

FINANCIAL REPORTING COUNCIL BILL

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立法會 CB(1)1485/05-06(01)號文件
LC Paper No. CB(1)1485/05-06(01)
COMMITTEE STAGE AMENDMENTS

141D. Power of shareholders of certain private companies to waive compliance with requirements as to accounts

- (1) Where all the shareholders of a private company agree in writing that this section shall apply with respect to a financial year of that company—
- (a) the following provisions of this Ordinance shall not apply with respect to that financial year, that is to say, sections 121(2), 123, 129, 129A, 129D, 129E and 141(3);
 - (b) the company's balance sheet as at the end of that financial year shall comply with the requirements of the Eleventh Schedule;
 - (c) there shall be attached to the balance sheet a report by the directors with respect to—
 - (i) the state of the company's affairs;
 - (ii) the amount (if any) which they recommend should be paid by way of dividend;
 - (iii) the amount of (if any) which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet;
 - (d) the directors' report so attached shall be approved by the board of directors and signed on behalf of the board either by the chairman of the meeting at which it was approved or by the secretary of the company;
 - (e) the auditors' report shall state—
 - (i) whether or not the auditors have obtained all the information and explanations which they have required; and
 - (ii) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.
- (2) The shareholders shall not in any financial year of the company enter into an agreement for the purposes of subsection (1) with respect to more than one such financial year.

Marked up copy of Part 6 of the
Bill - Consequential and related
amendments

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- (3) This section does not apply to a private company which—
- has any subsidiary or is a subsidiary of another company formed and registered under this Ordinance or an existing company; or (*Amended 6 of 1984 s. 96*)
 - carries on banking business and holds a valid banking licence granted under the Banking Ordinance (Cap. 155); or (*Amended 27 of 1986 s. 137*)
 - is a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance; or either solely or in common with any other business, (*Amended 5 of 2002 s. 407*)
 - carries on any insurance business otherwise than solely as an agent; or
 - by way of trade or business, other than banking business, accepts loans of money at interest, or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities; or
 - owns and operates ships or aircraft engaged in the carriage of cargo between Hong Kong and places outside Hong Kong.
- (4) Without prejudice to any other provision of this Ordinance, if any person being a director of a company fails to take all reasonable steps to secure compliance with the requirements of subsection (1)(c) and (d), he shall, in respect of each offence, be liable to imprisonment and a fine: (*Amended 7 of 1990 s. 2*)

Provided that—

- in any proceedings against the person in respect of an offence under this subsection, it shall be a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the said paragraphs were complied with and was in a position to discharge that duty; and
- a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(*Added 80 of 1974 s. 13*)

☐ > Revision of defective accounts or reports

141E. Voluntary revision of accounts, summary financial reports or directors' reports

- ☒ > (1) If it appears to the directors of a company that any accounts of the company did not comply with this Ordinance, the directors may—
- cause the accounts to be revised; and
 - make necessary consequential revisions to the summary financial report or directors' report concerned.
- (2) If the accounts, or a copy of the accounts, have been laid before the company in its general meeting under section 122 or 124 or forwarded to the Registrar under section 109, such revision of the accounts is to be confined to—
- the correction of those aspects in which the accounts did not comply with this Ordinance; and
 - ~~the making of necessary consequential revisions.~~
- (3) If—
- the directors of a company decide to cause any accounts of the company to be revised under subsection (1); and
 - a copy of the accounts has been forwarded to the Registrar under section 109,

the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.

(4) If a company fails to comply with subsection (3), the company, and every officer of the company who authorizes or permits the default, shall be guilty of an offence and liable to a fine.

☐ Revision of defective accounts or reports

- ☒ (1) If —
- a copy of any accounts of a company has been sent under section 129G to a person entitled to be sent the copy; and
 - it appears to the director of the company that the accounts did not comply with this Ordinance,
- the directors may cause the accounts to be revised and make necessary consequential revisions to the summary financial report or directors' report concerned.
- (2) Such revision of the accounts is to be confined to —
- those aspects in which the accounts did not comply with this Ordinance; and
 - other necessary consequential revisions.

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336. Accounts of oversea company

(1) Subject to subsection (6), every oversea company shall, at least once in every calendar year and at intervals of not more than 15 months, deliver to the Registrar for registration a return, which shall be signed on behalf of the company by a director or the secretary or a person authorized to accept service on behalf of the company or the manager or principal officer of the company in Hong Kong, confirming that there has been no alteration in the documents and particulars delivered under section 333 other than the alterations, if any, notified under section 335, and copies, certified in the prescribed manner, of— (*Amended 6 of 1984 s. 232*)

- (a) (i) its balance sheet as at the end of its last financial year,
 - (ii) its profit and loss account for the said year,
 - (iii) its group accounts, if any, in respect of the said year, and
 - (iv) its directors' report, if any, in respect of the said year,
- all in such form and containing such particulars and including copies of such documents as the company is required to prepare by the law for the time being applicable to the company in the place of its incorporation or origin; and
- (b) its auditors' report, if any, on the said balance sheet and accounts.

(2) The Registrar may, if he is of the opinion that the balance sheet, profit and loss account and documents referred to in subsection (1) do not sufficiently disclose the company's financial position, require the company to deliver to him for registration a balance sheet and profit and loss account within such period, in such form and, subject to subsection (3), containing such particulars and including such documents as he by notice in writing given to the company requires, and the company shall comply with the requirements set out in the notice.

(3) Subsection (2) does not authorize the Registrar to require a balance sheet or profit and loss account to contain any particulars or include any documents that would not be required to be furnished if the company were a company incorporated under this Ordinance.

(4) Where an oversea company is not required by the law of the place of its incorporation or origin to prepare a balance sheet and profit and loss account, the company shall prepare and deliver to the Registrar for registration— (*Amended 6 of 1984 s. 232*)

- (a) a balance sheet and profit and loss account within such period, in such form and containing such particulars and including such documents as the company would have been required to prepare if it were a company incorporated under this Ordinance, and
- (b) a report by qualified auditors on the said balance sheet and profit and loss account.

(5) If any return, balance sheet, profit and loss account, group accounts or document delivered to the Registrar for registration under this section is not written in the English or Chinese language, in lieu of that delivery there shall be delivered to the Registrar a certified translation thereof in English or Chinese. (*Amended 6 of 1984 s. 232; 83 of 1995 s. 18; 46 of 2000 s. 37*)

(6) This section shall not apply to a company which—

- (a) if it were incorporated under this Ordinance would be a private company within the meaning of section 29, or
- (b) in the opinion of the Registrar has substantially the same general characteristics as such a private company,

and which is not required by the law of the place of its incorporation or origin to publish its accounts or to deliver copies to any person in whose office they may be inspected as of right by members of the public.

(*Replaced 80 of 1974 s. 15*)

336A. Voluntary revision of accounts

(1) If—

- (a) a certified copy of any accounts of a non-Hong Kong company registered under this Part have been delivered to the Registrar for registration under section 336; and
 - (b) it appears to the directors of the company that the accounts did not comply with the relevant requirements,
- the directors may cause the accounts to be revised.

(2) Such revision of the accounts is to be confined to—

- (a) the correction of those aspects in which the accounts did not comply with the relevant requirements; and
 - (b) the making of necessary consequential revisions.
- (3) If the directors of a non-Hong Kong company decide to cause any accounts of the company to be revised under subsection (1), the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.

(4) In this section, "relevant requirements" (有關規定), in relation to the accounts of a non-Hong Kong company, means—

- (a) in the case where section 336(1) applies to the company, the law of the place of incorporation of that company;
- (b) in the case where section 336(2) applies to the company—
 - (i) the laws of any other jurisdictions where that company is registered as a company; or
 - (ii) the rules of any stock exchange or similar regulatory bodies in those jurisdictions.

336A. Voluntary revision of**accounts³⁹**

(1) If —

- (a) a certified copy of any accounts of an oversea company has been delivered to the Registrar for registration under section 336; and

- (b) it appears to the directors of the company that the accounts did not comply with the relevant requirements,

the directors may cause the accounts to be revised and make necessary consequential revisions to the directors' report concerned.

(2) Such revision of the accounts is to be confined to —

- (a) those aspects in which the accounts did not comply with the relevant requirements; and
- (b) other necessary consequential revisions.

(3) If the directors of an oversea company decide to cause any accounts of the company to be revised under subsection (1), the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.

(4) In this section, "relevant requirements" (有關規定), in relation to the accounts of an oversea company, means —

- (a) the law for the time being applicable to that company in the place of its incorporation or origin; or
- (b) if section 336(4) applies to that company, this Ordinance.

³⁹ To propose interim provisions to cater for voluntary revision of accounts by an "overseas company", before the commencement of Schedule 2 to the Companies (Amendment) Ordinance 2004 with respect to a "non-Hong Kong company".

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336A. Voluntary revision of accounts

- (1) If—
- (a) a certified copy of any accounts of a non-Hong Kong company registered under this Part ~~have~~ been delivered to the Registrar for registration under section 336; and
 - (b) it appears to the directors of the company that the accounts did not comply with the relevant requirements,
- the directors may cause the accounts to be revised.
- (2) Such revision of the accounts is to be confined to—
- (a) ~~the correction of~~ those aspects in which the accounts did not comply with the relevant requirements; and
 - (b) ~~the making of~~ necessary consequential revisions.
- (3) If the directors of a non-Hong Kong company decide to cause any accounts of the company to be revised under subsection (1), the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.
- (4) In this section, “relevant requirements” (有關規定), in relation to the accounts of a non-Hong Kong company, means—
- (a) in the case where section 336(1) applies to the company, the law of the place of incorporation of that company;
 - (b) in the case where section 336(2) applies to the company—
 - (i) the laws of any other jurisdictions where that company is registered as a company; or
 - (ii) the rules of any stock exchange or similar regulatory bodies in those jurisdictions.

↑ has |

↓ other |

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359A. Power to make regulations

(1) The Chief Executive in Council may make regulations in respect of any matter required or permitted to be prescribed by the Chief Executive in Council under this Ordinance. (*Amended 23 of 1999 s. 3; 27 of 2001 s. 7*)

(2) Without prejudice to the power conferred under subsection (1), the Chief Executive in Council may make regulations—

- (a) specifying the period for the purposes of section 141CB;
- (b) specifying the periods after which a copy of a summary financial report and a copy of the relevant financial documents of a listed company may be sent under section 141CC;
- (c) providing for any matter in relation to the determination of the effect of a notice of intent sent by an entitled person of a listed company, including providing for the circumstances under which such a notice of intent shall be treated as a request under section 141CD;
- (d) providing for the form and contents of a summary financial report of a listed company (including empowering a listed company to determine certain aspects of the form of its summary financial report);
- (e) providing for the means to ascertain the wishes of an entitled person of a listed company in relation to the sending of a copy of a summary financial report to the person in place of a copy of the relevant financial documents from which the report is derived (including providing for the sending of a notification by the company to the person for the purposes);
- (f) providing for the form and contents of a notification referred to in paragraph (e), including—
 - (i) providing for the form and contents of any card or document attached to such a notification; and
 - (ii) providing that any of such card or document shall be postage prepaid; and
- (g) providing for any incidental, consequential and transitional provision that is necessary or expedient for the purposes of the matters provided for by this subsection. (*Added 27 of 2001 s. 7*)

(*Added 6 of 1984 s. 250*)

(3) Without prejudice to the power conferred under subsection (1), the Chief Executive in Council may make regulations providing for the application of this Ordinance in relation to—

- (a) the accounts, summary financial report or directors' report that has been revised under section 141E; and
- (b) ~~the accounts that have been revised under section 336A.~~

(4) Regulations made under subsection (3)(a) may—

- (a) make different provision according to whether the accounts, summary financial report or directors' report has been revised by—
 - (i) supplementing the accounts or report with another document that shows the revisions; or
 - (ii) replacing the accounts or report;
- (b) provide for the functions of the auditors of the company in relation to the accounts, summary financial report or directors' report that has been revised;
- (c) where—
 - (i) the accounts or directors' report, or a copy of the accounts or report, has, before the revision, been sent to members and other persons under section 129G, laid before the company in its general meeting under section 122, 124 or 129D, or forwarded to the Registrar under section 109; or
 - (ii) a copy of a summary financial report has, before the revision, been sent to a person under section 141CA, require the directors of the company to take such steps as may be specified in the regulations in relation to the accounts or report that has been revised;
- (d) apply this Ordinance to the accounts, summary financial report or directors' report that has been revised subject to such additions, exceptions and modifications as specified in the regulations; and
- (e) provide for incidental, consequential and transitional provisions.

(5) Regulations made under subsection (3)(b) may—

- (a) ~~make different provision according to whether the accounts~~ have been revised by—
 - (i) supplementing the accounts with another document that shows the revisions; or
 - (ii) replacing the accounts;
- (b) require the non-Hong Kong company to take such steps as may be specified in the regulations in relation to the accounts that have been revised;
- (c) apply this Ordinance to the accounts that have been revised subject to such additions, exceptions and modifications as specified in the regulations; and
- (d) provide for incidental, consequential and transitional provisions.

- (b) the accounts or directors' report that has ~~that have~~ been revised under section 336A.

- * (a) make different provision according to whether the accounts or directors' report has ~~have~~ been revised by —
 - (i) supplementing the accounts or report with another document that shows the revisions; or
 - (ii) replacing the accounts or report;
- (b) require a company to which section 336A applies ~~the non-Hong Kong company~~ to take such steps as may be specified in the regulations in relation to the accounts or directors' report that has ~~that have~~ been revised;
- (c) apply this Ordinance to the accounts or directors' report that has ~~that have~~ been revised subject to such additions, exceptions and modifications as specified in the regulations; and
- (d) provide for incidental, consequential and transitional provisions.

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TWELFTH SCHEDULE

[s. 351]

PUNISHMENT OF OFFENCES UNDER THIS ORDINANCE

Section creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (if applicable)
140B(3)	Director failing to convene a meeting on the requisition of the auditor	On indictment Summary	\$150,000 and 2 years level 5 and 6 months	—
141CA(2)	Company sending copy of summary financial report in place of copy of relevant financial documents in contravention of section 141CA(1) (Added 27 of 2001 s. 8)	Summary	level 3	—
141CC(3)	Company sending copy of summary financial report in contravention of section 141CC(1) (Added 27 of 2001 s. 8)	Summary	level 3	—
141CC(3)	Company sending copy of relevant financial documents in contravention of section 141CC(2) (Added 27 of 2001 s. 8)	Summary	level 3	—
141CD(3)	Company failing to comply with request for copy of relevant financial documents (Added 27 of 2001 s. 8)	Summary	level 5	\$300
141CE(2)	Company sending copy of summary financial report where there is in existence any of the events mentioned in section 141CE(1) (Added 27 of 2001 s. 8)	Summary	level 5	—
141CF(3)(a)	Company circulates, issues or publishes copy of summary financial report which does not comply with requirements referred to in section 141CF(1) (Added 27 of 2001 s. 8)	Summary	\$300,000	—
141CF(3)(b)	Officer circulates, issues or publishes copy of summary financial report which does not comply with requirements referred to in section 141CF(1) (Added 27 of 2001 s. 8)	Summary	\$300,000 and 12 months	—
141D(4)	Director failing to take reasonable steps to ensure directors' report is attached to balance sheet	Summary	level 5 and 6 months	—

△ 141E(4) Company failing to deliver to Registrar warning statement Summary level 5 \$700

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53A. Secrecy

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

- (a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any insurer that may come to his knowledge in the exercise of any function under this Ordinance;
- (b) shall not communicate any such matter to any person other than the person to whom such matter relates; and
- (c) shall not suffer or permit any person to have access to any records in his possession, custody or control or in the possession, custody or control of any other person so appointed or employed.

(1AA) Subsection (1) shall apply to any person who is or has been—

- (a) a public officer;
- (b) a person employed or authorized by or assisting the Insurance Authority;
- (c) an Advisor appointed under section 35(2)(a);
- (d) a Manager appointed under section 35(2)(b); and
- (e) a person employed by or assisting a person to whom this subsection applies by virtue of paragraph (c) or (d);

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

(1A) Subsection (1) shall not apply if the Manager of an insurer is required to comply with a notice to furnish returns and information under section 51 of the Inland Revenue Ordinance (Cap. 112). (*Added 51 of 1992 s. 14*)

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

- (a) a prosecution for any offence;
- (b) the determination by the Court of First Instance of an application under section 24; or
- (c) a winding-up by the Court of First Instance under Part VI. (*Amended 25 of 1998 s. 2*)

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

- (a) in the form of a summary compiled from similar or related information provided by insurers if the summary is so compiled as to prevent particulars relating to the business of any such insurer being ascertained from it;
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings or investigation, whether under this Ordinance or otherwise, in Hong Kong;
- (c) in connection with any civil proceedings arising out of this Ordinance;
- (d) by the Insurance Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the performance of his professional duties by a prescribed person; (*Replaced 59 of 1993 s. 14*)
- (da) by the Insurance Authority to a prescribed person for the purpose of enabling or assisting the Insurance Authority to discharge his functions under this Ordinance; (*Added 59 of 1993 s. 14*)
- (db) by a prescribed person where—
 - (i) the information has been disclosed to that person under paragraph (da); and
 - (ii) that person has the consent of the Insurance Authority to do so; (*Added 59 of 1993 s. 14*)
- (e) to the Financial Secretary, an inspector appointed by the Financial Secretary to investigate the affairs of a company, a person holding an authorized statutory office or any public

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officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Insurance Authority— (*Amended L.N. 106 of 2002*)

- (i) it is desirable or expedient that the information should be so disclosed in the interests of existing or potential policy holders or the public interest; or
 - (ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of existing or potential policy holders or the public interest that the information should be so disclosed; (*Replaced 75 of 1995 s. 7*)
- (f) by the Insurance Authority to an auditor or actuary of an authorized insurer, an authorized insurance broker or a body of insurance brokers approved under section 70 if, in the opinion of the Insurance Authority, such information is necessary for the auditor or actuary, as the case may be, to perform his duties under this Ordinance; (*Added 75 of 1995 s. 7*)
- (g) subject to subsection (3A), by the Insurance Authority with the consent of the person from whom the information was obtained or received and if the information relates to a different person, also with the consent of the person to whom the information relates; (*Added 75 of 1995 s. 7. Amended 31 of 2000 s. 3*)
- (h) by the Insurance Authority if it has been made available to the public by virtue of its being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section or section 53B; or (*Added 75 of 1995 s. 7. Amended 31 of 2000 s. 3*)
- (i) by the Insurance Authority if—
- (i) the information is in the form of—
 - (A) such accounts, statements and information relating to the business of an insurer as have been submitted to the Insurance Authority under section 17(1);
 - (B) such accounts, statements, reports and information relating to the business of Lloyd's as have been submitted to the Insurance Authority under section 50C(1)(a), (b), (c) and (d); or
 - (C) such accounts, statements and other statistical and financial information relating to the long term business carried on in Hong Kong by an insurer or Lloyd's (as the case may be), as have been provided by the insurer or Lloyd's to the Insurance Authority on a voluntary basis; and

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(ii) in the opinion of the Insurance Authority, it is desirable that the information should be so disclosed in the interests of existing or potential policy holders or in the public interest. (*Added 31 of 2000 s. 3*)

(3A) Subsection (3)(g) shall not operate to require the Insurance Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. (*Added 75 of 1995 s. 7*)

(3B) For the purposes of subsection (3)(e), "authorized statutory office" (認可法定職位) means—

(a) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66) in the exercise of his functions under the Banking Ordinance (Cap. 155);

(b) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571); ~~or~~ (*Added 75 of 1995 s. 7. Amended 4 of 1998 s. 3; 5 of 2002 s. 407*)

(c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); ~~or~~ (*Added 4 of 1998 s. 3*)

|| ☒ (3C) The Legislative Council may, by resolution, amend subsection (3B) by adding or deleting the authorized statutory offices defined therein. (*Added 75 of 1995 s. 7*)

(3D) Where information is disclosed in any of the circumstances described in subsection (3), other than subsection (3)(a), (h) and (i), neither— (*Amended 31 of 2000 s. 3*)

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

(b) any person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a), shall disclose the information, or any part thereof, to any other person without the consent of the Insurance Authority. (*Added 75 of 1995 s. 7*)

(3E) Subject to subsections (2) and (3)(b) and (c), a person who is the Insurance Authority, and a person employed or authorized by or assisting the Insurance Authority, shall not disclose any information under this section relating to the affairs of any individual policy holder of an insurer. (*Added 31 of 2000 s. 3*)

(4) Any person who contravenes subsection (1) commits an offence and is liable—

(a) on conviction upon indictment to a fine of \$200,000 and, in the case of an individual, to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months. (*Amended 35 of 1996 s. 26*)

(4A) Any person who contravenes subsection (3D) commits an offence and is liable—

(a) on conviction upon indictment to a fine of \$200,000 and, in the case of an individual, to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and, in the case of an individual, to imprisonment for 6 months. (*Added 75 of 1995 s. 7*)

(5) This section shall apply to—

(a) companies which make application under section 7;

(b) associations of underwriters; and

(c) Lloyd's,

as it applies to insurers.

(6) For the purposes of this section, "function" includes a power and a duty.

△; or

☐ (d) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005).

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2. Interpretation

In this Ordinance, unless the context otherwise requires—

*“appointed day” (指定日期) means the day appointed by the Secretary for Financial Services and the Treasury under section 1(3) of the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004); (*Added 23 of 2004 s. 3*)

“appointed member” (委任理事) means a member of the Council appointed by the Chief Executive under section 10(2)(e); (*Added 23 of 2004 s. 3*)

“certified public accountant” (會計師) means a person registered as a certified public accountant by virtue of section 22; (*Replaced 23 of 2004 s. 3*)

“certified public accountant (practising)” (執業會計師) means a certified public accountant holding a practising certificate; (*Added 23 of 2004 s. 3*)

“relevant day” (有關日期) means the day on which the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004) comes into operation* under section 1(2) of that Ordinance; (*Added 23 of 2004 s. 3*)

“repealed section 24(2)” (已廢除的第24(2)條) means section 24(2) of this Ordinance repealed by the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004); (*Added 23 of 2004 s. 3*)

“reviewer” (審核人員) means any person appointed or engaged by the Council under section 32B(1)(d); (*Added 14 of 1992 s. 2*)

“Vice-President” (副會長) means the Vice-President of the Institute elected under section 4 and any person acting as Vice-President. (*Amended 23 of 2004 s. 54*)

(*Amended 8 of 1993 s. 8; 96 of 1994 s. 2; 23 of 2004 s. 3*)

△ “FRC” (財務匯報局) means the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005);

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7. Objects of the Institute

The objects of the Institute shall be— (*Amended 23 of 2004 s. 54*)

- (a) to maintain a register of certified public accountants, firms of certified public accountants (practising) and corporate practices; (*Amended 85 of 1995 s. 3; 23 of 2004 ss. 7 & 54*)
- (b) to regulate the practice of the accountancy profession;
- (c) to conduct examinations and act in such other manner as may be necessary to ascertain whether persons are qualified to be admitted to the register;
- (d) to encourage the study of accountancy by accountants and students, and to give certificates, bursaries, scholarships and rewards on such terms and conditions as may be specified from time to time;
- (e) to maintain a library and reading rooms for the use of accountants and students;
- (f) to establish and assist in establishing and supporting associations, funds, trusts and schemes intended to benefit accountants or their dependents, and to grant pensions and allowances to any accountant or his dependents;
- (g) to represent the views of the profession and to preserve and maintain its reputation, integrity and status; (*Amended 23 of 2004 s. 7*)
- (h) to discourage dishonourable conduct and practices by certified public accountants, and for this purpose to hold inquiries into the conduct of certified public accountants, firms and corporate practices referred to in paragraph (a); (*Amended 85 of 1995 s. 3; 23 of 2004 ss. 7 & 54*)
- (i) to provide for the settlement of disputes within the accountancy profession; (*Amended 85 of 1995 s. 3*)
- (j) to take such action as the Institute considers necessary in any matter affecting the professional interests of the accountancy profession; (*Amended 85 of 1995 s. 3; 23 of 2004 s. 54*)
- (k) to do all such other things as are incidental or conducive to the attainment of the above objects.

7A. Power of Institute to make contributions
to FRC

The Institute may contribute to the FRC such amount, as the Institute thinks fit, of the costs and expenses reasonably incurred by the FRC for the performance of the FRC's functions.

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18. Particular powers of Council

(1) Without derogating from the generality of the powers conferred by section 17(1), the Council may—

(a) do anything necessary for the better carrying out of the objects of the Institute;

(aa) fix registration and other fees; [↑] (Added 22 of 1977 s. 4)

(b) appoint such employees and agents as it deems necessary;

(c) appoint the bankers of the Institute;

(d) purchase, take on lease or in exchange, hire or otherwise acquire any movable or immovable property, and erect any buildings;

(e) sell, lease, mortgage, dispose of or otherwise deal with any movable or immovable property of the Institute;

(f) invest moneys of the Institute;

(g) borrow moneys upon security or otherwise;

(h) exchange information with similar bodies and with members of the profession in places outside Hong Kong and arrange with such bodies for the reciprocal recognition of accountants; (Amended 31 of 1999 s. 3)

(i) establish and maintain branches of the Institute, whether in Hong Kong or elsewhere and delegate the powers, duties and functions of the Institute to such branches; (Amended 23 of 1998 s. 2)

(j) institute, conduct, defend, compound or abandon any legal proceedings by or against the Institute or its officers or otherwise concerning the affairs of the Institute and compound or allow time for payment or satisfaction of any debts due or of any claims or demands made by or against the Institute;

(k) refer any claim or demand by or against the Institute to arbitration and comply with any award made as a result of such arbitration;

(l) make and give receipts, releases and other discharges for moneys payable to and for claims and demands of the Institute;

(m) appoint committees to assist or advise the Council in the exercise of its powers and delegate to such committees such of its powers as it may from time to time determine; and

(n) publish periodicals, booklets or other written material, and produce or sponsor the production of documentary films or other audio-visual material, and distribute the same by sale, loan, hire or otherwise, with or without charge, as the Council thinks fit.

[△] (2) A committee appointed under subsection (1)(m) may, subject to the by-laws of the Institute, include persons who are not certified public accountants.

(Amended 23 of 2004 s. 54)

[↑] , including those payable by the practice units, or a class of the practice units, to the Institute for the purpose of the contribution under section 7A

[△] (1A) For the purposes of subsection (1)(aa), the Council may, in order to provide for particular circumstances or cases, fix different fees for the same matter, service or facility.

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18B. Council's power to give directions

(1) The Council may, in connection with the discharge of any of its functions or duties or the exercise of any of its powers, give directions either generally to certified public accountants or to any one or more certified public accountants—

- (a) requiring the production or provision to the Institute by a certified public accountant of any document or information in connection with the registration of any certified public accountant or firm name, or the issue of a practising certificate;
- (b) requiring a certified public accountant to deliver up to the Institute any certificate of registration or practising certificate in the possession, custody or control of the certified public accountant if the registration to which the certificate relates has ceased or the practising certificate has been cancelled or ceased to be valid;
- (c) requiring a certified public accountant to give to the Institute an explanation of any act or omission of the certified public accountant which appears to the Council to be conduct unbecoming of a certified public accountant, or conduct which may affect the reputation, integrity and status of the Institute or of the accountancy profession or conduct which may fall within section 34(1)(a)(iii) to (xii).

|| > (2) A direction given under this section shall be a direction lawfully given by the Council for the purpose of section 34(1)(a)(ix).

(3) The Council may prescribe penalties of an amount not exceeding \$50,000 to be imposed for failure by a certified public accountant to comply with a direction given to him but no penalty shall be imposed on a certified public accountant unless he admits to the failure and agrees to the penalty and any penalty so imposed may be recovered by the Institute from the certified public accountant as a civil debt.

(4) Subsections (1), (2) and (3) apply mutatis mutandis in relation to a firm of certified public accountants (practising) and to a corporate practice as they apply to a certified public accountant.

(Added 23 of 2004 s. 16)

△ (1A) Without prejudice to the generality of subsection (1), the Council may, in connection with the payment by a practice unit of any fees fixed under section 18(1)(aa) for the purpose of the contribution under section 7A, give directions to practice units requiring the production or provision to the Institute by a practice unit of any document or information to enable the Institute to ascertain whether or not the practice unit falls within a particular class for the purpose of such payment.

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32H. Secrecy

(1) Subject to subsection (2), and except in the performance, or assisting in the performance, of a function under this Part, the Registrar, any reviewer, member of the Practice Review Committee or the Council or a person holding any other position who assists the Registrar, reviewer or a member of the Practice Review Committee or the Council in the performance of a function under this Part—

- (a) shall at all times after his appointment as the Registrar, a reviewer, or a member of the Practice Review Committee or the Council or to such other position, as the case may be, or during or after the performance of or assisting in the performance of such function, preserve and aid in preserving secrecy with regard to any matter coming to his knowledge in the performance or in assisting in the performance of any such function;
- (b) shall not at any time communicate any such matter to any other person; and
- (c) shall not at any such time suffer or permit any other person to have any access to any record, document or other thing which is in his possession or under his control by virtue of his being or having been so appointed or his having performed or having assisted any other person in the performance of such a function.

(2) Subsection (1) shall not apply in relation ~~to any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings.~~

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$100,000 and to imprisonment for 6 months.

↑ to—

- (a) any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings; or
- (b) any disclosure to the FRC for the purpose of enabling or assisting the FRC to perform its functions under the Financial Reporting Council Ordinance (of 2005).


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34. Disciplinary provisions

(1) A complaint that—

- (a) a certified public accountant— (*Amended 23 of 2004 s. 54*)
- (i) has been convicted of any offence under Part V (Perjury) of the Crimes Ordinance (Cap. 200);
 -  (ii) has been convicted in Hong Kong or elsewhere of any offence involving dishonesty;
 - (iii) whether as a certified public accountant or not— (*Amended 23 of 2004 s. 54*)
 - (A) falsified or caused to be falsified any document;
 - (B) made any statement which is material and which he knows to be false or does not believe to be true, in respect of any document;
 - (iv) has been negligent in the conduct of his profession;
 - (v) without reasonable excuse, failed or neglected to comply with any direction issued under section 32F(2) and with which he was required by the Practice Review Committee to comply;
 - (vi) failed or neglected to observe, maintain or otherwise apply a professional standard;
 - (vii) without reasonable excuse, failed or neglected to comply with any requirement made under section 42D in relation to him by an Investigation Committee;
 - (viii) has been guilty of professional misconduct;
 - (ix) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the Council;
 - (x) was guilty of dishonourable conduct;
 - (xi) while a director of a corporate practice, rendered any service as, or purporting to be, a director of a company whose name did not appear in Part II of the register at the time when the service was rendered; or
 - (xii) being such a director, practised accountancy as such a director at a time when the corporate practice was covered by professional indemnity insurance either not at all or not to the extent required by this Ordinance;

-  (ia) has been convicted of any offence under section 31 of the Financial Reporting Council Ordinance (of 2006);
- (ib) has been punished by the Court of First Instance under section 32(2)(b) of the Financial Reporting Council Ordinance (of 2006) for failing to comply with a requirement imposed under section 25, 26, 27 or 28 of that Ordinance or for being involved in the failure;
- (ic) has been punished by the Court of First Instance under section 45(2)(b) of the Financial Reporting Council Ordinance (of 2006) for failing to comply with a requirement imposed under section 43 of that Ordinance or for being involved in the failure;

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- (b) a corporate practice—
- (i) or any of its directors—
 - (A) falsified or caused to be falsified any document;
 - (B) made any statement which is material and which any of its directors knows to be false or does not believe to be true, in respect of any document;
 - (ii) failed to comply with a requirement referred to in section 28D(6)(a) or (7) or ceased or failed to comply with any requirement of section 28D(2)(b) or (c) applying to it;
 - (iii) rendered any service under a company name other than the name which then appeared in relation to the practice in the register;
 - (iv) being such a practice, practised accountancy without being covered by professional indemnity insurance at all or to the extent required by this Ordinance; or
 - (v) did or omitted to do something which, were the practice an individual certified public accountant, would reasonably be regarded as being dishonourable conduct by an individual,

shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels. (*Amended 14 of 1992 s. 6*)

(IAAA) If the Council decides not to refer the complaint to the Disciplinary Panels, the complainant who is aggrieved by the Council's decision may request the Council to refer the complaint to the Disciplinary Panels, whereupon the Council shall, unless it is of the opinion that no prima facie case has been shown for the complaint, or that the complaint is frivolous or vexatious, refer the complaint to the Disciplinary Panels. (*Added 23 of 2004 s. 36*)

(1AA) The provisions of subparagraphs ~~(iv) to (ix)~~ of paragraph (a) of subsection (1) shall apply mutatis mutandis in relation to a corporate practice and accordingly, in addition to those specified in subsection (1)(b), a complaint

under subsection (1) may be made against such a practice on any 1 or more of the grounds specified in those subparagraphs as so applied. (*Added 85 of 1995 s. 16*)

(1A) Where the Registrar has reason to believe that subsection (1)(a) or (b), or subsection (1)(a) as applied by subsection (1AA), applies to a certified public accountant or a corporate practice, he shall submit the facts to the Council which may, in its discretion, refer the complaint to the Disciplinary Panels. (*Added 22 of 1977 s. 12. Amended 14 of 1985 s. 10*)

(2) For the purposes of subsection (1)(a)(x) and (b)(v), "dishonourable conduct" (不名譽的行為) means an act or omission of a certified public accountant, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession.

(3) A person who was a member of the Practice Review Committee at any time when a complaint was made by it under section 32D(5) shall not take part as a member of a Disciplinary Committee in any proceedings relating to such complaint. (*Added 14 of 1992 s. 6*)

(*Amended 69 of 1994 s. 22; 85 of 1995 s. 16; 23 of 2004 ss. 36 & 54*)

↑ (ia), (ib), (ic),
(iv), (v), (vi), (vii), (viii) and (ix)'. |

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35. Disciplinary powers of Disciplinary Committee

(1) If a Disciplinary Committee is satisfied that a complaint referred to it under section 34 is proved, the Disciplinary Committee may, in its discretion make any one or more of the following orders—

- (a) an order that the name of the certified public accountant be removed from the register, either permanently or for such period as it may think fit;
 - (b) an order that the certified public accountant be reprimanded;
 - (c) an order that the certified public accountant pay a penalty not exceeding \$500,000 to the Institute;
 - (d) an order that the certified public accountant pay the costs and expenses of and incidental to an investigation against him under Part VA;
 - (da) an order that the practising certificate issued to the certified public accountant be cancelled; (*Added 23 of 2004 s. 37*)
 - (db) an order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit, (*Added 23 of 2004 s. 37*)
 - (e) (*Repealed 23 of 2004 s. 37*)
- and the Disciplinary Committee may in any case— (*Amended 23 of 2004 s. 37*)

- (i) provide for an order to take effect on such date as the Disciplinary Committee thinks fit;
- (ii) provide for an order to take effect only upon the happening or non-happening of such event within such period as may be specified by the Disciplinary Committee;
- (iii) make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, and any costs and expenses or penalty ordered to be paid may be recovered as a civil debt. (*Replaced 96 of 1994 s. 23. Amended 23 of 2004 ss. 37 & 54*)

(1A) Where any rules made under section 51 provide for a re-hearing by a Disciplinary Committee of a complaint referred to it under section 34, any order or decision made under subsection (1) shall, if a Disciplinary Committee re-hears the complaint, cease to have effect and subsection (1) shall apply to such re-hearing as if it were the original hearing. (*Added 14 of 1985 s. 11. Amended 85 of 1995 s. 17*)

(2) Nothing in this section shall be deemed to require a Disciplinary Committee to inquire into the question whether a professional accountant was properly convicted but the Committee may consider the record of a case in which such conviction was recorded and such other evidence as may show the nature and gravity of the offence.

(3) A Disciplinary Committee shall cause a copy of any order made under subsection (1)(a), or of any such order as varied on appeal by the Court of Appeal, as the case may be, to be published in the Gazette together with a summary of the nature of the complaint to which the order relates:

Provided that no order shall be so published before the expiry of 30 days after the date of service of the order on the professional accountant under section 38(1) or, in the case of an appeal under section 41, before the decision of the Court of Appeal on such appeal.

(*Amended 96 of 1994 s. 23*)

↑ accountant—

- (i) pay the costs and expenses of and incidental to an investigation against him under Part VA; and
- (ii) where the disciplinary proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance (of 2005), pay to the FRC the sum the Disciplinary Committee considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC;

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35B. Consent order

(1) Where a complaint that section 34(1)(a)(vi), (viii), (ix) or (x) applies to a certified public accountant is referred to the Disciplinary Committee and the Disciplinary Committee, without hearing either the complainant or the certified public accountant, is of the view that the complaint is of such a nature that if the complaint is proved, the appropriate order or orders to be made should fall within one or more of the following orders under section 35—

- (a) an order that the certified public accountant be reprimanded;
- (b) an order that the certified public accountant pay a penalty not exceeding \$50,000 to the Institute;
- || > (c) an order that the certified public accountant pay the costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of the complainant,

the Disciplinary Committee may give notice to the complainant and the certified public accountant.

(2) A notice given by the Disciplinary Committee under subsection (1) shall state—

- (a) the order or orders, being order or orders no more than those referred to in subsection (1), which the Disciplinary Committee proposes to make if the certified public accountant admits to the complaint; and
- (b) the time (being not earlier than 14 days from the date when the notice was given, or such further time as the Disciplinary Committee may allow) within which each of the complainant and the certified public accountant is required to inform the Disciplinary Committee as to whether he will consent to the proposed order or orders.

(3) If the complainant and the certified public accountant consent to the proposed order or orders, the Disciplinary Committee shall make an order or orders in terms of the proposed order or orders and such order and orders shall be deemed to be an order or orders made under section 35, save that sections 38(2) and 41(1)(b)(iii) shall not apply to such order or orders.

(4) If the complainant or the certified public accountant informs the Disciplinary Committee that he does not consent to the proposed order or orders, or if the Disciplinary Committee considers that the consent of either the complainant or the certified public accountant is not forthcoming notwithstanding the notice under subsection (2)(b), the Disciplinary Committee shall inform the Council and the following shall apply—

- (a) the Disciplinary Committee shall be dissolved;
- (b) the Council shall constitute a new Disciplinary Committee to deal with the complaint with which the dissolved committee was concerned by directing the Disciplinary Committee Convenor to appoint the chairman and other members of the new Disciplinary Committee;
- (c) a person who was a member of the dissolved committee shall not be eligible for membership of the new Disciplinary Committee; and
- (d) the new Disciplinary Committee shall deal with the complaint afresh without regard to this section and, accordingly, it shall not have any regard to any proceedings of the dissolved committee, including the proposed order or orders of the dissolved committee or any failure or refusal of the complainant or the certified public accountant to consent to the proposed order or orders.

(Added 23 of 2004 s. 38)

- △ (ba) an order that the certified public accountant pay to the FRC the sum the Disciplinary Committee considers appropriate for the costs and expenses in relation or incidental to an investigation under the Financial Reporting Council Ordinance (of 2005) reasonably incurred by the FRC;

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42G. Secrecy

(1) Subject to subsection (2), and except in the performance, or assisting in the performance, of a function under this Part, the Registrar, any member of the Investigation Committee or the Council, any person to whom any of the powers of the Investigation Committee is delegated under section 42E(1) or any person holding any other position who assists any of such persons in the performance of a function under this Part—

- (a) shall at all times after his appointment as the Registrar, a member of the Investigation Committee or the Council, a person to whom any of the powers of the Investigation Committee is delegated under section 42E(1) or to such other position, as the case may be, or during or after the performance of or assisting in the performance of such function, preserve and aid in preserving secrecy with regard to any matter coming to his knowledge in the performance or in assisting in the performance of any such function;
- (b) shall not at any time communicate any such matter to any other person; and
- (c) shall not at any such time suffer or permit any other person to have any access to any record, document or other thing which is in his possession or under his control by virtue of his being or having been so appointed or his having performed or having assisted any other person in the performance of such a function.

(2) Subsection (1) shall not apply in relation to ~~any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings.~~

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

↑ to—

- (a) any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings; or
- (b) any disclosure to the FRC for the purpose of enabling or assisting the FRC to perform its functions under the Financial Reporting Council Ordinance (of 2005).

120. Official secrecy

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

- (a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the exercise of any function under this Ordinance;
- (b) shall not communicate any such matter to any person other than the person to whom such matter relates; and
- (c) shall not suffer or permit any person to have access to any records in the possession, custody or control of any person to whom this subsection applies.

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

- (a) a public officer;
- (b) a person authorized by the Monetary Authority;
- (c) the Advisor of an authorized institution; (*Replaced 49 of 1995 s. 36*)
- (d) the Manager of an authorized institution; (*Replaced 49 of 1995 s. 36*)
- (da) a person appointed under section 53G(5); (*Added 49 of 1995 s. 36*)
- (e) a person appointed under section 117(2); and

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

who exercises or has exercised any function under this Ordinance.

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

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

(5) Subsection (1) shall not apply—

- (a) to the disclosure of information in the form of a summary of similar information provided by a number of authorized institutions if the summary is so framed as to prevent particulars relating to the business of any particular authorized institution being ascertained from it;
- (b) to the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Ordinance or otherwise;
- (c) in connection with any other legal proceedings arising out of this Ordinance;
- (d) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice, relevant to the proper investigation of any criminal complaint; (*Amended L.N. 362 of 1997*)
- (e) to the disclosure of information by the Monetary Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor or former auditor of an authorized institution or former authorized institution, whether or not the auditor or former auditor, as the case may be, was appointed under section 50, 59 or 63; (*Replaced 43 of 1990 s. 9. Amended 67 of 1992 s. 9*)
- (f) to the disclosure of information by the Monetary Authority to the Chief Executive, the Financial Secretary, an inspector appointed by the Financial Secretary to investigate the affairs of

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any public officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Monetary Authority— (*Amended L.N. 96 of 1993; 68 of 1999 s. 3; L.N. 106 of 2002*)

- (i) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or
 - (ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed; (*Replaced 95 of 1991 s. 40*)
- (fa) to the disclosure of information by the Monetary Authority to the Securities and Futures Commission relating to—
- (i) the carrying on of a regulated activity by a registered institution; or
 - (ii) the carrying on by an authorized institution of the business of receiving or holding client assets, within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), of intermediaries, within the meaning of Schedule 1 to that Ordinance, of which the institution is an associated entity within the meaning of Schedule 1 to that Ordinance; (*Added 6 of 2002 s. 12*)
- (g) to the disclosure of information by the Monetary Authority to an auditor of an authorized institution or former authorized institution, or to a former auditor, for the purpose of enabling or assisting the Monetary Authority to discharge his functions under this Ordinance; (*Replaced 43 of 1990 s. 9. Amended L.N. 276 of 1990; 95 of 1991 s. 40*)
- (gaa) to the disclosure of information by the Monetary Authority to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for the purpose of enabling or assisting the Board to exercise its functions under that Ordinance; (*Added 7 of 2004 s. 55*)
- ||>(ga) to the disclosure of information—
- (i) to any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66); and
 - (ii) where such disclosure will enable or assist such person to assist the Monetary Authority in the performance of any of the functions referred to in that section; (*Added 49 of 1995 s. 36*)
- (h) subject to subsection (5D), to the disclosure of information by the Monetary Authority with the consent of—

△ ~~(gab) to the disclosure of information by the Monetary Authority to the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005) for the purpose of enabling or assisting the Council to exercise its functions under that Ordinance;~~

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- (i) the person from whom the information was obtained or received; and
- (ii) where the information does not relate to such person, the person to whom it relates; or *(Added 95 of 1991 s. 40)*
- (i) to the disclosure of information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section or section 121. *(Added 95 of 1991 s. 40)*
- (5A) For the purposes of subsection (5)(f), "authorized statutory office" (認可法定職位) means—
- (a) the Insurance Authority under the Insurance Companies Ordinance (Cap. 41); *(Amended 10 of 1989 s. 65)*
- (b) the Securities and Futures Commission; ~~or~~ *(Replaced 10 of 1989 s. 65)*
- (c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); ~~Repealed 10 of 1989 s. 65. Added 4 of 1998 s. 7)~~
- (d) *(Repealed 10 of 1989 s. 65)*
- ☐ *(Added 68 of 1988 s. 2. Amended 4 of 1998 s. 7)*
- (5B) The Legislative Council may, by resolution, amend subsection (5A). *(Added 68 of 1988 s. 2)*
- (5C) The Monetary Authority may attach a condition to any disclosure of information made pursuant to subsection (5)(b), (c), (d), (e), (f), (fa), (gaa) or (ga), and shall attach a condition to any disclosure of information made pursuant to subsection (5)(g), that neither— *(Amended 49 of 1995 s. 36; 6 of 2002 s. 12; 7 of 2004 s. 55)*
- (a) the person to whom the information has been disclosed; nor
- (b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a), shall disclose that information to any other person without the consent of the Monetary Authority. *(Added 95 of 1991 s. 40)*
- (5D) Subsection (5)(h) shall not operate to require the Monetary Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. *(Added 95 of 1991 s. 40. Amended 94 of 1993 s. 28)*
- (6) Any person who—
- (a) contravenes subsection (1);
- (b) aids, abets, counsels or procures any person to contravene subsection (1); or
- (c) knowing that the condition referred to in subsection (5C) has been attached to a disclosure of information made pursuant to subsection (5), contravenes, or aids, abets, counsels or procures any person to contravene, that condition, *(Added 95 of 1991 s. 40)*
- commits an offence and is liable—
- (i) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*
- (7) Subsection (5)(a), (e) and (g) shall apply to and in relation to approved money brokers and former approved money brokers as it applies to and in relation to authorized institutions and former authorized institutions respectively, and the other provisions of this Ordinance shall be construed accordingly. *(Added 4 of 1997 s. 17)*
- (Amended 3 of 1990 s. 46; 82 of 1992 s. 20)*

△ or

☐ (e) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2006).

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SCHEDULE 1

[ss. 2(1) & 35]

PUBLIC BODIES

(Amended 20 of 1999 s. 6)

85. Electoral Affairs Commission. (Added 129 of 1997 s. 24)
86. Mandatory Provident Fund Schemes Authority. (Added 4 of 1998 s. 8)
87. New World First Bus Services Limited. (Added L.N. 239 of 1998)
88. The Hong Kong Mortgage Corporation Limited. (Added L.N. 313 of 1998)
89. Hong Kong Note Printing Limited. (Added L.N. 313 of 1998)
90. Exchange Fund Investment Limited. (Added L.N. 16 of 1999)
91. The Stock Exchange of Hong Kong Limited. (Added 20 of 1999 s. 6)
92. Hong Kong Futures Exchange Limited. (Added 20 of 1999 s. 6)
93. Hong Kong Securities Clearing Company Limited. (Added 20 of 1999 s. 6)
94. The SEHK Options Clearing House Limited. (Added 20 of 1999 s. 6)
95. HKFE Clearing Corporation Limited. (Added 20 of 1999 s. 6)
96. Hong Kong Exchanges and Clearing Limited. (Added 12 of 2000 s. 23)
97. Hong Kong Science and Technology Parks Corporation. (Added 5 of 2001 s. 40)
98. The Ombudsman. (Added 30 of 2001 s. 24)
- *99. A company recognized as an investor compensation company under section 79(1) of the Securities and Futures Ordinance (Cap. 571). (Added L.N. 226 of 2002 and 5 of 2002 s. 407)
100. Construction Workers Registration Authority. (Added 18 of 2004 s. 66)
101. Hong Kong Deposit Protection Board. (Added 7 of 2004 s. 55)
- 15/4 102. Geotechnical Engineers Registration Committee.
- 10/4 103. Hong Kong Sports Institute Limited.

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104. Construction Industry Council.
105. Construction Industry Training Board.

- △ 106. Financial Reporting Council.

||△>

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COMMITTEE STAGE AMENDMENTS

SCHEDULE 1

[ss. 2 & 24]

ORGANIZATIONS TO WHICH THIS ORDINANCE APPLIES

PART I*

*(Amended 44 of 1994 s. 17; 74 of 1996 s. 9)*Agriculture, Fisheries and Conservation Department. *(Replaced L.N. 331 of 1999)*Airport Authority. *(Added L.N. 155 of 1996)*All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility. *(Replaced L.N. 155 of 1996)*

Architectural Services Department.

Audit Commission. *(Amended L.N. 362 of 1997)**Auxiliary Medical Service (department). *(Added L.N. 155 of 1996. Amended 57 of 1997 s. 34)*Buildings Department. *(Replaced L.N. 282 of 1993)*

Census and Statistics Department.

†Civil Aid Service (department). *(Added L.N. 155 of 1996. Amended 58 of 1997 s. 34)*

Civil Aviation Department.

Civil Engineering and Development Department. *(Replaced L.N. 183 of 1992. Amended L.N. 104 of 2004)*Civil Service Training and Development Institute. *(Added L.N. 155 of 1996)*Companies Registry. *(Added 8 of 1993 s. 28)*

Correctional Services Department.

Customs and Excise Department.

* "Education Department" was repealed from Part I of this Schedule by the Education Reorganization (Miscellaneous Amendments) Ordinance 2003 (3 of 2003). For the related saving and transitional provisions, see section 29 of the Ordinance.

* Please see the saving provisions contained in section 33(4) of Cap. 517.

† Please see the saving provisions contained in section 33(4) of Cap. 518.

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Lands Department. (*Added L.N. 282 of 1993*)
Legal Aid Department.
Legislative Council Secretariat. (*Replaced 14 of 1994 s. 24*)
Leisure and Cultural Services Department. (*Added 78 of 1999 s. 7*)
Management Services Agency. (*Added L.N. 383 of 1993*)
Mandatory Provident Fund Schemes Authority. (*Added L.N. 139 of 1999*)
Marine Department.
Observatory. (*Amended 25 of 1998 s. 2*)
Office of the Telecommunications Authority. (*Added L.N. 242 of 1993*)
Official Languages Agency. (*Added L.N. 155 of 1996*)
Official Receiver's Office. (*Added L.N. 183 of 1992*)
Planning Department. (*Added L.N. 414 of 1989*)
Post Office.
Privacy Commissioner for Personal Data. (*Added 30 of 2001 s. 19*)
Radio Television Hong Kong.
Rating and Valuation Department.
Registration and Electoral Office. (*Added L.N. 251 of 1994*)
Registry of Trade Unions.
Securities and Futures Commission. (*Added 44 of 1994 s. 17*)
Social Welfare Department.
Technical Education and Industrial Training Department.
Television and Entertainment Licensing Authority.
The Hong Kong Examinations and Assessment Authority. (*Replaced 23 of 2002 s. 27*)
Trade and Industry Department. (*Replaced L.N. 173 of 2000*)
Transport Department.
Treasury.
University Grants Committee, Secretariat. (*Amended L.N. 35 of 1995*)
Urban Renewal Authority. (*Replaced 63 of 2000 s. 38*)

△ Hong Kong Sports Institute Limited.

△ Financial Reporting Council.

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COMMITTEE STAGE AMENDMENTS

SCHEDULE 1

[para. (b)]

SERVICES TO BE PROVIDED BY THE TRADING FUND

1. Administering and enforcing the provisions of the Companies Ordinance (Cap. 32), including facilitating the incorporation of new companies and maintaining registers of companies and charges.
2. Administering and enforcing the provisions of the Limited Partnerships Ordinance (Cap. 37), including maintaining the register of limited partnerships.
3. Administering and enforcing the provisions of Part VIII of the Trustee Ordinance (Cap. 29), including maintaining the Register of Trust Companies.
4. Administering and enforcing the provisions of the Registered Trustees Incorporation Ordinance (Cap. 306), including maintaining the register of incorporated trustees.
5. Making available, where the Registrar of Companies is so required or permitted by law, information registered or filed with the Registrar.
6. Monitoring the adequacy of the regulatory framework embodied in any Ordinance referred to in this Schedule and in other Ordinances where the Registrar of Companies has been specified, and advising the Government on any need for change.
7. Any service that the Registrar of Companies may be authorized to provide under or by virtue of any other Ordinance.
8. Providing advice or information on any matter that lies within the expertise of the Registrar of Companies.
9. Any service incidental to or conducive to the provision of any of the services specified in this Schedule.

- △ 6A. Supporting the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005) in the performance of its functions by—
- (a) providing the service of the Registrar of Companies as an ex officio member of the Council; and
 - > ~~(b) sponsoring the performance by the Council of any of its functions.~~

- (b) making contributions, whether in cash or in kind, to sponsor ~~sponsoring~~
- the performance by the Council of any of its functions.

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COMMITTEE STAGE AMENDMENTS

42. Authority may disclose certain information despite section 41

(1) Section 41 does not prevent the Authority from doing any of the following with respect to information obtained by it under this Ordinance—

- (a) disclose the information as a summary compiled from information provided by persons in accordance with this Ordinance but only if the summary is compiled so as to prevent the identities and businesses of those persons from being ascertained from the summary;
- (b) disclose the information for the purposes of any criminal proceedings in Hong Kong or an investigation conducted with a view to bringing any such proceedings;
- (c) disclose the information in connection with any civil proceedings to which the Authority is a party or with a view to bringing any such proceedings;
- (d) subject to subsection (2), disclose the information to the Chief Executive, the Financial Secretary, the Commissioner of Inland Revenue, the Registrar of Occupational Retirement Schemes, the Insurance Authority, the Monetary Authority ~~or the Securities and Futures Commission~~, but only if the Authority reasonably believes that the disclosure— (*Amended L.N. 106 of 2002*)
 - (i) is in the interests of the scheme members concerned; or
 - (ii) is in the public interest; or
 - (iii) is necessary to enable the exercise or performance of a function imposed or conferred by law;
- (e) disclose the information to a body specified in accordance with subsection (4), but only if the Authority—
 - (i) is satisfied that the information will be used only in disciplinary proceedings brought or proposed to be brought against a member of the body; and
 - (ii) considers that the disclosure is appropriate.

(2) The Authority may disclose information under subsection (1) to the Commissioner of Inland Revenue only if it is satisfied that the information is required in order to assist the Commissioner in determining a matter that the Commissioner is required or empowered to determine under the Inland Revenue Ordinance (Cap. 112).

↑ , the Securities and Futures Commission, or
the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005)

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COMMITTEE STAGE AMENDMENTS

(3) Subsection (1) does not authorize the disclosure of information contained in a report referred to in section 7C(4) to a person or body specified in subsection (1)(d) or (e).

(4) The Authority may, by notice published in the Gazette, specify a body for the purposes of subsection (1)(e).

(5) If—

(a) the Authority discloses information to a body specified in subsection (1)(e); and

(b) the body or a member of the body, or a person who obtains or receives the information (directly or indirectly) from the body or such a member, discloses the information to another person,

the body, member or person commits an offence and is liable on conviction to a fine at level 4.

(6) Section 41 does not prevent the Authority from disclosing to a person located in a place outside Hong Kong information obtained by it under this Ordinance if—

(a) the person exercises or performs in that place functions that correspond to those of the Authority or a person or body specified in subsection (1)(d); and

(b) the Authority is satisfied that—

(i) the person is subject to adequate secrecy provisions imposed by the law of that place; or

(ii) the disclosure will enable or assist the person to exercise or perform the person's official functions,

and that it is not contrary to the interests of any scheme members or the public interest that the information should be disclosed to the person.

(7) The information that may be disclosed under subsection (6) includes (but is not limited to) information on matters relating to the affairs of an approved trustee or a service provider—

(a) that is incorporated, or that has its principal place of business, in a place outside Hong Kong; or

(b) that is incorporated in or outside Hong Kong and that is an associate of an approved trustee that is incorporated, or has its principal place of business, in that place; or

(c) that is incorporated in Hong Kong and that has, or is proposing to establish, in that place an associate that is or would be subject to supervision by that person.

(Replaced 4 of 1998 s. 2)

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2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“act” (作為) includes a deliberate omission;

“financial regulator” (財經規管者) means any of—

- (a) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);
- (b) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571); (*Replaced 5 of 2002 s. 407*)
- (c) a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Replaced 5 of 2002 s. 407*)
- (d) a person authorized under Part III of the Securities and Futures Ordinance (Cap. 571) to provide automated trading services as defined in Schedule 5 to that Ordinance; (*Replaced 5 of 2002 s. 407*)
- (e)-(ea) (*Repealed 5 of 2002 s. 407*)
- (f) the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);
- (g) the Registrar of Occupational Retirement Schemes appointed under section 5 of the Occupational Retirement Schemes Ordinance (Cap. 426);
- (ga) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 4 of 1998 s. 14*)
- || > (h) a person specified in a notice under subsection (7) to be a regulator for the purposes of this definition;

- △ (gb) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005);

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257. Orders, etc. of Tribunal

(1) Subject to subsection (3), the Tribunal may at the conclusion of any proceedings instituted under section 252 make one or more of the following orders in respect of a person identified as having engaged in market misconduct pursuant to section 252(3)(b)—

- (a) an order that the person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for the period (not exceeding 5 years) specified in the order;
- (b) an order that the person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme for the period (not exceeding 5 years) specified in the order;
- (c) an order that the person shall not again perpetrate any conduct which constitutes such market misconduct as is specified in the order (whether the same as the market misconduct in question or not);

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- (d) an order that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question;
- (e) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government, whether in relation or incidental to the proceedings or in relation or incidental to any investigation of his conduct or affairs carried out for the purposes of the proceedings;
- (f) without prejudice to any power of the Tribunal under section 260, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to any investigation of his conduct or affairs carried out before the matter was referred to the Tribunal by the Financial Secretary or in relation or incidental to the proceedings;
- || > (g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against him.
- (2) When making any order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—
- (a) previously resulted in the person being convicted of an offence in Hong Kong;
- (b) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 252(3)(b); or
- (c) at any time before the commencement of this Part resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.
- (3) The Tribunal shall not make an order in respect of a person under subsection (1) without first giving the person a reasonable opportunity of being heard.
- (4) Where the Tribunal makes an order under subsection (1)(a), the Tribunal may specify a corporation by name or by reference to a relationship with any other corporation.
- (5) The Tribunal may, in relation to any person, specify any market misconduct in an order under subsection (1)(c), whether or not there is, at the time when the order is made, likelihood that the person would perpetrate any conduct which constitutes the market misconduct.
- (6) Where the Tribunal makes an order under subsection (1)(e) or (f) requiring the payment of costs as costs reasonably incurred in relation or incidental to any proceedings instituted under section 252, subject to any rules made by the Chief Justice under section 269, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) applies to the taxation of the costs.
- (7) The Tribunal shall by notice in writing notify a person of an order made in respect of him under subsection (1).
- (8) An order made in respect of a person under subsection (1) takes effect at the time when it is notified to the person or at the time specified in the notice, whichever is the later.
- (9) Where the Tribunal makes an order under subsection (1)(b), the Commission may notify any licensed person or registered institution of the order in such manner as it considers appropriate.
- (10) A person commits an offence if he fails to comply with an order made under subsection (1)(a), (b) or (c) and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

- > (fa) where the proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance (of 2005), an order that the person pay to the Financial Reporting Council established by section 6(1) of that Ordinance the sum the Tribunal considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the Council;'

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378. Preservation of secrecy, etc.

(1) Except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person—

- (a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;
- (b) shall not communicate any such matter to any other person; and
- (c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.

(2) Nothing in subsection (1) applies to—

- (a) the disclosure of information which has already been made available to the public;
- (b) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the laws of Hong Kong, in Hong Kong;
- (c) the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
- (d) the disclosure of information by a person in connection with any judicial or other proceedings to which the person is a party;
- (e) the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;
- (ea) the disclosure of information to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for the purpose of enabling or assisting the Board to perform its functions under section 5(a), (d) and (e) of that Ordinance; (*Added 7 of 2004 s. 55*)
- (f) the communication of any information or opinion to which section 381(1) applies (whether with or without reference to section 381(2))—
 - (i) to the Commission in the manner described in section 381(1);
 - (ii) where section 381(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 381(4).

(3) Notwithstanding subsection (1), the Commission may disclose information—

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- (a) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
- (b) to a person who is a liquidator appointed under the Companies Ordinance (Cap. 32);
- (c) to the Market Misconduct Tribunal;
- (d) to the Securities and Futures Appeals Tribunal;
- (e) to the Monetary Authority, if—
 - (i) the information relates to—
 - (A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or
 - (B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or
 - (ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;
- (f) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to—
 - (i) the Chief Executive;
 - (ii) the Financial Secretary;
 - (iii) the Secretary for Justice;
 - (iv) (*Repealed L.N. 106 of 2002*)
 - (v) the Insurance Authority;
 - (vi) the Registrar of Companies;
 - (vii) the Official Receiver;
 - (viii) the Mandatory Provident Fund Schemes Authority;
 - (ix) the Privacy Commissioner for Personal Data;
 - (x) the Ombudsman;
 - (xi) a public officer authorized by the Financial Secretary under subsection (12);
 - (xii) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
 - (xiii) a recognized exchange company;
 - (xiv) a recognized clearing house;
 - (xv) a recognized exchange controller;
 - (xvi) a recognized investor compensation company;
 - (xvii) a person authorized to provide authorized automated trading services under section 95(2);
- (g) if in the opinion of the Commission the condition specified in subsection (5) is satisfied—
 - (i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(a) and (b);
 - (ii) to—
 - (A) the Hong Kong Institute of Certified Public Accountants; (*Amended 23 of 2004 s. 56*)

- △ (xia) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005);

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- (B) any other body prescribed by rules made under section 397 for the purposes of this subparagraph, with a view to its taking of, or otherwise for the purposes of, any disciplinary action against any of its members;
- (h) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to perform its functions under any of the relevant provisions;
- (i) where the information is obtained by an investigator under section 183, to—
- (i) the Financial Secretary;
 - (ii) the Secretary for Justice;
 - (iii) the Commissioner of Police;
 - (iv) the Commissioner of the Independent Commission Against Corruption;
 - (v) the Market Misconduct Tribunal;
 - (vi) the Securities and Futures Appeals Tribunal;
- (j) for the purpose of, or otherwise in connection with, an audit required by section 16;
- (k) with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, also with the consent of the person to whom the information relates.
- (4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 159 or 160, and a person who is or was an employee or agent of such auditor, may disclose information obtained or received by him in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)—
- (a) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);
 - (b) in the case of a person who is or was an employee or agent of an auditor, to the auditor.
- (5) The condition referred to in subsection (3)(e), (f) and (g) is that—
- (a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(e), (f) or (g) (as the case may be) in the interest of the investing public or in the public interest; or
 - (b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

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(6) Where the Commission is satisfied, for the purposes of subsection (3)(g)(i), that an authority, regulatory organization or companies inspector outside Hong Kong—

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

- (b) is subject to adequate secrecy provisions,

the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.

(7) Where information is disclosed pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b))—

- (a) the person to whom that information is so disclosed; or

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

shall not disclose the information, or any part thereof, to any other person, unless—

- (i) the Commission consents to the disclosure;

- (ii) the information or the part thereof (as the case may be) has already been made available to the public;

- (iii) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

- (iv) the disclosure is in connection with any judicial or other proceedings to which the person or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or

- (v) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.

(8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(b)—

- (a) the auditor; or

- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor,

shall not disclose the information, or any part thereof, to any other person, unless—

- (i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(a);

- (ii) the Commission consents to the disclosure;

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- (iii) the information or the part thereof (as the case may be) has already been made available to the public;
 - (iv) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
 - (v) the disclosure is in connection with any judicial or other proceedings to which the auditor or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or
 - (vi) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.
- (9) The Commission, in disclosing any information in any of the circumstances described in subsection (3) or in granting any consent pursuant to subsection (7)(i) or (8)(ii), may impose such conditions as it considers appropriate.
- (10) A person who contravenes subsection (1) commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (11) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of the disclosure—
- (a) in the case of a contravention of subsection (7), he—
 - (i) knew or ought reasonably to have known that the information was previously disclosed to him or any other person (as the case may be) pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b)); and
 - (ii) had no reasonable grounds to believe that subsection (7)(i), (ii), (iii), (iv) or (v) applies to the disclosure of the information by him; or
 - (b) in the case of a contravention of subsection (8), he—
 - (i) knew or ought reasonably to have known that the information was previously disclosed to him or an auditor (as the case may be) in the circumstances described in subsection (4)(b); and
 - (ii) had no reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applies to the disclosure of the information by him,

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he commits an offence and is liable—

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(f)(xi).

(13) Any matter published under subsection (6) is not subsidiary legislation.

(14) For the avoidance of doubt, it is hereby declared that subsection (1) does not preclude the disclosure of information under a reprimand under section 194(1)(iii) or 196(1)(ii).

(15) In this section—

“companies inspector” (公司審查員), in relation to a place outside Hong Kong, means a person whose functions under the laws of that place include the investigation of the affairs of a corporation carrying on business in that place;

“specified person” (指明人士) means—

(a) the Commission;

(b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or

(c) any person who is or was—

(i) a person appointed under any of the relevant provisions;

(ii) a person performing any function under or carrying into effect any of the relevant provisions; or

(iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.