

(譯文)

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(經辦人：首席助理秘書長(5)
梁信彥先生)

傳真函件

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梁先生：

《 結算及交收系統條例草案 》

2004年4月16日的來函收悉。本人就政府當局的回應提出的意見，以及對條例草案提出的進一步意見載列如下，供閣下考慮：

有關提供資料的要求(條例草案第10、51及52條)

- (a) 倘若政府的用意是，指定系統的系統營運者或交收機構不能基於資料受保密權(例如法律專業保密權及免使自己入罪的特權)涵蓋的理由，拒絕提供資料；請當局考慮是否有需要在條例草案內清楚訂明此用意。正如閣下所知，條例草案第34(4)條訂有一項明確條文，使普通法下有關免使自己入罪的特權不適用。條例草案第10、51及52條應否亦作出相同規定？
- (b) 雖然沒有遵從根據條例草案第10及51條作出的提供資料的要求，是條例草案下的罪行，但條例草案卻沒有就不遵從根據第52條作出的提供資料的要求訂明類似制裁。就不遵從第52(4)條而言，條例草案訂明何種制裁(如有的話)？

條例草案第34(2)條

除了條例草案第34(1)(c)條外，條例草案第34(2)條訂明的不作披露的特權，是否亦應適用於條例草案第34(1)(e)及(f)條？

對“藉憲報公告”的提述

條例草案第56條訂明，行政長官可藉憲報公告修訂附表1或2。由於在條例草案獲制定為法例後，附表1及2便會成為該條例的一部分，修訂該兩個附表的任何公告將具立法效力，因而亦是《釋義及通則條例》(第1章)所界定的附屬法例。因此，香港法例第1章第34條適用於此等公告。

中文本

本人就條例草案中文本提出的意見，已在隨附的條例草案複本上標明，供閣下考慮。

謹請閣下盡快以中英文賜覆。

助理法律顧問

(馮秀娟小姐)

副本致：法律顧問

律政司(經辦人：高級助理法律草擬專員顏博志先生及
高級政府律師吳華姿女士)

總議會秘書(1)5

2004年4月22日

m5410

(3) 根據本條撤銷對某指定系統作出的指定，不得以影響在撤銷生效前已透過該系統達成的就轉撥指令進行的任何交收的方式有效。

第 2 分部——各指定系統的義務

5. 將姓名、名稱及地址等告知金融管理專員的義務

(1) 任何人如在某結算及交收系統根據本條例獲指定時是該系統的系统營運者或交收機構，則該人須在該指定作出後 3 天內，以書面告知金融管理專員——

- (a) 他的姓名或名稱、他的營業地點、一個郵遞地址及一個電子郵件地址；
- (b) 他負責該系統的哪些方面的管理或運作；及
- (c) (如該人是法團) 該法團的董事及股東的姓名或名稱及詳情，以及該法團的最高行政人員(如有的話)的姓名及詳情。

(2) 凡在某結算及交收系統獲指定之後，根據第(1)款就該系統而向或須向金融管理專員提供的詳情有任何改變，則該改變所關乎的每一人均須在該改變生效後 3 天內，以書面將該改變告知金融管理專員。

6. 適用於各指定系統的規定

(1) 指定系統的每一系統營運者及交收機構均須確保就該系統而符合以下各項規定——

- (a) 該系統的運作是以安全及有效率的方式進行，以期盡量減低對該系統發揮功能的干擾的可能性；
- (b) 備有符合以下說明的運作規則——
 - (i) 符合第(2)款指明的規定，並符合任何關乎指定系統的運作規則的訂明規定；及
 - (ii) 規定該系統須按照本條例就該系統而適用的情況運作；

(3) A revocation of the designation of a designated system effected under this section shall not operate so as to affect any settlement of a transfer order effected through the system prior to the revocation taking effect.

Division 2—Obligations of designated systems

5. Obligation to inform Monetary Authority of name and address, etc.

(1) Every person who, at the time of designation of a clearing and settlement system under this Ordinance, is a system operator or settlement institution of the system shall, within 3 days of the designation, inform the Monetary Authority in writing of—

- (a) his name, his place of business, a postal address and an electronic mail address;
- (b) the aspects of the management or operations of the system for which he is responsible; and
- (c) where the person is a corporation, the names and particulars of the directors and shareholders of the corporation and the name and particulars of the chief executive (if any) of the corporation.

(2) Where, subsequent to the designation of a clearing and settlement system, there is any change to the particulars given or required to be given to the Monetary Authority under subsection (1) in respect of the system, every person to whom such change relates shall within 3 days of the change taking effect inform the Monetary Authority in writing of the change.

6. Requirements applying to designated systems

(1) Every system operator and settlement institution of a designated system shall ensure that the following requirements are complied with in relation to the system, namely—

- (a) that the operations of the system are conducted in a safe and efficient manner calculated to minimize the likelihood of any disruption to the functioning of the system;
- (b) that there are in place operating rules that—
 - (i) comply with the requirements specified in subsection (2) and with any prescribed requirements relating to the operating rules of a designated system; and
 - (ii) provide for the system to be operated in accordance with this Ordinance as it applies in relation to that system;

Why are these words necessary? It seems that the English text does not contain the meaning as reflected in these words.

- (c) 須設有足夠安排以監察及強制執行以使該系統的運作規則獲符合，包括關於可供有關的系統營運者運用的資源的安排；
- (d) 須具備為妥善執行該系統的特定功能而屬適當的可供該系統運用的財政資源。
- (2) 指定系統的運作規則須——
- (a) 向參與者施加某些規定，而該等規定不得比根據本條例其他條文而向參與者施加的規定寬鬆；—— *Should the correct reference be "as if" or "as though"?*
- (b) 規定如參與者變為無償債能力，他可被暫時停止參與該系統；及 *to reflect*
- (c) 規定在整體情況下對該系統而言屬適當及足夠的違責處理安排。 *the meaning of the English text?*
- (3) 指定系統的運作規則不得在未經金融管理專員事先書面批准而更改。

7. 安全及效率

- (1) 在本條例中，凡提述結算及交收系統的安全，尤其包括提述——
- (a) 該系統的運作規則對透過該系統達成的轉撥指令在何種情況下被視為已為該系統的目的的交收所作的規定的明確程度；
- (b) 該系統的運作的可靠性及健全度；
- (c) 對接觸該系統的運作的管制；及
- (d) 該系統之內持有的資料的完整性。
- (2) 在本條例中，凡提述結算及交收系統的效率，尤其包括提述——
- (a) 執行該系統之內關乎轉撥指令的各項運作的速度及效率；
- (b) 在考慮到該系統向其參與者提供的服務之下，參與者因參與該系統所承擔的整體費用；
- (c) 就加入該系統中成為參與者而定的準則的合理程度；及
- (d) 一般而言，就該系統執行的功能方面，並無具有不公平地限制競爭的效力的措施，亦無具有利用缺乏競爭的情況的效力的措施。

- (c) that there are in place adequate arrangements to monitor and enforce compliance with the operating rules of the system, including arrangements regarding the resources available to the system operator;
- (d) that there are available to the system financial resources appropriate for the proper performance of the system's particular functions.
- (2) The operating rules of a designated system shall—
- (a) impose on participants requirements that are no less stringent than the requirements imposed on participants under the other provisions of this Ordinance;
- (b) provide that if a participant becomes insolvent he may be suspended from the system; and
- (c) provide for default arrangements which are appropriate and adequate for the system in all circumstances.
- (3) No change shall be made to the operating rules of a designated system without the prior approval in writing of the Monetary Authority.

7. Safety and efficiency

- (1) In this Ordinance, reference to the safety of a clearing and settlement system includes in particular reference to—
- (a) the extent to which the operating rules of the system provide for certainty as to the circumstances under which transfer orders effected through the system are to be regarded as settled for the purposes of the system;
- (b) the reliability and robustness of operation of the system;
- (c) control over access to the operations of the system; and
- (d) the integrity of information held within the system.
- (2) In this Ordinance, reference to the efficiency of a clearing and settlement system includes in particular reference to—
- (a) the speed and efficiency with which operations relating to transfer orders within the system are carried out;
- (b) the overall cost to a participant of his participation in the system, having regard to the services provided by the system to its participants;
- (c) the reasonableness of criteria for admission as a participant in the system; and
- (d) generally, the absence of measures having the effect of unfairly limiting, or exploiting the absence of, competition in relation to the functions performed by the system.

(b) 交易的代價的價值(以金錢或金錢等值衡量)是明顯地低於第二參與者或其主事人提供的代價的價值(以金錢或金錢等值衡量)。

(4) 金融管理專員可應任何指定系統的系統營運者或交收機構的要求，藉憲報公告而豁免該系統營運者或交收機構，使該系統營運者或交收機構無須受到本條所規限；而當上述的豁免有效時，本條並不就任何由該系統營運者或交收機構(視屬何情況而定)以該身分作為第一參與者訂立的交易而適用。

(5) 為免生疑問，本條並不具有減損第 18(2) 或 20 條的效力。

Should "某" instead of "任何" be used to reflect the meaning of the English text?

27. 有關破產清盤人員追討於 2 名參與者之間給予不公平的優惠的轉撥或轉讓的權利

(1) 本條適用於任何由某指定系統的一名參與者向另一名參與者作出的資金轉撥或證券轉讓，即——

(a) 第 17 條適用的轉撥或轉讓(但構成第 26 條適用的交易的一部分的轉撥或轉讓則除外)；

(b) 藉以使身為收受轉撥或轉讓的參與者("第一參與者")獲得由作出轉撥或轉讓的參與者("第二參與者")或由透過第二參與者行事的主事人給予一項不公平的優惠的轉撥或轉讓；及

(c) 在截至發生以下事情當日為止的 6 個月期間內的任何時間作出的轉撥或轉讓——

(i) 有人提交要求第二參與者或其主事人破產或要求將第二參與者或其主事人清盤的呈請；或

(ii) 由債權人將第二參與者或其主事人自動清盤的決議獲通過。

(2) 就本條所適用的轉撥或轉讓的第二參與者或其主事人行事的有關破產清盤人員，現獲賦權向該轉撥或轉讓的第一參與者追討與該轉撥或轉讓的價值相等的款額。

(3) 為施行本條，如有以下各項情況，轉撥或轉讓即屬第(1)(b)款描述的轉撥或轉讓——

(a) 第一參與者是第二參與者或其主事人的債權人，或是第二參與者或其主事人的任何債項或其他法律責任的保證人或擔保人；

(b) for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the second participant or his principal.

(4) At the request of a system operator or settlement institution of a designated system the Monetary Authority may, by notice published in the Gazette, exempt the system operator or settlement institution from the application of this section; and where such an exemption is in effect this section shall not apply in respect of any transaction entered into by the system operator or settlement institution (as the case may be) as first participant in his capacity as such system operator or settlement institution.

(5) For the avoidance of doubt, nothing in this section has the effect of derogating from section 18(2) or 20.

27. Right of relevant insolvency office holder to recover transfer between 2 participants giving unfair preference

(1) This section applies to any transfer of funds or securities from one participant in a designated system to another, being—

(a) a transfer to which section 17 applies (other than a transfer that forms part of a transaction to which section 26 applies);

(b) a transfer by which the participant who is the recipient of the transfer ("first participant") is given an unfair preference by the participant making the transfer ("second participant") or by the principal of the second participant acting through the second participant; and

(c) a transfer that is effected at any time during the period of 6 months ending with—

(i) the presentation of a petition for the bankruptcy or winding up of the second participant or his principal; or

(ii) the passing of a resolution of a creditors' voluntary winding up of the second participant or his principal.

(2) A relevant insolvency office holder acting in respect of the second participant to a transfer to which this section applies or his principal is hereby entitled to recover from the first participant to the transfer an amount equivalent to the value of the transfer.

(3) For the purposes of this section, a transfer is a transfer as described in subsection (1)(b) if—

(a) the first participant is a creditor of, or is a surety or guarantor for any debts or liabilities of, the second participant or his principal;

- (b) 該轉撥或轉讓具有將第一參與者置於某境況的效力，而第二參與者或其主事人一旦破產或清盤時，該境況將會勝於假若該轉撥或轉讓不曾作出第一參與者便會處於的境況；及
- (c) 第二參與者在決定作出該轉撥或轉讓時，或第二參與者的主事人在決定安排第二參與者作出該轉撥或轉讓時，是受到就第一參與者產生(b)段所描述的效力此一意願所影響。
- (4) 金融管理專員可應任何指定系統的系統營運者或交收機構的要求，藉憲報公告而豁免該系統營運者或交收機構，使該系統營運者或交收機構無須受到本條所規限；而當上述的豁免有效時，凡該系統營運者或交收機構(視屬何情況而定)以該身分作為第一參與者作出轉撥或轉讓，本條並不就該轉撥或轉讓而適用。
- (5) 為免生疑問，本條並不具有減損第18(2)或20條的效力。

The English text does not contain the reference to "決定" as reflected in the Chinese text. Please make both texts match.

28. 參與者就無償能力作出通知的義務

- (1) 指定系統的參與者如知道在香港發生以下任何情況，或在香港以外發生任何類似情況，須隨即通知該系統的任何系統營運者及金融管理專員——
 - (a) 該參與者的債權人以書面表示他有意就該參與者通過債權人的自動清盤決議；
 - (b) 有人提交要求該參與者破產或將該參與者清盤的呈請；
 - (c) 作出該參與者破產的命令或將該參與者清盤的命令；
 - (d) 將該參與者自動清盤的決議獲通過；或
 - (e) 該參與者的一名董事按《公司條例》(第32章)第228A(1)條作出法定聲明。
- (2) 任何參與者如在根據第(1)款規定的時間內沒有將該款提述的有關事件通知系統營運者或金融管理專員，而倘若該系統營運者或金融管理專員(視屬何情況而定)於該時間已知悉有關事件，則該參與者並沒有違反該款。

Should "任何" be added here to reflect the meaning of "any" in the English text?

Should "根據" instead of "按" be used to reflect the meaning of the English text?

- (b) the transfer has the effect of putting the first participant into a position which, in the event of the bankruptcy or winding up of the second participant or his principal, will be a better position than the position he would have been in if the transfer had not been made; and
- (c) the second participant in making the transfer, or the second participant's principal in deciding to cause him to make the transfer, is influenced by a desire to produce in relation to the first participant, the effect described in paragraph (b).

(4) At the request of a system operator or settlement institution of a designated system the Monetary Authority may, by notice published in the Gazette, exempt the system operator or settlement institution from the application of this section; and where such an exemption is in effect this section shall not apply in respect of any transfer effected by the system operator or settlement institution (as the case may be) as first participant in his capacity as such system operator or settlement institution.

(5) For the avoidance of doubt, nothing in this section has the effect of derogating from section 18(2) or 20.

28. Obligation of participant to notify of insolvency

(1) A participant in a designated system shall notify any system operator of the system and the Monetary Authority forthwith if there comes to his knowledge any of the following circumstances occurring in Hong Kong, or any analogous circumstances occurring outside Hong Kong, namely—

- (a) any indication in writing by a creditor of the participant of his intention to pass a creditor's voluntary winding-up resolution in respect of the participant;
- (b) the presentation of a petition for the bankruptcy or winding up of the participant;
- (c) the making of an order for bankruptcy or winding up of the participant;
- (d) the passing of a resolution for the voluntary winding up of the participant; or
- (e) the making of a statutory declaration as under section 228A(1) of the Companies Ordinance (Cap. 32) by a director of the participant.

(2) A failure by a participant to notify a system operator or the Monetary Authority of a relevant event referred to in subsection (1) within the time required under that subsection is not a contravention of that subsection if the system operator or Monetary Authority (as the case may be) was already aware of the relevant event by that time.

- (b) 如任何事實已經以相對可能性的衡量獲確立，審裁處可裁定該事實已獲確立。
- (8) 在完成覆核後，審裁處須在切實可行的範圍內，盡快宣告審裁處根據第(6)款作出的裁定及其裁定所據的理由。
- (9) 審裁處作出的裁定須以書面記錄並由審裁處主席簽署，然後該裁定須在原訟法庭登記，而經如此登記的裁定即須當作原訟法庭的命令。
- (10) 審裁處所作的裁定是最終裁定，不可上訴，但以法律論點上訴則除外。
- (11) 為在法院進行的任何法律程序的目的，任何文件如看來是審裁處所作的裁定並看來是由審裁處主席簽署的，在沒有相反證據的情況下，即視為審裁處妥為作出的裁定而無須提出關於其作出或簽署該裁定的證明，亦無須證明簽署該裁定的人確是審裁處主席。

34. 審裁處的權力

- (1) 就根據本條例覆核金融管理專員的決定而言，審裁處可——
- 收取及考慮任何以口述證供、書面陳述或文件形式提供的材料，不論該材料是否可被法院接納作為證據；
 - 決定收取任何上述材料的方式；
 - 藉審裁處主席簽署的書面通知，要求某人到審裁處席前應訊，以及在第(2)款的規限下作證和交出由該人管有或控制並關乎該覆核的標的事項的任何物品、紀錄或文件；
 - 監誓；
 - 訊問或安排訊問任何在審裁處席前應訊的人(不論訊問是否在經宗教式宣誓的情況下進行)，並要求該人據實回答審裁處認為為該覆核的目的而言屬適當的任何問題；
 - 命令證人為該覆核的目的以誓章提供證據；
 - 命令某人不得發表或以其他方式披露任何已向審裁處交出的材料；
 - 禁止發表或披露審裁處在非公開形式進行的任何聆訊中或在聆訊中以非公開形式進行的任何部分中收取的任何材料；

Why is "應訊" be used as the Chinese rendition for "attend"? In a similar provision in the Deposit Protection Scheme Bill, the Chinese text for "attend" is "出席聆訊". Please also refer to section 219 of Cap. 571 as well.

- (b) may determine that any matter of fact has been established if it has been established on the balance of probabilities.

(8) As soon as practicable after completing the review, the Tribunal shall deliver its determination made under subsection (6), with the reasons for its determination.

(9) A determination made by the Tribunal shall be recorded in writing and signed by the Chairman of the Tribunal, and shall then be registered in the Court of First Instance; and a determination so registered shall be deemed to be an order of the Court.

(10) The determination of the Tribunal is final and is not subject to appeal except on a point of law.

(11) For the purposes of any proceedings in a court of law, a document purporting to be a determination of the Tribunal that is signed by the Chairman of the Tribunal shall, in the absence of evidence to the contrary, be regarded as a determination of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the determination was in fact the Chairman of the Tribunal.

34. Powers of Tribunal

(1) In relation to a review of a decision of the Monetary Authority under this Ordinance, the Tribunal may—

- receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;
- determine the manner in which any such material is received;
- by notice in writing signed by the Chairman of the Tribunal, require a person to attend before it and, subject to subsection (2), to give evidence and produce any article, record or document in his possession or control relating to the subject matter of the review;
- administer oaths;
- examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purpose of the review;
- order a witness to provide evidence for the purpose of the review by affidavit;
- order a person not to publish or otherwise disclose any material produced to the Tribunal;
- prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, that is held in camera;

- (i) 在顧及公正原則後、基於審裁處認為適當的理由及按審裁處認為適當的條款及條件而擱置該覆核的任何法律程序；
 - (j) 決定須在與該覆核有關連的情況下依循的程序；
 - (k) 命令該覆核的任何一方或任何被要求為該覆核的目的到審裁處席前應訊的人獲付訟費或費用；
 - (l) 聆訊在審裁處作出裁定前任何時間提出的擱置覆核的法律程序的申請；及
 - (m) 行使進行該覆核或執行其職能所需或所附帶的其他權力，或作出進行該覆核或執行其職能所需或所附帶的其他命令。
- (2) 第(1)(c)款並不賦權審裁處要求——
- (a) 申請人的銀行或財務顧問披露關乎申請人以外的任何人的事務的任何資料；或
 - (b) 律師或大律師披露他以律師或大律師身分而接收或作出的任何受保密權涵蓋的通訊(不論是口頭通訊或書面通訊)。
- (3) 任何人不得——
- (a) 不遵從審裁處根據或依據第(1)款作出或給予的命令、通知、禁令或要求；
 - (b) 令審裁處任何聆訊無法繼續進行，或在任何該等聆訊過程中有其他不檢行為；
 - (c) 在已根據第(1)款被審裁處要求到審裁處席前應訊後，未經審裁處准許而在他被如此要求在場時離開有關地方；
 - (d) 阻礙任何人為覆核的目的到審裁處席前應訊、作證或交出任何物品、紀錄或文件，或阻嚇任何人以期他不為該目的作出該等作為；
 - (e) 因任何人曾到審裁處席前應訊而威脅或侮辱他，或令他蒙受任何損失；或
 - (f) 因審裁處主席或審裁處任何成員以該身分執行其職能而在任何時間威脅或侮辱他，或令他蒙受任何損失。
- (4) 任何人不得僅以遵從審裁處根據或依據第(1)款作出或給予的命令、通知、禁令或要求可能會導致他人入罪為理由，而獲豁免遵從該命令、通知、禁令或要求。

Should "出席聆訊" instead of "應訊" be used as the Chinese rendition for "attend"?
 Please refer to the Chinese text for a similar provision in the Deposit Protection Scheme Bill (clause 40(3)(c), (d) and (e))

- (i) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;
 - (j) determine the procedure to be followed in connection with the review;
 - (k) order that costs be paid to any party to the review or any person who is required to attend before it for the purpose of the review;
 - (l) hear an application for stay of proceedings for a review at any time before its determination is made; and
 - (m) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the performance of its functions.
- (2) Subsection (1)(c) does not empower the Tribunal to require—
- (a) the banker or financial adviser of an applicant to disclose any information relating to the affairs of any person other than the applicant; or
 - (b) a solicitor or counsel to disclose any privileged communication, whether oral or written, made to or by him in that capacity.
- (3) No person shall—
- (a) fail to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);
 - (b) disrupt any sitting of the Tribunal or otherwise misbehaves during any such sitting;
 - (c) having been required by the Tribunal under subsection (1) to attend before the Tribunal, leave the place where his attendance is so required without the permission of the Tribunal;
 - (d) hinder or deter any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
 - (e) threaten, insult or cause any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or
 - (f) threaten, insult or cause any loss to be suffered by the Chairman, or any member, of the Tribunal at any time on account of the performance of his functions in that capacity.
- (4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

46. 公司高級人員的個人法律責任

(1) 凡某法團犯本條例第 39(1)、(2)、(3)、(4) 或 (5)、40 或 43 條所訂罪行，而該法團是在第 (2) 款所述的人協助、教唆、慫使、促使或誘使下犯該罪行的，或該罪行是在該款所述的人的同意或縱容下犯的，或犯該罪行是可歸因於該款所述的人罔顧實情或罔顧後果的，則該人與該法團均犯該罪行，並可據此予以起訴和處罰。

(2) 第 (1) 款所提述的人是——

- (a) 有關法團的任何董事、經理或秘書，或任何參與該法團的管理的其他人；
- (b) (凡有關法團是某結算及交收系統的系統營運者或交收機構) 該法團的最高行政人員；或
- (c) 本意是以 (a) 或 (b) 段所描述的任何身分行事的任何人。

第 6 部

雜項

47. 行政長官發出指示的權力

(1) 行政長官在諮詢金融管理專員後，如信納就執行金融管理專員根據本條例具有的任何職能而向金融管理專員發出他認為合適的書面指示，是符合公眾利益的，則可如此發出書面指示。

(2) 金融管理專員須遵從根據第 (1) 款發出的任何指示。

(3) 如有任何指示根據第 (1) 款發出，而某條例規定金融管理專員為執行該指示所關乎的任何職能須——

- (a) 得出任何意見；
- (b) 確定是否信納任何事宜 (包括信納某種情況是否存在)；或
- (c) 諮詢任何人，

則就與依據或由於該指示而執行該職能一事有關連的任何目的而言，該項規定並不適用。

The English text does not contain the meaning of "確定". Please make both texts match.

46. Personal liability of company officers

(1) Where an offence is committed under section 39(1), (2), (3), (4) or (5), 40 or 43 of this Ordinance by a corporation and in committing the offence the corporation is aided, abetted, counselled, procured or induced by, or the offence is committed with the consent or connivance of, or is attributable to any recklessness on the part of, a person mentioned in subsection (2), that person (as well as the corporation) commits the offence and is liable to be proceeded against and punished accordingly.

(2) The persons referred to in subsection (1) are—

- (a) any director, manager or secretary of, or any other person involved in the management of, the corporation;
- (b) where the corporation is a system operator or settlement institution of a clearing and settlement system, the chief executive of the corporation; or
- (c) any person purporting to act in any such capacity as is described in paragraph (a) or (b).

PART 6

MISCELLANEOUS

47. Power of Chief Executive to give directions

(1) After consulting the Monetary Authority, the Chief Executive may, on being satisfied that it is in the public interest to do so, give the Monetary Authority such written directions as he thinks fit as to the performance of any function of the Monetary Authority under this Ordinance.

(2) The Monetary Authority shall comply with any direction given under subsection (1).

(3) If a direction is given under subsection (1), a requirement in an Ordinance that the Monetary Authority shall—

- (a) form any opinion;
- (b) be satisfied as to any matter (including the existence of particular circumstances); or
- (c) consult any person,

for the purpose of performing any function to which the direction relates, does not apply for any purpose connected with the performance of that function pursuant to or consequent upon the direction.