

立法會

Legislative Council

Paper for the Bills Committee on National Security (Legislative Provisions) Bill

Power to make Rules and Regulations for Appeals under the new sections 8E and 8F of the Societies Ordinance

At the meeting of the Bills Committee on 3 June 2003, members requested us to advise generally on the power to make rules and regulations for appeals under the new sections 8E and 8F of the Societies Ordinance (Cap. 151) as proposed for amendment by the Administration. The latest Committee Stage amendments are contained in Paper No. 88 (first draft of 6 June 2003).

2. This paper highlights some legal points of significance which may assist the Bills Committee in the consideration of the two provisions.

3. The Bill proposes that any office-bearer or member of a proscribed organization who is aggrieved by the proscription may appeal to the Court of First Instance (proposed new section 8D(1)). Under the proposed new section 8E(1) as would be amended, the Secretary for Security may make regulations ("Regulations") to provide for the handling of appeals including matters which are incidental to or arise out of the hearing of such appeals. Under the proposed section 8F, the Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4) may, subject to the Regulations, make rules of court ("Rules") in respect of specified procedural matters.

Delegated legislation

4. Whether or not legislative power is to be delegated is a matter for members. According to Bennion¹, underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can do is to lay down the outline. Reasons why the legislature finds it necessary to delegate legislative power are summarized by Bennion² as follows:

¹ Statutory Interpretation, Fourth edition, page 215

² *ibid.* at page 198

- (a) Modern legislation requires far more detail than Parliament itself has time or inclination for.
- (b) To bring a complex legislative scheme into full working operation, consultation with affected interests is required.
- (c) Some details of the overall legislative scheme may need to be tentative or experimental. Delegated legislation affords an easy means of adjusting the scheme without the need for further recourse to Parliament.
- (d) Within the field of a regulatory Acts new developments will from time to time arise. By the use of delegated legislation the scheme can be easily altered to allow for these.
- (e) If a sudden emergency arises it may be essential to give the executive wide and flexible legislative powers to deal with it whether or not Parliament is sitting.

5. The delegate is usually a functionary of the executive. An exception arises where the judiciary is given statutory power to make rules of court.

6. In conferring a delegated legislative power, the legislature often retains some measure of control over the exercise of the power. In Hong Kong, subsidiary legislation is normally subject to either the positive or negative vetting procedure. The former procedure is governed by section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) under which Legislative Council may amend subsidiary legislation published in the Gazette and tabled in Legislative Council, in any manner consistent with the delegate's power to make the subsidiary legislation. Under this procedure, the subsidiary legislation may take effect on the date of its gazettal, i.e. before it is tabled in Legislative Council. The latter procedure is governed by section 35 of Cap. 1. Under that section, a piece of subsidiary legislation has to be submitted to the Legislative Council for approval before it can be published in the Gazette and takes effect. In the first draft of the Administration's Committee Stage amendments, the Administration proposes that the Regulations and Rules be subject to the negative vetting procedure. At the meeting of the Bills Committee held on 10 June 2003, the Secretary for Security confirmed that the Regulations and Rules would be subject to the positive vetting procedure.

Rules of the High Court

7. If the proposals on the making of regulations and rules for the Court of First Instance were passed as proposed, at least three sets of procedural rules could apply to the court hearing appeals made under the proposed new section 8D of the Societies Ordinance (Cap. 151) : Rules of the High Court (Cap. 4, sub. leg. A), Regulations to be made by the Secretary and Rules to be made by the Rules Committee.

8. Section 54(1) of the High Court Ordinance (Cap. 4) provides that the Rules Committee may make rules of court regulating and prescribing the procedure and practice to be followed in the High Court in all courses and matters whatsoever in or with respect to which the High Court has jurisdiction and any matters incidental to or relating to that procedure or practice.

9. Order 55 of the Rules of the High Court applies to every appeal which by or under any enactment lies to the Court of First Instance from any court, tribunal or person, but the Order shall have effect subject to any provision made in relation to that appeal by any other provision of the Rules or by or under any enactment. Under section 3 of Cap. 1, "enactment" has the same meaning of "ordinance" which includes subsidiary legislation.

10. Order 59 applies to every appeal to the Court of Appeal not being an appeal for which other provision is made by the Rules and subject to the provisions with respect to particular appeals. It would be relevant for the Administration to clarify whether the Regulations and Rules to be made under the proposed new sections 8E and 8F would apply to an appeal to the Court of Appeal under the proposed new section 8D(7), and if so, whether they are regarded as "provisions with respect to particular appeals".

11. Members may also wish to note that Order 24, rule 15 relating to discovery and inspection of documents and Order 38, rule 2A(13) relating to witness statement already provide that documents should not be disclosed if disclosure would be injurious to the public interest (O.24, r.15) or that inspection should be withheld in the interest of national security (O.38, r.2A(13)). The term "national interest" is not defined in the Rules of High Court. Extracts of Orders 55, 59, 24 and 38 of the Rules of the High Court are at **Annex A**.

Appeal to the Hong Kong Court of Final Appeal

12. At the meeting of the Bills Committee on 10 June 2003, the Solicitor General, in his reply to the Hon Margaret Ng's question, indicated that the office-

bearer or member of a proscribed organization may appeal on a point of law up to the Hong Kong Court of Final Appeal ("CFA"). Under section 39 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the Court of Final Appeal Rules Committee may make rules of court regulating and prescribing the procedure and the practice to be followed in CFA in all causes and matters in or with respect to which CFA has jurisdiction and any matters incidental or relating to that procedure or practice, and it may make rules of court providing generally for the better carrying out of the provisions of that Ordinance.

13. Under the Hong Kong Court of Final Appeal Rules (Cap. 484, sub. leg. A), Rule 68 provides that the Registrar may for sufficient cause shown excuse the parties from compliance with any of the requirements of those Rules. If in the opinion of the Registrar it is desirable that any application for such excusal should be dealt with by a single permanent judge, the Appeal Committee or CFA he may direct the applicant to serve the opposite party with a notice of motion returnable before the Appeal Committee or a single permanent judge or CSA as the case may require.

14. It is unclear whether the Administration intends to rely on the aforesaid Rule 68 to enable proceedings to take place without the appellant being given full particulars of the reasons for the proscription in question, to enable CFA to hold proceedings in his absence and any legal representative appointed by him, to provide the appointment of a legal practitioner to act in his interests and generally to deal with admissibility of evidence.

15. Members may also consider asking the Administration to clarify whether the appeal may lie directly to CFA from the judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance. Extracts of the said section 39, Rule 68 and Division 3 of Part II are at **Annex B**.

Overlap and conflict

16. The ambit of the proposed regulation-making power to be conferred on the Secretary for Security is such that it covers matters which are also covered by the proposed rule-making power of the Rules Committee. This explains the need for providing expressly in the proposed new section 8F that the Rules are subject to the Regulations made under section 8E.

17. An example of such overlap may be found in the Legal Practitioners Ordinance (Cap. 159) where certain powers of the Bar Council to make rules subject to the approval of the Chief Justice under sections 72AA overlap with those of the

Chief Justice's under sections 72 and 72A. One of the overlaps is the power to prescribe fees for the issue of practising certificates for barristers. This overlap has not presented practical problems. The Bar Council has not exercised this power since it was given it in 1991. It had expressed satisfaction with the current arrangement that the Chief Justice continued to make those rules.

18. During the scrutiny of the Legal Practitioners (Amendment) Bill 1999, the Administration informed the Bills Committee that there would be no practical problem with the overlapping powers since the rules made by the Bar Council would in any event be subject to the approval of the Chief Justice. Therefore, it would be unlikely that the rules would conflict with each other. However, section 72AB was introduced by way of Committee Stage amendment to make clear that should there be any conflict between the rules made by the Chief Justice and the Bar Council, the rules made by the Chief Justice would prevail. Section 72AB is at **Annex C**.

Power to make rules for courts, tribunals or bodies performing similar functions

19. Rules of the magistrates' courts are made by the Chief Justice, and rules of the District Court, High Court and Court of Final Appeal are made by their respective Rules Committees. The power to make rules of procedures for tribunals varies as illustrated by the table at **Annex D**.

20. A mixed model is provided in the Securities and Futures Ordinance (Cap. 571) in respect of procedures of the Securities and Futures Appeals Tribunal and the Market Misconduct Tribunal. Schedules 8 and 9 to Cap. 571 contain provisions relating to the two tribunals respectively. These provisions include the power of the Tribunals to determine in the interests of justice whether a sitting or any part thereof should not be held in public. Sections 233 and 269 of that Ordinance empower the Chief Justice to make rules in other specific areas in respect of the two tribunals respectively. Extracts of the relevant provisions are at **Annex E**.

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
12 June 2003

第55號命令

向高等法院提出的來自法庭、審裁處或某人的上訴：一般規定

1. 申請(第55號命令第1條規則)

(1) 除第(2)、(3)及(4)款另有規定外，本命令適用於每一宗藉任何成文法則或根據任何成文法則可向原訟法庭提出的來自任何法庭、任何審裁處或任何人的上訴。
(1998年第25號第2條)

(2) 本命令不適用於——

(a) 藉案件呈述提出的上訴，

(香港)(b) 根據《裁判官條例》(第227章)提出的上訴，或

(香港)(c) 第73號命令適用的上訴。(1990年第363號法律公告)

(4) 本命令的以下規則，就本命令適用的上訴而言，具有效力，但須受本規則的任何其他條文就該上訴而訂立的任何條文規限，或受由任何成文法則或根據任何成文法則而就該上訴訂立的任何條文規限。

(5) 在本命令中，凡提述審裁處之處，須解釋為提述由任何成文法則或根據任何成文法則設立的任何審裁處，而非提述一般的法庭。

(香港)2. 聆訊上訴的法庭(第55號命令第2條規則)

除非本規則或根據任何成文法則另有規定，否則本命令適用的上訴須由單一名法官作聆訊及裁定。

(1990年第363號法律公告；1998年第25號第2條)

3. 提出上訴(第55號命令第3條規則)

(1) 本命令適用的上訴，須以重新聆訊的方式進行，並必須藉原訴動議提出。

(2) 提出上訴的每份動議通知書，均必須述明上訴理由，而如上訴是針對法庭的某項判決、命令或其他決定，則必須述明上訴是針對決定的全部抑或部分，如只是針對某部分，則必須指明該部分。

(3) 提出上訴並不具有擱置就上訴所針對的判決、裁定或其他決定而進行的程序的作用，但如將聆訊上訴的法庭，或作出該決定的法庭、審裁處或人有此命令，則屬例外。

ORDER 55

APPEALS TO THE HIGH COURT FROM COURT, TRIBUNAL OR PERSON:
GENERAL

1. Application (O. 55, r. 1)

(1) Subject to paragraphs (2), (3) and (4), this Order shall apply to every appeal which by or under any enactment lies to the Court of First Instance from any court, tribunal or person. (25 of 1998 s. 2)

(2) This Order shall not apply to—

(a) an appeal by case stated,

(HK)(b) an appeal under the Magistrates Ordinance (Cap. 227), or

(HK)(c) any appeal to which Order 73 applies. (L.N. 363 of 1990)

(4) The following rules of this Order shall, in relation to an appeal to which this Order applies, have effect subject to any provision made in relation to that appeal by any other provision of these rules or by or under any enactment.

(5) In this Order references to a Tribunal shall be construed as references to any Tribunal constituted by or under any enactment other than any of the ordinary courts of law.

(HK)2. Court to hear appeal (O. 55, r. 2)

Except where it is otherwise provided by these rules or under any enactment, an appeal to which this Order applies shall be heard and determined by a single judge.

(L.N. 363 of 1990)

3. Bringing of appeal (O. 55, r. 3)

(1) An appeal to which this Order applies shall be by way of rehearing and must be brought by originating motion.

(2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and, if the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.

(3) The bringing of such an appeal shall not operate as a stay of proceedings on the judgment, determination or other decision against which the appeal is brought unless the Court by which the appeal is to be heard or the court, tribunal or person by which or by whom the decision was given so orders.

2. 向上訴法庭提出的來自聆案官的某些決定的上訴 (第58號命令第2條規則)

來自聆案官在下列情況作出的任何判決、命令或決定(非正審判決、命令或決定除外)的上訴,須向上訴法庭提出——(1998年第25號第2條)

- (香港)(a) 聆訊或裁定根據第14號命令第6(2)條規則及第36號命令第1條規則在其席前審訊的任何訟案、事宜、問題或爭論點;
- (b) 根據第37號命令或在其他情況下評估損害賠償;或
- (香港)(c) 聆訊或裁定根據第84A號命令第3條規則提出的申請;或 (1995年第127號法律公告)
- (香港)(d) 聆訊或裁定根據第49B號命令提出的申請;或
- (香港)(e) 聆訊清盤或破產的呈請。 (1991年第404號法律公告)

7. 來自法官在互爭權利訴訟的法律程序中作出的 判決等的上訴(第58號命令第7條規則)

(1) 任何法官在根據第17號命令第5(2)(b)或(c)條規則簡易裁定在互爭權利訴訟的法律程序的申索人之間所爭論的任何問題時作出的任何判決、命令或決定,除非該名法官或上訴法庭給予許可向上訴法庭提出上訴,否則對申索人及所有透過申索人提出申索的人而言是最終及定局的。

(2) 凡互爭權利訴訟的爭論點是由一名法官在有陪審團或無陪審團的情況下進行審訊,可無需該名法官或上訴法庭的許可,就該名法官在審訊時作出的任何判決、命令或決定而向上訴法庭提出上訴。

(3) 根據本條規則提出的上訴,送達其通知書的時限,與送達來自非正審命令的上訴的通知書相同。

(1998年第25號第2條)

第59號命令

向上訴法庭提出上訴

(1998年第25號第2條)

1. 本命令對上訴的適用範圍(第59號命令第1條規則)

除本規則就某些特定的上訴而另有條文規定外,本命令適用於向上訴法庭提出的每一宗上訴(在適用的範圍內,包括任何來自聆案官或高等法院的其他人員或任何審裁處的向該法院提出的上訴,而根據或憑藉任何成文法則上訴是須向該法院提出的),

2. Appeals from certain decisions of masters to Court of Appeal (O. 58, r. 2)

An appeal shall lie to the Court of Appeal from any judgment, order or decision (other than an interlocutory judgment, order or decision) of a master, given or made—

- (HK)(a) on the hearing or determination of any cause, matter, question or issue tried before him under Order 14, rule 6(2) and Order 36, rule 1;
- (b) on an assessment of damages under Order 37 or otherwise; or
- (HK)(c) on the hearing or determination of an application under Order 84A, rule 3; or (L.N. 127 of 1995)
- (HK)(d) on the hearing or determination of an application under Order 49B; or
- (HK)(e) on the hearing of a petition for winding-up or bankruptcy. (L.N. 404 of 1991)

7. Appeal from judgment, etc. of judge in interpleader proceedings (O. 58, r. 7)

(1) Any judgment, order or decision of a judge given or made in summarily determining under Order 17, rule 5(2)(b) or (c), any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the judge or the Court of Appeal.

(2) Where an interpleader issue is tried by a judge (with or without a jury), an appeal shall lie to the Court of Appeal, without the leave of the judge or that Court, from any judgment, order or decision given or made by the judge on the trial.

(3) The time within which notice of appeal under this rule must be served shall be the same as in the case of an appeal from an interlocutory order.

ORDER 59

APPEALS TO THE COURT OF APPEAL

1. Application of Order to appeals (O. 59, r. 1)

This Order applies, subject to the provisions of these rules with respect to particular appeals, to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that Court from a master or other officer of the High Court or from any tribunal from which an appeal lies to that

[附屬法例]

但不包括本規則另有為其訂立條文的上訴，而凡提述“下級法庭”之處，即適用於該宗上訴所來自的任何法庭、審裁處或人。

(1998年第25號第2條)

2. 本命令對重新審訊申請的適用範圍 (第59號命令第2條規則)

本命令(第3(1)條規則中規定上訴須以再次聆訊的方式進行的部分及第11(1)條規則除外)適用於向上訴法庭提出的重新審訊申請，亦適用於將在有陪審團或無陪審團的情況下進行審訊後所作出的裁決、裁斷或判決作廢的申請，一如其適用於向該法院提出的上訴；而在本命令中，凡提述上訴及上訴人之處，均須據此解釋。

(1998年第25號第2條)

上訴的一般條文

3. 上訴通知書(第59號命令第3條規則)

(1) 向上訴法庭提出的上訴，須以再次聆訊的方式進行，並必須藉動議提出，而在本命令中，動議通知書稱為“上訴通知書”。

(2) 上訴通知書可就下級法庭的裁決或命令的全部或任何經指明的部分發出；每份上訴通知書均必須指明上訴的理由及上訴人擬要求上訴法庭作出的命令的確實形式。

(3) 除非經上訴法庭或單一名法官許可，否則上訴人無權在上訴聆訊時，倚據任何並無在上訴通知書中指明的上訴理由，或申請任何並無在上訴通知書中指明的補救。(1991年第404號法律公告)

(5) 上訴通知書必須送達在下級法庭進行的法律程序中直接受上訴影響的所有各方；並且除第8條規則另有規定外，上訴通知書無須送達並非如此受影響的各方。

(6) 在與第6(1)條規則所關乎的案件中，答辯人不得發出上訴通知書。

(1998年第25號第2條)

4. 上訴時限(第59號命令第4條規則)

(香港)(1) 除本規則另有規定外，每份上訴通知書均必須根據第3(5)條規則在以下期限屆滿前送達(期限由緊接下級法庭的判決或命令加蓋印章或以其他方式成為完備的日期翌日起計)，即——(1992年第165號法律公告)

[Subsidiary]

Court under or by virtue of any enactment) not being an appeal for which other provision is made by these rules and references to “the court below” apply to any Court, tribunal or person from which such appeal lies.

(25 of 1998 s. 2)

2. Application of Order to applications for new trial (O. 59, r. 2)

This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11(1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

GENERAL PROVISIONS AS TO APPEALS

3. Notice of appeal (O. 59, r. 3)

(1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as “notice of appeal”.

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal or a single judge, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal. (L.N. 404 of 1991)

(5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.

(6) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

4. Time for appealing (O. 59, r. 4)

(HK)(1) Except as otherwise provided by these rules, every notice of appeal must be served under rule 3(5) not later than the expiration of the following period beginning on the date immediately following the date on which the judgment or order of the court below was sealed or otherwise perfected, that is to say— (L.N. 165 of 1992)

[附屬法例]

(2) 如有申請根據本命令提出，要求將任何文件交出以供查閱或向法庭交出，或要求提供任何文件的文本，而有人在當時聲稱該份文件享有免于交出或免于提供文本的特權，或有人基於任何其他理由而反對交出文件或提供文本，法庭可查閱該份文件，以決定該項聲稱或反對是否有效。

14. 交出營業簿冊 (第 24 號命令第 14 條規則)

(1) 凡有申請根據任何前述規則提出，要求交出任何營業簿冊以供查閱，法庭可不命令交出簿冊正本以供查閱，而只命令提供該等簿冊的副本或其中的任何記項，並須由曾對照簿冊正本而審查該份副本的人以誓章核實該份副本或該等記項。

(2) 任何該等誓章，須述明簿冊正本中是否有任何塗擦、安插於行間的字或更改，以及該等塗擦、安插於行間的字或更改的內容。

(3) 即使已有任何簿冊中的任何記項的副本根據本條規則而提供，法庭仍可命令交出用作複製該副本的簿冊。

14A. 文件的使用 (第 24 號命令第 14A 條規則)

如一份文件是在某些法律程序中予以披露，則任何明示或隱含的不將該份文件用於該等法律程序以外的用途的承諾，在該份文件已向法庭讀出或已由法庭閱讀，或已在公開法庭上被提述後，即不再適用於該份文件，但如法庭基於特殊理由應一方或該份文件所屬的人的申請而另有命令，則屬例外。

**15. 其披露會損害公眾利益的文件：保留條文
(第 24 號命令第 15 條規則)**

本命令的前述條文不損害任何以披露會損害公眾利益為理由而准許或規定不得公開任何文件的法律規則。

**16. 沒有遵從關於透露等的規定
(第 24 號命令第 16 條規則)**

(1) 任何一方，如被任何一條前述規則或根據任何該等規則作出的命令規定須作出文件透露，或交出任何文件以供查閱或作任何其他用途，或提供該等文件的文本，卻沒有遵從該條規則的任何條文或該項命令（視屬何情況而定），（並如屬沒有遵從任何

[Subsidiary]

(2) Where on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of any document privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

14. Production of business books (O. 24, r. 14)

(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy or any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

14A. Use of documents (O. 24, r. 14A)

Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court, or referred to, in open court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs.

**15. Document disclosure of which would be injurious
to public interest: saving (O. 24, r. 15)**

The foregoing provisions of this Order shall be without prejudice to any rule of law which authorizes or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

**16. Failure to comply with requirement
for discovery, etc. (O. 24, r. 16)**

(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that

第38號命令

證據

I. 一般規則

1. 一般規則：證人須予口頭訊問
(第38號命令第1條規則)

除本規則及《證據條例》(第8章)的條文及與證據有關的任何其他成文法律另有規定外，任何規定須在審訊任何藉令狀開展的訴訟時以證人證據證明的事，須在公開法庭藉訊問證人而予以證明。

2. 藉誓章提供證據(第38號命令第2條規則)

(1) 法庭如認為鑑於案件的情況如此命令屬於合理，可在審訊任何藉令狀開展的訴訟之時或之前，命令任何證人的誓章可在審訊時宣讀。

(2) 根據第(1)款作出的命令，可按法庭認為適合的關於誓章的送交存檔、誓章文本的提供及交出宣誓人以接受盤問的條款而作出。但除任何該等條款及後來的法庭命令另有規定外，宣誓人無須接受盤問，亦無須為接受盤問而出席審訊。

(3) 在任何藉原訴傳票、原訴動議或呈請書開展的訟案或事宜中，並在有藉傳票或動議提出的申請提出時，證據可藉誓章而提供，但如在任何該等訟案、事宜或申請中，本規則的任何條文另有規定或法庭另有指示，則屬例外；然而法庭可應任何一方的申請，命令作出任何該等誓章的人出庭接受盤問；凡在該命令作出後，有關的人沒有出庭，則如無法庭許可，該人的誓章不得用作證據。

2A. 證人陳述書的交換(第38號命令第2A條規則)

(1) 法庭根據本條規則具有的權力，須為公平迅速處置在其席前的訟案或事宜及節省訟費而行使，但須顧及有關案件的所有情況，包括(但並不限於)——

(a) 事實有所爭議或已獲接納的程度；

ORDER 38

EVIDENCE

I. GENERAL RULES

1. General rule: witnesses to be examined orally
(O. 38, r. 1)

Subject to the provisions of these rules and of the Evidence Ordinance (Cap. 8) and any other written law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

2. Evidence by affidavit (O. 38, r. 2)

(1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

(3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

2A. Exchange of witness statements (O. 38, r. 2A)

(1) The powers of the Court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving costs, having regard to all the circumstances of the case, including (but not limited to)——

(a) the extent to which the facts are in dispute or have been admitted;

[附屬法例]

- (b) 事實爭論點為狀書所界定的程度；
- (c) 資料已由或相當可能會由更詳盡清楚的詳情、對質詢書作出的答覆或其他途徑提供的程度。

(2) 在藉令狀展開的訴訟中聆訊要求作指示的傳票時，法庭須指示每一方在法庭所指明的自聆訊起計的期限內，按法庭所指示的條款，向其他各方送達該一方擬就任何將在審訊時決定的事實爭論點援引的口頭證據的書面陳述。

法庭可根據本款，在該宗訴訟的任何其他階段及任何其他訟案或事宜的任何階段，向任何一方作出指示。

第3號命令第5(3)條規則不適用於法庭根據本款指明的任何期限。

(3) 根據第(2)或(17)款作出的指示，可就不同事實爭論點或不同證人作出不同規定。

(4) 根據本條規則送達的陳述書——

- (a) 須註明日期，並除非有好的理由(應由陳述書所附同的信件指明)，否則須由擬作為證人的人簽署；陳述書亦須包括一項由該人作出的陳述，述明就他所知所信陳述書內容屬於真實；
- (b) 須足以識別其中所提述的任何文件；及
- (c) 凡須由多於一方送達，則須同時作交換。

(5) 凡某一方未能從擬作為證人的人取得一份符合第(4)(a)款的書面陳述，法庭可指示意欲援引該名證人的證據的一方，向另一方提供該名證人的姓名以及(除非法庭另有命令)一項關於擬援引的證據的性質的陳述。

(6) 除第(9)款另有規定外，凡根據本條規則送達一份陳述書的一方並不傳召該份陳述書所關乎的證據的證人，則任何其他各方不得在審訊時提出該份陳述書作為證據。

(7) 除第(9)款另有規定外，凡送達該份陳述書的一方在審訊時傳召該名證人——

- (a) 除非審訊是在有陪審團的情況下進行，否則法庭可指示該份已送達的陳述書或其部分須作為該名證人的主問證據或該證據的一部分而使用，法庭並可施加其認為適合的條款；
- (b) 未經其他各方同意或法庭許可，該一方不得自該名證人援引其內容並不包括在該份已送達的陳述書內的證據，但屬以下情況者除外——

[Subsidiary]

- (b) the extent to which the issues of fact are defined by the pleadings;
- (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.

(2) At the hearing of a summons for directions in an action commenced by writ the Court shall direct every party to serve on the other parties, within such period of the hearing as the Court may specify and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter.

Order 3, rule 5(3) shall not apply to any period specified by the Court under this paragraph.

(3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.

(4) Statements served under this rule shall—

- (a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief;
- (b) sufficiently identify any documents referred to therein; and
- (c) where they are to be served by more than one party, be exchanged simultaneously.

(5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4)(a), the Court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial—

- (a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;
- (b) the party may not without the consent of the other parties or the leave of the Court adduce evidence from that witness the substance of which is not included in the statement served, except—

[附屬法例]

- (i) 凡法庭根據第(2)或(17)款作出的指示指明陳述書應只就某些事實爭論點交換，而該等證據是關於任何其他爭論點的；
 - (ii) 該等證據是關於新的事宜，而該等事宜是該份陳述書送達另一方後始出現的；
 - (c) 不論在該名證人的主問證據提出之時有否提述該份陳述書或其任何部分，任何一方均可在盤問該名證人時提出該份陳述書或其任何部分。
 - (8) 本條規則不會令本屬不可接納的證據成為可接納的證據。
 - (9) 凡已送達的任何陳述書屬《證據條例》(第8章)所適用者，則除該條例及本命令的第III及IV部的條文另有規定外，第(6)及(7)款具有效力。
- 除非送達證人陳述書的一方明文述明根據本條規則送達的證人陳述書須視為根據該條例發出的通知書，否則該份證人陳述書不得視為根據該條例發出的通知書，而凡一份陳述書或其任何部分，只憑藉該條例而可被接納為證據，則即使本命令第III或IV部的任何條文對送達根據該兩部發出的適當通知書的時限已有規定，該通知書仍須與該份陳述書一併送達。凡有送達該通知書，須當作已有一份反通知書根據第26(1)條規則送達。
- (10) 凡某一方沒有遵從關於交換證人陳述書的指示，該一方即無權未經法庭許可而援引該指示所關乎的證據。
 - (11) 凡某一方根據本條規則在某些法律程序中送達一份證人陳述書，則其他人不得將該份證人陳述書作進行該等法律程序以外的用途——
 - (a) 除非送達該份證人陳述書的一方給予書面同意或法庭給予許可，並以同意或許可的範圍為限；或
 - (b) 除非該份證人陳述書已被提出作為證據(不論是否依據根據第(7)(a)款作出的指示)，並以提出作為證據的範圍為限。
 - (12) 除第(13)款另有規定外，如任何人在審訊過程中有此請求，法官須指示書記主任將任何已根據第(7)(a)款被命令作為主問證據而使用的證人陳述書核證為可予公開查閱者。
- 根據本款作出的請求，可以口頭方式或書面作出。(1998年第25號第2條)
- (13) 法官如認為基於以下原因，證人陳述書不應供人查閱，可拒絕根據第(12)款就證人陳述書作出指示，或可將陳述書的任何詞句或段落摒除於該指示之外——(1998年第25號第2條)
 - (a) 基於公正或國家安全；
 - (b) 基於陳述書中的任何專家醫學證據的性質；或

[Subsidiary]

- (i) where the Court's directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;
 - (ii) in relation to new matters which have arisen since the statement was served on the other party;
 - (c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.
 - (8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.
 - (9) Where any statement served is one to which the Evidence Ordinance (Cap. 8) applies, paragraphs (6) and (7) shall take effect subject to the provisions of that Ordinance and Parts III and IV of this Order.
- The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under that Ordinance; and where a statement or any part thereof would be admissible in evidence by virtue only of that Ordinance, the appropriate notice under Part III or IV of this Order shall be served with the statement notwithstanding any provision of those Parts as to the time for serving such a notice. Where such a notice is served, a counter-notice shall be deemed to have been served under rule 26(1).
- (10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.
 - (11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served—
 - (a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or
 - (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).
 - (12) Subject to paragraph (13), the judge shall, if any person so requests during the course of the trial, direct the Clerk of Court to certify as open to inspection any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a).
- A request under this paragraph may be made orally or in writing.
- (13) The judge may refuse to give a direction under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available—
 - (a) in the interests of justice or national security;
 - (b) because of the nature of any expert medical evidence in the statement; or

[附屬法例]

(c) 基於任何其他充分的理由。

(14) 凡書記主任根據第 (12) 款被指示將一份證人陳述書核證為可予公開查閱，他須——

(a) 擬備一份證明書，而該份證明書須附於該份證人陳述書的一份文本（“核證本”）；及

(b) 令該核證本可供查閱。

(15) 由該份證明書發出時起計至有關審訊完結後 7 天結束時，在法庭可藉特別或一般指示而施加的任何條件的規限下，任何人均可查閱一份證人陳述書的核證本，並可在繳付訂明的費用後，將之複製副本。

(16) 在本條規則中——

(a) 第 (12) 至 (15) 款中凡提述證人陳述書之處，就一份只有某部分根據第 (7)(a) 款被命令作為主問證據而使用的證人陳述書而言，須解釋為提述該部分；

(b) 凡提述查閱一份證人陳述書的核證本或將該核證本複製副本之處，須解釋為包括提述查閱該核證本的副本或將該副本複製副本。

(17) 法庭具有權力更改或否定本條規則的任何條文（第 (1)、(8) 及 (12) 至 (16) 款除外），並作出其認為適合的替代指示。

(1995 年第 223 號法律公告)

3. 關於特定事實的證據 (第 38 號命令第 3 條規則)

(1) 在不損害第 2 條規則的原則下，法庭可在任何訴訟審訊之時或之前，命令關於任何特定事實的證據，須在審訊時按命令所指明的方式提供。

(2) 第 (1) 款所賦予的權力，適用範圍特別擴及於命令關於任何特定事實的證據可在審訊時——

(a) 藉經宣誓作出的關於資料或所信之事的陳述而提供，或

(b) 藉交出文件或簿冊上的記項而提供，或

(c) 藉文件的副本或簿冊上的記項的副本而提供，或

(d) 如某項事實是普遍地或在某特定地區廣為人知的，則為藉交出一份載有關於該項事實的陳述的指明報章而提供。

4. 對專家證據的限制 (第 38 號命令第 4 條規則)

法庭可在任何訴訟審訊之時或之前，命令在審訊時傳召的醫學或其他方面的專家證人的數目，須限於命令所指明的數目。

[Subsidiary]

(c) for any other sufficient reason.

(14) Where the Clerk of Court is directed under paragraph (12) to certify a witness statement as open to inspection he shall—

(a) prepare a certificate which shall be attached to a copy (“the certified copy”) of that witness statement; and

(b) make the certified copy available for inspection.

(15) Subject to any conditions which the Court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the certificate is given until the end of 7 days after the conclusion of the trial.

(16) In this rule—

(a) any reference in paragraphs (12) to (15) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;

(b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.

(17) The Court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.

(L.N. 223 of 1995)

3. Evidence of particular facts (O. 38, r. 3)

(1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial—

(a) by statement on oath of information or belief, or

(b) by the production of documents or entries in books, or

(c) by copies of documents or entries in books, or

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

4. Limitation of expert evidence (O. 38, r. 4)

The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.

36. 被告人的出席

除非終審法院認為基於司法公正或因公安或保安理由而有必要時另有命令，否則被告人有權出席上訴許可申請的聆訊，亦有權出席上訴的聆訊。

37. 上訴對判刑的影響

(1) 如被判刑的人根據第 34 或 35 條獲准保釋出外，則在計算其刑期時，該段保釋期間不得作服刑期計算，但如終審法院、上訴法庭或原訟法庭（視屬何情況而定）另作指示，則屬例外。

(2) 如終審法院在審理上訴時以某一判刑取代另一判刑，則除非終審法院、上訴法庭或原訟法庭（視屬何情況而定）另有指示，否則在符合第 (1) 款的規定下，該新判刑開始執行之日，須是該另一判刑原應開始執行之日。

(3) 在本條中，“判刑”(sentence) 包括某一法庭在處理犯罪者時所作出的任何命令（包括根據《精神健康條例》(第 136 章) 第 IV 部所作出的入院令)。

(由 1997 年第 120 號第 4 及 16 條修訂)

第 IV 部

雜項規定

38. 撤回上訴

(1) 上訴人可隨時在終審法院許可下撤回上訴。

(2) 凡上訴人根據第 (1) 款撤回上訴，則在不抵觸答辯人與上訴人達成任何相反的協議下，答辯人有權向終審法院申請其在上訴案中的訟費及上訴案的附帶訟費。

39. 規則

根據第 40 條組成的終審法院規則委員會，可訂立法院規則，規管及訂明須在終審法院遵行的程序及常規，以處理終審法院有司法管轄權的訟案及事項，以及規管及訂明有關程序或常規所附帶引起或涉及的事宜，委員會亦可訂立法院規則，對更有效地施行本條例，作出概括性的規定。

36. Presence of defendant

The defendant shall be entitled to be present at the hearing of an application for leave to appeal and an appeal unless the Court, where it considers it necessary in the interests of justice or public order or security to do so, orders otherwise.

37. Effect of appeal on sentence

(1) Where a person subject to a sentence is granted bail under section 34 or 35, the time during which he is released on bail shall be disregarded in computing the term of his sentence unless the Court, the Court of Appeal or the Court of First Instance, as the case may be, otherwise directs.

(2) Subject to subsection (1), any sentence passed on an appeal to the Court in substitution for another sentence shall, unless the Court, the Court of Appeal or the Court of First Instance, as the case may be, otherwise directs, begin to run from the time when the other sentence should have begun to run.

(3) In this section “sentence” (判刑) includes any order made by a court when dealing with an offender (including a hospital order under Part IV of the Mental Health Ordinance (Cap. 136)).

(Amended 120 of 1997 s. 16)

PART IV

MISCELLANEOUS

38. Withdrawal

(1) An appellant may at any time with leave of the Court withdraw his appeal.

(2) Where an appeal has been withdrawn under subsection (1) the respondent shall, subject to any agreement between himself and the appellant to the contrary, be entitled to apply to the Court for his costs of and incidental to the appeal.

39. Rules

The Court of Final Appeal Rules Committee constituted under section 40 may make rules of court regulating and prescribing the procedure and the practice to be followed in the Court in all causes and matters in or with respect to which the Court has jurisdiction and any matters incidental to or relating to that procedure or practice, and it may make rules of court providing generally for the better carrying out of the provisions of this Ordinance.

間內並且在提出申請的一方知悉該項不符合規定的事後採取任何新步驟之前提出，否則不得予以准許。

(2) 反對的理由必須在根據本條提出的任何申請中述明。

68. 豁免遵從本規則的權力

(1) 司法常務官可基於有充分因由提出而豁免有關各方遵從本規則的任何規定。

(2) 司法常務官如認為任何要求豁免申請適宜由單一名常任法官、上訴委員會或終審法院處理，則可指示申請人向對方送達一份會在單一名常任法官、上訴委員會或終審法院(視情況要求而定)席前聆訊的動議通知。

(3) 任何一方如因司法常務官就豁免的申請作出的決定而感到受屈，可以動議的方式向終審法院提出上訴，而該等上訴須由單一名常任法官重新聆訊，但如該法官決定上訴須由上訴委員會或終審法院聆訊，則屬例外。

69. 文件的擬備

(1) 以下條文適用於根據本規則須為向終審法院提出上訴或申請(包括上訴許可申請)而擬備的文件。

(2) 文件須採用 A4 尺寸的優質紙張單面製備，並須在右邊留有 4 厘米頁旁。

(3) 文件須以印刷、打字、影印或其他電子或機械複製或印刷過程製作。複寫紙副本不予接受。

(4) 文件上字體的字型大小不得小於“12 點”字體。

(5) 並非清楚可閱的文件不予接受。

(6) 文件的每頁須有頁碼。

70. 時間的延展等

(1) 終審法院可無須進行聆訊並按其認為公正的條款，藉命令延展或縮短本規則或任何判決、命令或指示規定或授權任何人在任何法律程序中作出任何作為的期限。(1999 年第 13 號法律公告)

(2) 即使延展期限的申請在有關期限屆滿後才作出，終審法院仍可延展第(1)款所提述的任何期限。

be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) The grounds of the objection must be stated in any application made under this rule.

68. Power to excuse from compliance with Rules

(1) The Registrar may for sufficient cause shown excuse the parties from compliance with any of the requirements of these Rules.

(2) If in the opinion of the Registrar it is desirable that any application for such excusal should be dealt with by a single permanent judge, the Appeal Committee or the Court he may direct the applicant to serve the opposite party with a notice of motion returnable before the Appeal Committee or a single permanent judge or the Court as the case may require.

(3) Any party aggrieved by a decision given by the Registrar on an application for excusal may appeal, by way of motion, to the Court, and such appeal shall be by way of rehearing by a single permanent judge unless the judge directs that the appeal be heard by the Appeal Committee or the Court.

69. Preparation of documents

(1) The following provisions shall apply to documents required by these Rules to be prepared for the purpose of an appeal or an application to the Court (including an application for leave to appeal).

(2) Documents shall be produced on one side only of good quality A4 paper, with a right hand margin of 4 cm.

(3) Documents shall be produced by printing, typewriting, photocopying or other electronic or mechanical copying or printing process. Carbon copies are not acceptable.

(4) The font size of the lettering on documents shall not be smaller than 12 point type.

(5) A document which is not clearly legible is not acceptable.

(6) Each page of a document shall be numbered.

70. Extensions, etc., of time

(1) The Court may, without having to conduct a hearing and on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these Rules, or by any judgment, order or direction, to do any act in any proceedings. (L.N. 13 of 1999)

(2) The Court may extend any such period as is referred to in subrule (1) although the application for extension is not made until after the expiration of that period.

27A. 定義

在本分部中——

“法官”(judge)指原訟法庭法官、原訟法庭特委法官或原訟法庭暫委法官；
“原訟法庭”(Court of First Instance)指高等法院原訟法庭。

27B. 民事上訴

(1) 即使第22條另有規定，如上訴是就原訟法庭任何民事訟案或事項的判決提出並符合第27C(1)(a)、(b)及(c)條所列的準則，則可向終審法院提出上訴，終審法院是否受理該上訴由原訟法庭及終審法院酌情決定。

(2) 除非——

- (a) 法官已根據第27C條發出一份證明書；及
- (b) 終審法院已根據第27D條給予上訴許可，

否則上訴不得獲受理。

27C. 證明書的給予

(1) 凡上訴可根據本分部就某法律程序提出，而審理證明書申請的法官應法律程序的任何一方的申請信納——

- (a) 就該法律程序中法官所作的決定而言，有關條件已符合；及
- (b) 向終審法院提出上訴的足夠理據成立，使提出該上訴的許可申請獲得支持；及
- (c) 該法律程序的各方同意根據本條給予證明書，

則法官可在符合本分部的條文下給予其意如此的證明書。

27A. Definitions

In this Division—

“Court of First Instance” (原訟法庭) means the Court of First Instance of the High Court;

“judge” (法官) means a judge of the Court of First Instance, a recorder of the Court of First Instance or a deputy judge of the Court of First Instance.

27B. Civil appeals

(1) Notwithstanding section 22, an appeal may lie to the Court at the discretion of the Court of First Instance and the Court, from any judgment of the Court of First Instance in any civil cause or matter if the criteria set out in section 27C(1)(a), (b) and (c) are satisfied.

(2) No appeal shall be admitted unless—

- (a) a certificate has been issued by a judge under section 27C; and
- (b) leave to appeal has been granted by the Court under section 27D.

27C. Grant of certificate

(1) Where on the application of any of the parties to any proceedings in respect of which an appeal may lie under this Division the judge hearing the application for a certificate is satisfied—

- (a) that the relevant conditions are fulfilled in relation to a decision of the judge in those proceedings; and
- (b) that a sufficient case for an appeal to the Court has been made out to justify an application for leave to bring such an appeal; and
- (c) that all the parties to the proceedings consent to the grant of a certificate under this section,

the judge, subject to the provisions of this Division, may grant a certificate to that effect.

allow.

(2) 為施行第(1)(a)款，就任何法律程序中法官所作的決定而言，該決定必須涉及具有重大廣泛的或關乎公眾的重要性的法律問題，而該法律問題屬下列情況，方符合有關條件——

(a) 如該法律問題並非純粹或並非主要是涉及《基本法》的詮釋，則該法律問題必須——

(i) 純粹或主要是關乎某條例或附屬法例的詮釋，並於該法律程序中徹底論及，而該法律程序中的法官在其判決中亦已予以徹底考慮；或

(ii) 是該法官受上訴法庭或終審法院在之前的法律程序中某項決定所約束的一項問題，而這問題已由上訴法庭或終審法院(視屬何情況而定)在之前的法律程序的判決中予以徹底考慮；及

(b) 如該法律問題純粹或主要是涉及《基本法》的詮釋，則該法律問題必須是該法官受上訴法庭或終審法院在之前的法律程序中某項決定所約束的一項問題，而這問題已由上訴法庭或終審法院(視屬何情況而定)在之前的法律程序的判決中予以徹底考慮。

(3) 根據本條要求給予證明書的申請，須在下述期間完結前向法官提出——

(a) 由判決作出當日起計的 14 日；或

(b) 法院規則所訂明的其他較長期間。

(4) 審理根據本條要求給予證明書的申請的法官，在切實可行及適宜的範圍內，須為與該申請有關的法律程序中的原審法官。

(5) 不得就根據本條給予證明書或拒絕根據本條給予證明書提出上訴。

27D. 上訴許可

(1) 凡在任何法律程序中，法官根據第 27C 條給予證明書，法律程序的任何一方可在下述期間內的任何時間藉動議通知向終審法院申請上訴許可——

(a) 由給予證明書當日起計的 28 日；或

(b) 終審法院在個別個案中容許的較長期間。

(2) For the purposes of subsection (1)(a), the relevant conditions are fulfilled in relation to a decision of the judge in any proceedings if a point of law of great general or public importance is involved in that decision and—

(a) where that point of law does not relate wholly or mainly to the construction of the Basic Law, it must—

(i) relate wholly or mainly to the construction of an Ordinance or subsidiary legislation, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings; or

(ii) be one in respect of which the judge is bound by a decision of the Court of Appeal or the Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the Court (as the case may be) in those previous proceedings; and

(b) where that point of law relates wholly or mainly to the construction of the Basic Law, it must be one in respect of which the judge is bound by a decision of the Court of Appeal or the Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the Court (as the case may be) in those previous proceedings.

(3) An application for a certificate under this section shall be made to a judge within—

(a) 14 days from the date on which the judgment is given; or

(b) such other longer period as may be prescribed by rules of court.

(4) The judge before whom an application for a certificate under this section is made shall, as far as is practicable and convenient, be the trial judge in the proceedings to which the application relates.

(5) No appeal shall lie against the grant or refusal of a certificate under this section.

27D. Leave to appeal

(1) Where in any proceedings a judge grants a certificate under section 27C, any of the parties to the proceedings may make an application to the Court for leave to appeal by way of a notice of motion at any time within—

(a) 28 days from the date on which that certificate is granted; or

(b) such extended time as in any particular case the Court may allow.

(2) 除第(4)款另有規定外，如有人根據本條提出申請，而終審法院覺得適宜給予許可將上訴直接提交終審法院，則可給予該許可；凡根據本條給予許可——

(a) 針對證明書所關乎的法官決定的上訴，不得向上訴法庭提出；但

(b) 針對該決定的上訴須向終審法院提出。

(3) 根據本條提出的申請，須由上訴委員會在有進行或沒有進行聆訊的情況下，決定是否接納。

(4) 在不損害第(2)款的原則下，在以下時間前，針對根據第 27C 條給予的證明書所關乎的法官決定的上訴，不得向上訴法庭提出——

(a) 根據本條提出申請的限期已經屆滿；及

(b) 如有人提出申請，已就該申請作出決定。

27E. 附加條件的上訴許可

(1) 終審法院根據第 27D(2) 條給予上訴許可時，可附加其認為有需要的條件。

(2) 第 25(2)、(3)、(4) 及 (6) 條在作出需要的變通後，就根據本條給予的上訴許可而適用，猶如該條適用於根據該條給予的上訴許可。

(3) 第 26 條就根據本分部提出的上訴所針對的判決及根據本分部提出上訴的許可的給予而適用，猶如該條就根據第 2 分部提出的上訴所針對的判決及根據第 2 分部提出上訴的許可的給予而適用。

(4) 第 27 條就根據本分部向終審法院提出的最終上訴許可的申請而適用，猶如該條就根據第 2 分部向上訴法庭或終審法院提出的最終上訴許可的申請而適用。

27F. 排除於第 27B(1) 條之外的個案

(1) 凡憑藉任何成文法則(本分部的條文除外)，就任何法律程序中法官所作的決定而言，不可就該決定向上訴法庭提出上訴(不論是否獲法官或上訴法庭許可)，則不得根據第 27B(1) 條上訴。

(2) 凡憑藉任何成文法則(本分部的條文除外)，就法官的決定而言，就上訴法庭對不服該法官的決定的上訴所作的任何決定均不可提出上訴(不論是否獲上訴法庭或終審法院許可)，則不得根據第 27B(1) 條上訴。

(2) Subject to subsection (4), if on an application made under this section it appears to the Court to be expedient to do so, the Court may grant leave for an appeal to be brought directly to the Court; and where leave is granted under this section—

(a) no appeal from the decision of the judge to which the certificate relates shall lie to the Court of Appeal, but

(b) an appeal shall lie from that decision to the Court.

(3) Applications under this section shall be determined by the Appeal Committee, with or without a hearing.

(4) Without prejudice to subsection (2), no appeal shall lie to the Court of Appeal from a decision of the judge in respect of which a certificate is granted under section 27C until—

(a) the time within which an application can be made under this section has expired; and

(b) where such an application is made, that application has been determined.

27E. Leave to appeal subject to conditions

(1) Leave to appeal granted under section 27D(2) may be granted subject to such conditions as the Court considers necessary.

(2) Section 25(2), (3), (4) and (6), with the necessary modifications, shall apply in relation to the grant of leave under this section as it applies to the grant of leave under that section.

(3) Section 26 shall apply in relation to a judgment appealed from and grant of leave to appeal under this Division as it applies in relation to a judgment appealed from and grant of leave to appeal under Division 2.

(4) Section 27 shall apply in relation to an application for final leave to appeal to the Court under this Division as it applies in relation to an application for final leave to appeal to the Court of Appeal or to the Court under Division 2.

27F. Cases excluded from section 27B(1)

(1) No appeal shall lie under section 27B(1) in respect of a decision of the judge in any proceedings where by virtue of any enactment, apart from the provisions of this Division, no appeal would lie from that decision to the Court of Appeal, with or without the leave of a judge or of the Court of Appeal.

(2) No appeal shall lie under section 27B(1) in respect of a decision of the judge where by virtue of any enactment, apart from the provisions of this Division, no appeal would (with or without the leave of the Court of Appeal or of the Court) lie from any decision of the Court of Appeal on an appeal from the decision of the judge.

(3) 凡憑藉任何成文法則(本分部的條文除外)，只有在獲得法官或上訴法庭的許可下才可就法官所作的決定向上訴法庭提出上訴，則除非法官覺得除本分部的條文外亦適宜給予上述許可，否則不得根據第 27B(1) 條上訴。

(4) 如法官所作出的決定，或法官依據該決定所作出的任何命令，是在行使懲處藐視法庭罪的司法管轄權下作出的，則不得根據第 27B(1) 條上訴。

(3) Where by virtue of any enactment, apart from the provisions of this Division, no appeal would lie to the Court of Appeal from the decision of the judge except with the leave of a judge or of the Court of Appeal, no appeal shall lie under section 27B(1) in respect of that decision unless it appears to the judge that apart from the provisions of this Division it would be a proper case for granting such leave.

(4) No appeal shall lie under section 27B(1) where the decision of the judge, or any order made by him in pursuance of that decision, is made in the exercise of jurisdiction to punish for contempt of court.

- (c) 規管向大律師發出執業證書及向受僱大律師發出受僱大律師證書，並在不局限前文的原則下，包括須就該等證書繳付的費用及該等證書的發出條件、申請方式、限期及格式，以及關於發出該等證書及暫時吊銷該等證書的公布；
- (d) 規定大律師及實習大律師所必須接受的持續法律進修或訓練以及不遵守該等規定的後果；
- (e) 就大律師紀律審裁組進行研訊及調查作出規定；
- (f) 如執委會信納已證明某大律師或實習大律師的行為構成違反適當的專業準則，則規定該大律師或實習大律師須支付執委會調查導致有關命令的行為的開支；
- (g) 對從事實習大律師的工作 and 任何人根據第 27 條合資格獲認許的方式加以規管，並在不局限前文的原則下，包括實習大律師的實習期及須考取合格的考試；
- (h) 對在香港以外地方取得資格的人士的認許，並在不局限前文的原則下，包括獲認許所須具備的資格、須考取合格的考試及繳付的費用；
- (i) 執委會豁免任何人遵從任何根據本條訂立的規則的條文，以及在任何個別情況下授予豁免所須符合的條件；及
- (j) 訂明根據本條例須由或可由執委會訂明的任何事項。

(由 2000 年第 42 號第 16 條增補)

**72AB. 終審法院首席法官所訂立的規則
與執委會所訂立的規則
互相抵觸的情況**

凡——

- (a) 終審法院首席法官；及
- (b) 執委會，

均就相同的事宜獲賦予訂立規則的權力，則他們任何一方或雙方各自就該事宜所訂立的規則均屬有效，但如一方所訂立的規則與另一方所訂立的規則相抵觸，則在抵觸的範圍內，以終審法院首席法官所訂立的規則為準。

(由 2000 年第 42 號第 16 條增補)

- (c) regulating the issuing of practising certificates to barristers and employed barrister's certificates to employed barristers including, without limiting the foregoing, the fees payable for, the conditions of issue of, the manner of applying for, the period and form of and the publication of the issue and suspension of, such certificates;
- (d) providing for any continuing legal education or training that must be undertaken by barristers and pupils and the consequences of failing to do so;
- (e) providing for the conduct of an inquiry and investigation by a Barristers Disciplinary Tribunal;
- (f) requiring a barrister or pupil whose conduct has been established to the satisfaction of the Bar Council to amount to a breach of proper professional standards to pay the Bar Council's costs of investigating the conduct which resulted in the order;
- (g) regulating the serving of pupillage and the manner in which any person shall qualify for admission under section 27, including, without limiting the foregoing, the period of pupillage and the examinations to be passed;
- (h) respecting the admission of persons on the basis of qualifications acquired outside Hong Kong including, without limiting the foregoing, the qualifications for admission, the examinations to be passed and the fees to be paid;
- (i) respecting the exemption by it of any person from compliance with the provisions of any rules made under this section and the conditions upon which such exemption may be granted in any particular case; and
- (j) prescribing anything which, under this Ordinance, is to be or may be prescribed by the Bar Council.

(Added 42 of 2000 s. 16)

**72AB. Conflict between rules made by
Chief Justice and Bar Council**

Where power is given to—

- (a) the Chief Justice; and
- (b) the Bar Council,

to make rules in respect of the same matter, rules made by either or both of them in respect of such a matter shall be valid unless there is a conflict between such rules, in which case the rules made by the Chief Justice shall be given precedence to the extent of such conflict.

(Added 42 of 2000 s. 16)

Rules of Procedure of Tribunals

Rules made by the Chief Justice

Labour Tribunal Ordinance (Cap. 25)
Mental Health Ordinance (Cap. 136)
Legal Practitioners Ordinance (Cap. 159)
Merchant Shipping Ordinance (Cap. 281)
Small Claims Tribunal Ordinance (Cap. 338)
Arbitration Ordinance (Cap. 341)
Control of Obscene and Indecent Articles Ordinance (Cap. 390)
Judicial Officers (Tenure of Office) Ordinance (Cap. 433)
Coroners Ordinance (Cap. 504)
Copyright Ordinance (Cap. 528)
Securities and Futures Ordinance (Cap. 571)

Rules made with the approval of the Chief Justice

Legal Practitioners Ordinance (Cap. 159)
Arbitration Ordinance (Cap. 341)
Administrative Appeals Board Ordinance (Cap. 442)

By providing the Tribunals with powers vested in a magistrate or Court of First Instance

Lands Tribunal Ordinance (Cap. 17)
Merchant Shipping Ordinance (Cap. 281)

Rules made by the Tribunal

Societies Ordinance (Cap. 151)
Road Traffic Ordinance (Cap. 374)

Rules made by the Chief Executive in Council

Immigration Ordinance (Cap. 115)
Registration of Persons Ordinance (Cap. 177)

Rules made by a Policy Secretary

Pharmacy and Poisons Ordinance (Cap. 138)

Procedures provided in the principal Ordinance

Electricity Ordinance (Cap. 406)

Builders' Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470)

Securities and Futures Ordinance (Cap. 571)

(c) 如該人在第 217(3) 條指明的 21 日限期內就該決定提出覆核申請，而——

- (i) 審裁處確認該決定，則該決定在獲確認之時生效；
- (ii) 審裁處更改該決定或以另一決定取代，則該決定在如此被更改或取代之時，按該項更改或取代的條款而生效；或
- (iii) 該人撤回該申請，則該決定在該申請被撤回之時生效。

(3) 除第 (1) 款另有規定外，不論第 (2) 款及本條例或其他條例的其他條文有任何規定，有關當局如認為就維護投資大眾的利益或公眾利益而言是適當的話，可在就某指明決定送達的通知中，指明如非因本款則該決定本會生效的時間以外的另一時間，作為該決定生效的時間，而在此情況下，該決定在如此指明的時間生效。

(4) 本條並不影響審裁處根據第 227 條准予擱置執行某指明決定的權力。

233. 終審法院首席法官訂立規則

終審法院首席法官可訂立規則——

- (a) 對根據第 223 條判給訟費及對該等訟費的評定作出規定；
- (b) 訂明審裁處依據第 226 條就其命令向原訟法庭發出通知的方式；
- (c) 規管根據第 229 條提出的上訴的聆訊程序；
- (d) 規定繳付在規則中就與覆核申請有關的任何事宜而指明的費用；
- (e) 對本部或附表 8 第 1 部沒有作出規定而關乎覆核申請的程序事宜或其他事宜作出規定；
- (f) 就為施行本部或附表 8 第 1 部發出或送達任何文件（不論實際如何稱述）作出規定；
- (g) 訂明本部規定由或可由終審法院首席法官藉規則訂明的事宜。

(c) where the person makes an application for review of the decision within the period of 21 days specified in section 217(3)—

- (i) where the decision is confirmed by the Tribunal, at the time when the decision is so confirmed;
- (ii) where the decision is varied, or substituted by another decision, by the Tribunal, at the time when the decision is so varied or substituted, subject however to the terms of the variation or substitution; or
- (iii) where the application is withdrawn, at the time when it is so withdrawn.

(3) Notwithstanding subsection (2) and any other provisions of this or any other Ordinance, but subject to subsection (1), the relevant authority may, where it considers appropriate in the interest of the investing public or in the public interest to do so, specify in the notice served in respect of a specified decision any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified.

(4) Nothing in this section affects the power of the Tribunal to grant a stay of execution of a specified decision under section 227.

233. Rules by Chief Justice

The Chief Justice may make rules—

- (a) providing for the award of costs under section 223 and the taxation of those costs;
- (b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 226;
- (c) regulating the procedure for the hearing of appeals under section 229;
- (d) requiring the payment of the fees specified in the rules for any matter relating to applications for review;
- (e) providing for matters of procedure or other matters relating to applications for review or reviews, which are not provided for in this Part or in Part 1 of Schedule 8;
- (f) providing for the issue or service of any document (however described) for the purposes of this Part or Part 1 of Schedule 8;
- (g) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

- (d) 將有關事宜發還審裁處處理，並給予上訴法庭認為適當的指示，包括指示審裁處重新進行有關研訊程序，以裁定上訴法庭指明的問題。
- (2) 上訴法庭對根據第 266(2) 條提出的上訴，可——
- (a) 確認、更改或推翻上訴所針對的命令；及
- (b) (如推翻該命令) 以它認為適當的任何其他命令取代該命令。
- (3) 如上訴法庭根據第 (1)(c) 或 (2)(a) 或 (b) 款更改某裁斷、裁定或命令或以任何其他裁斷、裁定或命令取代某裁斷、裁定或命令，經更改的該裁斷、裁定或命令或用以取代該裁斷、裁定或命令的其他裁斷、裁定或命令(視屬何情況而定) 可以是審裁處本有權根據它據以作出該裁斷、裁定或命令的同一條文或根據其他條文而——
- (a) (就第 (1)(c) 款的情況而言) 就有關研訊程序作出的任何裁斷或裁定(不論較嚴苛或寬鬆)；或
- (b) (就第 (2)(a) 或 (b) 款的情況而言) 就上訴人作出的任何命令(不論較嚴苛或寬鬆)。
- (4) 如上訴法庭應上訴而根據第 267(1)(d) 條將任何事宜發還審裁處處理，除非上訴法庭另有指示，否則處置該事宜的審裁處的成員，可與該上訴所來自的審裁處的成員相同或有所不同。
- (5) 上訴法庭對根據第 266 條提出的上訴，可就訟費作出它認為適當的命令。

268. 上訴不擱置執行

在不損害第 265 條的原則下，除非上訴法庭另有命令，否則根據第 266 條提出上訴或送交上訴許可申請書存檔，本身並不具有擱置執行審裁處的裁斷或裁定或命令(視屬何情況而定) 的效力。上訴法庭如命令擱置執行，可在訟費、繳存款項於審裁處或其他方面定出它認為適當的條件，而有關的擱置執行須受該等條件規限。

269. 終審法院首席法官訂立規則

終審法院首席法官可訂立規則——

- (d) remit the matter in question to the Tribunal with the directions it considers appropriate, which may include a direction to the Tribunal to conduct the proceedings in question afresh for the purpose of determining any question specified by the Court of Appeal.

- (2) In an appeal under section 266(2), the Court of Appeal may—
- (a) confirm, vary or set aside the order appealed against; and
- (b) where the order is set aside, substitute for the order any other order it considers appropriate.

(3) Where the Court of Appeal varies, or substitutes any other finding, determination or order for, a finding, determination or order under subsection (1)(c) or (2)(a) or (b), the finding, determination or order as varied or the other finding, determination or order substituting for the finding, determination or order (as the case may be) may be—

- (a) in the case of subsection (1)(c), any finding or determination (whether more or less onerous) that the Tribunal had power to make for the purposes of the proceedings in question; or
- (b) in the case of subsection (2)(a) or (b), any order (whether more or less onerous) that the Tribunal had power to make in respect of the appellant,

whether or not under the same provision as that under which the finding, determination or order has been made.

(4) Where on appeal the Court of Appeal remits any matter to the Tribunal under section 267(1)(d), unless the Court of Appeal otherwise directs, members of the Tribunal disposing of the matter may be the same as, or different from, those of the Tribunal from which the appeal lies.

(5) In an appeal under section 266, the Court of Appeal may make such order as to costs as it considers appropriate.

268. No stay of execution on appeal

Without prejudice to section 265, neither the lodging of an appeal nor the filing of an application for leave to appeal under section 266 by itself operates as a stay of execution of a finding or determination or an order (as the case may be) of the Tribunal unless the Court of Appeal otherwise orders, and any stay of execution may be subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate.

269. Rules by Chief Justice

The Chief Justice may make rules—

- (a) 對須根據第 257(1)(e) 或 (f) 條提述的命令 (不論該命令是根據第 257(1) 條或是根據第 258(1) 條而作出的) 繳付的訟費的評定，以及對根據第 260 條判給訟費及對該等訟費的評定作出規定；
- (b) 訂明審裁處依據第 264 條就其命令向原訟法庭發出通知的方式；
- (c) 規管——
 - (i) 根據第 266 條申請上訴許可的程序及該等申請的聆訊程序；
 - (ii) 根據該條提出的上訴的聆訊程序；
- (d) 規定繳付在規則中就與根據第 252 條提起的研訊程序有關的任何事宜而指明的費用；
- (e) 對本部或附表 9 沒有作出規定而關乎根據第 252 條提起的研訊程序的程序事宜或其他事宜作出規定；
- (f) 就為施行本部或附表 9 發出或送達任何文件 (不論實際如何稱述) 作出規定；
- (g) 訂明本部規定由或可由終審法院首席法官藉規則訂明的事宜。

第 4 分部——內幕交易

270. 內幕交易

- (1) 當以下情況出現時，與某上市法團有關的內幕交易即告發生——
 - (a) 與該法團有關連的人，掌握他知道屬關於該法團的有關消息的消息，並——
 - (i) 進行該法團 (或該法團的有連繫法團) 的上市證券或其衍生工具的交易；或
 - (ii) 在知道或有合理理由相信另一人會進行該等證券或工具的交易的情況下，慫使或促使該另一人進行該等交易；
 - (b) 正意圖或曾意圖提出收購該法團的要約的人 (不論是否聯同別人提出)，在知道該項收購意圖的消息或已打消該意圖的消息是關於該法團的有關消息的情況下——

- (a) providing for the taxation of costs required to be paid under an order referred to in section 257(1)(e) or (f), whether made under section 257(1) or 258(1), and for the award of costs under section 260 and the taxation of those costs;
- (b) prescribing the manner in which the Tribunal is to give notice to the Court of First Instance in respect of orders of the Tribunal pursuant to section 264;
- (c) regulating the procedure for—
 - (i) applying for leave to appeal, and the hearing of applications for leave to appeal, under section 266;
 - (ii) the hearing of appeals under that section;
- (d) requiring the payment of the fees specified in the rules for any matter relating to the proceedings instituted under section 252;
- (e) providing for matters of procedure or other matters relating to the proceedings instituted under section 252, which are not provided for in this Part or in Schedule 9;
- (f) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 9;
- (g) prescribing any matter which this Part provides is, or may be, prescribed by rules made by the Chief Justice.

Division 4—Insider dealing

270. Insider dealing

- (1) Insider dealing in relation to a listed corporation takes place—
 - (a) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation—
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them;
 - (b) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation—

7. 如因不能取得第 1 至 6 條列出的規定所規定的某些資料、詳情或文件，或因第 1 至 6 條列出的規定所規定的事宜不適用於有關團體，以致不能符合該規定，該要約須改為說明該事實及其理由；如該團體是在香港成立的法團，而送交公司註冊處處長的該法團的申報表中並無提供第 2 至 6 條規定的某些資料、詳情或文件，則該要約亦須說明該事實。

8. 要約——

(a) 的英文本須在顯眼位置載有以下通知，印刷字體須不小於泰晤士報 8 點字——

“IMPORTANT

If you are in doubt as to any aspect of this offer,
you should consult a licensed securities dealer,
bank manager, solicitor, professional
accountant or other professional
adviser.”; 及

(b) 的中文本須在顯眼位置載有以下通知，印刷字面長度須不少於 2.5 毫米——

“重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、
銀行經理、律師、專業會計師或其他專業顧問。”。

9. (1) 在本部中，“團體”(body) 具有本條例第 175(9) 條給予該詞的涵義。

(2) 本條例第 175(8) 條適用於在本部中提述某團體 (不論實際如何稱述) 的證券之處，一如該條適用於本條例第 175 條中提述某團體的證券之處。

附表 8

[第 215、216、217、218、
219、222、232、233
及 234 條及附表 10]

證券及期貨事務上訴審裁處

第 1 部

成員的委任及審裁處的研訊程序等

1. 在本附表中，除文意另有所指外——

“上訴委員”(panel member) 指上訴委員會委員；

“上訴委員會”(appeal panel) 指根據第 2 條委出的委員會；

“主席”(chairman) 指審裁處主席；

“各方”(parties) 具有本條例第 215 條給予該詞的涵義；

“有關當局”(relevant authority) 具有本條例第 215 條給予該詞的涵義；

“局長”(Secretary) 指財經事務及庫務局局長； (由 2002 年第 106 號法律公告修訂)

“成員”(member) 指審裁處成員；

7. If any requirement set out in sections 1 to 6 cannot be satisfied because any of the information, particulars and documents required are not available, or because any of the matters covered by the requirement are not applicable to the body in question, the offer shall instead state that fact and the reasons therefor; and if the body in question is a corporation incorporated in Hong Kong but any of the information, particulars and documents required under sections 2 to 6 are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.

8. The offer shall contain in a prominent position——

(a) in the case of the English text, the following notice printed in type of a size not smaller than the type known as 8 point Times——

“IMPORTANT

If you are in doubt as to any aspect of this offer,
you should consult a licensed securities dealer,
bank manager, solicitor, professional
accountant or other professional
adviser.”; and

(b) in the case of the Chinese text, the following notice printed in type the face of which is not less than 2.5 mm in depth——

“重要提示

如你對此要約的任何方面有疑問，應諮詢持牌證券交易商、
銀行經理、律師、專業會計師或其他專業顧問。”。

9. (1) In this Part, “body” (團體) has the meaning assigned to it by section 175(9) of this Ordinance.

(2) Section 175(8) of this Ordinance applies to a reference to securities of a body (however described) in this Part as it applies to such a reference in section 175 of this Ordinance.

SCHEDULE 8

[ss. 215, 216, 217, 218,
219, 222, 232, 233 &
234 & Sch. 10]

SECURITIES AND FUTURES APPEALS TRIBUNAL

PART 1

APPOINTMENT OF MEMBERS AND PROCEEDINGS OF TRIBUNAL, ETC.

1. In this Schedule, unless the context otherwise requires——

“appeal panel” (上訴委員會) means the panel of persons appointed under section 2;

“application for review” (覆核申請) has the meaning assigned to it by section 215 of this Ordinance;

“chairman” (主席) means the chairman of the Tribunal;

“judge” (法官) has the meaning assigned to it by section 215 of this Ordinance;

“member” (成員) means a member of the Tribunal;

“ordinary member” (普通成員) means a member other than the chairman;

“panel member” (上訴委員) means a member of the appeal panel;

“parties” (各方) has the meaning assigned to it by section 215 of this Ordinance;

- “法官”(judge)具有本條例第 215 條給予該詞的涵義；
 “指明決定”(specified decision)具有本條例第 215 條給予該詞的涵義；
 “普通成員”(ordinary member)指並非主席的成員；
 “審裁處”(Tribunal)具有本條例第 215 條給予該詞的涵義；
 “覆核”(review)具有本條例第 215 條給予該詞的涵義；
 “覆核申請”(application for review)具有本條例第 215 條給予該詞的涵義。

委出上訴委員會

2. 行政長官須委出由他認為適當的數目的非公職人員組成的上訴委員會。
3. 在不抵觸第 4 及 5 條的條文下，上訴委員的任期為行政長官認為適當的期間，並可在本條例其他條文的規限下不時獲再度委任。
4. 上訴委員可隨時以書面通知行政長官而辭職。
5. 行政長官可基於某上訴委員喪失履行職務能力、破產、疏於職守、有利益衝突或行為失當的理由，而藉書面通知將該委員免任。
6. 為免生疑問，本條例第 216(5) 條並不規定根據第 2 條委出多於一個委員會。

主席的委任

7. 主席由行政長官按終審法院首席法官所作建議而委任。
8. 在不抵觸第 9 至 11 條的條文下，主席的任期為 3 年，或獲委任就指明的覆核行事，並可在本條例其他條文的規限下不時獲再度委任。
9. 主席可隨時以書面通知行政長官而辭職。
10. 行政長官可基於主席喪失履行職務能力、破產、疏於職守、有利益衝突或行為失當的理由，而在諮詢終審法院首席法官後藉書面通知將主席免任。
11. 由審裁處展開的覆核如在主席任期屆滿之前仍未完成，行政長官可授權他繼續擔任主席，以完成該項覆核。

普通成員的委任

12. 為裁定某項覆核，局長須按主席的建議而就該項覆核委任 2 名上訴委員為普通成員。
13. 在不抵觸第 14 及 15 條的條文下，普通成員獲委任就指明的覆核行事，並可在本條例其他條文的規限下不時獲再度委任。
14. 普通成員可隨時以書面通知局長而辭職。
15. 普通成員停任上訴委員時，即停任普通成員。

聆訊

16. 主席須為裁定有關覆核而召開所需的審裁處聆訊。

- “relevant authority”(有關當局) has the meaning assigned to it by section 215 of this Ordinance;
 “review”(覆核) has the meaning assigned to it by section 215 of this Ordinance;
 “Secretary”(局長) means the Secretary for Financial Services and the Treasury; (*Amended L.N. 106 of 2002*)
 “specified decision”(指明決定) has the meaning assigned to it by section 215 of this Ordinance;
 “Tribunal”(審裁處) has the meaning assigned to it by section 215 of this Ordinance.

Appointment of appeal panel

2. The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.
3. Subject to sections 4 and 5, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
4. A panel member may at any time resign his office by notice in writing to the Chief Executive.
5. The Chief Executive may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
6. For the avoidance of doubt, section 216(5) of this Ordinance does not require the appointment of persons to more than one panel under section 2.

Appointment of chairman

7. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.
8. Subject to sections 9 to 11, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
9. The chairman may at any time resign his office by notice in writing to the Chief Executive.
10. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
11. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

Appointment of ordinary members

12. For the purpose of determining a review, the Secretary on the recommendation of the chairman shall appoint 2 panel members as ordinary members in relation to the review.
13. Subject to sections 14 and 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
14. An ordinary member may at any time resign his office by notice in writing to the Secretary.
15. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

Sittings

16. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.

17. 在根據第 16 條就某項覆核召開聆訊前，審裁處可就該項覆核的各方所須遵從的程序事宜，以及各方須在甚麼時間內遵從該等事宜，給予指示。

18. 除第 19 條另有規定外——

- (a) 主席及 2 名普通成員須出席審裁處任何聆訊；
- (b) 審裁處任何聆訊均由主席主持；及
- (c) 在審裁處任何聆訊中，每項有待審裁處裁定的問題，均取決於成員的多數意見，但法律問題須由主席單獨裁定。

19. 在主席根據第 31 或 32 條就任何由他以審裁處單一成員身分單獨裁定的事宜而進行的聆訊中，只有主席須出席，而每項有待審裁處裁定的問題，均由他裁定。

20. 審裁處所有聆訊均須公開進行，但如審裁處主動或應有關覆核的各方或其中一方的申請而裁定，為公正起見，某次聆訊或其中任何部分不得公開進行，則該次聆訊或該部分聆訊（視屬何情況而定）可閉門進行。

21. 凡有人依據第 20 條申請裁定某次聆訊或其中任何部分不得公開進行，該申請的聆訊須閉門進行。

22. 覆核的各方均有權在任何與該項覆核有關的審裁處聆訊中——

- (a) 親自陳詞，就有關當局或任何法團而言，可由其高級人員或僱員陳詞；及
- (b) 由大律師或律師陳詞，或在審裁處許可下，由任何其他人士陳詞。

23. 主席須在審裁處的聆訊中擬備或安排擬備研訊程序的紀錄，該紀錄須載有他認為適當而與該程序有關的詳情。

24. 在審裁處聆訊中的研訊程序，由審裁處以對有關案件的情況屬最適當的方式決定。

初步會議及同意令

25. 在覆核申請提出後的任何時間，主席可——

- (a) 主動或應該項覆核的各方中的任何一方提出的申請；
- (b) 在經考慮該項覆核的各方就該覆核申請呈交審裁處的任何材料而認為作出以下指示是適當的情況下；及
- (c) 在各方同意或（如任何一方依據 (a) 段提出申請）另一方同意的情况下，指示為以下目的舉行會議，由該項覆核的各方或其代表出席，並由主席主持——
 - (i) 使各方能夠準備進行該項覆核；
 - (ii) 協助審裁處為該項覆核的目的就爭議點作出裁定；及
 - (iii) 一般而言，使該項覆核得以在公正、迅速和合乎經濟原則的情況下進行。

26. 在按照主席根據第 25 條作出的指示而舉行會議時，主席可——

- (a) 給予他認為為有關覆核得以在公正、迅速和合乎經濟原則的情況下進行而屬有需要或可取的指示；及
- (b) 設法確保有關覆核的各方就該項覆核作出所有他們按理應作出的協議。

17. Before convening a sitting under section 16 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.

18. Subject to section 19, at any sitting of the Tribunal—

- (a) the chairman and 2 ordinary members shall be present;
- (b) the chairman shall preside; and
- (c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

19. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 31 or 32, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

20. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

21. Where an application is made pursuant to section 20 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

22. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard—

- (a) in person or, in the case of the relevant authority or a corporation, through an officer or employee of the relevant authority or the corporation (as the case may be); and
- (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

23. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

24. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

Preliminary conferences and consent orders

25. At any time after an application for review has been made, the chairman may—

- (a) on his own motion or on the application of any of the parties to the review;
- (b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application for review by the parties to the review; and
- (c) if the parties agree or, in the case of an application made by any party pursuant to paragraph (a), the other party agrees, direct that a conference, to be attended by the parties or their representatives and presided over by the chairman shall be held for the purposes of—
 - (i) enabling the parties to prepare for the conduct of the review;
 - (ii) assisting the Tribunal to determine issues for the purposes of the review; and
 - (iii) generally securing the just, expeditious and economical conduct of the review.

26. At a conference held in accordance with a direction of the chairman under section 25, the chairman may—

- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
- (b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.

27. 在按照主席根據第 25 條作出的指示而舉行會議後，主席須向審裁處報告關於該會議而他認為適當的事宜。

28. 在覆核申請提出後，如——

(a) 該項覆核的各方請求並同意審裁處或主席根據本條作出以下命令；及

(b) 該項覆核的各方同意以下命令的所有條款，

審裁處或主席（視屬何情況而定）可作出他根據本條例任何條文有權作出的命令，不論是否已符合在其他方面適用於該命令的規定。

29. 不論本條例第 XI 部或本附表其他條文有任何規定，凡審裁處或主席根據第 28 條作出任何命令，則該命令就所有目的而言，須視為審裁處或主席（視屬何情況而定）在符合在其他方面適用於該命令的作出的規定的情況下，根據該條文作出的。

30. 在第 28 及 29 條中，“命令”（order）包括任何裁斷、裁定及其他決定。

主席作為審裁處單一成員

31. 在覆核申請提出後但在審裁處舉行聆訊以裁定該項覆核前，如該項覆核的各方藉給予審裁處書面通知，告知審裁處他們同意該項覆核可由主席以審裁處單一成員身分單獨裁定，則主席可以審裁處單一成員身分裁定該項覆核。

32. 凡——

(a) 任何人依據本條例第 217(4) 條向審裁處申請，要求延展提出覆核申請的限期；或

(b) 任何人根據本條例第 227(2) 條向審裁處申請擱置某指明決定，

主席可以審裁處單一成員身分裁定該申請。

33. 如第 31 或 32 條適用，則由主席以審裁處單一成員身分構成的審裁處，就所有目的而言，須視為連同 2 名普通成員構成的審裁處。

34. 主席在根據第 31 條作出任何裁定或就第 32(b) 條描述的申請作出任何裁定後，須向審裁處報告作出該裁定、作出該裁定的理由及關於該裁定而他認為適當的事宜。

35. 凡——

(a) 有第 32(b) 條描述的申請；及

(b) 主席因傷病、不在香港或其他因由而不能執行其職能，或主席認為自己就該申請執行其職能是不恰當或不可取的，

本條例第 215 條中“法官”的定義的 (a) 段所指的法官，須在獲終審法院首席法官為此目的委任後裁定該申請，猶如他是根據本條例妥為委任的主席一樣，而本條例的條文據此適用於他。

雜項條文

36. 除本條例另有規定外，審裁處及其成員，以及在任何覆核中的任何證人、大律師、律師、覆核的各方或所涉及的其他人，就該項覆核享有的特權和豁免權，與假若該項覆核是在原訟法庭進行的民事法律程序他們便會享有的一樣。

27. After a conference has been held in accordance with a direction of the chairman under section 25, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

28. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if—

(a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and

(b) the parties consent to all of the terms of the order.

29. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 28 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

30. In sections 28 and 29, “order” (命令) includes any finding, determination and any other decision.

Chairman as sole member of Tribunal

31. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.

32. Where—

(a) an application is made to the Tribunal pursuant to section 217(4) of this Ordinance for the grant of an extension of the time within which an application for review shall be made; or

(b) an application is made to the Tribunal under section 227(2) of this Ordinance for a stay of execution of a specified decision,

the chairman may determine the application as the sole member of the Tribunal.

33. Where section 31 or 32 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

34. After the chairman has made any determination under section 31, or made any determination in respect of an application described in section 32(b), the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.

35. Where—

(a) there is an application described in section 32(b); and

(b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application,

a judge within the meaning of paragraph (a) of the definition of “judge” in section 215 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

Miscellaneous

36. Except as otherwise provided in this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

項	指明決定的描述	條文
7.	第 2 部第 1 分部第 27 項所列的指明決定。	本條例第 121(6) 條。
8.	第 2 部第 1 分部第 36 項所列的指明決定。	本條例第 132(4) 條。
9.	第 2 部第 1 分部第 42 項所列的指明決定。	本條例第 146(9) 條。
10.	第 2 部第 1 分部第 41 或 43 項所列的指明決定。	本條例第 146(10) 條。
11.	第 2 部第 1 分部第 44 項所列的指明決定。	本條例第 147(7) 條。
12.	第 2 部第 1 分部第 45 或 46 項所列的指明決定。	本條例第 147(8) 條。
13.	第 2 部第 1 分部第 61 項所列的指明決定。	本條例第 203(3) 條。
14.	第 2 部第 1 分部第 62、63、64 或 65 項所列的指明決定。	本條例第 209(1) 條。
15.	第 2 部第 2 分部第 6 項所列的指明決定。	《銀行業條例》(第 155 章) 第 71E(4) 條。

附表 9

[第 251、252、253、
256 及 269 條]

市場失當行為審裁處

1. 在本附表中，除文意另有所指外——

“主席”(chairman) 指審裁處主席；

“成員”(member) 指審裁處成員；

“法官”(judge) 具有本條例第 245(1) 條給予該詞的涵義；

“研訊程序”(proceedings) 指根據本條例第 252 條提起的研訊程序；

“普通成員”(ordinary member) 指並非主席的成員；

“提控官”(Presenting Officer) 具有本條例第 245(1) 條給予該詞的涵義；

“審裁處”(Tribunal) 具有本條例第 245(1) 條給予該詞的涵義。

成員的委任

2. 主席由行政長官按終審法院首席法官所作建議而委任。

3. 在不抵觸第 6、7 及 9 條的條文下，主席的任期為 3 年，或獲委任就指明的研訊程序行事，並可在本條例其他條文的規限下不時獲再度委任。

4. 普通成員由行政長官委任。

5. 在不抵觸第 6 及 8 條的條文下，普通成員獲委任就指明的研訊程序行事，並可在本條例其他條文的規限下不時獲再度委任。

Item	Description of specified decision	Provision
7.	A specified decision set out in item 27 of Division 1 of Part 2.	Section 121(6) of this Ordinance.
8.	A specified decision set out in item 36 of Division 1 of Part 2.	Section 132(4) of this Ordinance.
9.	A specified decision set out in item 42 of Division 1 of Part 2.	Section 146(9) of this Ordinance.
10.	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
11.	A specified decision set out in item 44 of Division 1 of Part 2.	Section 147(7) of this Ordinance.
12.	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.
13.	A specified decision set out in item 61 of Division 1 of Part 2.	Section 203(3) of this Ordinance.
14.	A specified decision set out in item 62, 63, 64 or 65 of Division 1 of Part 2.	Section 209(1) of this Ordinance.
15.	A specified decision set out in item 6 of Division 2 of Part 2.	Section 71E(4) of the Banking Ordinance (Cap. 155).

SCHEDULE 9

[ss. 251, 252, 253,
256 & 269]

MARKET MISCONDUCT TRIBUNAL

1. In this Schedule, unless the context otherwise requires—

“chairman”(主席) means the chairman of the Tribunal;

“judge”(法官) has the meaning assigned to it by section 245(1) of this Ordinance;

“member”(成員) means a member of the Tribunal;

“ordinary member”(普通成員) means a member other than the chairman;

“Presenting Officer”(提控官) has the meaning assigned to it by section 245(1) of this Ordinance;

“proceedings”(研訊程序) means proceedings instituted under section 252 of this Ordinance;

“Tribunal”(審裁處) has the meaning assigned to it by section 245(1) of this Ordinance.

Appointment of members

2. The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.

3. Subject to sections 6, 7 and 9, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

4. The ordinary members shall be appointed by the Chief Executive.

5. Subject to sections 6 and 8, an ordinary member shall be appointed to act in relation to any specified proceedings, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.

6. 成員可隨時以書面通知行政長官而辭職。
7. 行政長官可基於主席喪失履行職務能力、破產、疏於職守、有利益衝突或行為失當的理由，而在諮詢終審法院首席法官後藉書面通知將主席免任。
8. 行政長官可基於某普通成員喪失履行職務能力、破產、疏於職守、有利益衝突或行為失當的理由，而藉書面通知將該成員免任。
9. 由審裁處展開的研訊程序如主席任期屆滿之前仍未完成，行政長官可授權他繼續擔任主席，以完成該程序。

委任代替普通成員的人

10. 在不抵觸第 11 條的條文下，如某普通成員已死亡、根據第 6 條辭職或根據第 8 條被免任，則行政長官可委任一名不是公職人員的人代替該普通成員，而該人可在本條例其他條文的規限下不時獲再度委任。
11. 除非符合以下條件，否則行政長官不得根據第 10 條委任某人代替審裁處某普通成員——
 - (a) 審裁處主席已在顧及公正原則後建議應如此委任該人；及
 - (b) 審裁處主席已給予以下的人合理的陳詞機會——
 - (i) 依據第 13(b) 條在第 13 條描述的就有關研訊程序而作的陳述中被指明身分的人；及
 - (ii) 就有關研訊程序委任的提控官。
12. 根據第 10 條獲委任代替某普通成員的人就所有目的而言，須當作該普通成員。

為提起研訊程序而作的陳述

13. 財政司司長根據本條例第 252(2) 條發出的通知須載有的陳述，須指明——
 - (a) 依據本條例第 XIII 部哪項或哪些條文，指某人看來曾作出構成市場失當行為的行為；及
 - (b) 該人的身分，及足以披露關於上述行為的性質及要素的合理資料的概要。
14. 如財政司司長覺得依據本條例第 XIII 部某些條文，某人可能曾作出構成市場失當行為的行為，則第 13 條描述的陳述可逐一或以交替形式依據該等條文指明該等行為。
15. 審裁處可在研訊程序進行期間，隨時命令就該程序委任的提控官按審裁處認為適當的方式，修訂第 13 條描述的就該程序而作的陳述，但——
 - (a) 不得修訂該陳述原來依據第 13(b) 條指明的該人身分；及
 - (b) 在修訂作出後，該陳述中指明屬任何市場失當行為的標的的金融產品，須保持與該陳述中原來指明屬該市場失當行為的標的的金融產品相同。
16. 為免生疑問，審裁處按它具有就第 13 條描述的陳述而可行使的司法管轄權的方式，而具有就根據第 15 條修訂的陳述而可行使的司法管轄權。

6. A member may at any time resign his office by notice in writing to the Chief Executive.
7. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
8. The Chief Executive may by notice in writing remove an ordinary member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
9. If any proceedings have been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the proceedings.

Appointment of persons to replace ordinary members

10. Subject to section 11, the Chief Executive may appoint a person, who is not a public officer, to replace an ordinary member if the ordinary member has died, or has resigned from office under section 6 or has been removed from office under section 8, and the person may, subject to the other provisions of this Ordinance, from time to time be reappointed.
11. The Chief Executive shall not appoint a person to replace an ordinary member of the Tribunal under section 10 unless the chairman of the Tribunal—
 - (a) has recommended that a person should be so appointed having regard to the interests of justice; and
 - (b) has given a reasonable opportunity of being heard to—
 - (i) any person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13; and
 - (ii) the Presenting Officer appointed for the proceedings.
12. A person appointed to replace an ordinary member under section 10 shall be deemed for all purposes to be the ordinary member.

Statements for institution of proceedings

13. The statement required to be contained in a notice given by the Financial Secretary under section 252(2) of this Ordinance shall specify—
 - (a) the provision or provisions of Part XIII of this Ordinance by reference to which any person appears to have perpetrated any conduct which constitutes market misconduct; and
 - (b) the identity of the person, and such brief particulars as are sufficient to disclose reasonable information concerning the nature and essential elements of the market misconduct.
14. Where it appears to the Financial Secretary that a person may have perpetrated any conduct which constitutes market misconduct by reference to more than one provision of Part XIII of this Ordinance, the statement described in section 13 may specify separately or in the alternative the market misconduct by reference to those provisions.
15. The Tribunal may at any time during the course of any proceedings order the Presenting Officer appointed for the proceedings to amend the statement for the proceedings as described in section 13 in such manner as it considers appropriate, except that—
 - (a) there shall be no amendment to the identity of the person originally specified pursuant to section 13(b) in the statement; and
 - (b) after the amendment the financial product which is the subject of any market misconduct specified in the statement shall remain the same as the financial product which is the subject of the market misconduct originally specified in the statement.
16. For the avoidance of doubt, the Tribunal shall have jurisdiction exercisable by reference to a statement as amended under section 15 in the same manner as it has jurisdiction exercisable by reference to a statement described in section 13.

17. 不論本條例第 XIII 部有任何規定，除非某人依據第 13(b) 條在第 13 條描述的陳述中被指明身分，否則——

- (a) 不得依據本條例第 252(3)(b) 條識辨他為曾從事市場失當行為；及
- (b) 不得根據本條例第 257 或 258 條就他作出命令。

18. 依據第 13(b) 條在第 13 條描述的陳述中被指明身分的人，須按審裁處指示的方式獲提供該陳述的文本；如該陳述根據第 15 條修訂，則該人須按審裁處指示的方式獲提供經如此修訂的該陳述的文本。

19. 在進行根據本條例第 252 條提起的研訊程序後，凡審裁處覺得因任何人的行為而曾發生或可能發生市場失當行為，審裁處如認為適當，可在它根據本條例第 262(1) 條就該程序擬備的報告中，向財政司司長建議根據本條例第 252 條就該事宜提起研訊程序。

20. 在第 15 條中，“金融產品”(financial product) 指——

- (a) (如有關市場失當行為是內幕交易) 本條例第 245(2) 條界定的上市證券或上市證券衍生工具；或
- (b) (如有關市場失當行為是任何其他市場失當行為) 本條例附表 1 界定的證券或期貨合約。

提控官

21. 在不損害本條例第 XIII 部授予提控官的權力及職能的原則下，提控官須就他獲委任進行的研訊程序，向審裁處提交任何可得證據，包括審裁處要求他提交的證據，以使審裁處能夠就是否曾有市場失當行為發生及(如有話)該行為的性質，作出有根據的決定。

22. 律政司司長可隨時更換提控官或獲委任協助提控官的人。

聆訊

23. 主席須為聆聽和裁定研訊程序所引起或在與該程序有關連的情況下產生的任何問題或爭議點，而召開所需的審裁處聆訊。

24. 除第 25 條另有規定外——

- (a) 主席及 2 名普通成員須出席審裁處任何聆訊；
- (b) 審裁處任何聆訊均由主席主持；及
- (c) 在審裁處任何聆訊中，每項有待審裁處裁定的問題，均取決於成員的多數意見，但法律問題須由主席單獨裁定。

25. 在主席根據第 36 條就任何由他以審裁處單一成員身分單獨裁定的事宜而進行的聆訊中，只有主席須出席，而每項有待審裁處裁定的問題，均由他裁定。

26. 審裁處所有聆訊均須公開進行，但如審裁處——

- (a) 主動；或
- (b) 應以下的人提出的申請——
 - (i) 依據第 13(b) 條在第 13 條描述的就有關研訊程序而作的陳述中被指明身分的人；或
 - (ii) 就有關研訊程序委任的提控官，

裁定為公正起見，某次聆訊或其中任何部分不得公開進行，則該次聆訊或該部分聆訊(視屬何情況而定)可閉門進行。

17. Notwithstanding anything in Part XIII of this Ordinance, unless the identity of a person is specified pursuant to section 13(b) in a statement described in section 13—

- (a) he shall not be identified as having engaged in market misconduct pursuant to section 252(3)(b) of this Ordinance; and
- (b) no order shall be made in respect of him under section 257 or 258 of this Ordinance.

18. Any person whose identity is specified pursuant to section 13(b) in a statement described in section 13 shall be provided with a copy of the statement and, where the statement is amended under section 15, of the statement as so amended, in such manner as the Tribunal may direct.

19. After the conduct of any proceedings instituted under section 252 of this Ordinance, where it appears to the Tribunal that market misconduct has or may have taken place by reference to the conduct of any person, it may, where it considers appropriate, include in the report prepared by it in respect of the proceedings under section 262(1) of this Ordinance a recommendation to the Financial Secretary to institute proceedings under section 252 of this Ordinance concerning the matter.

20. In section 15, “financial product” (金融產品) means—

- (a) where the market misconduct in question is an insider dealing, listed securities or derivatives of listed securities as defined in section 245(2) of this Ordinance; or
- (b) where the market misconduct in question is any other market misconduct, securities or futures contracts as defined in Schedule 1 to this Ordinance.

Presenting Officer

21. Without prejudice to any powers and functions of a Presenting Officer under Part XIII of this Ordinance, a Presenting Officer shall, in respect of the proceedings for which he is appointed, present to the Tribunal such available evidence, including any evidence which the Tribunal requests him to present to it, as shall enable the Tribunal to reach an informed decision as to whether market misconduct has taken place and, if so, the nature of the market misconduct.

22. The Secretary for Justice may at any time replace a Presenting Officer or any person appointed to assist a Presenting Officer.

Sittings

23. The chairman shall convene such sittings of the Tribunal as are necessary to hear and determine any question or issue arising out of or in connection with the proceedings.

24. Subject to section 25, at any sitting of the Tribunal—

- (a) the chairman and 2 ordinary members shall be present;
- (b) the chairman shall preside; and
- (c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.

25. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 36, the chairman only shall be present, and every question before the Tribunal shall be determined by him.

26. Every sitting of the Tribunal shall be held in public unless the Tribunal—

- (a) on its own motion; or
- (b) on the application of—
 - (i) any person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13; or
 - (ii) the Presenting Officer appointed for the proceedings,

determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.

27. 凡有人依據第 26 條申請裁定某次聆訊或其中任何部分不得公開進行，該申請的聆訊須閉門進行。

28. 在任何與任何研訊程序有關的審裁處聆訊中，依據第 13(b) 條在第 13 條描述的就該程序而作的陳述中被指明身分的人有權——

- (a) 親自陳詞，就法團而言，可由該法團的高級人員或僱員陳詞；及
- (b) 由大律師或律師陳詞，或在審裁處許可下，由任何其他人士陳詞。

29. 主席須在審裁處的聆訊中擬備或安排擬備研訊程序的紀錄，該紀錄須載有他認為適當而與該程序有關的詳情。

初步會議及同意令

30. 在研訊程序根據本條例第 252 條提起後的任何時間，主席可——

- (a) 主動或應以下的人提出的申請——
 - (i) 依據第 13(b) 條在第 13 條描述的就該程序而作的陳述中被指明身分的人；或
 - (ii) 就該程序委任的提控官；
- (b) 在經考慮依據 (a)(i) 或 (ii) 段有權提出申請的任何人就該程序呈交審裁處的任何材料而認為作出以下指示是適當的情況下；及
- (c) 在所有依據 (a)(i) 或 (ii) 段有權提出但沒有提出申請的人同意的情况下，指示為以下目的舉行會議，由該程序的各方或其代表出席，並由主席主持——
 - (i) 使各方能夠準備進行該程序；
 - (ii) 協助審裁處為該程序的目的就爭議點作出裁定；及
 - (iii) 一般而言，使該程序得以在公正、迅速和合乎經濟原則的情況下進行。

31. 在按照主席根據第 30 條作出的指示而舉行會議時，主席可——

- (a) 給予他認為為使有關研訊程序得以在公正、迅速和合乎經濟原則的情況下進行而屬有需要或可取的指示；及
- (b) 設法確保有關研訊程序的各方就該程序作出所有他們按理應作出的協議。

32. 在按照主席根據第 30 條作出的指示而舉行會議後，主席須向審裁處報告關乎該會議而他認為適當的事宜。

33. 在研訊程序根據本條例第 252 條提起後，如——

- (a) 該程序的各方請求並同意審裁處或主席根據本條例作出以下命令；及
- (b) 該程序的各方同意以下命令的所有條款，

審裁處或主席（視屬何情況而定）可作出他根據本條例任何條文有權作出的命令，不論是否已符合在其他方面適用於該命令的規定。

34. 不論本條例第 XIII 部或本附表其他條文有任何規定，凡審裁處或主席根據第 33 條作出任何命令，則該命令就所有目的而言，須視為審裁處或主席（視屬何情況而定）在符合在其他方面適用於該命令的作出的規定的情況下，根據該條文作出的。

35. 在第 33 及 34 條中，“命令”(order) 包括任何裁斷、裁定及其他決定。

27. Where an application is made pursuant to section 26 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.

28. At any sitting of the Tribunal relating to any proceedings, a person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13 shall be entitled to be heard—

- (a) in person or, in the case of a corporation, through an officer or employee of the corporation; and
- (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

29. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

Preliminary conferences and consent orders

30. At any time after any proceedings have been instituted under section 252 of this Ordinance, the chairman may—

- (a) on his own motion or on the application of—
 - (i) any person whose identity is specified pursuant to section 13(b) in the statement for the proceedings as described in section 13; or
 - (ii) the Presenting Officer appointed for the proceedings;
- (b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the proceedings by any person who is entitled to make an application pursuant to paragraph (a)(i) or (ii); and
- (c) if all persons who are entitled to make, but have not made, an application pursuant to paragraph (a)(i) or (ii) agree,

direct that a conference, to be attended by the parties to the proceedings or their representatives and presided over by the chairman, shall be held for the purposes of—

- (i) enabling the parties to prepare for the conduct of the proceedings;
- (ii) assisting the Tribunal to determine issues for the purposes of the proceedings; and
- (iii) generally securing the just, expeditious and economical conduct of the proceedings.

31. At a conference held in accordance with a direction of the chairman under section 30, the chairman may—

- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the proceedings; and
- (b) endeavour to secure that the parties to the proceedings make all agreements as they ought reasonably to have made in relation to the proceedings.

32. After a conference has been held in accordance with a direction of the chairman under section 30, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.

33. At any time after any proceedings have been instituted under section 252 of this Ordinance, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if—

- (a) the parties to the proceedings request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and
- (b) the parties consent to all of the terms of the order.

34. Notwithstanding Part XIII of this Ordinance or any other provisions of this Schedule, where under section 33 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

35. In sections 33 and 34, “order” (命令) includes any finding, determination and any other decision.

主席作為審裁處單一成員

36. 在研訊程序根據本條例第 252 條提起後但在審裁處舉行聆訊以聆聽和裁定該程序所引起或與該程序有關連的問題或爭議點前，如該程序的各方藉給予審裁處書面通知，告知審裁處他們同意任何該等問題或爭議點可由主席以審裁處單一成員身分單獨裁定，則主席可以審裁處單一成員身分裁定該問題或爭議點。

37. 如第 36 條適用，則由主席以審裁處單一成員身分構成的審裁處，就所有目的而言，須視為連同 2 名普通成員構成的審裁處。

38. 主席在根據第 36 條作出任何裁定後，須向審裁處報告作出該裁定、作出該裁定的理由及關乎該裁定而他認為適當的事實。

雜項條文

39. 除本條例另有規定外，審裁處及其成員、任何提控官，以及在研訊程序中的任何一方、證人、大律師、律師或所涉及的其他人，就該程序享有的特權和豁免權，與假若該程序是在原訟法庭進行的民事法律程序他們便會享有的一樣。

附表 10

[第 237、240、242、
406、407、408 及
409 條]

保留、過渡性、相應及有關條文等

第 1 部

保留條文，及過渡性及補充安排

第 1 部的釋義

1. 本部條文的標題並無立法效力，亦不在任何方面更改、限制或擴大本部任何條文的釋義。

本條例第 II 部 (證券及期貨事務監察委員會)

2. 在不損害本條例第 3 條的原則下——

- (a) 任何在本條例第 II 部生效前由證監會根據或憑藉已廢除的《證券及期貨事務監察委員會條例》作出的或就證監會而根據或憑藉該條例作出的、且在緊接該部生效前具有效力的事情，在該事情是可在該部生效後根據或憑藉該部任何條文作出的範圍內，在該部生效時繼續有效，並當作已根據或憑藉該條文作出；
- (b) 任何在緊接本條例第 II 部生效前正由證監會根據或憑藉已廢除的《證券及期貨事務監察委員會條例》進行的或正就證監會而根據或憑藉該條例進行的事情，在該事情是可在該部生效後根據或憑藉該部任何條文作出的範圍內，在該部生效時可根據或憑藉該條文繼續進行；

Chairman as sole member of Tribunal

36. Where, at any time after any proceedings have been instituted under section 252 of this Ordinance but before any sitting of the Tribunal is held to hear and determine any question or issue arising out of or in connection with the proceedings, the parties to the proceedings have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that any such question or issue may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the question or issue as the sole member of the Tribunal.

37. Where section 36 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

38. After the chairman has made any determination under section 36, the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.

Miscellaneous

39. Except as otherwise provided in this Ordinance, the Tribunal and its members, any Presenting Officer, and any party, witness, counsel, solicitor, or any other person involved, in any proceedings, shall have the same privileges and immunities in respect of the proceedings as they would have if the proceedings were civil proceedings before the Court of First Instance.

SCHEDULE 10

[ss. 237, 240, 242, 406,
407, 408 & 409]

SAVINGS, TRANSITIONAL, CONSEQUENTIAL AND
RELATED PROVISIONS, ETC.

PART I

SAVINGS, TRANSITIONAL AND SUPPLEMENTAL ARRANGEMENTS

Interpretation of Part I

1. In this Part, a heading to any provision of this Part shall not have legislative effect and shall not in any way vary, limit or extend the interpretation of any provision of this Part.

Part II of this Ordinance (Securities and
Futures Commission)

2. Without prejudice to section 3 of this Ordinance—
 - (a) anything done under or by virtue of the repealed Securities and Futures Commission Ordinance before the commencement of Part II of this Ordinance by or in relation to the Commission and having effect immediately before such commencement shall, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, upon such commencement continue to have effect and be deemed to have been done under or by virtue of that provision;
 - (b) anything which immediately before the commencement of Part II of this Ordinance is in the process of being done under or by virtue of the repealed Securities and Futures Commission Ordinance by or in relation to the Commission may, in so far as it could upon such commencement have been done under or by virtue of any provision in that Part, be continued upon such commencement under or by virtue of that provision;