

(譯文)

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香港
中區政府合署
中座及東座4樓
財經事務及庫務局
財經事務及庫務局局長
(經辦人：首席助理秘書長
吳麗敏小姐)

傳真文件
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吳小姐：

《2005年收入(豁免離岸基金繳付利得稅)條例草案》

本人正在審議上述條例草案，以便向議員提供意見，現請閣下澄清下述事宜：

條例草案第2條 —— 擬議第20AB條

- (a) 在擬議第20AB(2)(b)至(d)條中，如果該法團、合夥或信託產業的中央管理及控制在有關的課稅年度內，只在香港進行了一段短時間，則它是否符合居港規定？如果條文的原意是該法團等的中央管理及控制須在該課稅年度內連續全年(本人所作的強調)在香港進行，才會被視作居港者，這點應否在條文中清楚訂明？
- (b) 在哪些情況下，法團、合夥或信託產業的中央管理及控制會被視作在香港進行？是否適宜在條例草案中載列這些情況？

條例草案第2條 —— 擬議第20AC條

- (a) 本部察悉，擬議的豁免擬適用於1996年4月1日或之後開始的任何課稅年度，而合資格交易則載於擬議第20AC(2)至(4)條，當中提述到《證券及期貨條例》(第571章)的若干條文。不過，正如閣下所知，《證券及期貨條例》在2003年4月1日才開始實施，因此截至1996年4月1日，沒有交易可透過根據《證券及期貨條例》獲認可或發牌的人或法團進行。因此，請考慮以現時的方式草擬的擬議第20AC(1)至(4)條在豁免《證券及期貨條例》仍未存在的期間的稅款方面會否引起技術困難。

- (b) 本部察悉，如豁免條文具有追溯效力的建議獲採納，政府當局擬向離岸基金退還已收取的稅款。據本部理解，退還的稅款須付給離岸基金，並成為基金受益人有權享有的基金財產。根據法律，信託財產的信託人有責任分發收入及資本給受益人，以及必須肯定信託財產只會分發給適當的人。政府當局有否諮詢業界，由於已相隔一段時間，他們是否難以追尋受益人，以便向他們分發其在額外收入中所佔的份額，如果已退還的金額未能分發給受益人，離岸基金可否把以往各年的帳目確定下來？請亦考慮退還款項的建議會否在無意間令信託人承擔風險，就是被基金受益人控告，藉以追回信託人管有的額外收入？
- (c) 擬議第20AC(2)(a)條提述到《證券及期貨條例》附表5第2部“證券交易”定義中(a)或(b)段所指的證券交易。本部察悉，該定義適用於人，而該人進行的某些證券交易並不包括在該定義內。按現時的草擬方式來看，第20AC(2)(a)條的重點似乎在於交易的性質而不是進行交易的人。因此，與其提述《證券及期貨條例》附表5第2部“證券交易”定義，提述《證券及期貨條例》附表1第1部“交易”定義中(a)段所指的交易的定義會否較為恰當？
- (d) 根據《證券及期貨條例》附表5第2部“證券交易”的定義，某些人(包括擬議第20AC(2)(b)(ii)至(iv)條提述的人)進行的證券交易不被視作屬該定義中的證券交易。憑藉在擬議第20AC(2)(b)(i)條中提述“《證券及期貨條例》附表5第2部所指的證券交易”，政府當局是否擬把這些人進行的交易排除在外？若然，請說明擬議第20AC(2)(b)(ii)至(iv)條的目的，以及其與擬議第20AC(2)(b)(i)條的關係。請注意，類似的問題適用於擬議第20AC(3)(b)及(4)(b)條提述的期貨合約交易及槓桿式外匯交易。
- (e) 擬議第20AC(3)(a)條旨在界定構成期貨合約交易的交易的涵義，請考慮提述《證券及期貨條例》附表1第1部“交易”定義中(b)段所指的交易的定義會否較恰當。
- (f) 擬議第20AC(2)(b)(iii)及3(b)(iii)條均提述“自動化交易服務”，是否需要透過提述“該條例附表5第2部界定的自動化交易服務”以界定該用詞的涵義？

條例草案第3條 —— 擬議第70AB條

擬議第70AB(1)條訂明，任何人可因就在豁免繳稅條文的生效日期之前屆滿的某一課稅年度申請更改評稅，而該項申請須於該生效日期後12個月內或在有關年度完結之後的6年內提出。本部察悉，這條文是以《稅務條例》(第112章)第70AA條為藍本。不過，雖然在第70AA條中，為期6年的時限是有其實際目的，但有關時限在擬議第70AB條似乎沒有大太作用。鑒於擬議的稅項豁免將適用於自1996年4月1日開始的課稅年度，任何人均沒可能在該年度完結之後的6年內提出有關申請。因此，為期6年的時限應否予以修改，以配合豁免繳稅條文的生效日期？

草擬事宜

- (a) 在擬議第20AB(4)(c)條的英文本中，“otherwise than through another person(“interposed person”)”的短語只適用於第(ii)節。然而，在相應的中文本中，該短語同時適用於第(i)及(ii)節。請統一兩個文本的意思。
- (b) 在擬議第20AB(4)(c)(ii)條的英文本中，在“a director”之前的句號，應否以逗號取代？

謹請閣下於2005年9月16日或該日前提提供政府當局的中、英文回覆。

助理法律顧問

(馮秀娟)

副本致：律政司(經辦人：高級助理法律草擬專員(雙語草擬組))3
羅文苑女士)圖文傳真號碼：2869 1302
法律顧問

2005年8月27日

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第 7 分部——自動化交易服務

Division 7—Automated trading services

95. 認可提供自動化交易服務

(1) 任何人不得——

- (a) 提供自動化交易服務；或
- (b) 要約提供該服務，

除非該人是——

- (i) 根據第 (2) 款獲認可提供自動化交易服務的人；
- (ii) 根據第 (2) 款獲認可提供該服務的人的僱員或代理人並且以該身分為該人或代該人行事；
- (iii) 就第 7 類受規管活動獲發牌或獲註冊的中介人；
- (iv) 第 7 類受規管活動的持牌代表並且以該身分為他所隸屬的持牌法團行事；或
- (v) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受就第 7 類受規管活動獲註冊的註冊機構就該活動聘用的人並且以該身分為該機構行事。

(2) 凡證監會信納認可某人提供自動化交易服務是適當的，則可應該人的申請，藉送達書面通知予該人，認可該人提供該服務，而該項認可——

- (a) 受該會認為適當並在該通知中指明的條件規限；及
- (b) 自該通知指明的生效日期起生效。

95. Authorization for providing automated trading services

(1) No person shall—

- (a) provide automated trading services; or
- (b) offer to provide automated trading services,

unless that person—

- (i) is authorized under subsection (2);
- (ii) is an employee or agent of a person authorized under subsection (2), and is acting in that capacity for or on behalf of that person;
- (iii) is an intermediary licensed or registered for Type 7 regulated activity;
- (iv) is a licensed representative for Type 7 regulated activity, and is acting in that capacity for the licensed corporation to which the representative is accredited; or
- (v) is an individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged in respect of Type 7 regulated activity by a registered institution registered for that regulated activity, and is acting in that capacity for the registered institution.

(2) Where the Commission is satisfied that it is appropriate to do so, the Commission may upon application by a person, by notice in writing served on that person, authorize that person to provide automated trading services—

- (a) subject to such conditions as it considers appropriate specified in the notice; and
- (b) with effect from a date specified in the notice for the purpose.

114. 對經營受規管活動的業務的限制等

- (1) 除第 (2)、(5) 及 (6) 款另有規定外，任何人不得——
 - (a) 經營某類受規管活動的業務；或
 - (b) 顯示自己經營某類受規管活動的業務。
- (2) 第 (1) 款不適用於——
 - (a) 就有關類別的受規管活動而根據第 116 或 117 條獲發牌的法團；
 - (b) 就有關類別的受規管活動而根據第 119 條獲註冊的認可財務機構；或
 - (c) 根據第 95(2) 條獲認可進行有關類別的受規管活動的人。
- (3) 在不損害第 (1) 款的原則下但在第 (4) 款的規限下，任何人不得——
 - (a) 就任何以業務形式進行的受規管活動執行任何受規管職能；或
 - (b) 顯示自己執行該項職能。
- (4) 第 (3) 款——
 - (a) 在持牌代表為其主事人進行該代表獲發牌進行的受規管活動的情況下，不適用於該代表；
 - (b) 不適用於符合以下說明的個人——
 - (i) 為註冊機構進行該機構獲註冊進行的受規管活動；及
 - (ii) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受該機構就該類活動聘用的；或
 - (c) 不適用於根據第 95(2) 條獲認可進行某類受規管活動的人士的僱員，而該僱員是就該類活動執行任何受規管職能的。

114. Restriction on carrying on business in regulated activities, etc.

- (1) Subject to subsections (2), (5) and (6), no person shall—
 - (a) carry on a business in a regulated activity; or
 - (b) hold himself out as carrying on a business in a regulated activity.
- (2) Subsection (1) shall not apply to—
 - (a) a corporation licensed under section 116 or 117 for the regulated activity;
 - (b) an authorized financial institution registered under section 119 for the regulated activity; or
 - (c) a person authorized under section 95(2) for the regulated activity.
- (3) Without prejudice to subsection (1) but subject to subsection (4), no person shall—
 - (a) perform any regulated function in relation to a regulated activity carried on as a business; or
 - (b) hold himself out as performing such function.
- (4) Subsection (3) shall not apply to—
 - (a) a licensed representative who carries on for his principal a regulated activity for which the representative is licensed;
 - (b) an individual—
 - (i) who carries on for a registered institution a regulated activity for which the registered institution is registered; and
 - (ii) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity; or
 - (c) an employee of a person authorized under section 95(2) for the regulated activity who performs any regulated function in relation to the regulated activity for which the person is so authorized.

(5) 任何人不得僅因進行附表 5 第 3 部指明的一項或多於一項活動，而視為就第 8 類受規管活動違反第 (1) 款。

(6) 任何人如提供財務通融並合理地相信該項通融並非用以利便——

(a) 取得在證券市場（不論是認可證券市場或香港以外地方的任何其他證券市場）上市的證券；或

(b) 繼續持有該等證券，

則該人不得僅因該項提供而視為就第 8 類受規管活動違反第 (1) 款。

(7) 就第 (6) 款而言，在就違反第 (1) 款而進行的法律程序中，如證明有關的人在向某借用人提供財務通融之前，已從該借用人取得確認書，確認該項通融並非用以利便第 (6)(a) 及 (b) 款提述的取得或繼續持有，則除非相反證明成立，否則須推定該人已合理地相信該項通融不會如此使用。

(8) 任何人無合理辯解而違反第 (1) 款，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$5,000,000 及監禁 7 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$100,000；或

(b) 一經循簡易程序定罪，可處罰款 \$500,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$10,000。

(9) 任何人無合理辯解而違反第 (3) 款，即屬犯罪——

(a) 一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 2 年，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$20,000；或

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月，如屬持續的罪行，則可就罪行持續期間的每一日，另處罰款 \$2,000。

(5) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of carrying on one or more of the activities specified in Part 3 of Schedule 5.

(6) A person shall not be regarded as contravening subsection (1) in relation to Type 8 regulated activity by reason only of providing financial accommodation if he reasonably believes that the financial accommodation is not to be used to facilitate—

(a) the acquisition of securities listed on a stock market (whether a recognized stock market or any other stock market outside Hong Kong); or

(b) the continued holding of such securities.

(7) For the purposes of subsection (6), where it is proved in any proceedings for a contravention of subsection (1) that the person had obtained, before providing the financial accommodation to a borrower, a written confirmation from the borrower that the financial accommodation was not to be used to facilitate such acquisition or continued holding as referred to in subsection (6)(a) and (b), that person shall be presumed, unless the contrary is proved, to have reasonably believed that the financial accommodation was not to be so used.

(8) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

(9) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

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116. 法團須獲發牌以進行受規管活動

(1) 證監會可應申請人以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使申請人可進行該會在牌照上指明的一類或多於一類受規管活動。

(2) 除非以下規定獲符合，否則證監會須拒絕根據第(1)款批給進行某類受規管活動的牌照——

(a) 申請人是——

(i) 一間公司；

(ii) 已遵守《公司條例》(第 32 章) 第 XI 部關於文件登記的條文的海外公司；或

(iii) 符合以下說明而非公司或海外公司的法團——

(A) 主要在香港以外地方經營某項活動的業務，而該項活動如在香港進行，便會構成該類受規管活動；

(B) 若非有第 115(1)(i) 及 (ii) 條的條文，則第 114(1) 條不會適用於該法團；及

(C) 如該法團在香港設立營業地點，則《公司條例》(第 32 章) 第 XI 部會適用於該法團；

(b) 已就第 125(1)(a) 及 (b) 條所提述的人根據第 126 條提出申請，要求核准他們就該類活動成為申請人的負責人員；及

(c) 已根據第 130(1) 條提出申請，要求批准將某處所用作申請人存放本條例規定的紀錄或文件的地方。

(3) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第(1)款批給進行某類受規管活動的牌照——

(a) 申請人是就該類活動獲發牌的適當人選；

(b) 申請人如獲發牌，將有能力遵守財政資源規則；及

(c) 申請人——

(i) 已按照在第(4)款下訂立的規則向證監會交存保證，並將保證保持有效；或

116. Corporations to be licensed for carrying on regulated activities

(1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on one or more than one regulated activity as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless—

(a) the applicant is—

(i) a company;

(ii) an overseas company which has complied with the provisions of Part XI of the Companies Ordinance (Cap. 32) for the registration of documents; or

(iii) a corporation (other than a company or an overseas company)—

(A) which carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;

(B) to which section 114(1) would not apply but for the provisions of section 115(1)(i) and (ii); and

(C) to which Part XI of the Companies Ordinance (Cap. 32) would apply if it established a place of business in Hong Kong;

(b) applications have been lodged under section 126 in respect of such persons as referred to in section 125(1)(a) and (b) for approval of them as the responsible officers of the applicant in relation to the regulated activity; and

(c) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that—

(a) it is a fit and proper person to be licensed for the regulated activity;

(b) it will be able, if licensed, to comply with the financial resources rules; and

(c) it—

(i) has lodged and maintains with the Commission such security in accordance with rules made under subsection (4); or

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(ii) 已按照根據第 (5) 款訂立的規則投購保險。

(4) 證監會可為施行第 (3)(c)(i) 款而訂立規則，就以下各項作出規定——

- (a) 持牌法團須向證監會交存並將之保持有效的任何保證；
- (b) 交存該等保證的方式；
- (c) 須按甚麼條款將該等保證保持有效；
- (d) 證監會按該等規則訂明的情況、目的及方式運用該等保證的權力；
- (e) 關乎該等保證的任何其他事宜。

(5) 證監會可為施行第 (3)(c)(ii) 款而訂立規則，就以下各項作出規定——

- (a) 持牌法團須就指明風險投購並將之保持有效的指明款額的保險保障內容；
- (b) 須按甚麼條款投購該等保險並將之保持有效；
- (c) 關乎該等保險的任何其他事宜。

(6) 根據第 (1) 款批給的牌照須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予有關持牌法團，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。

(7) 凡證監會根據第 (6) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。

(8) 持牌法團在進行它根據第 (1) 款獲發牌進行的受規管活動時，須使用牌照上指明的名稱，而不得使用其他名稱。

(9) 在不損害證監會在第 IX 部下的權力的原則下，凡某法團獲發牌進行第 7 類受規管活動，在該法團根據第 95(2) 條獲認可提供自動化交易服務時，該牌照須當作就該類活動而被撤銷。

(ii) is insured in accordance with rules made under subsection (5).

(4) The Commission may make rules for the purposes of subsection (3)(c)(i) that provide for—

- (a) any security to be lodged and maintained by a licensed corporation with the Commission;
- (b) the manner in which the security is lodged;
- (c) the terms on which the security is maintained;
- (d) the Commission's power to apply a security lodged and maintained with the Commission in such circumstances, for such purposes and in such manner as may be prescribed in the rules;
- (e) any other matter relating to the security.

(5) The Commission may make rules for the purposes of subsection (3)(c)(ii) that provide for—

- (a) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;
- (b) the terms on which the insurance is to be taken out and maintained;
- (c) any other matter relating to the insurance.

(6) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(7) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (6), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(8) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.

(9) Without prejudice to the Commission's powers under Part IX, a licence granted to a corporation to carry on Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the corporation's being granted an authorization under section 95(2) to provide automated trading services.

117. 向法團批給短期牌照以進行受規管活動

(1) 證監會可應法團以訂明方式提出的申請並在訂明費用獲繳付後，向申請人批給牌照，使申請人可進行該會在牌照上指明的一類或多於一類受規管活動（第 3、7、8 及 9 類受規管活動除外），為期不超過 3 個月。

(2) 除非申請人令證監會信納以下事宜，否則該會須拒絕根據第 (1) 款批給進行某類受規管活動的牌照——

- (a) 申請人主要在香港以外地方經營某項活動的業務，而該項活動如在香港進行，便會構成該類受規管活動的；
- (b) 申請人尋求就該類受規管活動獲發牌，純粹是為了在香港經營 (a) 段提述的業務；
- (c) 申請人根據 (a) 段提述的地方的主管當局或規管機構的授權（不論實際如何稱述）在該地方經營 (a) 段提述的業務，而——
 - (i) 證監會認為該當局或機構所執行的職能，是與本部授予該會的職能相似的；
 - (ii) 該當局或機構確認並令證監會信納申請人已獲如此授權；及
 - (iii) 證監會信納該當局或機構獲該地方的法律賦權調查申請人在香港的行為，並在適用的情況下為該等行為採取紀律行動；
- (d) 批給該牌照，不會導致在任何一段 24 個月的期間內，申請人根據第 (1) 款獲批給的各牌照的各別牌照期合計超過 6 個月；
- (e) 申請人是就該類受規管活動獲如此發牌的適當人選；
- (f) 申請人已提名至少一名個人以供證監會為第 (5)(a) 款的目的而核准；及
- (g) 已根據第 130(1) 條提出申請，要求批准將某處所用作申請人存放本條例規定的紀錄或文件的地方。

(3) 根據第 (1) 款批給的牌照須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予有關持牌法團，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。

117. Grant of temporary licences to corporations for carrying on regulated activities

(1) The Commission may, upon application by a corporation in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to carry on, for a period not exceeding 3 months, one or more than one regulated activity (other than Type 3, Type 7, Type 8 and Type 9 regulated activities) as the Commission may specify in the licence.

(2) The Commission shall refuse to grant a licence to carry on a regulated activity under subsection (1) unless the applicant satisfies the Commission that—

- (a) it carries on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute the regulated activity;
- (b) it seeks to be licensed for the regulated activity solely for carrying on in Hong Kong such business in the activity;
- (c) it carries on such business in the activity in the place referred to in paragraph (a) under an authorization (however described) by an authority or regulatory organization in that place which—
 - (i) in the Commission's opinion, performs a function similar to the functions of the Commission under this Part;
 - (ii) confirms to the satisfaction of the Commission that the applicant has been so authorized; and
 - (iii) the Commission is satisfied is empowered under the law of that place to investigate, and, where applicable, to take disciplinary action for, the conduct of the applicant in Hong Kong;
- (d) the granting of the licence would not result in its being granted licences under subsection (1) for respective licence periods that in total exceed 6 months in any period of 24 months;
- (e) it is a fit and proper person to be so licensed for the regulated activity;
- (f) it has nominated at least one individual for approval by the Commission for the purposes of subsection (5)(a); and
- (g) an application has been lodged under section 130(1) for approval of premises to be used by the applicant for keeping records or documents required under this Ordinance.

(3) A licence granted under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.

(4) 凡證監會根據第 (3) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。

(5) 在不局限第 (3) 款的一般性的原則下，根據第 (1) 款為進行某類受規管活動而批給的牌照，須受以下條件規限——

(a) 就該類活動而言，須有至少一名個人——

(i) 由有關持牌法團提名，並獲證監會為本段的目的而核准；及

(ii) 可時刻監督該法團獲發牌進行的受規管活動的業務；及

(b) 該持牌法團在進行該類活動時不得持有任何客戶資產。

(6) 持牌法團在進行它根據第 (1) 款獲發牌進行的受規管活動時，須使用牌照上指明的名稱，而不得使用其他名稱。

119. 註冊機構

(1) 證監會可應任何認可財務機構以訂明方式提出的申請並在訂明費用獲繳付後，將申請人註冊，使申請人可進行一類或多於一類受規管活動（第 3 及 8 類受規管活動除外），該會並須在註冊後向申請人發給註冊證明書，指明該申請人獲註冊進行的受規管活動。

(2) 證監會須將任何根據第 (1) 款提出的申請轉交金融管理專員。

(3) 金融管理專員在收到根據第 (2) 款轉交的、要求就某類受規管活動獲註冊的申請後，須——

(a) 考慮該申請；

(b) 就應否批准該申請諮詢證監會；及

(c) 通知證監會申請人是否令他信納申請人是就該類活動獲註冊的適當人選。

(4) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (3), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.

(5) Without limiting the generality of subsection (3), it shall be a condition of a licence granted under subsection (1) for carrying on a regulated activity—

(a) that, in relation to the regulated activity, there is at least one individual who is—

(i) nominated by the licensed corporation and approved by the Commission for the purposes of this paragraph; and

(ii) available at all times to supervise the business of the regulated activity for which the corporation is licensed; and

(b) that the licensed corporation shall not hold any client assets in carrying on the regulated activity.

(6) A licensed corporation shall not, when carrying on a regulated activity for which it is licensed under subsection (1), use a name other than the name specified in the licence.

119. Registered institutions

(1) The Commission may, upon application by an authorized financial institution in the prescribed manner and payment of the prescribed fee, register the applicant for one or more than one regulated activity (other than Type 3 and Type 8 regulated activities) and shall, upon such registration, grant to the applicant a certificate of registration specifying the regulated activity for which it is registered.

(2) The Commission shall refer to the Monetary Authority any application made to it under subsection (1).

(3) Upon receiving an application for registration for a regulated activity referred to him under subsection (2), the Monetary Authority shall—

(a) consider the application;

(b) consult the Commission upon the merits of the application; and

(c) advise the Commission whether he is satisfied by the applicant that the applicant is a fit and proper person to be registered for that regulated activity.

- (4) 證監會在決定根據第 (1) 款將申請人註冊或拒絕根據第 (1) 款將申請人註冊時——
- (a) 須顧及金融管理專員依據第 (3)(c) 款給予該會的意見；及
 - (b) 可完全或局部依賴該意見，以作出該決定。
- (5) 根據第 (1) 款所作的註冊須受證監會施加的合理條件規限，而證監會可隨時藉送達書面通知予有關註冊機構，修訂或撤銷任何該等條件或施加新的條件，但該項修訂、撤銷或施加須是在有關情況下屬合理的。
- (6) 凡證監會根據第 (5) 款藉送達書面通知修訂或撤銷任何條件或施加任何新的條件，該項修訂、撤銷或施加在該通知送達時或在該通知指明的時間（兩者以較遲者為準）生效。
- (7) 在不損害證監會在第 IX 部下的權力的原則下，凡某認可財務機構就第 7 類受規管活動獲註冊，在該機構根據第 95(2) 條獲認可提供自動化交易服務時，該項註冊須當作就該類活動而被撤銷。
- (8) 在不局限第 (5) 款的一般性的原則下，根據第 (1) 款所作的註冊——
- (a) 如是就某類受規管活動所作的，則該項註冊須受以下條件規限——
 - (i) 就該類活動而言，註冊機構須有至少一名主管人員可時刻監督該類活動的業務；及
 - (ii) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為受註冊機構就該類活動聘用的個人屬獲如此聘用的適當人選；
 - (b) 如是就第 7 類受規管活動所作的，則該項註冊須受以下條件規限：如證監會行使其絕對酌情決定權藉書面通知提出要求，則註冊機構須在該通知指明的合理期間內，根據第 95(2) 條申請獲認可進行該類活動，而在該項註冊有待根據第 197(2) 條撤銷前，該類活動須以該通知指明的方式營辦。
- (9) 證監會不得在沒有事先諮詢金融管理專員的情況下，根據第 (5) 或 (8)(b) 款行使其權力。

- (4) In deciding whether to register or refuse to register an applicant under subsection (1), the Commission—
- (a) shall have regard to any advice given to it by the Monetary Authority pursuant to subsection (3)(c); and
 - (b) may rely wholly or partly on that advice in making that decision.
- (5) Any registration under subsection (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the registered institution concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (6) Where the Commission by notice in writing amends or revokes any condition or imposes any new condition under subsection (5), the amendment, revocation or imposition takes effect at the time of the service of the notice or at the time specified in the notice, whichever is the later.
- (7) Without prejudice to the Commission's powers under Part IX, the registration of an authorized financial institution for Type 7 regulated activity shall be deemed to be revoked in respect of that regulated activity upon the institution's being granted an authorization under section 95(2) to provide automated trading services.
- (8) Without limiting the generality of subsection (5), it shall be a condition of any registration under subsection (1) for—
- (a) a regulated activity, that—
 - (i) in relation to the regulated activity, there is at least one executive officer of the registered institution who is available at all times to supervise the business of the regulated activity for which the institution is registered; and
 - (ii) any individual whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged by the registered institution in respect of the regulated activity is a fit and proper person to be so engaged;
 - (b) Type 7 regulated activity, that if the Commission in its absolute discretion requires by notice in writing, the registered institution shall apply, within such reasonable period as may be specified in the notice, for an authorization under section 95(2) for that regulated activity, and the regulated activity shall be operated in such manner as may be specified in the notice pending the revocation of the registration under section 197(2).
- (9) The Commission shall not exercise its power under subsection (5) or (8)(b) unless the Commission has first consulted the Monetary Authority.

附表 1 [第 2、19、66、164、171、
174、175、202 及
406 條及附表 9]

釋義及一般條文

第 1 部

釋義

1. 本條例的釋義

在本條例中，除另予界定、另被豁除或文意另有所指外——

“上市”(listed) 指在認可證券市場上市，而就本定義而言——

- (a) 如某法團的任何證券屬上市證券，則該法團須視為上市法團；
- (b) 如認可交易所應發行有關證券的法團或有關證券的持有人的申請，同意在符合本條例的規定下，容許該等證券在認可證券市場交易，則該等證券須視為上市證券；而在該等證券在該認可證券市場暫停交易期間，須持續視為上市證券；

“上市”(listing) 作為名詞使用時，就任何證券而言，指該等證券上市的程序；

“上訴審裁處”(Securities and Futures Appeals Tribunal) 指本條例第 216 條設立的證券及期貨事務上訴審裁處；

“已廢除的《交易所及結算所(合併)條例》”(repealed Exchanges and Clearing Houses (Merger) Ordinance) 指根據本條例第 406 條廢除的《交易所及結算所(合併)條例》(第 555 章)；

“已廢除的《保障投資者條例》”(repealed Protection of Investors Ordinance) 指根據本條例第 406 條廢除的《保障投資者條例》(第 335 章)；

“已廢除的《商品交易條例》”(repealed Commodities Trading Ordinance) 指根據本條例第 406 條廢除的《商品交易條例》(第 250 章)；

“已廢除的《槓桿式外匯買賣條例》”(repealed Leveraged Foreign Exchange Trading Ordinance) 指根據本條例第 406 條廢除的《槓桿式外匯買賣條例》(第 451 章)；

“已廢除的《證券及期貨事務監察委員會條例》”(repealed Securities and Futures Commission Ordinance) 指根據本條例第 406 條廢除的《證券及期貨事務監察委員會條例》(第 24 章)；

“已廢除的《證券及期貨(結算所)條例》”(repealed Securities and Futures (Clearing Houses) Ordinance) 指根據本條例第 406 條廢除的《證券及期貨(結算所)條例》(第 420 章)；

“已廢除的《證券(內幕交易)條例》”(repealed Securities (Insider Dealing) Ordinance) 指根據本條例第 406 條廢除的《證券(內幕交易)條例》(第 395 章)；

“已廢除的《證券交易所合併條例》”(repealed Stock Exchanges Unification Ordinance) 指根據本條例第 406 條廢除的《證券交易所合併條例》(第 361 章)；

“已廢除的《證券(披露權益)條例》”(repealed Securities (Disclosure of Interests) Ordinance) 指根據本條例第 406 條廢除的《證券(披露權益)條例》(第 396 章)；

“已廢除的《證券條例》”(repealed Securities Ordinance) 指根據本條例第 406 條廢除的《證券條例》(第 333 章)；

“中介人”(intermediary) 指持牌法團或註冊機構；

“公司”(company) 指《公司條例》(第 32 章)第 2(1) 條界定的公司；

“公司註冊處處長”(Registrar of Companies) 指根據《公司條例》(第 32 章)第 303 條委任的公司註冊處處長；

SCHEDULE 1

[ss. 2, 19, 66, 164, 171,
174, 175, 202 &
406 & Sch. 9]

INTERPRETATION AND GENERAL PROVISIONS

PART 1

INTERPRETATION

1. Interpretation of this Ordinance

In this Ordinance, unless otherwise defined or excluded or the context otherwise requires—
“accredited” (隸屬) means accredited to a licensed corporation with the Commission's approval under section 122 of this Ordinance;

“Advisory Committee” (諮詢委員會) means the Advisory Committee referred to in section 7 of this Ordinance;

“articles” (章程細則), in relation to a company, means its articles as defined in section 2(1) of the Companies Ordinance (Cap. 32);

“associate” (有聯繫者), in relation to a person, means—

- (a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) the trustee of a trust of which the person, his spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object;
- (e) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;
- (f) another person accustomed or obliged to act in accordance with the directions or instructions of the person;
- (g) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;
- (h) a corporation which is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;
- (i) a corporation at general meetings of which the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;
- (j) a corporation of which the person controls the composition of the board of directors;
- (k) where the person is a corporation—
 - (i) each of its directors and its related corporations and each director or employee of any of its related corporations; and
 - (ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation;
- (l) without limiting the circumstances in which paragraphs (a) to (k) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or such interest, any other person with whom the person has an agreement or arrangement—
 - (i) with respect to the acquisition, holding or disposal of such securities or such interest; or
 - (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

“associated entity” (有聯繫實體), in relation to an intermediary, means a company, or an overseas company complying with the provisions of Part XI of the Companies Ordinance (Cap. 32) relating to the registration of documents, which—

“公司集團”(group of companies)指 2 個或多於 2 個的法團，而其中 1 個是其餘法團的控股公司；

“公眾”、“大眾”(public)指香港的公眾，並包括任何一類該等公眾人士；

“文件”(document)包括註冊紀錄冊、登記冊、簿冊、紀錄帶、任何形式的資訊系統輸入或輸出資料，以及其他文件或類似的材料（不論是以機械、電子、磁力、光學、人手或其他方式製作的）；

“不當行為”(misfeasance)指以不當方式作出在其他方面屬合法的作為；

“未成年”(minor)就任何人而言，指未滿 18 歲；

“司法或其他法律程序”(judicial or other proceedings)指任何法律程序，不論屬司法程序性質或其他性質；

“市場失當行為”(market misconduct)具有本條例第 245(1)條給予該詞的涵義；

“市場失當行為審裁處”(Market Misconduct Tribunal)指本條例第 251 條設立的市場失當行為審裁處；

“市場合約”(market contract)指認可結算所依據一項約務更替而與結算所參與者訂立並受該結算所的規章規限的合約，而該約務更替既符合該等規章，亦是為在認可證券市場或認可期貨市場達成（或在認可交易所規章的規限下達成）的證券或期貨合約交易的結算及交收而作出的；

“申訴專員”(Ombudsman)指《申訴專員條例》(第 397 章)第 3(1)條提述的申訴專員；

“主管人員”(executive officer)——

(a) 就某持牌法團而言，指該法團的負責人員；

(b) 就某註冊機構而言，指根據《銀行業條例》(第 155 章)屬該機構的主管人員的人；或

(c) 就中介人的有聯繫實體而言，指負責直接監管該實體收取或持有該中介人的客戶資產的該實體的董事；

“成立”、“成立為法團”(incorporated)包括以任何方式組成或設立；

“成員”(member)就證監會而言，指該會的執行董事（不論是否以主席或副主席身分行事）或非執行董事；

“交易”(dealing)——

(a) 就證券而言，指不論以主事人或代理人身分而與另一人訂立或要約與另一人訂立協議，或誘使或企圖誘使另一人訂立或要約訂立協議，而——

(i) 目的是或旨在取得、處置、認購或包銷證券；或

(ii) 該等協議的目的或伴稱目的是使任何一方從證券的收益或參照證券價值的波動獲得利潤；或

(b) 就期貨合約而言，指不論以主事人或代理人身分而——

(i) 為訂立、取得或處置期貨合約而與另一人訂立或要約與另一人訂立協議；

(ii) 誘使或企圖誘使另一人訂立或要約訂立期貨合約；或

(iii) 誘使或企圖誘使另一人取得或處置期貨合約；

“交易所參與者”(exchange participant)指符合以下說明的人——

(a) 根據認可交易所規章，可透過該交易所或在該交易所營辦的認可證券市場或認可期貨市場進行交易；及

(b) 其姓名或名稱已記入在由該交易所備存的、以記錄可透過該交易所或在該交易所營辦的認可證券市場或認可期貨市場進行交易的人的列表、名冊或登記冊內；

“交易權”(trading right)就認可交易所而言，指有資格透過該交易所或在該交易所營辦的認可證券市場或認可期貨市場進行交易的權利，且該權利已記入該交易所備存的列表、名冊或登記冊內；

(a) is in a controlling entity relationship with the intermediary; and

(b) receives or holds in Hong Kong client assets of the intermediary;

“auditor”(核數師)means a certified public accountant (practising) as defined in the Professional Accountants Ordinance (Cap. 50), or such other person as is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition; (Amended 23 of 2004 s. 56)

“authorized automated trading services”(認可自動化交易服務)means automated trading services which a person is authorized to provide under section 95(2) of this Ordinance;

“authorized financial institution”(認可財務機構)means an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap. 155);

“automated trading services”(自動化交易服務)has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

“bank”(銀行)means any institution carrying on business similar to—

(a) the banking business within the meaning of the Banking Ordinance (Cap. 155) as carried on by an authorized financial institution; or

(b) the business of taking deposits within the meaning of that Ordinance as carried on by an authorized financial institution,

whether it is an authorized financial institution or not, and “banker”(銀行)shall be construed accordingly;

“bank incorporated outside Hong Kong”(在香港以外地方成立為法團的銀行)means a bank incorporated outside Hong Kong that is not an authorized financial institution;

“banker's books”(銀行簿冊)includes—

(a) books of a banker;

(b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession of a banker;

(c) securities in the possession of a banker, whether as a pledge or otherwise; and

(d) any material in which information is recorded (however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form) and which is used in the ordinary course of business of a bank;

“books”(簿冊)includes—

(a) accounts and any accounting information; and

(b) in the case of a banker, any banker's books,

however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

“broadcast”(廣播), in relation to any material (however described), includes having the information contained in the material broadcast;

“broadcaster”(廣播業者)means a person who lawfully—

(a) establishes and maintains a broadcasting service within the meaning of Part IIIA of the Telecommunications Ordinance (Cap. 106); or

(b) provides a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (Cap. 562);

“business day”(營業日)means a day other than—

(a) a public holiday; and

(b) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

“certificate of deposit”(存款證)means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable (and, in the case of any such document which is a prescribed instrument by virtue of paragraph (a) of the definition of “prescribed instrument” in section 137B(1) of the Banking Ordinance (Cap. 155), such document includes any right or interest referred to in paragraph (b) of that definition in respect of such document);

“certified public accountant”(會計師)means a certified public accountant as defined in section 2 of the Professional Accountants Ordinance (Cap. 50); (Added 23 of 2004 s. 56)

“charge”(押記)includes any form of security, including a mortgage;

“clearing house”(結算所)means a person—

“行為”(conduct)包括任何作為或不作為，以及任何一連串的作為或不作為；

“在香港以外地方成立為法團的銀行”(bank incorporated outside Hong Kong)指在香港以外地方成立為法團而並非認可財務機構的銀行；

“自動化交易服務”(automated trading services)具有本條例附表 5 第 2 部給予該詞的涵義；

“存款證”(certificate of deposit)指存放在發證人或其他人而與金錢(不論屬何種貨幣)有關的文件，而該文件承認有將一筆指定數額的款項(不論是否連同利息)付給持證人或文件上的指定人的義務，亦不論該文件有無背書，均可憑該文件的交付而將收取該筆款項(不論是否連同利息)的權利轉讓；任何該等文件如憑藉《銀行業條例》(第 155 章)第 137B(1)條中“訂明票據”的定義的(a)段而屬訂明票據，則該文件包括在該定義的(b)段就該文件而提述的任何權利或權益；

“合資格信貸評級”(qualifying credit rating)指——

(a) 第 5 部指明的信貸評級；或

(b) 證監會認為是相等於第 5 部某一指明的信貸評級的信貸評級；

“收購要約”(take-over offer)就法團而言，指向法團的股份的所有持有人(或提出要約的人及其代名人以外的所有持有人)提出為取得該等股份或某一指明比例的該等股份而提出的要約，或向該等股份的某一類別的所有持有人(或提出要約的人及其代名人以外的該類別股份的所有持有人)提出為取得該類別股份或某一指明比例的該類別股份而提出的要約；

“有聯繫者”(associate)就某人而言——

(a) 指該人的配偶、親生或領養的未成年子女，或未成年繼子女；

(b) 指該人擔任董事的法團；

(c) 指該人的僱員或合夥人；

(d) 指某信託的受託人，而該人、其配偶、其親生或領養的未成年子女或其未成年繼子女是該信託的受益人或酌情對象；

(e) 指另一人而該人慣於或有義務按照該另一人的指示或指令行事；

(f) 指慣於或有義務按照該人的指示或指令行事的另一人；

(g) 指任何法團而該人慣於或有義務按照該法團(或該法團的董事)的指示或指令行事；

(h) 指任何法團而該法團(或該法團的董事)慣於或有義務按照該人的指示或指令行事；

(i) 指任何法團而該人(不論單獨或聯同另一人)有權在該法團的成員大會上直接或間接行使不少於 33% 的投票權或控制該數量的投票權的行使；

(j) 指任何法團而該人控制該法團董事局的組成；

(k) 在該人是法團的情況下，指——

(i) 該法團各董事、該法團各有連繫法團，以及該等有連繫法團各董事或僱員；及

(ii) 該法團(或該法團的有連繫法團)的退休金計劃、公積金計劃或僱員股份計劃；

(l) 在不局限(a)至(k)段適用的情況的原則下，如有關情況涉及法團的證券或其他權益，或因持有該等證券或權益而產生的權利，則指——

(i) 與該人訂有關於取得、持有或處置該等證券或權益的協議或安排的另一人；或

(ii) 與該人訂有某項協議或安排的人，而根據該項協議或安排，他們承諾在該法團的成員大會上行使投票權時行動一致；

(a) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on a recognized stock market or subject to the rules of a recognized exchange company;

(b) whose activities or objects include the provision of services for—

(i) the clearing and settlement of transactions in futures contracts; or

(ii) the day-to-day adjustment of the financial position of futures contracts, effected on a recognized futures market or subject to the rules of a recognized exchange company; or

(c) who guarantees the settlement of any such transactions as are referred to in paragraph (a) or (b),

but does not include a corporation operated by or on behalf of the Government;

“clearing participant”(結算所參與者) means a person—

(a) who, in accordance with the rules of a recognized clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house; and

(b) whose name is entered in a list, roll or register kept by that recognized clearing house as a person who may participate in one or more of the services provided by that clearing house;

“client”(客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity, and—

(a) includes another intermediary that—

(i) deposits securities;

(ii) deposits money; or

(iii) deposits any property as collateral,

with the first-mentioned intermediary;

(b) in connection with a leveraged foreign exchange contract, does not include a recognized counterparty;

“client assets”(客戶資產) means—

(a) client securities and collateral; and

(b) client money;

“client collateral”(客戶抵押品) means—

(a) securities collateral; and

(b) other collateral;

“client money”(客戶款項)—

(a) in relation to a licensed corporation, means any money—

(i) received or held by or on behalf of the licensed corporation; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,

which is so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest, and includes any accretions thereto whether as capital or income; or

(b) in relation to a registered institution, means any money—

(i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity,

which is so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest, and includes any accretions thereto whether as capital or income;

“client securities”(客戶證券)—

(a) in relation to a licensed corporation, means any securities (other than securities collateral)—

(i) received or held by or on behalf of the licensed corporation; or

(ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the licensed corporation,

which are so received or held on behalf of a client of the licensed corporation or in which a client of the licensed corporation has a legal or equitable interest; or

“有聯繫實體”(associated entity)就某中介人而言,指符合以下說明的公司,或符合以下說明及《公司條例》(第 32 章)第 XI 部關於文件登記的條文的海外公司——

- (a) 和該中介人有控權實體關係;及
- (b) 在香港收取或持有該中介人的客戶資產;

“有關股本”(relevant share capital)指法團某類別已發行股本,而該類別股本是帶有在所有情況下均可在該法團成員大會上投票的權利的;

“有關條文”(relevant provisions)指——

- (a) 本條例的條文;
- (b) 《公司條例》(第 32 章)第 II 及 XII 部的條文,但只限於該兩部中直接或間接關乎執行與下述事宜有關的職能的範疇——
 - (i) 招股章程;
 - (ii) 法團購買本身股份;
 - (iii) 法團為收購本身股份而提供資助,不論該等職能是否已藉根據本條例第 25 或 68 條作出的轉移令轉移;
- (c) (僅為施行本條例第 213 條)《公司條例》(第 32 章)第 II 及 XII 部的條文,但只限於該兩部直接或間接關乎該條例第 38B(1) 條所述的廣告的範圍內; (由 2004 年第 30 號第 3 條增補)

“多邊機構”(multilateral agency)指第 4 部指明的團體;

“私隱專員”(Privacy Commissioner for Personal Data)指《個人資料(私隱)條例》(第 486 章)第 5(1) 條設立的個人資料私隱專員;

“其他抵押品”(other collateral)——

- (a) 就某持牌法團而言,指任何符合以下說明的、屬證券及金錢以外的財產——
 - (i) 存放於該法團,或由該法團的客戶或代該法團的客戶以其他方式向該法團提供的;或
 - (ii) 存放於任何人或中介人,或由該法團的客戶或代該法團的客戶以其他方式向該人或中介人提供的,而該財產是——
 - (A) 為獲得該法團提供財務通融而如此存放或提供作為保證的;或
 - (B) 為利便獲得該法團根據某項安排提供財務通融而如此存放或提供的,而在該項安排下,該法團對抵押予它的該財產享有權益;或
- (b) 就某註冊機構而言,指任何符合以下說明的、屬證券及金錢以外的財產——
 - (i) 在進行該機構獲註冊進行的任何受規管活動的過程中存放於該機構,或由該機構的客戶或代該機構的客戶以其他方式向該機構提供的;或
 - (ii) 就進行該受規管活動而存放於任何人或中介人,或由該機構的客戶或代該機構的客戶以其他方式向該人或中介人提供的,而該財產是——
 - (A) 為獲得該機構提供財務通融而如此存放或提供作為保證的;或
 - (B) 為利便獲得該機構根據某項安排提供財務通融而如此存放和提供的,而在該項安排下,該機構對抵押予它的該財產享有權益;

“股份”(share)指法團股本中的股份,而除非股額與股份之間有明示或隱含的分別,否則亦包括股額;

“招股章程”(prospectus)指《公司條例》(第 32 章)第 2(1) 條所界定的招股章程; (由 2004 年第 30 號第 3 條代替)

“押記”(charge)包括任何形式的保證(包括按揭);

“法庭”、“法院”(court)包括裁判官及審裁處;

(b) in relation to a registered institution, means any securities (other than securities collateral)——

- (i) received or held by or on behalf of the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or
- (ii) received or held by or on behalf of any corporation which is in a controlling entity relationship with the registered institution, in relation to such conduct of the regulated activity, which are so received or held on behalf of a client of the registered institution or in which a client of the registered institution has a legal or equitable interest;

“client securities and collateral”(客戶證券及抵押品) means——

- (a) client securities; and
- (b) client collateral;

“collective investment scheme”(集體投資計劃) means——

- (a) arrangements in respect of any property——
 - (i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;
 - (ii) under which——
 - (A) the property is managed as a whole by or on behalf of the person operating the arrangements;
 - (B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
 - (C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and
 - (iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive——
 - (A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or
 - (B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or
- (b) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as being regarded as collective investment schemes in accordance with the terms of the notice, but does not include——
 - (i) arrangements operated by a person otherwise than by way of business;
 - (ii) arrangements under which each of the participating persons is a corporation in the same group of companies as the person operating the arrangements;
 - (iii) arrangements under which each of the participating persons is a bona fide employee or former employee of a corporation in the same group of companies as the person operating the arrangements, or a spouse, widow, widower, minor child (natural or adopted) or minor step-child of such employee or former employee;
 - (iv) franchise arrangements under which the franchisor or franchisee earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;
 - (v) arrangements under which money is taken by a solicitor from his client, or as a stakeholder, acting in his professional capacity in the ordinary course of his practice;
 - (vi) arrangements made for the purposes of any fund or scheme maintained by the Commission, or by a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company,

“法團”(corporation)指在香港或其他地方成立的公司或其他法人團體，但不包括為本定義的目的而藉根據本條例第 397 條訂立的規則豁免遵守本條例條文的公司或其他法人團體，而就此獲如此豁免遵守本條例任何條文的公司或其他法人團體而言，“法團”一詞在該豁免範圍內不包括該公司或法人團體；

“非執行董事”(non-executive director)就證監會而言，指根據本條例附表 2 第 1 部第 1 條委任為該會非執行董事的人；

“受規管投資協議”(regulated investment agreement)指某項協議，而該項協議的目的或作用或其作稱的目的或作用，是向協議的任何一方提供(不論是否附有條件)藉參照任何財產(集體投資計劃的權益除外)的價值的變動而計算的利潤、收益或其他回報；

“受規管活動”(regulated activity)指本條例附表 5 第 1 部指明的任何一類受規管活動，而凡提述某類受規管活動，即指該部指明的該類受規管活動；

“直播”(live broadcast)就材料(不論實際如何稱述)而言，指事先未經灌錄或攝錄而將該材料廣播；

“金融產品”(financial product)指——

- (a) 證券；
- (b) 期貨合約；
- (c) 集體投資計劃；
- (d) 槓桿式外匯交易合約；

“金融管理專員”(Monetary Authority)指根據《外匯基金條例》(第 66 章)第 5A 條委任的金融管理專員；

“客戶”(client)就某中介人而言，在該中介人向任何人提供服務而該項提供構成受規管活動的情況下，指該人，並——

- (a) 包括存放以下項目於該中介人處——
 - (i) 證券；
 - (ii) 金錢；或
 - (iii) 任何財產作為抵押品，

的另一中介人；但

(b) 在與槓桿式外匯交易合約有關連的情況下，不包括認可對手方；

“客戶抵押品”(client collateral)指——

(a) 證券抵押品；及

(b) 其他抵押品；

“客戶款項”(client money)——

(a) 就某持牌法團而言，指——

- (i) 由該法團或代該法團收取或持有的款項；或
- (ii) 由任何或代任何和該法團有控權實體關係的另一法團收取或持有的款項，而該等款項是代該法團的客戶如此收取或持有的，或該法團的客戶對該等款項是擁有法律上或衡平法上的權益的；客戶款項並包括上述款項以資本或收入形式出現的任何增益；或

(b) 就某註冊機構而言，指——

- (i) 在進行該機構獲註冊進行的任何受規管活動的過程中，由該機構或代該機構收取或持有的款項；或
- (ii) 與進行該受規管活動有關的，由任何或代任何和該機構有控權實體關係的任何法團收取或持有的款項，

而該等款項是代該機構的客戶如此收取或持有的，或該機構的客戶對該等款項是擁有法律上或衡平法上的權益的；客戶款項並包括上述款項以資本或收入形式出現的任何增益；

under any provision of this Ordinance for the purpose of providing compensation in the event of default by an exchange participant or a clearing participant;

(vii) arrangements made by any credit union in accordance with the objects thereof;

(viii) arrangements made for the purposes of any chit-fund permitted to operate under the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262);

(ix) arrangements made for the purposes of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);

(x) arrangements which are arrangements, or are of a class or description of arrangements, prescribed by notice under section 393 of this Ordinance as not being regarded as collective investment schemes in accordance with the terms of the notice;

“Commission”(證監會) means the Securities and Futures Commission referred to in section 3(1) of this Ordinance;

“Commissioner of the Independent Commission Against Corruption”(廉政專員) means the person who holds the office of the Commissioner of the Independent Commission Against Corruption pursuant to section 5 of the Independent Commission Against Corruption Ordinance (Cap. 204); (Amended 14 of 2003 s. 24)

“company”(公司) means a company as defined in section 2(1) of the Companies Ordinance (Cap. 32);

“compensation fund”(賠償基金) means the Investor Compensation Fund established under section 236 of this Ordinance;

“conduct”(行為) includes any act or omission, and any series of acts or omissions;

“constitution”(章程), in relation to a corporation, including a recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, means—

(a) where the corporation is a company, the memorandum and articles of the corporation; or

(b) in any other case, any other instrument providing for the constitution of the corporation;

“controlling entity”(控權實體), in relation to a corporation, means a person who, either alone or with any of his associates—

(a) is entitled to exercise or control the exercise of not less than—

(i) subject to subparagraph (ii), 20%; or

(ii) where any other percentage is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition, such other percentage,

(b) has the right to nominate any of the directors of the corporation; or

(c) has an interest in shares carrying the right to—

(i) veto any resolution; or

(ii) amend, modify, limit or add conditions to any resolution,

at general meetings of the corporation;

“controlling entity relationship”(控權實體關係), in relation to a corporation, means its relationship with an intermediary by virtue of—

(a) the intermediary being a controlling entity of the corporation;

(b) the corporation being a controlling entity of the intermediary; or

(c) another person, who is a controlling entity of the corporation, being also a controlling entity of the intermediary;

“corporation”(法團) means a company or other body corporate incorporated either in Hong Kong or elsewhere, but does not include a company or other body corporate which is prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as being exempted from the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as being exempted from any provision of this Ordinance;

“court”(法庭、法院) includes a magistrate and a tribunal;

“credit union”(儲蓄互助社) means a credit union registered under the Credit Unions Ordinance (Cap. 119);

“data material”(數據材料) means a document or other material used with or produced by any information system;

“dealing”(交易)—

(a) in relation to securities, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement—

“客戶資產”(client assets)指——

- (a) 客戶證券及抵押品；及
- (b) 客戶款項；

“客戶證券”(client securities)——

- (a) 就某持牌法團而言，指任何符合以下說明的、屬證券抵押品以外的證券——
 - (i) 由該法團或代該法團收取或持有的；或
 - (ii) 由任何或代任何和該法團有控權實體關係的另一法團收取或持有的，而該等證券是代該法團的客戶如此收取或持有的，或該法團的客戶對該等證券是擁有法律上或衡平法上的權益的；或
- (b) 就某註冊機構而言，指任何符合以下說明的、屬證券抵押品以外的證券——
 - (i) 在進行該機構獲註冊進行的任何受規管活動的過程中，由該機構或代該機構收取或持有的；或
 - (ii) 與進行該受規管活動有關的，由任何或代任何和該機構有控權實體關係的法團收取或持有的，而該等證券是代該機構的客戶如此收取或持有的，或該機構的客戶對該等證券是擁有法律上或衡平法上的權益的；

“客戶證券及抵押品”(client securities and collateral)指——

- (a) 客戶證券；及
- (b) 客戶抵押品；

“持有”(hold)就財產而言，包括——

- (a) 管有該財產；
- (b) 在為指明誰人擁有該財產的所有權或誰人有權收取該財產而設置或製作的登記冊或其他紀錄(不論以何種方式編纂或貯存)中，登記或以其他方式記錄為擁有該財產的所有權或有權收取該財產；及
- (c) (就經營業務的人而言)可在以下情況下將該財產轉移予他本人或以其他方式收取該財產的利益——
 - (i) 另一人擁有該財產的法律上或衡平法上的權益；
 - (ii) 該財產與他經營的業務有關連；及
 - (iii) 不論該人將該財產轉移予他本人或以其他方式收取該財產的利益是否合法，但就付款予另一人的支票或其他付款單而言，不包括在將該支票或付款單發送予或交付該另一人或代該另一人發送予或交付其他人的過程中管有該支票或付款單；

“持牌人”(licensed person)指持牌法團或持牌代表；

“持牌代表”(licensed representative)指根據本條例第 120 或 121 條獲批給牌照的個人；

“持牌法團”(licensed corporation)指根據本條例第 116 或 117 條獲批給牌照的法團；

“指明期貨交易所”(specified futures exchange)指第 2 部指明的期貨交易所；

“指明債務證券”(specified debt securities)指符合以下說明的債權股證、債權證、債券、票據、指數債券、可轉換債務證券、附認股權證債券、無息債務證券及其他確認、證明或產生債務的證券或文書——

- (a) 由政府發行或作出擔保的；
- (b) 由某發行人發行的，而該發行人發行的債務票據具有合資格信貸評級；或
- (c) 由其他獲證監會就個別個案以書面核准的發行人發行的；

“指明證券交易所”(specified stock exchange)指第 3 部指明的證券交易所；

“律政人員”(legal officer)指《律政人員條例》(第 87 章)第 2 條界定的律政人員；

(i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(ii) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(b) in relation to futures contracts, means, whether as principal or agent——

(i) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;

(ii) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or

(iii) inducing or attempting to induce another person to acquire or dispose of a futures contract;

“debenture”(債權證) includes debenture stocks, bonds, and other securities of a corporation, whether constituting a charge on the assets of the corporation or not;

“defalcation”(虧空) means misapplication, including misappropriation, of any property;

“director”(董事) includes a shadow director and any person occupying the position of director by whatever name called;

“document”(文件) includes any register and books, any tape recording and any form of input or output into or from an information system, and any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

“exchange participant”(交易所參與者) means a person——

(a) who, in accordance with the rules of a recognized exchange company, may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company; and

(b) whose name is entered in a list, roll or register kept by that recognized exchange company as a person who may trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company;

“executive director”(執行董事), in relation to the Commission, means the chairman of the Commission, or any other person who is appointed as an executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance;

“executive officer”(主管人員)——

(a) in relation to a licensed corporation, means a responsible officer of the licensed corporation;

(b) in relation to a registered institution, means a person who is an executive officer of the registered institution under the Banking Ordinance (Cap. 155); or

(c) in relation to an associated entity of an intermediary, means any director of the associated entity who is responsible for directly supervising the receiving or holding by the associated entity of client assets of the intermediary;

“fee”(費用) includes a charge;

“financial accommodation”(財務通融) means a loan or other arrangement under which a person is or is to be provided with credit, whether directly or through a third party, and in particular includes an overdraft, a discounted negotiable instrument, a guarantee, a forbearance from enforcing any debt that in substance is a loan, and also includes an agreement to secure the payment or repayment of any such accommodation;

“financial product”(金融產品) means——

(a) any securities;

(b) any futures contract;

(c) any collective investment scheme;

(d) any leveraged foreign exchange contract;

“financial resources rules”(財政資源規則) means rules made under section 145 of this Ordinance;

“financial year”(財政年度)——

(a) in relation to the Commission, means the financial year referred to in section 13(1) of this Ordinance; or

(b) in relation to an intermediary, or an associated entity of an intermediary, means——

- (i) the financial year in respect of which notification is given to the Commission under section 155(1) of this Ordinance or, where an approval is granted under section 155(3)(a) of this Ordinance, the financial year in respect of which the approval is granted;

“負責人員”(responsible officer)就某持牌法團而言，指獲證監會根據本條例第 126(1) 條核准為該法團的負責人員的個人；

“紀錄”(record)指不論以何種方式編纂或貯存的資料紀錄，並包括——

- (a) 簿冊、契據、合約、協議、憑單、收據或數據材料，或並非以可閱讀形式記錄但能夠以可閱讀形式重現的資料；及
- (b) 包含聲音或其他非視覺影像的數據以便能夠使該等聲音或數據重播或重現(不論是否藉其他設備的輔助)的文件、紀錄碟、紀錄帶、聲軌或其他器材，以及載有視覺影像以便能夠使該等影像重現(不論是否藉其他設備的輔助)的影片(包括微縮影片)、錄影帶或其他器材；

“保險人”(insurer)指《保險公司條例》(第 41 章)第 2(1) 條界定的保險人；

“保險業監督”(Insurance Authority)指根據《保險公司條例》(第 41 章)第 4 條委任的保險業監督；

“洗錢活動”(money laundering activities)指在有意圖達致下述效果下進行的活動：使——

- (a) 因犯了香港法律所訂罪行或因作出某行為(假使在香港發生即屬犯香港法律所訂罪行)而獲取的收益的任何財產；或
- (b) 全部或部分、直接或間接代表該等收益的任何財產，

看似並非該等收益或不如此代表該等收益；

“風險管理委員會”(Risk Management Committee)就某認可控制人而言，指該控制人根據本條例第 65(1) 條設立，並以風險管理委員會為名的委員會；

“海外公司”(overseas company)指《公司條例》(第 32 章)第 332 條所指的海外公司；

“執行”(performance)就職能而言，包括履行及行使；

“執行董事”(executive director)就證監會而言，指證監會主席，或根據本條例附表 2 第 1 部第 1 條委任為該會執行董事的任何其他人；

“財政年度”(financial year)——

- (a) 就證監會而言，指本條例第 13(1) 條提述的財政年度；或
- (b) 就中介人或中介人的有聯繫實體而言——
 - (i) 指證監會根據本條例第 155(1) 條獲告知的財政年度；如該會根據本條例第 155(3)(a) 條就某財政年度給予批准，則指該財政年度；
 - (ii) 指金融管理專員根據《銀行業條例》(第 155 章)第 59B(1) 條獲告知的財政年度；如金融管理專員根據該條例第 59B(3)(a) 條就某財政年度給予批准，則指該財政年度；或
 - (iii) 在其他情況下，指截至一個公曆年的 3 月 31 日為止的一段連續 12 個月的期間；

“財政資源規則”(financial resources rules)指根據本條例第 145 條訂立的規則；

“財產”(property)包括——

- (a) 金錢、貨物、據法權產和土地，不論是在香港的或是在其他地方的；及
- (b) (a) 段界定的財產所產生或附帶的義務、地役權和各類產業、權益及利潤，不論是現存的或是將來的、是既有的或是或然的；

“財務通融”(financial accommodation)指直接或透過第三者令某人獲提供或將會獲提供信貸的任何貸款或其他安排，尤其包括透支、已貼現可流轉票據、擔保及延期強制執行償還實質上是一項貸款的債項，亦包括保證任何該等通融的付款或還款的協議；

- (ii) the financial year in respect of which notification is given to the Monetary Authority under section 59B(1) of the Banking Ordinance (Cap. 155) or, where an approval is granted under section 59B(3)(a) of that Ordinance, the financial year in respect of which the approval is granted; or
- (iii) in any other case, a period of 12 consecutive months ending on 31 March in a calendar year;

“function”(職能) includes power and duty;

“futures contract”(期貨合約) means—

- (a) a contract or an option on a contract made under the rules or conventions of a futures market;
- (b) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as futures contracts in accordance with the terms of the notice,

but does not include interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as futures contracts in accordance with the terms of the notice;

“Futures Exchange Company”(期交所) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Futures Exchange Limited;

“futures market”(期貨市場) means a place at which facilities are provided for persons to negotiate or conclude sales and purchases of, or for bringing together on a regular basis sellers and purchasers of—

- (a) contracts the effect of which is—
 - (i) that one party agrees to deliver to the other party at an agreed future time an agreed property, or an agreed quantity of a property, at an agreed price; or
 - (ii) that the parties will make an adjustment between them at an agreed future time according to whether at that time an agreed property is worth more or less or an index or other factor stands at a higher or lower level than a value or level agreed at the time of making of the contract; or
- (b) options on contracts of the kind described in paragraph (a),

where—

- (i) the contracts or options of the kind described in paragraph (a) or (b) are novated or guaranteed by a central counterparty under the rules or conventions of the market on which they are traded; or
- (ii) the contractual obligations under the contracts or options of the kind described in paragraph (a) or (b) are normally discharged before the contractual expiry date under the rules or conventions of the market on which they are traded,

but does not include the office of a recognized clearing house;

“group of companies”(公司集團) means any 2 or more corporations one of which is the holding company of the other or others (as the case may be);

“hold”(持有), in relation to any property, includes—

- (a) possession of the property;
- (b) being registered or otherwise recorded, as having title to or being entitled to receive the property, in any register or other record (however compiled or stored) which is established or created for the purpose of identifying persons having title to or being entitled to receive any property; and
- (c) in the case of a person carrying on business, the person being in a position to transfer the property to himself or otherwise receive the benefit of the property—
 - (i) where another person has a legal or equitable interest in the property;
 - (ii) where there is a connection between the property and the business which is carried on by the person; and
 - (iii) regardless of whether it would be lawful or unlawful for the person to transfer the property to himself or otherwise receive the benefit of the property,

but does not include, in the case of a cheque or other order made payable to any person, the possession of the cheque or other order during the course of dispatching or delivering it to that person or any other person on behalf of that person;

“高級人員”(officer)——

(a) 就某法團而言，指其董事、經理或秘書，或其他參與其管理的人；或

(b) 就不是法團的團體而言，指其管治團體的成員；

“破產管理署署長”(Official Receiver) 指根據《破產條例》(第 6 章) 第 75 條委任的破產管理署署長；

“送達”(served) 包括給予；

“核數師”(auditor) 指《專業會計師條例》(第 50 章) 所界定的執業會計師，或為本定義的目的而藉根據本條例第 397 條訂立的規則訂明的其他人；(由 2004 年第 23 號第 56 條修訂)

“控股公司”(holding company) 就某法團而言，指以該法團作為附屬公司的另一法團；

“控權實體”(controlling entity) 就某法團而言，指任何符合以下說明的人——

(a) (不論單獨或聯同其任何有聯繫者) 有權在該法團的成員大會上行使不少於以下百分率的投票權，或控制不少於以下百分率的投票權的行使——

(i) (除第(ii)節另有規定外) 20%；或

(ii) 如為本定義的目的而藉根據本條例第 397 條訂立的規則訂明其他百分率，則為該其他百分率；

(b) (不論單獨或聯同其任何有聯繫者) 擁有提名該法團任何董事的權利；或

(c) (不論單獨或聯同其任何有聯繫者) 擁有股份的權益，而該等股份帶有以下權利——

(i) 在該法團的成員大會上否決任何決議的權利；或

(ii) 在該法團的成員大會上修訂、修改、限制任何決議，或對任何決議附加條件的權利；

“控權實體關係”(controlling entity relationship) 就某法團而言，指該法團和任何中介人之間憑藉以下情況而有的關係——

(a) 該中介人是該法團的控權實體；

(b) 該法團是該中介人的控權實體；或

(c) 另一人同時是該中介人及該法團的控權實體；

“專業投資者”(professional investor) 指——

(a) 認可交易所、認可結算所、認可控制人或認可投資者賠償公司，或根據本條例第 95(2) 條獲認可提供自動化交易服務的人；

(b) 中介人，或經營提供投資服務的業務並受香港以外地方的法律規管的其他人；

(c) 認可財務機構，或並非認可財務機構但受香港以外地方的法律規管的銀行；

(d) 根據《保險公司條例》(第 41 章) 獲授權的保險人，或經營保險業務並受香港以外地方的法律規管的其他人；

(e) 符合以下說明的計劃——

(i) 屬根據本條例第 104 條獲認可的集體投資計劃；或

(ii) 以相似的方式根據香港以外地方的法律成立，並(如受該地方的法律規管)根據該地方的法律獲准許營辦，或營辦任何該等計劃的人；

(f) 《強制性公積金計劃條例》(第 485 章) 第 2(1) 條界定的註冊計劃，或《強制性公積金計劃(一般)規例》(第 485 章，附屬法例 A) 第 2 條界定的該等計劃的成分基金，或就任何該等計劃而言屬該條例第 2(1) 條界定的核准受託人或服務提供者或屬任何該等計劃或基金的投資經理的人；

“holding company”(控股公司)，in relation to a corporation, means any other corporation of which it is a subsidiary;

“incorporated”(成立、成立為法團) includes formed or established, by whatever means;

“information”(資訊、資料、消息) includes data, text, images, sound codes, computer programmes, software and databases, and any combination thereof;

“information system”(資訊系統) means an information system as defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“Insurance Authority”(保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);

“insurer”(保險人) means an insurer as defined in section 2(1) of the Insurance Companies Ordinance (Cap. 41);

“intermediary”(中介人) means a licensed corporation or a registered institution;

“judicial or other proceedings”(司法或其他法律程序) means any legal proceedings, whether in the nature of judicial proceedings or otherwise;

“legal officer”(律政人員) means a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);

“leveraged foreign exchange contract”(槓桿式外匯交易合約) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

“leveraged foreign exchange trading”(槓桿式外匯交易) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

“licence”(牌、牌照) means a licence granted under section 116, 117, 120 or 121 of this Ordinance, and “licensed”(獲發牌、持牌) shall be construed accordingly;

“licensed corporation”(持牌法團) means a corporation which is granted a licence under section 116 or 117 of this Ordinance;

“licensed person”(持牌人) means a licensed corporation or a licensed representative;

“licensed representative”(持牌代表) means an individual who is granted a licence under section 120 or 121 of this Ordinance;

“liquidator”(清盤人) includes a provisional liquidator;

“listed”(上市) means listed on a recognized stock market, and for the purposes of this definition——

(a) a corporation shall be regarded as listed if any of its securities are listed;

(b) securities shall be regarded as listed when a recognized exchange company has, on the application of the corporation which issued them, or on the application of a holder of them, agreed to allow, subject to the requirements of this Ordinance, dealings in those securities to take place on a recognized stock market, and shall continue to be so regarded during a period of suspension of dealings in those securities on the recognized stock market;

“listing”(上市), in relation to securities, means the process by which the securities are listed;

“live broadcast”(直播), in relation to any material (however described), means having the material broadcast without its being recorded in advance;

“Mandatory Provident Fund Schemes Authority”(積金局) means the Mandatory Provident Fund Schemes Authority established under section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

“market contract”(市場合約) means a contract subject to the rules of a recognized clearing house entered into by the clearing house with a clearing participant pursuant to a novation which is both in accordance with those rules and for the purposes of the clearing and settlement of transactions in securities or futures contracts effected on a recognized stock market or a recognized futures market or subject to the rules of a recognized exchange company;

“market misconduct”(市場失當行為) has the meaning assigned to it by section 245(1) of this Ordinance;

“Market Misconduct Tribunal”(市場失當行為審裁處) means the Market Misconduct Tribunal established by section 251 of this Ordinance;

“member”(成員), in relation to the Commission, means any executive director (whether or not acting as the chairman or deputy chairman) or non-executive director of the Commission;

“memorandum”(章程大綱), in relation to a company, means its memorandum as defined in section 2(1) of the Companies Ordinance (Cap. 32);

“minor”(未成年), in relation to a person, means not having attained the age of 18 years;

“misfeasance”(不當行為) means the performance of an otherwise lawful act in a wrongful manner;

(g) 符合以下說明的計劃——

- (i) 屬《職業退休計劃條例》(第 426 章) 第 2(1) 條界定的註冊計劃；或
- (ii) 屬該條例第 2(1) 條界定的離岸計劃，並(如以某地方為本籍而受該地方的法律規管)根據該地方的法律獲准許營辦，

或就任何該等計劃而言屬該條例第 2(1) 條界定的管理人的人；

(h) 任何政府(市政府當局除外)、執行中央銀行職能的任何機構，或任何多邊機構；

(i) (除為施行本條例附表 5 外) 符合以下說明的法團——

(i) 屬下述者的全資附屬公司——

(A) 中介人，或經營提供投資服務的業務並受香港以外地方的法律規管的其他人；或

(B) 認可財務機構，或並非認可財務機構但受香港以外地方的法律規管的銀行；

(ii) 屬持有下列述者的所有已發行股本的控股公司——

(A) 中介人，或經營提供投資服務的業務並受香港以外地方的法律規管的其他人；或

(B) 認可財務機構，或並非認可財務機構但受香港以外地方的法律規管的銀行；或

(iii) 屬第(ii)節提述的控股公司的任何其他全資附屬公司；或

(j) 屬於為施行本段而藉根據本條例第 397 條訂立的規則訂明為就本條例條文屬本定義所指的類別的人，或(如為施行本段而藉如此訂立的規則訂明某類別為就本條例任何條文屬本定義所指的類別)在該範圍內屬於該類別的人；

“規章”(rules)——

(a) 就某認可交易所而言，指管限以下各項的規則、規例及指示(不論實際如何稱述，亦不論載於何處)——

- (i) 其交易所參與者；
- (ii) 可參與該交易所提供的服務的人；
- (iii) 費用的訂定及徵收；

(iv) 證券的上市；

(v) 證券或期貨合約的交易；

(vi) 其他服務的提供；或

(vii) 概括而言，其管理、運作或程序，

而就本條例第 24 及 92 條而言，包括其章程；

(b) 就某認可結算所而言，指管限以下各項的規則、規例及指示(不論實際如何稱述，亦不論載於何處)——

(i) 其結算所參與者；

(ii) 可參與該結算所提供的服務的人；

(iii) 費用的訂定及徵收；

(iv) 結算與交收服務的提供，以及上述服務的暫停或撤回；

(v) 其他服務的提供；或

(vi) 概括而言，其管理、運作或程序，

而就本條例第 41 及 92 條而言，包括其章程；

“Monetary Authority”(金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

“money laundering activities”(洗錢活動) means activities intended to have the effect of making any property—

(a) which is the proceeds obtained from the commission of an offence under the laws of Hong Kong, or of any conduct which if occurred in Hong Kong would constitute an offence under the laws of Hong Kong; or

(b) which in whole or in part, directly or indirectly, represents such proceeds, not to appear to be or so represent such proceeds;

“multilateral agency”(多邊機構) means a body specified in Part 4;

“non-executive director”(非執行董事), in relation to the Commission, means a person who is appointed as a non-executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance;

“number”(數目), in relation to shares which in the context can be construed to include stock, includes amount;

“officer”(高級人員)——

(a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or

(b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body;

“Official Receiver”(破產管理署署長) means the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap. 6);

“Ombudsman”(申訴專員) means The Ombudsman referred to in section 3(1) of The Ombudsman Ordinance (Cap. 397);

“other collateral”(其他抵押品)——

(a) in relation to a licensed corporation, means any property (other than securities or money)——

(i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person,

which is so deposited or provided——

(A) as security for the provision by the licensed corporation of financial accommodation; or

(B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the property; or

(b) in relation to a registered institution, means any property (other than securities or money)——

(i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity,

which is so deposited or provided——

(A) as security for the provision by the registered institution of financial accommodation; or

(B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the property;

“overseas company”(海外公司) means an overseas company within the meaning of section 332 of the Companies Ordinance (Cap. 32);

“performance”(執行), in relation to a function, includes discharge and exercise;

“possession”(管有), in relation to any matter, includes custody, control and power of or over the matter;

“Privacy Commissioner for Personal Data”(私隱專員) means the Privacy Commissioner for Personal Data established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486);

(c) 就某認可控制人而言，指——

- (i) 其章程；或
- (ii) 管限下述者的行為或程序的規則、規例及指示（不論實際如何稱述，亦不論載於何處）——
 - (A) 認可控制人；
 - (B) 風險管理委員會；或
 - (C) 本條例第 66(2) 條所指的公告宣布為本分節適用的人或團體；或

(d) 就認可投資者賠償公司而言，指——

- (i) 其章程；或
- (ii) 管限其管理、運作或程序或其服務的提供的規則、規例及指示（不論實際如何稱述，亦不論載於何處）；

“章程”(constitution) 就某法團（包括認可交易所、認可結算所、認可控制人或認可投資者賠償公司）而言——

- (a) 如該法團是公司，指該法團的章程大綱及章程細則；或
- (b) 在其他情況下，指訂定該法團的章程的其他文書；

“章程大綱”(memorandum) 就某公司而言，指《公司條例》(第 32 章) 第 2(1) 條界定的該公司的章程大綱；

“章程細則”(articles) 就某公司而言，指《公司條例》(第 32 章) 第 2(1) 條界定的該公司的章程細則；

“清盤人”(liquidator) 包括臨時清盤人；

“費用”(fee) 包括收費；

“註冊”(registered, registration) 指根據本條例第 119 條註冊；

“註冊機構”(registered institution) 指根據本條例第 119 條註冊的認可財務機構；

“期交所”(Futures Exchange Company) 指根據《公司條例》(第 32 章) 成立為法團，並根據該條例以“香港期貨交易所有限公司”名稱註冊的公司；

“期貨市場”(futures market) 指提供設施以供人洽商或完成以下項目的買賣或供以下項目的買賣雙方經常性地聯結的地方（但不包括認可結算所的辦事處）——

(a) 具有以下效力的合約——

- (i) 合約一方同意以議定價格在議定的將來某個時間，向合約另一方交付議定的財產或議定數量的財產；或
- (ii) 合約雙方將會在議定的將來某個時間在彼此之間作出調整，而該調整是按照議定財產當時的價值相對於在訂立該合約時所議定的價值的增加或減少而作出的，或是按照當時某個指數或其他系數所處水平相對於在訂立該合約時所議定的水平的上升或下降而作出的；或

(b) (a) 段所描述的類別的合約的期權，

而——

- (i) (a) 或 (b) 段所描述的類別的合約或期權由中央對手方根據進行該等合約或期權買賣的市場的規則或慣例作出更替或擔保；或
- (ii) 在 (a) 或 (b) 段所描述的類別的合約或期權下的合約義務，通常在合約到期日之前根據進行該等合約或期權買賣的市場的規則或慣例解除；

“期貨合約”(futures contract) 指——

- (a) 根據期貨市場的規則或慣例訂立的合約，或該等合約的期權；
- (b) 本條例第 392 條提述的公告訂明為按照該公告的條款視為期貨合約的權益、權利或財產，或屬於如此訂明為如此視為期貨合約的類別或種類的權益、權利或財產，

“professional investor” (專業投資者) means—

- (a) any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, or any person authorized to provide automated trading services under section 95(2) of this Ordinance;
- (b) any intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;
- (c) any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
- (d) any insurer authorized under the Insurance Companies Ordinance (Cap. 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong;
- (e) any scheme which—
 - (i) is a collective investment scheme authorized under section 104 of this Ordinance; or
 - (ii) is similarly constituted under the law of any place outside Hong Kong and, if it is regulated under the law of such place, is permitted to be operated under the law of such place,
 or any person by whom any such scheme is operated;
- (f) any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A), or any person who, in relation to any such registered scheme, is an approved trustee or service provider as defined in section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;
- (g) any scheme which—
 - (i) is a registered scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or
 - (ii) is an offshore scheme as defined in section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is permitted to be operated under the law of such place,
 or any person who, in relation to any such scheme, is an administrator as defined in section 2(1) of that Ordinance;
- (h) any government (other than a municipal government authority), any institution which performs the functions of a central bank, or any multilateral agency;
- (i) except for the purposes of Schedule 5 to this Ordinance, any corporation which is—
 - (i) a wholly owned subsidiary of—
 - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
 - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
 - (ii) a holding company which holds all the issued share capital of—
 - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
 - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong; or
 - (iii) any other wholly owned subsidiary of a holding company referred to in subparagraph (ii); or
- (j) any person of a class which is prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph as within the meaning of this definition for the purposes of the provisions of this Ordinance, or to the extent that it is prescribed by rules so made as within the meaning of this definition for the purposes of any provision of this Ordinance;

- 但不包括本條例第 392 條提述的公告訂明為按照該公告的條款不視為期貨合約的權益、權利或財產，或屬於如此訂明為如此不視為期貨合約的類別或種類的權益、權利或財產；
- “牌”、“牌照”(licence)指根據本條例第 116、117、120 或 121 條批給的牌照，而“獲發牌”、“持牌”(licensed)須據此解釋；
- “報酬”(remuneration)包括金錢、代價、財務通融或利益，不論是直接或間接支付、提供或供給的；
- “結算所”(clearing house)指符合以下說明的人——
- 業務或宗旨包括為在認可證券市場達成(或在認可交易所規章的規限下達成)的證券交易提供結算及交收服務；
 - 業務或宗旨包括——
 - 就在認可期貨市場達成(或在認可交易所規章的規限下達成)的期貨合約交易提供結算及交收服務；或
 - 提供就在認可期貨市場交易(或在認可交易所規章的規限下交易)的期貨合約的損益風險作出逐日調整的服務；或
 - 擔保(a)或(b)段提述的交易的交收，但不包括由政府或代政府營辦的法團；
- “結算所參與者”(clearing participant)指符合以下說明的人——
- 根據認可結算所的規章，可參與該結算所以結算所身分提供的一項或多於一項服務；及
 - 其姓名或名稱已記入在由該結算所備存的、以記錄可參與該結算所提供的一項或多於一項服務的人的列表、名冊或登記冊內；
- “買”、“購買”(purchase)就證券而言，包括認購或取得證券，不論所付代價屬何形式；
- “集體投資計劃”(collective investment scheme)指——
- 就財產而作出並符合以下說明的安排——
 - 根據有關安排，參與者對所涉財產的管理並無日常控制，不論他們是否有權就上述管理獲諮詢或有權就上述管理發出指示；
 - 根據有關安排——
 - 上述財產整體上是由營辦該安排的人或代該人管理的；
 - 參與者的供款和用以付款給他們的利潤或收益是匯集的；或
 - 上述財產整體上是由營辦該安排的人或代該人管理的，而參與者的供款和用以付款給他們的利潤或收益是匯集的；及
 - 有關安排的目的或作用或其伴稱的目的或作用，是使參與者(不論以取得上述財產或其任何部分的任何權利、權益、所有權或利益的方式或以其他方式)能夠分享或收取——
 - 聲稱從或聲稱相當可能會從上述財產或其任何部分的取得、持有、管理或處置而產生的利潤、收益或其他回報，或聲稱從或聲稱相當可能會從任何該等利潤、收益或其他回報支付的款項；或
 - 從上述財產或其任何部分的任何權利、權益、所有權或利益的取得、持有、處置或贖回而產生的，或因行使該等權利、權益、所有權或利益的任何權利而產生的，或因該等權利、權益、所有權或利益屆滿而產生的款項或其他回報；或
 - 本條例第 393 條提述的公告訂明為按照該公告的條款視為集體投資計劃的安排，或屬於如此訂明為如此視為集體投資計劃的類別或種類的安排，

“property”(財產) includes—

- money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a);

“prospectus”(招股章程) means prospectus as defined in section 2(1) of the Companies Ordinance (Cap. 32); (*Replaced 30 of 2004 s. 3*)

“public”(公眾、大眾) means the public of Hong Kong, and includes any class of that public;

“purchase”(買、購買), in relation to securities, includes subscribing for or acquiring the securities, in whatever form the consideration may be;

“qualifying credit rating”(合資格信貸評級) means—

- a credit rating specified in Part 5; or
- any credit rating which, in the opinion of the Commission, is equivalent to a credit rating specified in Part 5;

“recognized clearing house”(認可結算所) means a company recognized as a clearing house under section 37(1) of this Ordinance;

“recognized counterparty”(認可對手方) means—

- an authorized financial institution;
- in relation to a particular transaction conducted by a corporation licensed for Type 3 regulated activity, another corporation which is also so licensed; or
- an institution prescribed by rules made under section 397 of this Ordinance for the purposes of this definition as a recognized counterparty;

“recognized exchange company”(認可交易所) means a company recognized as an exchange company under section 19(2) of this Ordinance;

“recognized exchange controller”(認可控制人) means a company recognized as an exchange controller under section 59(2) of this Ordinance;

“recognized futures market”(認可期貨市場) means a futures market operated by a recognized exchange company;

“recognized investor compensation company”(認可投資者賠償公司) means a company recognized as an investor compensation company under section 79(1) of this Ordinance;

“recognized stock market”(認可證券市場) means a stock market operated by a recognized exchange company;

“record”(紀錄) means any record of information (however compiled or stored) and includes—

- any books, deeds, contract or agreement, voucher, receipt or data material, or information which is recorded otherwise than in a legible form but is capable of being reproduced in a legible form; and
- any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced, and any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;

“registered”(註冊) means registered under section 119 of this Ordinance, and “registration”(註冊) shall be construed accordingly;

“registered institution”(註冊機構) means an authorized financial institution which is registered under section 119 of this Ordinance;

“Registrar of Companies”(公司註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32);

“regulated activity”(受規管活動) means any of the regulated activities specified in Part 1 of Schedule 5 to this Ordinance, and a reference to a type of regulated activity by number shall be construed as a reference to the type of regulated activity of that number as specified in that Part;

“regulated investment agreement”(受規管投資協議) means an agreement the purpose or effect, or pretended purpose or effect, of which is to provide, whether conditionally or unconditionally, to any party to the agreement a profit, income or other returns calculated by reference to changes in the value of any property, but does not include an interest in a collective investment scheme;

“relevant provisions”(有關條文) means the provisions of—

- this Ordinance;

但不包括——

- (i) 任何人以並非經營業務的方式營辦的安排；
- (ii) 符合以下說明的安排：其每名參與者均是營辦該安排的人所屬的同一公司集團中的法團；
- (iii) 符合以下說明的安排：其每名參與者均是營辦該安排的人所屬的同一公司集團中的法團的真正僱員或前僱員，或該等僱員的配偶、遺孀、鰥夫、親生或領養的未成年子女，或未成年繼子女；
- (iv) 符合以下說明的專營權安排：發出專營權或獲發給專營權的人根據該安排，藉利用該安排所授予的權利使用某一商標名稱或設計或其他知識產權或附於其中的商譽，而賺取利潤或收益；
- (v) 讓在日常業務過程中以專業身分行事的律師從其客戶取得金錢或以保證金保存人身分取得金錢的安排；
- (vi) 為以下基金或計劃的目的作出的安排：證監會、認可交易所、認可結算所、認可控制人或認可投資者賠償公司根據本條例任何條文為在交易所參與者或結算所參與者一旦違責時提供賠償而維持的基金或計劃；
- (vii) 任何儲蓄互助社按照其宗旨作出的安排；
- (viii) 為根據《銀會經營（禁止）條例》（第 262 章）獲准許營辦的銀會的目的作出的安排；
- (ix) 為《外匯基金條例》（第 66 章）設立的外匯基金的目的作出的安排；
- (x) 本條例第 393 條提述的公告訂明為按照該公告的條款不視為集體投資計劃的安排，或屬於如此訂明為如此不視為集體投資計劃的類別或種類的安排；

“董事”（director）包括幕後董事，及身居董事職位的人（不論該人實際職銜為何）；

“會計師”（certified public accountant）指《專業會計師條例》（第 50 章）第 2 條所界定的會計師；

（由 2004 年第 23 號第 56 條增補）

“廉政專員”（Commissioner of the Independent Commission Against Corruption）指依據《廉政公署條例》（第 204 章）第 5 條擔任廉政專員職位的人；（由 2003 年第 14 號第 24 條代替）

“資訊”、“資料”、“消息”（information）包括數據、文字、影像、聲音編碼、電腦程式、軟件及數據庫，以及以上項目的任何組合；

“資訊系統”（information system）指《電子交易條例》（第 553 章）第 2(1) 條界定的資訊系統；

“債權證”（debenture）包括法團的債權股證、債券及其他證券，不論它是否構成對該法團的資產的押記；

“認可交易所”（recognized exchange company）指根據本條例第 19(2) 條認可為交易所公司的公司；

“認可自動化交易服務”（authorized automated trading services）指根據本條例第 95(2) 條獲認可為提供的自動化交易服務；

“認可投資者賠償公司”（recognized investor compensation company）指根據本條例第 79(1) 條認可為投資者賠償公司的公司；

“認可財務機構”（authorized financial institution）指《銀行業條例》（第 155 章）第 2(1) 條界定的認可機構；

“認可控制人”（recognized exchange controller）指根據本條例第 59(2) 條認可為交易所控制人的公司；

“認可期貨市場”（recognized futures market）指認可交易所營辦的期貨市場；

“認可結算所”（recognized clearing house）指根據本條例第 37(1) 條認可為結算所的公司；

“認可對手方”（recognized counterparty）——

(a) 指認可財務機構；

(b) 就任何就第 3 類受規管活動獲發牌的法團所進行的個別交易而言，指同樣如此獲發牌的另一法團；或

(b) Parts II and XII of the Companies Ordinance (Cap. 32), so far as those Parts relate, directly or indirectly, to the performance of functions relating to—

(i) prospectuses;

(ii) the purchase by a corporation of its own shares;

(iii) a corporation giving financial assistance for the acquisition of its own shares, whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance;

(c) Parts II and XII of the Companies Ordinance (Cap. 32), for the purposes only of section 213 of this Ordinance, and so far as those Parts relate, directly or indirectly, to an advertisement mentioned in section 38B(1) of that Ordinance; (Added 30 of 2004 s. 3)

“relevant share capital”（有關股本）means the issued share capital of a corporation which is of a class carrying rights to vote in all circumstances at general meetings of the corporation;

“remuneration”（報酬）includes money, any consideration, financial accommodation or benefit, whether paid, provided or supplied directly or indirectly;

“repealed Commodities Trading Ordinance”（已廢除的《商品交易條例》）means the Commodities Trading Ordinance (Cap. 250) repealed under section 406 of this Ordinance;

“repealed Exchanges and Clearing Houses (Merger) Ordinance”（已廢除的《交易所及結算所（合併）條例》）means the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) repealed under section 406 of this Ordinance;

“repealed Leveraged Foreign Exchange Trading Ordinance”（已廢除的《槓桿式外匯買賣條例》）means the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) repealed under section 406 of this Ordinance;

“repealed Protection of Investors Ordinance”（已廢除的《保障投資者條例》）means the Protection of Investors Ordinance (Cap. 335) repealed under section 406 of this Ordinance;

“repealed Securities and Futures (Clearing Houses) Ordinance”（已廢除的《證券及期貨（結算所）條例》）means the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) repealed under section 406 of this Ordinance;

“repealed Securities and Futures Commission Ordinance”（已廢除的《證券及期貨事務監察委員會條例》）means the Securities and Futures Commission Ordinance (Cap. 24) repealed under section 406 of this Ordinance;

“repealed Securities (Disclosure of Interests) Ordinance”（已廢除的《證券（披露權益）條例》）means the Securities (Disclosure of Interests) Ordinance (Cap. 396) repealed under section 406 of this Ordinance;

“repealed Securities (Insider Dealing) Ordinance”（已廢除的《證券（內幕交易）條例》）means the Securities (Insider Dealing) Ordinance (Cap. 395) repealed under section 406 of this Ordinance;

“repealed Securities Ordinance”（已廢除的《證券條例》）means the Securities Ordinance (Cap. 333) repealed under section 406 of this Ordinance;

“repealed Stock Exchanges Unification Ordinance”（已廢除的《證券交易所合併條例》）means the Stock Exchanges Unification Ordinance (Cap. 361) repealed under section 406 of this Ordinance;

“responsible officer”（負責人員）means an individual who is approved by the Commission under section 126(1) of this Ordinance as a responsible officer of a licensed corporation;

“Risk Management Committee”（風險管理委員會），in relation to a recognized exchange controller, means the committee of that name established under section 65(1) of this Ordinance by the controller;

“rules”（規章）——

(a) in relation to a recognized exchange company, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing—

(i) its exchange participants;

(ii) the persons who may participate in any of the services it provides;

(iii) the setting and levying of fees;

(iv) the listing of securities;

(v) the trading of securities or futures contracts;

(vi) the provision of other services; or

(vii) generally, its management, operations or procedures, and includes, in respect of sections 24 and 92 of this Ordinance, its constitution;

- (c) 指為本定義的目的而藉根據本條例第 397 條訂立的規則訂明為認可對手方的機構；
- “認可證券市場”(recognized stock market) 指認可交易所營辦的證券市場；
- “管有”(possession) 就任何事物而言，包括保管和控制該事物，以及對該事物具有權力；
- “銀行”(bank, banker) 指經營的業務與認可財務機構經營的以下業務相似的機構，不論該機構是否認可財務機構——
- (a) 《銀行業條例》(第 155 章) 所指的銀行業務；或
 - (b) 該條例所指的接受存款業務；
- “銀行簿冊”(banker's books) 包括——
- (a) 銀行的簿冊；
 - (b) 由銀行管有的支票、付款用的本票、匯票及承付票；
 - (c) 由銀行管有的證券，不論是否作為質押；及
 - (d) 記錄着資料(不論以何種方式編纂或貯存，亦不論以可閱讀形式記錄或並非以可閱讀形式記錄但能夠以可閱讀形式重現)且在銀行日常業務過程中使用的任何材料；
- “幕後董事”(shadow director) 在法團董事慣於或有義務按照某人的指示或指令行事的情況下，指該人，但如某人以專業身分提供意見而董事按該等意見行事，則該人不得僅因此而視為幕後董事；
- “槓桿式外匯交易”(leveraged foreign exchange trading) 具有本條例附表 5 第 2 部給予該詞的涵義；
- “槓桿式外匯交易合約”(leveraged foreign exchange contract) 具有本條例附表 5 第 2 部給予該詞的涵義；
- “稱銜”(title) 包括名稱或稱謂；
- “數目”(number) 就按照文意可解釋作包括股額的股份而言，包括款額；
- “數據材料”(data material) 指與任何資訊系統並用或以任何資訊系統製作的文件或其他材料；
- “賣空指示”(short selling order)——
- (a) 除 (b) 段另有規定外，指為某賣方或為某人的利益或代該人而作出的售賣證券(在本定義中稱為“有關證券”)的指示，而就有關證券而言，該賣方或該人憑藉以下事實而擁有一項即時可行使而不附有條件的權利，以將有關證券轉歸於其購買人名下——
 - (i) 該賣方或該人已根據某證券借貸協議——
 - (A) 借用有關證券；或
 - (B) 獲得該協議的對手方確認該方備有有關證券以借給他；
 - (ii) 該賣方或該人擁有可用以轉換為或換取有關證券的其他證券的所有權；
 - (iii) 該賣方或該人擁有可取得有關證券的期權；
 - (iv) 該賣方或該人擁有可認購及可收取有關證券的權利或認購證；或
 - (v) 該賣方或該人已與另一人訂立屬於為施行本節而藉根據本條例第 397 條訂立的規則訂明的種類的協議或安排；
 - (b) 在該賣方或該人已於作出售賣有關證券的指示時，發出不附有條件的獲取有關證券的指示的情況下，就 (a)(ii)、(iii)、(iv) 或 (v) 段而言，不包括該項指示；
- “廣播”(broadcast) 就材料(不論實際如何稱述)而言，包括將該材料所載資料廣播；
- “廣播業者”(broadcaster) 指合法地作出以下作為的人——
- (a) 設置與維持《電訊條例》(第 106 章) 第 IIIA 部所指的廣播服務；或
 - (b) 提供《廣播條例》(第 562 章) 第 2(1) 條界定的廣播服務；
- “賠償基金”(compensation fund) 指根據本條例第 236 條設立的投資者賠償基金；

- (b) in relation to a recognized clearing house, means the rules, regulations and directions, by whatever name they may be called and wherever contained, governing—
- (i) its clearing participants;
 - (ii) the persons who may participate in any of the services it provides;
 - (iii) the setting and levying of fees;
 - (iv) the provision of clearing and settlement services, and the suspension or withdrawal of such services;
 - (v) the provision of other services; or
 - (vi) generally, its management, operations or procedures, and includes, in respect of sections 41 and 92 of this Ordinance, its constitution;
- (c) in relation to a recognized exchange controller, means—
- (i) its constitution; or
 - (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing the conduct or procedures of—
 - (A) the recognized exchange controller;
 - (B) the Risk Management Committee; or
 - (C) any person or body of persons declared in a notice under section 66(2) of this Ordinance to be a person or body of persons (as the case may be) to which this sub-subparagraph shall apply; or
- (d) in relation to a recognized investor compensation company, means—
- (i) its constitution; or
 - (ii) the rules, regulations and directions, by whatever name they may be called and wherever contained, governing its management, operations or procedures, or its provision of services;
- “securities”(證券) means—
- (a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
 - (b) rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
 - (c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
 - (d) interests in any collective investment scheme;
 - (e) interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
 - (f) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as being regarded as securities in accordance with the terms of the notice,
- but does not include—
- (i) shares or debentures of a company that is a private company within the meaning of section 29 of the Companies Ordinance (Cap. 32);
 - (ii) any interest in any collective investment scheme that is—
 - (A) a registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);
 - (B) an occupational retirement scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426); or
 - (C) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap. 41);
 - (iii) any interest arising under a general partnership agreement or proposed general partnership agreement unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts (whether or not that person is, or is to become, a party to the agreement or proposed agreement);

“積金局”(Mandatory Provident Fund Schemes Authority)指《強制性公積金計劃條例》(第 485 章)第 6 條設立的強制性公積金計劃管理局;

“諮詢委員會”(Advisory Committee)指本條例第 7 條提述的諮詢委員會;

“聯交所”(Stock Exchange Company)指根據《公司條例》(第 32 章)成立為法團,並根據該條例以“香港聯合交易所有限公司”名稱註冊的公司;

“虧空”(defalcation)指不當運用(包括挪用)任何財產;

“營業日”(business day)指不屬以下任何日子的日子——

(a) 公眾假日;

(b) 《釋義及通則條例》(第 1 章)第 71(2)條界定的烈風警告日或黑色暴雨警告日;

“儲蓄互助社”(credit union)指根據《儲蓄互助社條例》(第 119 章)註冊的儲蓄互助社;

“隸屬”(accredited)指根據本條例第 122 條獲證監會批准隸屬某持牌法團;

“職能”(function)包括權力及責任;

“簿冊”(books)包括——

(a) 帳目及任何會計資料;及

(b) (就銀行而言)銀行簿冊,

不論以何種方式編纂或貯存,亦不論以可閱讀形式記錄或並非以可閱讀形式記錄但能夠以可閱讀形式重現;

“證券”(securities)指——

(a) 任何團體(不論是否屬法團)或政府或市政府當局的或由它發行的股份、股額、債權證、債權股額、基金、債券或票據;

(b) 在(a)段所述各項目中的或關乎該等項目的權利、期權或權益(不論以單位或其他方式描述);

(c) (a)段所述各項目的權益證明書、參與證明書、臨時證明書、中期證明書、收據,或認購或購買該等項目的權證;

(d) 在集體投資計劃中的權益;

(e) 通常稱為證券的權益、權利或財產,不論屬文書或其他形式;

(f) 本條例第 392 條提述的公告訂明為按照該公告的條款視為證券的權益、權利或財產,或屬於如此訂明為如此視為證券的類別或種類的權益、權利或財產,

但不包括——

(i) 《公司條例》(第 32 章)第 29 條所指的私人公司的股份或債權證;

(ii) 在以下屬集體投資計劃的項目中的權益——

(A) 《強制性公積金計劃條例》(第 485 章)第 2(1)條界定的註冊計劃,或《強制性公積金計劃(一般)規例》(第 485 章,附屬法例 A)第 2 條界定的該等註冊計劃的成分基金;

(B) 《職業退休計劃條例》(第 426 章)第 2(1)條界定的職業退休計劃;或

(C) 與《保險公司條例》(第 41 章)附表 1 指明的保險業務類別有關的保險合約;

(iii) 根據一般合夥協議或建議的一般合夥協議而產生的權益,除非該協議或建議的協議是關乎由任何人或代任何人所推銷的業務、計劃、企業或投資合約的,而該人的日常業務是推銷或包括推銷同類業務、計劃、企業或投資合約的(不論該人是否已屬或是否會成為協議或建議的協議的一方);

(iv) 證明一筆存款的可流轉收據或其他可流轉的證明書或文件,或根據該收據、證明書或文件而產生的任何權利或權益;

(v) 《匯票條例》(第 19 章)第 3 條所指的匯票及該條例第 89 條所指的承付票;

(vi) 明確規定本身屬不可流轉或不可轉讓的債權證;

(iv) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document;

(v) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) and any promissory note within the meaning of section 89 of that Ordinance;

(vi) any debenture that specifically provides that it is not negotiable or transferable;

(vii) interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of this Ordinance as not being regarded as securities in accordance with the terms of the notice;

“Securities and Futures Appeals Tribunal”(上訴審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of this Ordinance;

“securities and futures industry”(證券期貨業) means the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants;

“securities and futures market”(證券期貨市場) means any market, exchange, place or service which facilitates the bringing together on a regular basis persons who are parties to transactions related to financial products;

“securities borrowing and lending agreement”(證券借貸協議) means an agreement whereby a person borrows or lends securities pursuant to an arrangement where the borrower undertakes to return securities of the same description, or pay the equivalent value of the securities, to the lender, and includes a stock borrowing within the meaning of section 19(16) of the Stamp Duty Ordinance (Cap. 117);

“securities collateral”(證券抵押品)——

(a) in relation to a licensed corporation, means any securities——

(i) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, the licensed corporation; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the licensed corporation to, any other intermediary or person,

which are so deposited or provided——

(A) as security for the provision by the licensed corporation of financial accommodation; or

(B) to facilitate the provision by the licensed corporation of financial accommodation under an arrangement that confers on the licensed corporation a collateral interest in the securities; or

(b) in relation to a registered institution, means any securities——

(i) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, the registered institution, in the course of the conduct of any regulated activity for which the registered institution is registered; or

(ii) deposited with, or otherwise provided by or on behalf of a client of the registered institution to, any other intermediary or person, in relation to such conduct of the regulated activity,

which are so deposited or provided——

(A) as security for the provision by the registered institution of financial accommodation; or

(B) to facilitate the provision by the registered institution of financial accommodation under an arrangement that confers on the registered institution a collateral interest in the securities;

“securities margin financing”(證券保證金融資) has the meaning assigned to it by Part 2 of Schedule 5 to this Ordinance;

“served”(送達) includes given;

“shadow director”(幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

- (vii) 本條例第 392 條提述的公告訂明為按照該公告的條款不視為證券的權益、權利或財產，或屬於如此訂明為如此不視為證券的類別或種類的權益、權利或財產；
- “證券市場”(stock market) 指供人經常會面洽商證券的買賣(包括價格)或提供設施供證券買賣雙方聯結的地方，但不包括——
- (a) 可營辦證券市場的認可交易所的交易所參與者的辦事處；或
- (b) 認可結算所的辦事處；
- “證券抵押品”(securities collateral)——
- (a) 就某持牌法團而言，指任何符合以下說明的證券——
- (i) 存放於該法團，或由該法團的客戶或代該法團的客戶以其他方式向該法團提供的；或
- (ii) 存放於任何人或中介人，或由該法團的客戶或代該法團的客戶以其他方式向該人或中介人提供的，而該等證券是——
- (A) 為獲得該法團提供財務通融而如此存放或提供作為保證的；或
- (B) 為利便獲得該法團根據某項安排提供財務通融而如此存放或提供的，而在該項安排下，該法團對抵押予它的該等證券享有權益；或
- (b) 就某註冊機構而言，指任何符合以下說明的證券——
- (i) 在進行該機構獲註冊進行的任何受規管活動的過程中存放於該機構，或由該機構的客戶或代該機構的客戶以其他方式向該機構提供的；或
- (ii) 就進行該受規管活動而存放於任何人或中介人，或由該機構的客戶或代該機構的客戶以其他方式向該人或中介人提供的，而該等證券是——
- (A) 為獲得該機構提供財務通融而如此存放或提供作為保證的；或
- (B) 為利便獲得該機構根據某項安排提供財務通融而如此存放或提供的，而在該項安排下，該機構對抵押予它的該等證券享有權益；
- “證券保證金融資”(securities margin financing) 具有本條例附表 5 第 2 部給予該詞的涵義；
- “證券借貸協議”(securities borrowing and lending agreement) 指任何人所訂立藉以依據某項安排借用或借出證券的協議，而在該項安排下，借用人承諾向借出人交還名稱與所借用的證券相同的證券，或向借出人支付與所借用的證券的價值相等的款項；該詞的涵義亦包括《印花稅條例》(第 117 章) 第 19(16) 條所指的證券借用；
- “證券期貨市場”(securities and futures market) 指利便與金融產品有關的交易的各方經常性地聯結的市場、交易所、地方或服務；
- “證券期貨業”(securities and futures industry) 指證券期貨市場及其中並非投資者的參與者(包括認可交易所、認可結算所、認可控制人、認可投資者賠償公司，及進行受規管活動的人)，以及與金融產品有關而在上述證券期貨市場或由上述參與者進行的活動；
- “證監會”(Commission) 指本條例第 3(1) 條提述的證券及期貨事務監察委員會。
- (由 2004 年第 23 號第 56 條修訂)

- “share”(股份) means any share in the share capital of a corporation, and, except where a distinction between stock and shares is express or implied, includes stock;
- “short selling order”(賣空指示)——
- (a) subject to paragraph (b), means an order to sell securities in respect of which the seller, or the person for whose benefit or on whose behalf the order is made, has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having——
- (i) under a securities borrowing and lending agreement——
- (A) borrowed the securities; or
- (B) obtained a confirmation from the counterparty to the agreement that the counterparty has the securities available to lend to him;
- (ii) a title to other securities which are convertible into or exchangeable for the securities to which the order relates;
- (iii) an option to acquire the securities to which the order relates;
- (iv) rights or warrants to subscribe for and to receive the securities to which the order relates; or
- (v) entered into with any other person an agreement or arrangement of a description prescribed by rules made under section 397 of this Ordinance for the purposes of this subparagraph;
- (b) in relation to paragraph (a)(ii), (iii), (iv) or (v), does not include an order where the seller, or the person for whose benefit or on whose behalf the order is made, has, at the time of placing the order, issued unconditional instructions to obtain the securities to which the order relates;
- “specified debt securities”(指明債務證券) means debenture stocks, loan stocks, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities and other securities or instruments acknowledging, evidencing or creating indebtedness——
- (a) which are issued or guaranteed by the Government;
- (b) which are issued by an issuer that has a qualifying credit rating for any of its debt instruments; or
- (c) which are issued by any other issuer as may be approved by the Commission in writing in a particular case;
- “specified futures exchange”(指明期貨交易所) means a futures exchange specified in Part 2;
- “specified stock exchange”(指明證券交易所) means a stock exchange specified in Part 3;
- “Stock Exchange Company”(聯交所) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name The Stock Exchange of Hong Kong Limited;
- “stock market”(證券市場) means a place where persons regularly meet together to negotiate sales and purchases of securities (including prices), or a place at which facilities are provided for bringing together sellers and purchasers of securities; but does not include the office of——
- (a) an exchange participant of a recognized exchange company which may operate a stock market; or
- (b) a recognized clearing house;
- “take-over offer”(收購要約), in relation to a corporation, means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of the shares to acquire the shares of the class or a specified proportion of them;
- “title”(稱銜) includes name or description;
- “trading right”(交易權), in relation to a recognized exchange company, means a right to be eligible to trade through that exchange company or on a recognized stock market or a recognized futures market operated by that exchange company and entered as such a right in a list, roll or register kept by that exchange company.

(Amended 23 of 2004 s. 56)

附表 5

[第 114、118、139 及
142 條及附表 1]

受規管活動

第 1 部

以下各項為受規管活動——

- 第 1 類：證券交易；
- 第 2 類：期貨合約交易；
- 第 3 類：槓桿式外匯交易；
- 第 4 類：就證券提供意見；
- 第 5 類：就期貨合約提供意見；
- 第 6 類：就機構融資提供意見；
- 第 7 類：提供自動化交易服務；
- 第 8 類：提供證券保證金融資；
- 第 9 類：提供資產管理。

第 2 部

在本附表中——

“外匯交易”(foreign exchange trading)指訂立或要約訂立任何合約或安排，或誘使或企圖誘使他人訂立或要約訂立任何合約或安排，而某人藉該合約或安排承諾——

- (a) 與另一人兌換貨幣；
- (b) 將某數額的外幣交付另一人；或
- (c) 將某數額的外幣存入另一人的帳戶內，

但不包括為“槓桿式外匯交易”的定義中第(i)至(xv)段所描述的合約或安排或為建議的該等合約或安排作出的作為，亦不包括在與該等段落所描述的合約或安排或與建議的該等合約或安排有關連的情況下作出的作為；

“自動化交易服務”(automated trading services)指透過並非由認可交易所或認可結算所提供的電子設施而提供的服務，而藉該項服務——

- (a) 買賣任何證券或期貨合約的要約經常以某種方式被提出或接受，而按照已確立的方法(包括證券市場或期貨市場一般採用的方法)，以該種方式提出或接受該等要約構成具約束力的交易或導致具約束力的交易產生；
- (b) 人與人之間經常互相介紹或認識，從而洽商或完成任何證券或期貨合約的買賣，或在有他們將會以某種方式洽商或完成任何證券或期貨合約的買賣的合理期望的情況下經常互相介紹或認識，而按照已確立的方法(包括證券市場或期貨市場一般採用的方法)，以該種方式洽商或完成該等買賣構成具約束力的交易或導致具約束力的交易產生；或
- (c) 符合以下說明的交易得以更替、結算、交收或獲得擔保——
 - (i) (a)段提述的；
 - (ii) 由(b)段提述的活動而產生的；或
 - (iii) 在證券市場或期貨市場或在該等市場的規則的規限下完成的，

但不包括由政府或代政府營辦的法團所提供的該等服務；

SCHEDULE 5

[ss. 114, 118, 139 &
142 & Sch. 1]

REGULATED ACTIVITIES

PART 1

The following are regulated activities—

- Type 1: dealing in securities;
- Type 2: dealing in futures contracts;
- Type 3: leveraged foreign exchange trading;
- Type 4: advising on securities;
- Type 5: advising on futures contracts;
- Type 6: advising on corporate finance;
- Type 7: providing automated trading services;
- Type 8: securities margin financing;
- Type 9: asset management.

PART 2

In this Schedule—

“advising on corporate finance”(就機構融資提供意見) means giving advice—

- (a) concerning compliance with or in respect of rules made under section 23 or 36 of this Ordinance governing the listing of securities and the code published under section 399(2)(a) or (b) of this Ordinance;
- (b) concerning—
 - (i) any offer to dispose of securities to the public;
 - (ii) any offer to acquire securities from the public; or
 - (iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or
- (c) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring in respect of securities (including the issue, cancellation or variation of any rights attaching to any securities),

but does not include such advice given by—

- (i) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (ii) a person who is licensed for Type 1 regulated activity who gives such advice wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice wholly incidental to the carrying on of that regulated activity;
- (iv) an individual—
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) counsel who gives such advice wholly incidental to his practice as such;

“期貨合約交易”(dealing in futures contracts)就任何人而言,指該人——

- (a) 為訂立、取得或處置期貨合約而與另一人訂立或要約與另一人訂立協議;
- (b) 誘使或企圖誘使另一人訂立或要約訂立期貨合約;或
- (c) 誘使或企圖誘使另一人取得或處置期貨合約,

但不包括該人在以下情況進行的期貨合約交易——

- (i) 該人以認可結算所身分執行其職能;
- (ii) 該人透過另一人(“該交易商”)作出(a)、(b)或(c)段提述的作為,而該交易商是——
 - (A) 就第2類受規管活動獲發牌或獲註冊的;或
 - (B) 名列於金融管理專員根據《銀行業條例》(第155章)第20條備存的紀錄冊並顯示為就第2類受規管活動受聘於就該類活動獲註冊的認可財務機構的,
 但如該人是為賺取佣金、回佣或其他報酬而進行以下事項,則須視為進行期貨合約交易——
 - (I) 從第三者接收為訂立期貨合約而提出的要約或邀請,並以他本人或該第三者的名義將該要約或邀請傳達予該交易商;
 - (II) 使該交易商或其代表與第三者互相介紹,以使該第三者可與該交易商訂立期貨合約或提出與該交易商訂立期貨合約的要約或邀請;
 - (III) 透過該交易商為第三者達成期貨合約的取得或處置;
 - (IV) 為該交易商向第三者提出取得或處置期貨合約的要約;或
 - (V) 為該交易商接受第三者提出的取得或處置期貨合約的要約;
- (iii) 該人只在《商品交易所(禁止經營)條例》(第82章)第3(a)、(b)或(c)條提述的市場作出(a)、(b)或(c)段提述的作為;
- (iv) 該人屬《商品交易所(禁止經營)條例》(第82章)第3(d)條提述的商品交易所的成員,並且只在該交易所作出(a)、(b)或(c)段提述的作為;
- (v) 該人訂立市場合約;
- (vi) 該人就第9類受規管活動獲發牌或獲註冊,並純粹為進行該類活動而作出(a)、(b)或(c)段提述的作為;或
- (vii) 該人以主事人身分並透過與另一人交易而就並非在認可期貨市場交易的期貨合約作出(a)、(b)或(c)段提述的作為,而該另一人是專業投資者(不論以主事人或代理人身分行事);

“就期貨合約提供意見”(advising on futures contracts)指——

- (a) 就以下各項提供意見——
 - (i) 應否訂立期貨合約;
 - (ii) 應訂立哪些期貨合約;
 - (iii) 應於何時訂立期貨合約;或
 - (iv) 應按哪些條款或條件訂立期貨合約;或
- (b) 發出分析或報告,而目的是為利便該等分析或報告的受眾就以下各項作出決定——
 - (i) 是否訂立期貨合約;
 - (ii) 須訂立哪些期貨合約;
 - (iii) 於何時訂立期貨合約;或
 - (iv) 按哪些條款或條件訂立期貨合約,

但不包括在以下情況提供的意見或發出的分析或報告——

- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司,或該控股公司的其他全資附屬公司提供上述意見或發出上述分析或報告;

- (vii) a certified public accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (Amended 23 of 2004 s. 56)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice wholly incidental to the discharge of its duty as such; or
- (ix) a person through—
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

“advising on futures contracts”(就期貨合約提供意見) means——

- (a) giving advice on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, futures contracts should be entered into; or
- (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—
 - (i) whether;
 - (ii) which;
 - (iii) the time at which; or
 - (iv) the terms or conditions on which, futures contracts are to be entered into,
 otherwise than by—
 - (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
 - (ii) a person who is licensed for Type 2 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (iii) an authorized financial institution which is registered for Type 2 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (iv) an individual—
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity; and
 - (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
 - (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
 - (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
 - (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (Amended 23 of 2004 s. 56)
 - (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
 - (ix) a person who gives such advice or issues such analyses or reports through—
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

- (ii) 就第 2 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iii) 就第 2 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iv) 任何符合以下說明的個人——
- (A) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 2 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
- (B) 完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告的；
- (v) 律師完全因為在《法律執業者條例》(第 159 章) 所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章) 所指的執業單位以會計師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章) 第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見或發出上述分析或報告；或
- (ix) 任何人透過——
- (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見或發出上述分析或報告；或
- (B) 供公眾接收(不論是否需付收看費)的電視廣播或無線電廣播提供上述意見或發出上述分析或報告；
- “就機構融資提供意見”(advising on corporate finance) 指——
- (a) 對根據本條例第 23 或 36 條訂立的關於管限證券上市的規章或規則及根據本條例第 399(2)(a) 或 (b) 條刊登或發表的守則的遵守問題或就該等規章、規則或守則提供意見；
- (b) 提供關於以下各項的意見——
- (i) 處置證券而將之轉予公眾的要約；
- (ii) 從公眾取得證券的要約；或
- (iii) 接受第 (i) 或 (ii) 節提述的任何要約，但以意見是普遍地提供予證券或某類別證券的持有人為限；或
- (c) 向上市法團、公眾公司或該法團或公司的附屬公司，或向該法團、公司或附屬公司的高級人員或股東提供關於機構重組而在證券方面(包括發行、撤銷或更改附於任何證券的權利)的意見，
- 但不包括在以下情況提供的意見——
- (i) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述意見；
- (ii) 就第 1 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見；
- (iii) 就第 1 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見；
- (iv) 任何符合以下說明的個人——
- (A) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
- (B) 完全因為進行該類活動而附帶提供上述意見的；

“advising on securities”(就證券提供意見) means—

- (a) giving advice on—
- (i) whether;
- (ii) which;
- (iii) the time at which; or
- (iv) the terms or conditions on which, securities should be acquired or disposed of; or
- (b) issuing analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on—
- (i) whether;
- (ii) which;
- (iii) the time at which; or
- (iv) the terms or conditions on which, securities are to be acquired or disposed of,
- otherwise than by—
- (i) a corporation which gives such advice or issues such analyses or reports solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (ii) a person who is licensed for Type 1 regulated activity who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iii) an authorized financial institution which is registered for Type 1 regulated activity which gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (iv) an individual—
- (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity; and
- (B) who gives such advice or issues such analyses or reports wholly incidental to the carrying on of that regulated activity;
- (v) a solicitor who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a solicitor in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) counsel who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as counsel;
- (vii) a certified public accountant who gives such advice, or issues such analyses or reports as part of an advice given, wholly incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); (Amended 23 of 2004 s. 56)
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice or issues such analyses or reports wholly incidental to the discharge of its duty as such; or
- (ix) a person who gives such advice or issues such analyses or reports through—
- (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
- (B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise,
- but does not include the giving of such advice that falls within the meaning of “advising on corporate finance”.
- “asset management”(資產管理), in relation to a person, means providing a service of managing a portfolio of securities or futures contracts for another person by the person, otherwise than by—
- (a) a corporation which provides such service solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;
- (b) a person who is licensed for Type 1 or Type 2 regulated activity who provides such service wholly incidental to the carrying on of that regulated activity;

- (v) 律師完全因為在《法律執業者條例》(第 159 章) 所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章) 所指的執業單位以會計師身分執業而附帶提供上述意見；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章) 第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見；或
- (ix) 任何人透過——
- (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見；或
- (B) 供公眾接收(不論是否需付收看費)的電視廣播或無線電廣播提供上述意見；
- “就證券提供意見”(advising on securities) 指——
- (a) 就以下各項提供意見——
- (i) 應否取得或處置證券；
- (ii) 應取得或處置哪些證券；
- (iii) 應於何時取得或處置證券；或
- (iv) 應按哪些條款或條件取得或處置證券；或
- (b) 發出分析或報告，而目的是為利便該等分析或報告的受眾就以下各項作出決定——
- (i) 是否取得或處置證券；
- (ii) 須取得或處置哪些證券；
- (iii) 於何時取得或處置證券；或
- (iv) 按哪些條款或條件取得或處置證券；
- 但不包括在以下情況提供的意見或發出的分析或報告——
- (i) 任何法國純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述意見或發出上述分析或報告；
- (ii) 就第 1 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iii) 就第 1 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告；
- (iv) 任何符合以下說明的個人——
- (A) 名列於金融管理專員根據《銀行業條例》(第 155 章) 第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
- (B) 完全因為進行該類活動而附帶提供上述意見或發出上述分析或報告的；
- (v) 律師完全因為在《法律執業者條例》(第 159 章) 所指的香港律師行或外地律師行以律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vi) 大律師完全因為以大律師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；
- (vii) 會計師完全因為在《專業會計師條例》(第 50 章) 所指的執業單位以會計師身分執業而附帶提供上述意見，或發出上述分析或報告作為他所提供的意見的一部分；(由 2004 年第 23 號第 56 條修訂)
- (viii) 根據《受託人條例》(第 29 章) 第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述意見或發出上述分析或報告；或

- (c) an authorized financial institution which is registered for Type 1 or Type 2 regulated activity which provides such service wholly incidental to the carrying on of that regulated activity;
- (d) an individual—
- (i) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 or Type 2 (as the case may be) regulated activity by an authorized financial institution registered for that regulated activity; and
- (ii) who provides such service wholly incidental to the carrying on of that regulated activity;
- (e) a solicitor who provides such service wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (f) counsel who provides such service wholly incidental to his practice as such;
- (g) a certified public accountant who provides such service wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50); or (Amended 23 of 2004 s. 56)
- (h) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which provides such service wholly incidental to the discharge of its duty as such;
- “automated trading services” (自動化交易服務) means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house, whereby—
- (a) offers to sell or purchase securities or futures contracts are regularly made or accepted in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market;
- (b) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of securities or futures contracts in a way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market; or
- (c) transactions—
- (i) referred to in paragraph (a);
- (ii) resulting from the activities referred to in paragraph (b); or
- (iii) effected on, or subject to the rules of, a stock market or futures market, may be novated, cleared, settled or guaranteed,
- but does not include such services provided by a corporation operated by or on behalf of the Government;
- “dealing in futures contracts” (期貨合約交易), in relation to a person, means—
- (a) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;
- (b) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or
- (c) inducing or attempting to induce another person to acquire or dispose of a futures contract,
- by the person, except where the person—
- (i) is carrying out his functions as a recognized clearing house;
- (ii) performs the act referred to in paragraph (a), (b) or (c) through another person (“the futures dealer”)—
- (A) who is licensed or registered for Type 2 regulated activity; or
- (B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 2 regulated activity by an authorized financial institution registered for that regulated activity,
- but the person shall be regarded as dealing in futures contracts if, in return for a commission, rebate or other remuneration, the person—

(ix) 任何人透過——

- (A) 普遍地提供予公眾閱覽的報章、雜誌、書籍或其他刊物提供上述意見或發出上述分析或報告；或
- (B) 供公眾接收（不論是否需付收看費）的電視廣播或無線電廣播提供上述意見或發出上述分析或報告；

但如所提供的上述意見符合“就機構融資提供意見”的涵義，則“就證券提供意見”不包括提供該等意見；

“資產管理”(asset management)就任何人而言，指該人為另一人提供管理證券或期貨合約投資組合的服務，但不包括在以下情況提供的服務——

- (a) 任何法團純粹向其任何全資附屬公司、持有其所有已發行股份的控股公司，或該控股公司的其他全資附屬公司提供上述服務；
- (b) 就第 1 或 2 類受規管活動獲發牌的人完全因為進行該類活動而附帶提供上述服務；
- (c) 就第 1 或 2 類受規管活動獲註冊的認可財務機構完全因為進行該類活動而附帶提供上述服務；
- (d) 任何符合以下說明的個人——
 - (i) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 或 2 類（視屬何情況而定）受規管活動受聘於就該類活動獲註冊的認可財務機構的；及
 - (ii) 完全因為進行該類活動而附帶提供上述服務的；
- (e) 律師完全因為在《法律執業者條例》(第 159 章)所指的香港律師行或外地律師行以律師身分執業而附帶提供上述服務；
- (f) 大律師完全因為以大律師身分執業而附帶提供上述服務；
- (g) 會計師完全因為在《專業會計師條例》(第 50 章)所指的執業單位以會計師身分執業而附帶提供上述服務；或（由 2004 年第 23 號第 56 條修訂）
- (h) 根據《受託人條例》(第 29 章)第 VIII 部註冊的信託公司完全因為履行它作為註冊信託公司的職責而附帶提供上述服務；

“槓桿式外匯交易”(leveraged foreign exchange trading)指以下任何作為——

- (a) 訂立或要約訂立槓桿式外匯交易合約，或誘使或企圖誘使他人訂立或要約訂立槓桿式外匯交易合約；
- (b) 提供任何財務通融，以便利進行外匯交易或(a)段提述的作為；或
- (c) 與另一人訂立或要約與另一人訂立一項為訂立合約而作出的安排，或誘使或企圖誘使某人與另一人訂立一項為訂立合約而作出的安排（不論該項安排是否在酌情決定的基礎上訂立），以便利進行(a)或(b)段提述的作為，

但不包括為符合下述說明的合約或安排或為建議的該等合約或安排作出的作為，亦不包括在與符合下述說明的合約或安排或與建議的該等合約或安排有關連的情況下作出的作為——

- (i) 完全關於以公平價值或市場價值提供財產（貨幣除外）、服務或職位的；
- (ii) 凡該等合約或安排是由一個法團訂立的，而——
 - (A) 該法團的主要業務並不包括任何形式的貨幣交易；
 - (B) 該法團訂立該等合約或安排的目的，是對沖它就其業務所承受的貨幣兌換風險；及
 - (C) 該等合約或安排是與另一個法團訂立的；

- (I) receives from a third person an offer or invitation to enter into a futures contract, and communicates it, either in his name or in the name of the third person, to the futures dealer;
- (II) effects an introduction between the futures dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, a futures contract with the futures dealer;
- (III) effects an acquisition or disposal of a futures contract for a third person through the futures dealer;
- (IV) makes an offer for the futures dealer to a third person to acquire or dispose of a futures contract; or
- (V) accepts for the futures dealer an offer by a third person to acquire or dispose of a futures contract;
- (iii) performs the act referred to in paragraph (a), (b) or (c) only on a market referred to in section 3(a), (b) or (c) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82);
- (iv) is a member of a commodity exchange referred to in section 3(d) of the Commodity Exchanges (Prohibition) Ordinance (Cap. 82) who only performs the act referred to in paragraph (a), (b) or (c) on such an exchange;
- (v) enters into a market contract;
- (vi) is licensed or registered for Type 9 regulated activity and performs the act referred to in paragraph (a), (b) or (c) solely for the purposes of carrying on that regulated activity; or
- (vii) as principal performs the act referred to in paragraph (a), (b) or (c) in relation to a futures contract traded otherwise than on a recognized futures market by way of dealing with a person who is a professional investor (whether acting as principal or agent);

“dealing in securities” (證券交易), in relation to a person, means making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement——

- (a) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
 - (b) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities, by the person, except where the person——
 - (i) is a recognized exchange company operating a stock market;
 - (ii) is a recognized clearing house;
 - (iii) is a corporation providing automated trading services under authorization granted under section 95(2) of this Ordinance;
 - (iv) performs the act through another person (“the securities dealer”)——
 - (A) who is licensed or registered for Type 1 regulated activity; or
 - (B) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in respect of Type 1 regulated activity by an authorized financial institution registered for that regulated activity,
- but the person shall be regarded as dealing in securities if, in return for a commission, rebate or other remuneration, the person——
- (I) receives from a third person an offer or invitation to enter into an agreement referred to in paragraph (a) or (b), and communicates it, either in his name or in the name of the third person, to the securities dealer;
 - (II) effects an introduction between the securities dealer or his representative and a third person, so that the third person may enter into, or offer or invite to enter into, an agreement referred to in paragraph (a) or (b) with the securities dealer;
 - (III) effects an agreement referred to in paragraph (a) or (b) on behalf of a third person through the securities dealer;
 - (IV) makes an offer to the securities dealer on behalf of a third person to acquire or dispose of securities; or
 - (V) accepts for the securities dealer an offer by a third person to enter into an agreement referred to in paragraph (a) or (b);

- (iii) 屬《貨幣兌換商條例》(第 34 章) 所指的兌換交易；
 - (iv) 由《銀行業條例》(第 155 章) 第 2(1) 條所指的核准貨幣經紀安排，而有關合約或安排的各方均是法團或根據《有限責任合夥條例》(第 37 章) 註冊的有限責任合夥；
 - (v) 屬保險人純粹為了其保險業務而進行的交易，而該保險人是根據《保險公司條例》(第 41 章) 第 8 條獲授權經營保險業務或根據該條例第 61(1) 或 (2) 條被當作獲如此授權的；
 - (vi) 屬由任何就第 2 類受規管活動獲發牌或獲註冊的人或透過該人在指明期貨交易所執行的合約，或屬完全附帶於一份或多於一份該類合約或一系列該類合約的合約；
 - (vii) 由以下團體或機構所安排的——
 - (A) 金融管理專員認為屬以下性質的團體——
 - (I) 中央銀行；或
 - (II) 執行中央銀行職能的機構；或
 - (B) 獲金融管理專員批准以代 (A) 節提述的團體行事的機構；
 - (viii) 屬由任何就第 1 類受規管活動獲發牌或獲註冊的人或透過該人在指明證券交易所執行的交易，或屬完全附帶於一宗或多於一宗該類交易或一系列該類交易的交易；
 - (ix) 屬由任何就第 7 類受規管活動獲發牌或獲註冊的人或透過該人執行的交易，或屬完全附帶於一宗或多於一宗該類交易或一系列該類交易的交易；
 - (x) 屬就證監會根據本條例第 104 條認可的集體投資計劃的一項或多於一項權益而作出的交易；
 - (xi) 屬完全附帶於一宗或多於一宗就指明債務證券作出的交易或一系列該類交易的交易；
 - (xii) 由認可財務機構作出的；
 - (xiii) 由任何屬某類別人士的人或從事某類業務的人作出的，而該類別人士或該類業務是由證監會為施行本段而藉根據本條例第 397 條訂立的規則訂明的；
 - (xiv) 由任何人透過交易商作出的，但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行槓桿式外匯交易——
 - (A) 該人從另一人接收為進行以下各項而提出的要約或邀請——
 - (I) 訂立槓桿式外匯交易合約；或
 - (II) 使用任何財務通融以便利進行外匯交易或訂立槓桿式外匯交易合約，並以他本人或該另一人的名義將該要約或邀請傳達予該交易商；
 - (B) 該人使另一人與該交易商或其代表互相介紹，以使該另一人可——
 - (I) 與該交易商訂立槓桿式外匯交易合約；或
 - (II) 使用由該交易商提供的任何財務通融以便利進行外匯交易或訂立槓桿式外匯交易合約；或
 - (C) 該人透過該交易商而為另一人達成槓桿式外匯交易合約的訂立，在本段中，“交易商”(trader) 指認可財務機構或就第 3 類受規管活動獲發牌的法團；或
 - (xv) 由——
 - (A) 證監會根據本條例第 104 條認可的集體投資計劃作出的；或
 - (B) 任何人為營辦證監會根據本條例第 104 條認可的集體投資計劃而在業務過程中作出的；
- “槓桿式外匯交易合約”(leveraged foreign exchange contract) 指任何合約或安排，其效果是該合約或安排的一方同意或承諾——
- (a) 在他本人與協議的另一方或在他本人與另一人之間，按照某貨幣相對於另一貨幣的增值或減值(視屬何情況而定) 作出調整；

- (v) as principal—
 - (A) performs the act by way of dealing with a person who is a professional investor (whether acting as principal or agent); or
 - (B) acquires, disposes of, subscribes for or underwrites securities;
 - (vi) enters into a market contract;
 - (vii) issues a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance;
 - (viii) issues a document relating to the securities of a corporation incorporated in Hong Kong which is not a company, being a document which—
 - (A) would, if the corporation were a company, be a prospectus to which section 38 of the Companies Ordinance (Cap. 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and
 - (B) contains all the matters which, under Part XII of that Ordinance, would be required to contain if the corporation were a corporation incorporated outside Hong Kong and the document were a prospectus issued by the corporation;
 - (ix) issues a form of application for the shares or debentures of a corporation, together with—
 - (A) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance (Cap. 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or
 - (B) in the case of a corporation incorporated in Hong Kong which is not a company, a document which contains the matters specified in paragraph (viii)(B);
 - (x) issues a prospectus the registration of which has been authorized by the Commission under section 342C of the Companies Ordinance (Cap. 32) in relation to a collective investment scheme that is a corporation—
 - (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
 - (B) the shares in which are exclusively, or primarily, redeemable shares, or issues together with the prospectus a form of application for the shares in the corporation;
 - (xi) issues any advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of this Ordinance;
 - (xii) is a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) acting as an agent for a collective investment scheme which, by performing the act, is carrying out its functions of distributing application forms, redemption notices, conversion notices and contract notes, receiving money and issuing receipts on behalf of its principal;
 - (xiii) is licensed or registered for Type 4 or Type 6 regulated activity and, solely for the purposes of carrying on that regulated activity, he issues a document under section 175(1)(a)(i) or (ii) of this Ordinance, the content of which complies with the requirements of section 175(1)(b) and (c) of this Ordinance; or
 - (xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity;
- “foreign exchange trading” (外匯交易) means entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a contract or arrangement whereby any person undertakes to—
- (a) exchange currency with another person;
 - (b) deliver an amount of foreign currency to another person; or
 - (c) credit the account of another person with an amount of foreign currency,
- but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement as described in paragraphs (i) to (xv) of the definition of “leveraged foreign exchange trading”;
- “leveraged foreign exchange contract” (槓桿式外匯交易合約) means a contract or arrangement the effect of which is that one party agrees or undertakes to—

- (b) 向協議的另一方或向另一人支付某數額的款項或交付某數量的商品，而該數額或該數量是按照或將會按照某貨幣相對於另一貨幣在幣值上的變動而釐定的；或
- (c) 在議定的將來某個時間，將一筆按議定定價計算的議定數額的貨幣，交付協議的另一方或交付另一人；

“證券交易”(dealing in securities)就任何人而言，指該人與另一人訂立或要約與另一人訂立協議，或誘使或企圖誘使另一人訂立或要約訂立協議，而——

- (a) 目的是或旨在取得、處置、認購或包銷證券；或
- (b) 該等協議的目的或伴稱目的是使任何一方從證券的收益或參照證券價值的波動獲得利潤。

但不包括該人在以下情況進行的證券交易——

- (i) 該人是營辦證券市場的認可交易所；
- (ii) 該人是一間認可結算所；
- (iii) 該人是根據本條例第 95(2) 條獲認可提供自動化交易服務的法團；
- (iv) 該人透過另一人(“該交易商”)作出有關作為，而該交易商是——
- (A) 就第 1 類受規管活動獲發牌或獲註冊的；或
- (B) 名列於金融管理專員根據《銀行業條例》(第 155 章)第 20 條備存的紀錄冊並顯示為就第 1 類受規管活動受聘於就該類活動獲註冊的認可財務機構的，
- 但如該人是為賺取佣金、回佣或其他報酬而進行以下事項，則須視為進行證券交易——
- (I) 從第三者接收為訂立 (a) 或 (b) 段提述的協議而提出的要約或邀請，並以他本人或該第三者的名義將該要約或邀請傳達予該交易商；
- (II) 使該交易商或其代表與第三者互相介紹，以使該第三者可與該交易商訂立 (a) 或 (b) 段提述的協議，或提出與該交易商訂立 (a) 或 (b) 段提述的協議的要約或邀請；
- (III) 透過該交易商代第三者達成 (a) 或 (b) 段提述的協議；
- (IV) 代第三者向該交易商提出取得或處置證券的要約；或
- (V) 為該交易商接受第三者提出的訂立 (a) 或 (b) 段提述的協議的要約；
- (v) 該人以主事人身分進行以下事項——
- (A) 透過與另一人交易而作出有關作為，而該另一人是專業投資者(不論以主事人或代理人身分行事)；或
- (B) 取得、處置、認購或包銷證券；
- (vi) 該人訂立市場合約；
- (vii) 該人發出符合或獲豁免而無需符合《公司條例》(第 32 章)第 II 部的招股章程，如該人是在香港以外地方成立的法團，則指發出符合或獲豁免而無需符合該條例第 XII 部的招股章程；
- (viii) 該人發出關於在香港成立但並非公司的法團的證券的文件，而——
- (A) 假若該法團是一間公司，則該文件便是《公司條例》(第 32 章)第 38 條適用或(若該文件沒有被該條例第 38(5)(b) 或 38A 條豁除)會適用的招股章程；及
- (B) 假若該法團是在香港以外地方成立的法團，而該文件是該法團發出的招股章程的話，則該文件已載有該條例第 XII 部規定該文件須載有的所有事項；
- (ix) 該人發出申請某法團的股份或債權證的表格，而該表格連同——
- (A) 符合或獲豁免而無需符合《公司條例》(第 32 章)第 II 部的招股章程，或(如該法團是在香港以外地方成立的法團)符合或獲豁免而無需符合該條例第 XII 部的招股章程；或
- (B) (如該法團是在香港成立的不是公司的法團)載有第 (viii)(B) 段指明的事項的文件；

- (a) make an adjustment between himself and the other party or another person according to whether a currency is worth more or less (as the case may be) in relation to another currency;
- (b) pay an amount of money or to deliver a quantity of any commodity determined or to be determined by reference to the change in value of a currency in relation to another currency to the other party or another person; or
- (c) deliver to the other party or another person at an agreed future time an agreed amount of currency at an agreed consideration;

“leveraged foreign exchange trading”(槓桿式外匯交易) means—

- (a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or to offer to enter into, a leveraged foreign exchange contract;
- (b) the act of providing any financial accommodation to facilitate foreign exchange trading or to facilitate an act referred to in paragraph (a); or
- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person, on a discretionary basis or otherwise, to enter into a contract to facilitate an act referred to in paragraph (a) or (b),

but does not include any act performed for or in connection with any contract or arrangement or a proposed contract or arrangement—

- (i) wholly referable to the provision of property, other than currency, or services or employment at fair or market value;
- (ii) where the contract or arrangement is entered into by a corporation—
- (A) the principal business of which does not include dealing in currency in any form;
- (B) for the purpose of hedging its exposure to currency exchange risks in connection with its business; and
- (C) with another corporation;
- (iii) that is an exchange transaction within the meaning of the Money Changers Ordinance (Cap. 34);
- (iv) arranged by an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) and every party to which is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37);
- (v) that is a transaction executed solely for the purpose of its insurance business by an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41) to carry on insurance business or deemed to be so authorized under section 61(1) or (2) of that Ordinance;
- (vi) that is a transaction executed on a specified futures exchange by or through a person who is licensed or registered for Type 2 regulated activity or is wholly incidental to one or more than one such contract or a series of such contracts;
- (vii) arranged by—
- (A) a body which, in the opinion of the Monetary Authority, is—
- (I) a central bank; or
- (II) an institution which performs the functions of a central bank; or
- (B) an organization which, with the approval of the Monetary Authority, is acting on behalf of a body referred to in subparagraph (A);
- (viii) that is a transaction executed on a specified stock exchange by or through a person who is licensed or registered for Type 1 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;
- (ix) that is a transaction executed by or through a person who is licensed or registered for Type 7 regulated activity or is wholly incidental to one or more than one such transaction or a series of such transactions;
- (x) that is a transaction in an interest or interests in a collective investment scheme authorized by the Commission under section 104 of this Ordinance;
- (xi) that is wholly incidental to one or more than one transaction in specified debt securities or a series of such transactions;
- (xii) by an authorized financial institution;
- (xiii) by any person belonging to a class of persons, or carrying on a type of business, as prescribed by rules made under section 397 of this Ordinance for the purposes of this paragraph;

- (x) 該人就某屬法團的集體投資計劃發出已獲證監會根據《公司條例》(第 32 章) 第 342C 條批准註冊的招股章程，或連同該章程發出該法團的股份的申請表格，而——
- (A) 該法團主要是從事或顯示本身主要是從事投資、再投資或買賣任何財產(包括證券及期貨合約)的業務的；及
- (B) 該法團的股份純粹是或主要是可贖回股份；
- (xi) 該人發出已獲根據本條例第 105 條認可發出的廣告、邀請或文件；
- (xii) 該人是以某集體投資計劃的代理人身分行事的、根據《受託人條例》(第 29 章) 第 VIII 部註冊的信託公司，該公司藉作出有關作為而代其主事人執行派發申請表格、贖回通知、轉換通知及成交單據，以及收受金錢及發出收據等職能；
- (xiii) 該人就第 4 或 6 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而根據本條例第 175(1)(a)(i) 或 (ii) 條發出一份文件，而該文件的內容是符合本條例第 175(1)(b) 及 (c) 條的規定的；或
- (xiv) 該人就第 9 類受規管活動獲發牌或獲註冊，並純粹為進行該類活動而作出有關作為；
- “證券保證金融資”(securities margin financing) 指提供財務通融，以便利——
- (a) 取得在任何證券市場(不論是認可證券市場或香港以外地方的任何其他證券市場) 上市的證券；及
- (b) (如適用的話) 繼續持有該等證券，
- 而不論該等證券或其他證券是否被質押作為該項通融的抵押，但不包括以下各項——
- (i) 提供組成某項包銷或分銷證券安排的一部分的財務通融；
- (ii) 提供財務通融以便利按照某招股章程的條款取得證券，不論認購有關證券的要約是在香港或其他地方提出的；
- (iii) 由任何就第 1 類受規管活動獲發牌或獲註冊的人提供的、以便利該人為其客戶取得或持有證券的財務通融；
- (iv) 由屬法團的集體投資計劃提供的、對投資於它所發行的集體投資計劃的任何權益的投資提供財務通融，而——
- (A) 該法團主要是從事或顯示本身主要是從事投資、再投資或買賣任何財產(包括證券及期貨合約)的業務的；及
- (B) 該法團的股份純粹是或主要是可贖回股份；
- (v) 由某認可財務機構提供的、以便利該機構的客戶取得或持有證券的財務通融；
- (vi) 由持有某公司不少於 10% 已發行股本的個人向該公司提供的、以便利取得或持有證券的財務通融；或
- (vii) 由某中介人藉使某人與該中介人的有連繫法團互相介紹以使該法團可提供財務通融予該人的方式提供的財務通融。

第 3 部

以下是本條例第 114(5) 條提述的指明活動——

- (a) 取得在證券市場上市的證券，而此舉屬《印花稅條例》(第 117 章) 第 19(16) 條所界定的證券借用或證券交還或組成某項該等證券借用或證券交還的一部分，或屬與該等借用或交還相似的任何證券交易；或

- (xiv) by a person through a trader, but the person shall be regarded as carrying on leveraged foreign exchange trading if, in return for a commission, rebate or other remuneration, the person—
- (A) receives from another person an offer or invitation to—
- (I) enter into a leveraged foreign exchange contract; or
- (II) use any financial accommodation to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract, and communicates it, either in his name or in the name of the other person, to the trader;
- (B) effects an introduction between the trader or its representative and another person, so that the other person may—
- (I) enter into a leveraged foreign exchange contract with the trader; or
- (II) use any financial accommodation provided by the trader to facilitate foreign exchange trading or facilitate entering into a leveraged foreign exchange contract; or
- (C) effects the entering into a leveraged foreign exchange contract by another person through the trader, where in this paragraph, “trader” (交易商) means a corporation licensed for Type 3 regulated activity or an authorized financial institution; or
- (xv) by—
- (A) a collective investment scheme; or
- (B) a person in the course of business for the purpose of operating a collective investment scheme, authorized by the Commission under section 104 of this Ordinance;
- “securities margin financing” (證券保證金融資) means providing a financial accommodation in order to facilitate—
- (a) the acquisition of securities listed on any stock market, whether a recognized stock market or any other stock market outside Hong Kong; and
- (b) (where applicable) the continued holding of those securities, whether or not those or other securities are pledged as security for the accommodation, but does not include the provision of financial accommodation—
- (i) that forms part of an arrangement to underwrite or sub-underwrite securities;
- (ii) to facilitate an acquisition of securities in accordance with the term of a prospectus, regardless of whether the offer of securities is made in Hong Kong or elsewhere;
- (iii) by a person who is licensed or registered for Type 1 regulated activity in order to facilitate acquisitions or holdings of securities by the person for his client;
- (iv) by a collective investment scheme that is a corporation—
- (A) which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in any property (including securities and futures contracts); and
- (B) the shares in which are exclusively, or primarily, redeemable shares, in order to finance investment in any interest in the collective investment scheme of which it is the issuer;
- (v) by an authorized financial institution for the purpose of facilitating acquisitions or holdings of securities by the institution's clients;
- (vi) by an individual to a company in which he holds 10% or more of its issued share capital to facilitate acquisitions or holdings of securities; or
- (vii) by an intermediary by way of effecting an introduction between a person and a related corporation of the intermediary in order that the corporation may provide the person with financial accommodation.

PART 3

The following are the specified activities referred to in section 114(5) of this Ordinance—

- (a) the acquisition of securities listed on a stock market which is or forms part of a stock borrowing or stock return as defined in section 19(16) of the Stamp Duty Ordinance (Cap. 117), or any transaction in securities similar to such a borrowing or return; or

第 571 章 證券及期貨條例

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- (b) (i) 向任何就第 1 或 8 類受規管活動獲發牌的法團或向任何認可財務機構提供的、以便利取得或持有證券的財務通融；
- (ii) 由某公司向其董事或僱員提供的、以便利取得或持有該公司本身的證券的財務通融；或
- (iii) 由某公司集團的某成員向該集團的另一成員提供的、以便利該另一成員取得或持有證券的財務通融。
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CAP. 571 *Securities and Futures Ordinance*

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- (b) the provision of financial accommodation—
- (i) to a corporation licensed for Type 1 or Type 8 regulated activity or an authorized financial institution to facilitate acquisitions or holdings of securities;
- (ii) by a company to its directors or employees to facilitate acquisitions or holdings of its own securities; or
- (iii) by a member of a group of companies to another member of the group to facilitate acquisitions or holdings of securities by that other member.
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香港特別行政區

2004 年第 12 號條例

印章位置

行政長官
董建華
2004 年 6 月 24 日

本條例旨在修訂《稅務條例》。

[2004 年 6 月 25 日]

由立法會制定。

1. 簡稱

本條例可引稱為《2004 年稅務(修訂)條例》。

2. 適用範圍

(1) 除第(4)款另有規定外，第4條就2000/01課稅年度及其後的所有課稅年度而適用。

(2) 第8條就1998/99課稅年度及其後的所有課稅年度而適用。

(3) 第9(b)、10、11(b)(i)及(iii)、12及13條就2004/05課稅年度及其後的所有課稅年度而適用。

(4) 第4條(在其涉及《稅務條例》(第112章)第12(6)(c)(iii)及(f)條的範圍內)就2004/05課稅年度及其後的所有課稅年度而適用。

(5) 第22條——

(a) 除(b)段另有規定外，就2004/05課稅年度及其後的所有課稅年度而適用；

(b) (在其涉及《稅務條例》(第112章)附表13第17項的範圍內)就《1998年法律執業者(修訂)條例》(1998年第27號)第5(1)(e)條開始實施的課稅年度及其後的所有課稅年度而適用。

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 12 OF 2004

000033

L.S.

TUNG Chee-hwa
Chief Executive
24 June 2004

An Ordinance to amend the Inland Revenue Ordinance.

[25 June 2004]

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2004.

2. Application

(1) Subject to subsection (4), section 4 applies in relation to the year of assessment 2000/01 and to all subsequent years of assessment.

(2) Section 8 applies in relation to the year of assessment 1998/99 and to all subsequent years of assessment.

(3) Sections 9(b), 10, 11(b)(i) and (iii), 12 and 13 apply in relation to the year of assessment 2004/05 and to all subsequent years of assessment.

(4) Section 4 (in so far as it relates to section 12(6)(c)(iii) and (f) of the Inland Revenue Ordinance (Cap. 112)) applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment.

(5) Section 22—

(a) subject to paragraph (b), applies in relation to the year of assessment 2004/05 and to all subsequent years of assessment;

(b) in so far as it relates to item 17 of Schedule 13 to the Inland Revenue Ordinance (Cap. 112), applies in relation to the year of assessment in which section 5(1)(e) of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) comes into operation and to all subsequent years of assessment.

000034

4. 應評稅入息的調整

第 12(6) 條現予修訂，廢除 (b)、(c) 及 (d) 段而代以——

- “(b) “個人進修開支”(expenses of self-education) 指納稅人支付的以下開支——
- (i) 與納稅人修讀的訂明教育課程有關的費用，包括學費及考試費；或
 - (ii) 就納稅人為取得或維持在任何受僱工作中應用的資格而參加的由教育提供者、行業協會、專業協會或業務協會主辦的考試而支付的費用，但不包括——
 - (A) 在任何課稅年度內根據本條例任何其他條文屬可容許納稅人扣除或已容許納稅人扣除的開支；或
 - (B) 該等開支中已由或須由納稅人的僱主或任何其他人士付還該納稅人的部分，但如該納稅人的應評稅入息已經或將會包括所付還的款項，則屬例外；
- (c) “訂明教育課程”(prescribed course of education) 指為取得或維持在受僱工作中應用的資格而修讀的以下課程——
- (i) 由教育提供者提供的教育課程；
 - (ii) 由行業協會、專業協會或業務協會提供的訓練或發展課程；或
 - (iii) 由附表 13 指明的機構所審定或認可的訓練或發展課程；
- (d) “教育提供者”(education provider) 指——
- (i) 大學、大學學院或工業學院；
 - (ii) 《教育條例》(第 279 章) 憑藉該條例第 2 條而不適用的教育機構；
 - (iii) 根據《教育條例》(第 279 章) 第 13(a) 條註冊的學校；
 - (iv) 根據《教育條例》(第 279 章) 第 9(1) 條獲豁免而無需註冊的學校；
 - (v) 獲局長為第 16C 條的施行而批准的機構；或
 - (vi) 獲局長根據 (e) 段而批准的機構；
- (e) 局長可以書面批准某機構為教育提供者，該項批准可自批准文書內指明的日期起生效，不論該日期是在該批准日期之前或之後，並可隨時撤回；
- (f) 財經事務及庫務局局長可藉命令修訂附表 13。”。

4. Adjustments to assessable income

Section 12(6) is amended by repealing paragraphs (b), (c) and (d) and substituting—

- “(b) “expenses of self-education” (個人進修開支) means expenses paid by the taxpayer as—
- (i) fees, including tuition and examination fees, in connection with a prescribed course of education undertaken by the taxpayer; or
 - (ii) fees in respect of an examination set by an education provider or a trade, professional or business association, and undertaken by the taxpayer to gain or maintain qualifications for use in any employment, but does not include—
 - (A) expenses for which a deduction is allowable or has been allowed to the taxpayer in any year of assessment under any other provision of this Ordinance; or
 - (B) expenses to the extent to which they have been reimbursed or are reimbursable to the taxpayer by his employer or any other person unless the reimbursement has been or will be included in the assessable income of the taxpayer;
- (c) “prescribed course of education” (訂明教育課程) means a course undertaken to gain or maintain qualifications for use in any employment and being—
- (i) a course of education provided by an education provider;
 - (ii) a training or development course provided by a trade, professional or business association; or
 - (iii) a training or development course accredited or recognized by an institution specified in Schedule 13;
- (d) “education provider” (教育提供者) means—
- (i) a university, university college or technical college;
 - (ii) a place of education to which the Education Ordinance (Cap. 279) does not apply by virtue of section 2 of that Ordinance;
 - (iii) a school registered under section 13(a) of the Education Ordinance (Cap. 279);
 - (iv) a school exempted from registration under section 9(1) of the Education Ordinance (Cap. 279);
 - (v) an institution approved by the Commissioner for the purposes of section 16C; or
 - (vi) an institution approved by the Commissioner under paragraph (e);
- (e) the Commissioner may in writing approve an institution as an education provider and the approval may operate from a date, whether before or after the date of approval, specified in the instrument of approval and may be withdrawn at any time;
- (f) the Secretary for Financial Services and the Treasury may by order amend Schedule 13.”。

8. 居所貸款利息

第 26E(8) 條現予修訂，廢除“根據《差餉條例》(第 116 章)第 10 條與該住宅作為單一物業單位一併估價的”。

8. Home loan interest

Section 26E(8) is amended by repealing “any car parking space valued together with the dwelling as a single tenement under section 10 of the Rating Ordinance (Cap. 116), such” and substituting “a car parking space, the”.