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Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	L.N. 148 of 2005
Section:	71C	Heading:	Executive officers of registered institutions require Monetary Authority's consent	Version Date:	02/12/2005

(1) Subject to sections 71E and 71F, no person shall-

- (a) become an executive officer of a registered institution without the consent in writing of the Monetary Authority;
- (b) if he becomes such executive officer without such consent, act or continue to act as such executive officer without such consent;
- (c) fail to comply with a condition attached under subsection (2)(b) or (9) as such condition is in force from time to time; or
- (d) act or continue to act as such executive officer after such consent has been withdrawn under subsection (4).

(2) The Monetary Authority-

- (a) shall refuse to give consent under subsection (1) unless the Monetary Authority is satisfied that the person concerned-
 - (i) is a fit and proper person to be an executive officer of the registered institution concerned; and
 - (ii) has sufficient authority within the institution to be such executive officer;
- (b) may give consent under subsection (1) subject to such conditions as the Monetary Authority thinks proper to attach thereto.

(3) Where the Monetary Authority gives consent, or refuses to give consent, under subsection (1), he shall as soon as is reasonably practicable thereafter give notice in writing-

- (a) in the case of the consent, to the person concerned and the registered institution concerned and specifying any conditions attached to the consent;
- (b) in the case of the refusal, to the person concerned and the registered institution concerned and specifying his reasons.

(4) Where-

- (a) an executive officer is, or was at any time, guilty of misconduct; or
- (b) the Monetary Authority has ceased to be satisfied that an executive officer of a registered institution-
 - (i) is a fit and proper person to be such type of officer; or
 - (ii) has sufficient authority within the institution to be such officer,

then the Monetary Authority may, after consultation with the Securities and Futures Commission, by notice in writing served on the officer and the institution-

- (c) withdraw the consent; or
- (d) suspend the consent for such period or until the occurrence of such event as the Monetary Authority specifies.

(5) Without limiting the generality of subsection (4) or the operation of any other provisions of this Ordinance, for the avoidance of doubt, it is hereby declared that the Monetary Authority may exercise his power under that subsection wholly or partly on the basis of information disclosed to the Monetary Authority by the Securities and Futures Commission, and whether or not the information arises from an investigation under section 182 of the Securities and Futures Ordinance (Cap 571).

(6) The Monetary Authority shall not exercise his power under subsection (4) against an executive officer without first giving the officer an opportunity of being heard.

(7) Where the Monetary Authority decides to exercise his power under subsection (4) against an executive officer, the Monetary Authority shall inform the officer of his decision to do so by notice in writing served on him, and the notice shall include-

- (a) a statement of the reasons for which the decision is made;
- (b) the time at which the decision is to take effect; and
- (c) in so far as applicable, the duration and terms of the withdrawal or suspension of the consent to be imposed under the decision.

(7A) Where the Monetary Authority has exercised his power under subsection (4) against an executive officer, the Monetary Authority may disclose to the public details of the decision he has made under that subsection, the reasons for which the decision was made, and any material facts relating to the case. (Added 19 of 2005 s. 14)

(8) Without prejudice to the exercise of any powers by the Securities and Futures Commission under the Securities and Futures Ordinance (Cap 571), the Monetary Authority may make such recommendations to the Securities and Futures Commission concerning any executive officer in respect of the exercise of the power under section 196 or 197 of that Ordinance as he considers appropriate.

(9) Where the Monetary Authority-

- (a) has decided that he is satisfied that conditions need to be attached to a consent given under subsection (1), or that conditions attached to any such consent need to be amended;
- (b) has given to the executive officer not less than 7 days' advance notice of his decision, specifying his reasons, and accompanied by a copy of this section; and
- (c) has taken into account any written representation received by him from the executive officer,

the Monetary Authority may, by notice in writing served on the executive officer and the institution, attach conditions to the consent, or amend conditions attached to the consent, as the case may be.

(10) Any person who contravenes subsection (1) commits an offence and is liable-

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

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

(11) A person shall not be regarded for the purposes of subsection (1) as becoming an executive officer of a registered institution if he is appointed to serve as an executive officer of it-

- (a) immediately on the expiration of a previous term by him as an executive officer; and
- (b) in relation to the same regulated activity as he was such executive officer in that previous term.

(12) In this section-

"misconduct" (失當行爲), in relation to an executive officer, means-

- (a) a contravention of any of the relevant provisions, within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap 571), which are applicable to the officer;
- (b) a contravention of-
 - (i) any conditions attached under subsection (2)(b), or attached or amended under subsection (9), to the consent under subsection (1) which relates to the officer; or
 - (ii) any conditions attached or amended under section 71E(3) to the provisional consent under section 71E(1) which relates to the officer; or
- (c) an act or omission of the officer relating to the carrying on of any regulated activity-
 - (i) by the registered institution in relation to which the officer is an executive officer; and
 - (ii) which, in the opinion of the Monetary Authority, is or is likely to be prejudicial to the interest of the investing public or to the public interest,

and "guilty of misconduct" (犯失當行爲) shall be construed accordingly.

(13) Where any registered institution is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c) or (d) of the definition of "misconduct" in section 193(1) of the Securities and Futures Ordinance (Cap 571) as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of, an executive officer of the institution, the conduct shall also be regarded as misconduct on the part of the officer, and "guilty of misconduct" shall also be construed accordingly.

(14) For the purposes of paragraph (c) of the definition of "misconduct" in subsection (12), the Monetary Authority shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless he has had regard to such of the provisions set out in any code of conduct published under section 169 of the Securities and Futures Ordinance (Cap 571) or any code or guideline published under section 399 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission.

(Added 6 of 2002 s. 10)

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Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number: L.N. 12 of 2003
Section:	119	Heading:	Registered institutions	Version Date: 01/04/2003

(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) 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.

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Chapter: 571 Title: SECURITIES AND FUTURES ORDINANCE Gazette Number: L.N. 12 of 2003
 Section: 129 Heading: **Determination of "fit and proper"** Version Date: 01/04/2003

(1) In considering whether a person is a fit and proper person for the purposes of any provision of this Part, the Commission or the Monetary Authority (as the case may be) shall, in addition to any other matter that the Commission or the Monetary Authority (as the case may be) may consider relevant, but subject to section 134, have regard to-

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is allowed, the person will perform;
- (c) the ability to carry on the regulated activity competently, honestly and fairly; and
- (d) the reputation, character, reliability and financial integrity,

of-

- (i) where the person is an individual, the person himself;
- (ii) where the person is a corporation (other than an authorized financial institution), the corporation and any officer of the corporation; or
- (iii) where the person is an authorized financial institution, the institution and any director, chief executive, manager (as defined in section 2(1) of the Banking Ordinance (Cap 155)) and executive officer of the institution.

(2) Without limiting the generality of subsection (1), the Commission or the Monetary Authority (as the case may be) may, in considering whether a person is a fit and proper person for the purposes of any provision of this Ordinance-

- (a) take into account a decision made in respect of the person by-
 - (i) (in the case of the Commission) the Monetary Authority or (in the case of the Monetary Authority) the Commission;
 - (ii) the Insurance Authority;
 - (iii) the Mandatory Provident Fund Schemes Authority; or
 - (iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Commission's opinion, performs a function

- similar to the functions of the Commission;
- (b) take into account any information in the possession of the Commission or the Monetary Authority (as the case may be), whether provided by the person or not, relating to-
- (i) where such consideration relates to a licence under section 116 or 117 or an application for the licence, any other person who is or is to be employed by, or associated with, the person for the purposes of the regulated activity for which the licence is granted or the application is made (as the case may be);
 - (ii) where such consideration relates to a licence under section 116 or 117 to carry on a regulated activity or any registration for a regulated activity under section 119 or an application for the licence or registration, any other person who will be acting for or on behalf of the person in relation to the regulated activity; or
 - (iii) where the person is a corporation in a group of companies-
 - (A) any other corporation in the same group of companies; or
 - (B) any substantial shareholder or officer of the corporation or any corporation referred to in sub-subparagraph (A);
- (c) take into account, where such consideration relates to a licence under section 116 or 117 or any registration under section 119 or an application for the licence or registration, whether the person has established effective internal control procedures and risk management systems to ensure his compliance with all applicable regulatory requirements under any of the relevant provisions, having regard in particular to the information provided in accordance with section 128; and
- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.

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