Ref.: LDT/884/00/0C 'B' II
來函檔號 Your Ref.: SU B56/7(99)X
電話號碼 Tel. No.: 2867 4526 (Fax No. 2845 2215)

14 December 1999

Ms Leung Siu-kum
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road
Central, Hong Kong.

BY FAX: 28696794

Dear Ms Leung,

Bills Committee
Exchanges and Clearing Houses (Merger) Bill
Meeting on 8 December 1999.

At the above meeting, members of the committee raised certain questions regarding the implementation and potential effect of Schedule 1 of the Bill.

2. Mr Fox explained that Schedule 1 was adapted from similar provisions under the Insurance Companies Ordinance (Cap. 41) and the Banking Ordinance (Cap. 155) and promised to provide copies of these provisions for members' reference. Attached please find copies of -

- (a) sections 13C and 13D of the Insurance Companies Ordinance (Cap. 41); and
- (b) sections 70B, 70C and 70D of the Banking Ordinance (Cap. 155).

3. As promised, we have also written to the Insurance Authority and the Hong Kong Monetary Authority regarding the implementation of the above provisions. We will let you know once we have heard from them.

Yours sincerely,

(Ms Mabel Cheung)
Government Counsel
Law Drafting Division

(7) If a person is aggrieved by the decision of the Insurance Authority to serve a notice of objection on him, he may, within 1 month from the date on which the notice is served, appeal against the decision to the Financial Secretary whose decision shall be final.

(8) No transaction relating to the acquisition of voting power in an insurer shall be void or voidable by reason only of a contravention of subsection (2).

(9) Subject to subsection (10), any person who fails to comply with subsection (2) commits an offence and is liable to a fine of \$200,000 and, in the case of an individual, to imprisonment for 2 years. (Amended 35 of 1996 s. 7)

(10) Where a person is charged with an offence under subsection (9), it shall be a defence to prove that he did not know that the acts or circumstances by virtue of which he became a controller of the insurer concerned were such as to have that effect.

(11) Any person who fails to comply with subsection (3) commits an offence and is liable to a fine of \$200,000 and, in the case of an individual, to imprisonment for 2 years, together with a fine of \$2,000 for each day on which the offence continues. (Amended 35 of 1996 s. 7)

(Added 44 of 1990 s. 3)

13C. Restrictions on and sale of shares where there has been a contravention of section 13B(2)

(1) The powers conferred by this section shall be exercisable where a person has become a controller of an insurer in contravention of section 13B(2) in that—

- (a) a notice in writing has been served under section 13B(2)(a) on the Insurance Authority by that person in respect of that insurer but none of the events specified in section 13B(2)(b) has occurred; (Amended 35 of 1996 s. 8)
(b) no notice in writing has been served under section 13B(3) on the Insurance Authority by that person in respect of that contravention;
(c) a notice in writing has been served under section 13B(3) on the Insurance Authority by that person in respect of that contravention, the Insurance Authority has served a notice of objection under section 13B(4) on that person in respect of that contravention, and either—
(i) the period specified in section 13B(7) within which that person may appeal against the decision of the Insurance Authority to so serve such notice of objection has expired without any such appeal having been made; or

(7) 任何人如因保險業監督向他送達反對通知書的決定而感到受屈，可在自通知書的送達日期起計 1 個月內，就該項決定向財政司司長提出上訴，而財政司司長的決定即為最終決定。(由 1997 年第 362 號法律公告修訂)

(8) 任何有關取得保險人內部投票權的交易，不得純粹因違反第 (2) 款而屬無效或可使無效。

(9) 除第 (10) 款另有規定外，任何人不遵從第 (2) 款，即屬犯罪，可處罰款 \$200,000，如屬個人，則可另處監禁 2 年。(由 1996 年第 35 號第 7 條修訂)

(10) 凡任何人被控犯有第 (9) 款所訂的罪行，如該人證明他並不知道自己成為有關的保險人的控權人所應循的行為或情況會有該效果，即可以此作為免責辯護。

(11) 任何人不遵從第 (3) 款，即屬犯罪，可處罰款 \$200,000，如屬個人，則可另處監禁 2 年，而在該項罪行持續期間，另加每日罰款 \$2,000。(由 1996 年第 35 號第 7 條修訂)

(由 1990 年第 44 號第 3 條增補)

13C. 在如有違反第 13B(2) 條的情況下對股份的限制及售賣股份

(1) 凡任何人在以下情況下違反第 13B(2) 條而成為保險人的控權人，則本條所授予的權力即可行使——

- (a) 該人已根據第 13B(2)(a) 條就保險人向保險業監督送達通知書，但第 13B(2)(b) 條所指明的情況均沒有出現；(由 1996 年第 35 號第 8 條修訂)
(b) 該人並沒有根據第 13B(3) 條就該項違反向保險業監督送達通知書；
(c) 該人已根據第 13B(3) 條就該項違反向保險業監督送達通知書，而保險業監督亦已根據第 13B(4) 條就該項違反向該人送達反對通知書，而——
(i) 第 13B(7) 條指明該人可就保險業監督向他送達反對通知書的決定而提出上訴的期限已屆滿，但該人都並沒有提出上訴；或

- (ii) an appeal under section 13B(7) by that person against the decision of the Insurance Authority to so serve such notice of objection is unsuccessful; or
- (d) that person has been convicted of an offence under section 13B(9) in respect of that contravention.
- (2) Subject to subsection (6), the Insurance Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—
- (a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of such shares, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment shall be made of any sums due from the insurer on the shares, whether in respect of capital or otherwise.
- (3) Where shares are subject to the restrictions under subsection (2)(a), any agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them, shall be void.
- (4) Where shares are subject to the restrictions under subsection (2)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation) shall be void.
- (5) Subject to subsection (7), the Court of First Instance may, on the application of the Insurance Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions. (Amended 25 of 1998 s. 2)
- (6) Where the Insurance Authority has, by virtue of subsection (1)(b), served a notice in writing under subsection (2) on the person concerned and—
- (a) that person has, not later than 14 days after the service of that notice, served a notice in writing under section 13B(3) on the Insurance Authority in respect of the contravention of section 13B(2) to which that first-mentioned notice relates; and
- (b) one of the following occurs—
- (i) the Insurance Authority has, before the expiration of 3 months from the date on which that notice under section 13B(3) has been served on him, notified that person in writing that there is no objection to his having become the controller, within the meaning of section 13B, to which that contravention relates;

- (ii) 該人根據第 13B(7) 條就保險業監督向他送達反對通知書的決定而提出的上訴失敗；或
- (d) 該人已就該項違反根據第 13B(9) 條被定罪。
- (2) 除第 (6) 款另有規定外，保險業監督可藉向有關的人送達通知書，指示本條適用的任何指明股份須受以下一項或多項限制所規限，直至另行通知為止——
- (a) 轉讓該等股份或（如股份屬未發行股份）轉讓獲發該等未發行股份的權利，以及發行該等未發行股份，均屬無效；
- (b) 不得行使該等股份的投票權；
- (c) 不得依憑該等股份，或依據向該等股份的持有人提出的要約而再發行股份；
- (d) 除非在清盤的情況下，否則不得支付保險人在股份方面欠付的任何款項，不論該等款項是否就股本而支付。
- (3) 凡任何股份正受第 (2)(a) 款所訂的限制所規限，則任何轉讓該等股份的協議，或（如股份屬未發行股份）轉讓獲發該等未發行股份的權利的協議，均屬無效。
- (4) 凡任何股份正受第 (2)(c) 或 (d) 款所訂的限制所規限，則任何轉讓依憑該等股份而獲發其他股份的權利的協議，或任何轉讓在非清盤情況下就該等股份收取款項的權利的協議，均屬無效。
- (5) 在不抵觸第 (7) 款的條文下，原訟法庭可應保險業監督的申請，命令暫實本條適用的任何指明股份，如該等股份當時正受第 (2) 款所訂的限制所規限，則可命令該等股份不再受該等限制所規限。 (由 1998 年第 25 號第 2 條修訂)
- (6) 凡保險業監督已憑第 (1)(b) 款向有關的人送達根據第 (2) 款而發出的通知書，而——
- (a) 該人在通知書送達後 14 日內，就上述的通知書所指違反第 13B(2) 條一事，根據第 13B(3) 條向保險業監督送達通知書；及
- (b) 以下其中一種情況出現——
- (i) 自根據第 13B(3) 條向保險業監督送達該通知書的送達日期起計 3 個月屆滿前，保險業監督已以書面通知該人，表示沒有反對他成為（該項違反是與此有關的）第 13B 條所指的控罪人；

- (ii) no preliminary notice of objection under section 13B(4) has been served by the Insurance Authority on that person in respect of that contravention within 3 months from the date on which the notice under section 13B(3) has been served on the Insurance Authority;
- (iii) where a preliminary notice of objection under section 13B(4) has been served on the person in respect of that contravention—
 - (A) the Insurance Authority has, before the expiration of 2 months from the date of service of the preliminary notice, notified that person in writing that there is no objection to his having become the controller, within the meaning of section 13B, to which that contravention relates; or
 - (B) the period referred to in sub-paragraph (A) has expired without the Insurance Authority having served on that person a notice of objection under section 13B(4) in respect of that contravention; or
- (iv) a notice of objection has been so served within the period referred to in subparagraph (iii)(A) but an appeal under section 13B(7) by that person against the decision of the Insurance Authority to so serve such notice of objection is successful. (*Replaced 35 of 1996 s. 8*)

the Insurance Authority shall forthwith serve a notice in writing on that person to the effect that the first-mentioned notice is revoked.

(7) The Insurance Authority shall not, by virtue of subsection (1)(b), make an application referred to in subsection (5) unless—

- (a) the application relates to shares which are the subject of a notice in writing under subsection (2); and
- (b) the person upon whom that notice has been served has not, within 14 days after the service of that notice, served a notice in writing under section 13B(3) in respect of the contravention of section 13B(2) to which that first-mentioned notice relates;

Provided that this subsection shall be without prejudice to the Insurance Authority's power, by virtue of subsection (1)(c), to subsequently make such an application in respect of those shares.

(8) Where an order has been made under subsection (5) the Court of First Instance may, on the application of the Insurance Authority, make such further order relating to the sale or transfer of the shares as it thinks fit. (*Amended 25 of 1998 s. 2*)

(9) Where shares are sold in pursuance of an order under this section the proceeds of the sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds to be paid to him. (*Amended 25 of 1998 s. 2*)

- (ii) 保險業監督沒有在自根據第 13B(3) 條向他送達通知書的日期起計 3 個月內，根據第 13B(4) 條就該項違反向該人送達初步反對通知書；
- (iii) 如已根據第 13B(4) 條就該項違反向該人送達初步反對通知書——
 - (A) 自初步通知書送達日期起計 2 個月屆滿前，保險業監督已以書面通知該人，表示沒有反對該人成為(該項違反是與此有關的) 第 13B 條所指的控權人；或
 - (B) (A) 分節提述的期限屆滿，而保險業監督沒有根據第 13B(4) 條就該項違反向該人送達反對通知書；或
- (iv) 反對通知書已在第 (iii)(A) 節提述的期間內送達，但該人根據第 13B(7) 條就保險業監督如此向他送達反對通知書的決定而提出的上訴得直。 (*由 1996 年第 35 號第 8 條代替*)

則保險業監督須立即向該人送達通知書，說明撤銷該首述的通知書。

(7) 除非符合下述情況，否則保險業監督不得憑藉第 (1)(b) 款而提出第 (5) 款所提述的申請——

- (a) 該項申請與根據第 (2) 款發出的通知書內所指的股份有關；及
- (b) 獲送達通知書的人並沒有在通知書送達後 14 日內，根據第 13B(3) 條就首述的通知書所指違反第 13B(2) 條一事，送達通知書；

但不該並不損害保險業監督隨後憑藉第 (1)(c) 款就該等股份提出該申請的權力。

(8) 凡已根據第 (5) 款作出命令，則原訟法庭可應保險業監督的申請，作出原訟法庭認為合適並與出售或轉讓股份有關的進一步命令。 (*由 1998 年第 25 號第 2 條修訂*)

(9) 凡任何股份依據本條下的命令出售，則所得收益減去該項買賣所招致的費用後，須為了對該等所得收益有實益權益的人的利益而付予法院，而任何該等人士可向原訟法庭申請作出命令，將該等所得收益全部或部分向他支付。 (*由 1998 年第 25 號第 2 條修訂*)

(10) This section applies to all the shares by virtue of which a person who has become a controller of an insurer in contravention of section 13B(2) is, whether alone or with any associate within the meaning of section 9(4) or through a nominee, entitled to exercise, or control the exercise of, the voting power at any general meeting of the insurer, but does not include any such shares held by that person, or any such associate or nominee, before that person became such a controller.

(11) A copy of a notice in writing served under subsection (2) or (6) on the person concerned shall be served on the insurer to whose shares it relates and, if it relates to shares held by an associate within the meaning of section 9(4), or a nominee, of that person, on that associate or nominee, as the case may be.

(Added 44 of 1990 s. 3)

13D. Punishment for attempted evasion of restrictions

(1) A person commits an offence and is liable to a fine at level 4 and to imprisonment for 6 months if he --

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to any restrictions under section 13C(2) or of any right to be issued with any such shares;
- (b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them;
- (c) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy; or
- (d) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 13C(3) or (4).

(2) Where shares in an insurer are issued in contravention of restrictions under section 13C(2), or payments are made by an insurer in contravention of such restrictions, the insurer commits an offence and is liable to a fine at level 4 and, in the case of an individual who commits the like offence by virtue of section 57, to imprisonment for 6 months.

(Added 44 of 1990 s. 3. Amended 35 of 1996 s. 9)

(10) 在違反第 13B(2) 條的情況下成為保險人的控權人的人，可憑藉該等股份而有權單獨或連同第 9(4) 條所指的相聯者或透過代名人，在保險人的大會上行使或控制行使投票權者，本條即適用於所有該等股份，但不包括該人或任何該等相聯者或代名人在該人成為控權人之前所持有的股份。

(11) 根據第 (2) 或 (6) 款向有關的人送達的通知書的副本，須送達予持有通知書所關乎的股份的保險人，如通知書關乎上述有關的人的相聯者 (第 9(4) 條所指者) 或代名人所持有的股份，則須送達該相聯者或代名人 (視屬何情況而定)。

(由 1990 年第 44 號第 3 條增補)

13D. 對企圖逃避限制的懲罰

(1) 任何人有以下情況，即屬犯罪，可處第 4 級罰款及監禁 6 個月——

- (a) 行使或其意是行使任何權利，以處置任何據其所知在當其時正受第 13C(2) 條所訂的限制所規限的股份，或行使或其意是行使處置獲發行該等股份的權利；
- (b) 不論以持有人或代表的身份，就任何該等股份投票，或委任任何代表就該等股份投票；
- (c) 身為任何該等股份的持有人，但卻沒有將該等股份受到上述限制所規限一事，通知任何他不知道已察覺該事，但他知道是有權 (假若沒有該等限制) 以持有人或代表身分就該等股份投票的人；或
- (d) 身為該等股份的持有人，或身為有權依憑該等股份而獲發其他股份的人，或身為有權在非清盤情況下就該等股份收取任何款項的人，但卻訂立根據第 13C(3) 或 (4) 條屬無效的協議。

(2) 凡在違反第 13C(2) 條所訂的限制下發行任何保險人的股份，或保險人在違反該等限制下支付任何款項，該保險人即屬犯罪，可處第 4 級罰款，而根據第 57 條屬犯同類罪行的個人，則可另處監禁 6 個月。

(由 1990 年第 44 號第 3 條增補。由 1996 年第 35 號第 9 條修訂)

70B. Restrictions on and sale of shares

(1) This section shall apply to a person being a majority shareholder controller of an authorized institution incorporated in Hong Kong as it applies to a person being a minority shareholder controller of an authorized institution incorporated in Hong Kong.

(2) The powers conferred by this section shall be exercisable where a person—

- (a) has become a minority shareholder controller of an authorized institution in contravention of section 70(3) in that—
- (i) a notice in writing has been served under section 70(3)(a) on the Monetary Authority by that person in respect of that institution but neither of the events specified in section 70(3)(b) has occurred;
 - (ii) no notice in writing has been served under section 70(5) in respect of that contravention;
 - (iii) a notice in writing has been served under section 70(5) on the Monetary Authority by that person in respect of that contravention, the Monetary Authority has served a notice of objection under section 70(6) on that person in respect of that contravention, and either—
 - (A) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg.) within which that person may appeal under section 132A(3) against the decision of the Monetary Authority to serve such notice of objection has expired without any such appeal having been made; or
 - (B) an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is unsuccessful; or
 - (iv) that person has been convicted of an offence under section 70(18) in respect of that contravention; or
- (b) continues to be a minority shareholder controller of an authorized institution after having been served with a notice of objection under section 70A(3) in respect of his being such a controller and either—
- (i) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg.) within which that person may appeal under section 132A(3) against the decision of the Monetary Authority to so serve such notice of objection has expired without any such appeal having been made; or

70B. 對股份的限制及股份的售賣

(1) 本條適用於本身為在香港成立為法團的認可機構的大股東控權人的人，一如其適用於本身為在香港成立為法團的認可機構的小股東控權人的人。

(2) 任何人如有以下情形，則本條授予的權力可予行使——

- (a) 在違反第 70(3) 條的情況下成為認可機構的小股東控權人，而該等情況是——
- (i) 該人已根據第 70(3)(a) 條就該機構向金融管理專員送達書面通知，但第 70(3)(b) 條所指明的兩種情況均沒有出現；
 - (ii) 並沒有根據第 70(5) 條就該項違反送達書面通知；
 - (iii) 該人已根據第 70(5) 條就該項違反向金融管理專員送達書面通知，金融管理專員已根據第 70(6) 條就該項違反向該人送達反對通知書，而——
 - (A) 該人就金融管理專員向他送達該反對通知書的決定在《行政上訴規則》(第 1 章，附屬法例)內指明的可根據第 132A(3) 條提出上訴的期限已屆滿，但該人並沒有提出上訴；或
 - (B) 該人根據第 132A(3) 條就金融管理專員向他如此送達該反對通知書的決定而提出的上訴不成功；或
 - (iv) 該人已就該項違反根據第 70(18) 條被定罪；或
- (b) 就本身為認可機構小股東控權人而根據第 70A(3) 條獲送達反對通知書後，仍繼續為該等控權人，而——
- (i) 該人就金融管理專員向他送達該反對通知書的決定在《行政上訴規則》(第 1 章，附屬法例)內指明的可根據第 132A(3) 條提出上訴的期限已屆滿，但該人並沒有提出上訴；或

(ii) an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is unsuccessful. (Amended 4 of 1997 s. 27)

(3) Subject to subsection (8), the Monetary Authority may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of such shares, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or pursuant to any offer made to their holder;
- (d) except in a liquidation, no payment shall be made of any sums due from the authorized institution, or other company, concerned on the shares, whether in respect of capital or otherwise.

(4) Where shares are subject to the restrictions under subsection (3)(a), my agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them, shall be void.

(5) Where shares are subject to the restrictions under subsection (3)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), shall be void.

(6) Where shares are subject to any restrictions under subsection (3), any person affected by any of those restrictions may request the Monetary Authority to make an application referred to in subsection (7)(a) in respect of those shares and, where such a request is made, the Monetary Authority shall, not later than 1 month after that request has been made—

- (a) if, by virtue of subsection (9), the Monetary Authority is prohibited from making such an application, serve a notice in writing on that person stating that he is so prohibited;
- (b) in any other case—
 - (i) comply with that request; or
 - (ii) serve a notice in writing on that person stating that he does not propose to comply with that request.

(7) Subject to subsection (9), the Court of First Instance may— (Amended 25 of 1998 s. 2)

- (a) on the application of the Monetary Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (3), that they shall cease to be subject to those restrictions;
- (b) on the application of a person who has made a request under subsection (6) where—

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(ii) 該人根據第 132A(3) 條就金融管理專員向他如此送達該反對通知書的決定而提出的上訴不成功。 (由 1997 年第 4 號第 27 條修訂)

(3) 在不抵觸第 (8) 款的規定下，金融管理專員可藉向有關的人送達的書面通知，指示本條適用的任何指明股份須受以下一項或多於一項限制所規限，直至另行通知為止——

- (a) 轉讓該等股份或(如股份屬未發行股份)轉讓獲發該等未發行股份的權利，以及發行該等未發行股份，均屬無效；
- (b) 不得就該等股份行使表決權；
- (c) 不得依憑該等股份，或依據向該等股份的持有人提出的要約而再發行股份；
- (d) 除非在清盤的情況下，否則不得支付有關應可機構或其他公司在股份方面欠付的任何款項，不論該等款項是否就股本而支付。

(4) 凡任何股份受第 (3)(a) 款所訂的限制所規限，則任何轉讓該等股份的協議或(如股份屬未發行股份)轉讓獲發該等未發行股份的權利的協議，均屬無效。

(5) 凡任何股份受第 (3)(c) 或 (d) 款所訂的限制所規限，則任何轉讓依憑該等股份而獲發其他股份的權利的協議，或任何轉讓在非清盤情況下就該等股份收取款項的權利的協議，均屬無效。

(6) 凡任何股份受第 (3) 款所訂的限制所規限，任何受該等限制影響的人，可要求金融管理專員就該等股份而提出第 (7)(a) 款提述的申請；凡有該等要求提出，在該等要求提出後不遲於 1 個月——

- (a) 如金融管理專員因第 (9) 款被禁止提出該等申請，金融管理專員須向該人送達書面通知，說明他被禁止提出該等申請；
- (b) 如屬其他情況，金融管理專員須——
 - (i) 依照該要求行事；或
 - (ii) 向該人送達書面通知，說明他不擬依照該要求行事。

(7) 在不抵觸第 (9) 款的條文下，原訟法庭可—— (由 1998 年第 25 號第 2 條修訂)

- (a) 應金融管理專員的申請，命令售賣本條適用的任何指明股份，如該等股份當其時正受第 (3) 款所訂的任何限制所規限，則可命令該等股份不再受該等限制所規限；
- (b) 應一名已根據第 (6) 款提出要求的人的申請，在以下情況下——

- (i) paragraph (b) of that subsection applies in respect of that request; and
- (ii) he has been served with a notice in writing under paragraph (b)(ii) of that subsection in respect of that request; or
- (iii) the period specified in that subsection has expired and neither of the events referred to in paragraph (b) of that subsection has occurred in respect of that request,
- order the sale of any shares to which that request relates and that they shall cease to be subject to any restrictions under subsection (3).
- (8) Where the Monetary Authority has, by virtue of subsection (2)(a)(ii), served a notice in writing under subsection (3) on the person concerned and—
- (a) that person has, not later than 14 days after the service of that notice, served a notice in writing under section 70(5) on the Monetary Authority in respect of the contravention of section 70(3) to which that first-mentioned notice relates; and
- (b) either—
- (i) no notice of objection under section 70(6) has been served by the Monetary Authority on that person in respect of that contravention within the period in respect of which section 70(9)(b) permits such a notice of objection to be so served; or
- (ii) such a notice of objection has been so served within that period but an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is successful, (*Amended 4 of 1997 s. 27*)
- whichever first occurs,
- the Monetary Authority shall forthwith serve a notice in writing on that person to the effect that the first-mentioned notice is revoked.
- (9) The Monetary Authority shall not, by virtue of subsection (2)(a)(ii), make an application referred to in subsection (7)(a) unless—
- (a) the application relates to shares which are the subject of a notice in writing under subsection (3); and
- (b) the person upon whom that notice has been served has not, within 14 days after the service of that notice, served a notice in writing under section 70(5) in respect of the contravention of section 70(3) to which that first-mentioned notice relates:
- Provided that this subsection shall be without prejudice to the Monetary Authority's power, by virtue of subsection (2)(a)(iii), to subsequently make such an application in respect of those shares. (*Amended 82 of 1992 s. 19*)

- (i) 該款 (b) 段適用於該項要求；及
- (ii) 該人就該項要求根據該款 (b)(ii) 段獲送達書面通知；或
- (iii) 該款指明的期限屆滿而就該項要求於該款 (b) 段所述的兩種情況均沒有出現，
- 命令將與該項要求有關的任何股份售賣並不再受第 (3) 款的任何限制規限。
- (8) 凡金融管理專員已憑藉第 (2)(a)(ii) 款向有關的人送達第 (3) 款所指的書面通知，而——
- (a) 該人在該通知書送達後不遲於 14 天，就該通知書所指違反第 70(3) 條一事，根據第 70(5) 條向金融管理專員送達書面通知；及
- (b) (i) 在第 70(9)(b) 條容許送達第 70(6) 條所指的反對通知書的期限內，金融管理專員並沒有就該項違反向該人如此送達該等反對通知書；或
- (ii) 該等反對通知書已在該期間內如此送達，但該人根據第 132A(3) 條就金融管理專員向他如此送達該等反對通知書的決定而提出的上訴得直，（由 1997 年第 4 號第 27 條修訂）
- 兩種情況以較先出現的為準，
- 則金融管理專員須立即向該人送達意指撤銷該首述通知書的書面通知。
- (9) 除非符合下述情況，否則金融管理專員不得憑藉第 (2)(a)(ii) 款而提出第 (7)(a) 款所提述的申請——
- (a) 該項申請與根據第 (3) 款發出的書面通知內所指的股份有關；及
- (b) 獲送達該通知書的人並沒有在該通知書送達後 14 天內，根據第 70(5) 條就與該通知書有關的違反第 70(3) 條一事，送達書面通知；
- 但本款並不損害金融管理專員隨後憑藉第 (2)(a)(iii) 款就該等股份提出該等申請的權力。（由 1992 年第 82 號第 19 條修訂）

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(10) Where an order has been made under subsection (7), the Court of First Instance may, on the application of the Monetary Authority, make such further order relating to the sale or transfer of the shares as it thinks fit. (Amended 25 of 1998 s. 2)

(11) Where shares are sold pursuant to an order under this section, the proceeds of the sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds be paid to him. (Amended 25 of 1998 s. 2)

(12) This section shall apply—

(a) to all the shares in the authorized institution concerned by virtue of which the person concerned is a minority shareholder controller of the institution which are held by him or any associate of his and were not so held immediately before he became such a controller; and

(b) where the person concerned became a minority shareholder controller of the authorized institution concerned by virtue of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held immediately before he became such a controller.

(13) A copy of a notice in writing served under subsection (3) or (8) on the person concerned shall be served on the authorized institution or other company to whose shares it relates and, if it relates to shares held by any associate of that person, on that associate.

(14) The Chief Justice may make rules regulating the practice and procedure in connection with applications (including any class of applications) made under subsection (7).

(Added 95 of 1991 s. 18. Amended 82 of 1992 s. 25)

70C. Prohibition on certain persons acting as indirect controllers

(1) In this section, "prohibited person" (受禁制的人), in relation to an authorized institution, means any person—

(a) who has been served with a notice of objection under section 70(6) in respect of his becoming or being, as the case may be, an indirect controller of the institution and either—

(i) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg.) within which that person may appeal under section 132A(3) against the decision of the Monetary Authority to so serve such notice of objection has expired without any such appeal having been made; or

(10) 凡已根據第 (7) 款作出命令，則原訟法庭可應金融管理專員的申請，作出原訟法庭認為適當並與該等股份的出售或轉讓有關的進一步命令。(由 1998 年第 25 號第 2 條修訂)

(11) 凡任何股份依據本條的命令售出，則該項售賣的收益在減去該項售賣的費用後，須為享有該等所得收益的實益權益的人的利益而賺存於法院，而任何該等人可向原訟法庭申請作出命令，將該等所得收益全部或部分支付予他。(由 1998 年第 25 號第 2 條修訂)

(12) 本條的適用範圍如下——

(a) 凡有關的人憑藉有關認可機構的股份而屬該機構的小股東控權人，本條適用於所有由該人或任何其他相關者所持有的該機構的該等股份，而在緊接他成為該等控權人之前，該等股份並不是如此持有的；及

(b) 凡有關的人憑藉他本人或其任何相關者所獲取的另一間公司的股份而成為有關認可機構的小股東控權人，本條適用於所有由該人或任何其他相關者所持有的該公司的股份，而在緊接他成為該等控權人之前，該等股份並不是如此持有的。

(13) 根據第 (3) 或 (8) 款向有關的人送達的覆函通知的副本，須送達予通知書所關乎的股份所屬的認可機構或其他公司，如通知書關乎該人的相關者所持有的股份，則須送達該相關者。

(14) 終審法院首席法官可訂立規則，規管與根據第 (7) 款提出的申請 (包括任何類別的申請) 有關的常規及程序。(由 1998 年第 25 號第 2 條修訂)

(由 1991 年第 95 號第 18 條增加。由 1992 年第 82 號第 25 條修訂)

70C. 禁止某些人以間接控權人的身分行事

(1) 在本條中，“受禁制的人”(prohibited person)就認可機構而言，指以下任何人——

(a) 就他成為或本身為(視屬何情況而定)該機構的間接控權人而根據第 70(6)條獲送達反對通知書，而——

(i) 該人就金融管理專員向他送達該反對通知書的決定在《行政上訴規則》(第 1 章，附屬法例)內指明的可根據第 132A(3)條提出上訴的期限已屆滿，但該人並沒有提出上訴；或

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- (ii) an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is unsuccessful; or
- (b) who has been served with a notice of objection under section 70A(3) in respect of his being an indirect controller of the institution and either—
 - (i) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg.) within which that person may appeal under section 132A(3) against the decision of the Monetary Authority to so serve such notice of objection has expired without any such appeal having been made; or
 - (ii) an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is unsuccessful. (Amended 82 of 1992 s. 25)

(2) No person who is a prohibited person in respect of an authorized institution shall act or continue to act, as the case may be, as an indirect controller of the institution and, accordingly, as such a controller shall not give or shall cease to give, as the case may be, any directions or instructions to the directors of the institution or of another company of which it is a subsidiary.

(3) Where any director of an authorized institution or of another company of which it is a subsidiary is given (whether directly or indirectly) any directions or instructions—

- (a) by a person whom the director knows, or ought reasonably to know, is a prohibited person in respect of the institution; and
- (b) which are, or might reasonably be construed as being, prohibited from being so given by virtue of subsection (2),

the director shall forthwith notify the Monetary Authority of those directions or instructions and the circumstances in which they were so given. (Amended 82 of 1992 s. 25)

(4) Any prohibited person who contravenes subsection (2) commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.

(5) Any director who without reasonable excuse contravenes subsection (3) commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or

- (ii) 該人根據第 132A(3) 條就金融管理專員向他如此送達該反對通知書的決定而提出的上訴不成功；或
- (b) 就他本身為該機構的間接控權人而根據第 70A(3) 條獲送達反對通知書，而——
 - (i) 該人就金融管理專員向他送達該反對通知書的決定在《行政上訴規則》(第 1 章，附屬法例)內指明的可根據第 132A(3) 條提出上訴的期限已屆滿，但該人並沒有提出上訴；或
 - (ii) 該人根據第 132A(3) 條就金融管理專員向他如此送達該反對通知書的決定而提出的上訴不成功。(由 1992 年第 82 號第 25 條修訂)

(2) 任何人就一間認可機構而言如屬受禁制的人，不得以或繼續以(視屬何情況而定)該機構的間接控權人的身分行事，據此，不得以或須停止以(視屬何情況而定)該等控權人的身分向該機構的董事，或向該機構為附屬公司的另一間公司的董事，發出任何指示或指令。

(3) 認可機構的任何董事，或認可機構為附屬公司的另一間公司的任何董事，如接獲(不論直接或間接)任何指示或指令——

- (a) 而該董事知道或理應知道發出指示或指令的人，就該機構而言，是一名受禁制的人；及
- (b) 而因第 (2) 款，該等指示或指令是禁止如此發出的，或會合理地解釋為是禁止如此發出的，

則該董事須將該等指示或指令，以及其發出的情形，立即通知金融管理專員。(由 1992 年第 82 號第 25 條修訂)

(4) 任何受禁制的人違反第 (2) 款，即屬犯罪——

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。

(5) 任何董事無合理辯解而違反第 (3) 款，即屬犯罪——

- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months, and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.

(Added 95 of 1991 s. 18. Amended 4 of 1997 s. 27)

70D. Punishment for attempted evasion of restrictions

(1) Any person who—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to any restrictions under section 70B(3) or of any right to be issued with any such shares;
- (b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them;
- (c) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy; or
- (d) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 70B(4) or (5),

commits an offence and is liable—

- (i) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at tier 5 and to imprisonment for 6 months.

(2) Where shares in an authorized institution or another company are issued in contravention of restrictions under section 70B(3), or payments are made by an authorized institution or another company in contravention of such restrictions, every director and every manager of the authorized institution or other company, as the case may be, who knowingly and wilfully permits such an issue of shares or the making of such a payment, as the case may be, commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months.

(Added 95 of 1991 s. 18. Amended 4 of 1997 s. 27)

(b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。
(由 1991 年第 95 號第 18 條增補。由 1997 年第 4 號第 27 條修訂)

70D. 對企圖逃避限制的懲罰

(1) 任何人——

- (a) 行使或其意是行使任何權利，以處置任何據他所知在當時受第 70B(3) 條所訂的限制所規限的股份，或行使或其意是行使任何權利，以處置獲發行該等股份的權利；
- (b) 不膺以持有人或代表的身分，就任何該等股份表決，或委任任何代表就該等股份表決；
- (c) 本身為任何該等股份的持有人，但沒有將該等股份受到上述限制所規限一事，通知任何他不知道是察覺該事的，但他知道是有權（假若沒有該等限制）以持有人或代表身分就該等股份表決的人；或
- (d) 本身為任何該等股份的持有人，或本身為有權依憑該等股份而獲發其他股份的人，或本身為有權在非清盤情況下就該等股份收取任何款項的人，而訂立根據第 70B(4) 或 (5) 條屬無效的協議，

即屬犯罪——

- (i) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(2) 凡任何認可機構或其他公司的股份在違反第 70B(3) 條所訂的限制下發行，或任何認可機構或其他公司在違反該等限制下支付款項，則該認可機構或其他公司（視屬何情況而定）的每名董事及每名經理，如明知並故意容許該等股份的發行或該等款項的支付（視屬何情況而定），即屬犯罪——

- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(由 1991 年第 95 號第 18 條增補。由 1997 年第 4 號第 27 條修訂)