

## Securities and Futures (Amendment) Bill 2016

**Committee Stage**Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
6	In the proposed section 112A, in the definition of <i>sub-custodian</i> , by deleting “by virtue of section 112ZA(5)(a) or (b)” and substituting “, other than the custodian of the company”.
6	By deleting the proposed section 112U(3) and substituting— <ul style="list-style-type: none"> <li>“(3) A director of an open-ended fund company owes the open-ended fund company— <ul style="list-style-type: none"> <li>(a) the same fiduciary duties that are owed by a director of an ordinary company to the ordinary company; and</li> <li>(b) the duty to exercise reasonable care, skill and diligence that is owed by a director of an ordinary company to the ordinary company under section 465 of the Companies Ordinance (Cap. 622).”.</li> </ul> </li> </ul>
6	By deleting the proposed section 112ZA(5) and substituting— <ul style="list-style-type: none"> <li>“(5) This section does not prohibit any of the following persons from entrusting, by an agreement in writing, to another person for safe keeping any or all of the scheme property of an open-ended fund company that is entrusted to the first-mentioned person— <ul style="list-style-type: none"> <li>(a) a custodian of the company;</li> <li>(b) a person to whom any scheme property of the company is entrusted for safe keeping under an agreement in writing, other than the custodian of the company.”.</li> </ul> </li> </ul>

- 6 In the proposed section 112ZF, by adding—
- “(3A) A direction given under subsection (1), or an amendment or revocation of such a direction under subsection (3), takes effect—
- (a) at the time of the service of the notice in respect of the direction, amendment or revocation; or
  - (b) if a later time is specified in the notice, at that time.”.

6 In the proposed section 112ZG—

    - (a) in the heading, by deleting “**for inquiry into**” and substituting “**in respect of**”;
    - (b) by deleting subsection (1);
    - (c) in subsection (2), by deleting “In the inquiry, the Court of First instance” and substituting “If a person fails to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance in respect of the failure and the Court”;
    - (d) in subsection (2)(a), in the Chinese text, by deleting “有關人士不遵從有關” and substituting “該人不遵從該”;
    - (e) in subsection (2)(b), in the Chinese text, by deleting “有關” and substituting “該項”.

6 In the proposed section 112ZJ, by adding

“(6A) An amendment or revocation of a condition, or a new condition imposed, under subsection (6) takes effect—

    - (a) at the time of the service of the notice in respect of the amendment or revocation of the condition or the imposition of the new condition; or
    - (b) if a later time is specified in the notice, at that time.”.

6 In the proposed section 112ZK(4), by adding—

“(ga) the liability of a person acting in contravention of section 112X or of an order made by the

Court of First Instance under rules made under paragraph (g);”.

- 12(1) (a) By deleting the proposed section 213(3A) and substituting—
- “(3A) If the contravention involved in a case is a contravention by an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company, the Court of First Instance may also, on the application of the Commission, make any of the orders specified in subsection (3B).
- (3AB) The power under subsection (3A) may be exercised whether or not the Commission also applies for an order specified in subsection (2).”.
- (b) In the proposed section 213(3B)(a)(vi), by deleting “; and” and substituting a semicolon.
- (c) In the proposed section 213(3B)(a), by adding—
- “(viii) any ancillary order that the Court of First Instance considers necessary as a result of the making of any of the orders referred to in subparagraphs (i), (ii), (iii), (iv), (v), (vi) and (vii); and”.
- (d) In the proposed section 213(3B)(b)(i), by deleting “paragraph (a)” and substituting “paragraph (a)(i), (ii), (iii), (iv), (v), (vi) and (vii)”.
- (e) In the proposed section 213(3B)(b)(iii), by deleting “; and” and substituting a semicolon.
- (f) In the proposed section 213(3B)(b)(iv), by deleting “rules.” and substituting “rules; and”.
- (g) In the proposed section 213(3B)(b), by adding—
- “(v) any ancillary order that the Court of First Instance considers necessary as a result of the making of any of the orders referred to in subparagraphs (i), (ii), (iii) and (iv).”.

12 By deleting subclause (6).

- 13 In the proposed section 214A, by adding—
- “(2A) If the order to be applied for under subsection (1) is an order against—
- (a) an authorized financial institution; or
  - (b) a corporation that, to the knowledge of the Commission—
    - (i) is a controller of an authorized financial institution;
    - (ii) has as its controller an authorized financial institution; or
    - (iii) has a controller that is also a controller of an authorized financial institution,
- the Commission must not make the application unless it has first consulted the Monetary Authority.”.

- 13 In the proposed section 214A, by adding—
- “(5) In this section—
- controller*** (控制人) means an indirect controller or a majority shareholder controller as defined by section 2(1) of the Banking Ordinance (Cap. 155).”.

- 22 (a) By renumbering the clause as clause 22(1).
- (b) By adding—
- “(2) Schedule 8, Part 3, Division 5, after item 2—
- Add**
- |      |   |                                      |
|------|---|--------------------------------------|
| “2A. | A specified decision set out in item 15D of Division 1 of Part 2. | Section 112ZF(3A) of this Ordinance. |
| 2B.  | A specified decision set out in item 15E of Division 1 of Part 2. | Section 112ZF(3A) of this Ordinance. |

- 2C. A specified decision set out in item 15L of Division 1 of Part 2. Section 112ZJ(5) of this Ordinance.
- 2D. A specified decision set out in item 15M of Division 1 of Part 2. Section 112ZJ(6A) of this Ordinance.”.”.

- 27 By deleting the clause and substituting—
- “27. Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)**
- Section 19(1DA)—
- Repeal**
- “or Part 2 of Schedule 9”
- Substitute**
- “, Part 2 of Schedule 9 or Part 2 of Schedule 10”.”.
- 30 By deleting the clause and substituting—
- “30. Section 63 amended (regulations)**
- Section 63(c)—
- Repeal**
- “and 9”
- Substitute**
- “, 9 and 10”.”.
- 31 By deleting the clause and substituting—
- “31. First Schedule amended**
- (1) First Schedule—
- Repeal**
- “8 & 9]”
- Substitute**
- “8, 9 & 10]”.

(2) First Schedule, head 2(4), Note 2—

**Repeal**

“or Part 4 of Schedule 9”

**Substitute**

“, Part 4 of Schedule 9 or Part 3 of Schedule 10”.”.

- 32 By deleting “Sch. 9]” and substituting “Sch. 10]”.
- 33 By deleting “**Schedule 9**” (wherever appearing) and substituting “**Schedule 10**”.
- 33 By deleting “After Schedule 8” and substituting “After Schedule 9”.
- New By adding—
- “Division 4A—Amendments to Banking Ordinance (Cap. 155)**
- 33A. Section 58A amended (disciplinary action in respect of relevant individuals)**
- (1) Section 58A(6), definition of *misconduct*, paragraph (a)—
- Repeal**
- “; or”
- Substitute a semicolon.**
- (2) Section 58A(6), definition of *misconduct*, paragraph (b)(ii)—
- Repeal**
- “public interest,”
- Substitute**
- “public interest; or”.
- (3) Section 58A(6), definition of *misconduct*, after paragraph (b)—
- Add**
- “(c) an act or omission of the individual

that—

- (i) relates to the carrying on of any activity that—
  - (A) is not a regulated activity; and
  - (B) the registered institution, in relation to which the individual is a relevant individual, may carry on for an open-ended fund company under the Securities and Futures Ordinance (Cap. 571); and
- (ii) 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.”.

(4) Section 58A(7)—

**Repeal**

“paragraph (b)”

**Substitute**

“paragraphs (b) and (c)”.

(5) Section 58A(7), before “399”—

**Add**

“112ZR or”.

**33B. Section 71C amended (executive officers of registered institutions require Monetary Authority’s consent)**

(1) Section 71C(12), definition of *misconduct*, paragraph (b)(ii)—

**Repeal**

“; or”

**Substitute a semicolon.**

(2) Section 71C(12), definition of *misconduct*, paragraph (c)(ii)—

**Repeal**

“public interest,”

**Substitute**

“public interest; or”.

- (3) Section 71C(12), definition of *misconduct*, after paragraph (c)—

**Add**

“(d) an act or omission of the officer that—

- (i) relates to the carrying on of any activity that—

(A) is not a regulated activity; and

(B) the registered institution, in relation to which the officer is an executive officer, may carry on for an open-ended fund company under the Securities and Futures Ordinance (Cap. 571); and

- (ii) 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.”.

- (4) Section 71C(13)—

**Repeal**

“or (d)”

**Substitute**

“, (d) or (e)”.

- (5) Section 71C(14)—

**Repeal**

“paragraph (c)”

**Substitute**

“paragraphs (c) and (d)”.

- (6) Section 71C(14), before “399”—

**Add**

“112ZR or”.”.

New

By adding—

**“Division 7A—Amendment to Financial Reporting Council Ordinance (Cap. 588)**

**43A. Section 2 amended (interpretation)**

Section 2(1)—

**Repeal the definition of *relevant code***

**Substitute**

**“*relevant code* (有關守則) means—**

- (a) a code or guideline published under section 112ZR of the Securities and Futures Ordinance (Cap. 571), as in force at the material time; or
- (b) a code or guideline published under section 399 of that Ordinance for providing guidance in relation to the operation of section 104 of that Ordinance, as in force at the material time;”.