

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance
(Cap. 571)

Securities and Futures (Amendment) Bill 2016

INTRODUCTION

A At the meeting of the Executive Council on 5 January 2016, the Council **ADVISED** and the Chief Executive **ORDERED** that the Securities and Futures (Amendment) Bill 2016 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to introduce a new open-ended fund company (“OFC”) structure in Hong Kong.

JUSTIFICATIONS

Benefits to the Financial Services Industry

2. Currently, an open-ended investment fund may be established under the laws of Hong Kong in the form of a unit trust but not in corporate form due to various restrictions on capital reduction under the Companies Ordinance (Cap. 622) (“CO”). The OFC structure¹ is a proposal in response to the market need for a more flexible choice of investment fund vehicle as it will allow funds to be set up in the form of a company, but with the flexibility to create and cancel shares for investors to trade the funds, which is currently not enjoyed by conventional companies. This would provide an extra option for fund structure and create a more flexible business environment for fund managers to meet market demand, which in turn could attract more publicly offered funds and privately offered funds to choose to domicile in Hong Kong. This is consistent with our policy objective to diversify fund types, expand the fund distribution network and promote fund origination in Hong Kong to deepen and broaden our asset management industry.

¹ The OFC structure is also found in a number of major fund centres, for example, the United Kingdom, the United States, Ireland and Luxembourg.

Our Proposal

OFC structure and key features

3. An OFC is an open-ended collective investment scheme, which is structured in corporate form with limited liability and variable share capital. The proposed OFC structure will have characteristics similar to a conventional limited company in that it will have a legal personality; it will have a constitutional document, namely the Instrument of Incorporation; it will be governed by a board of directors who are subject to fiduciary duties, and the liability of its shareholders will be limited to the amount unpaid on their shares in the company. An OFC could be a publicly or privately offered fund².

4. However, being an investment vehicle, it is proposed that an OFC –

- (a) should not be bound by restrictions on the reduction of share capital applicable to companies formed under the CO, and instead will have the flexibility to vary its share capital in order to meet shareholder subscription and redemption requests;
- (b) should not be bound by restrictions on distribution out of share capital applicable to companies formed under the CO and instead, may distribute out of share capital subject to solvency and disclosure requirements; and
- (c) should not be required to be licensed as a licensed corporation under the Securities and Futures Ordinance (Cap. 571) (“the Ordinance”), but will have to be registered with the Securities and Futures Commission (“SFC”), and should delegate its investment management functions to an investment manager who is appointed by the OFC board.

² A publicly offered fund is a fund that is offered to the public in Hong Kong and should be subject to the prior authorisation of the SFC, whereas a privately offered fund is a fund that is not offered for sale to the public (e.g. for sale to professional investors) and is not subject to the SFC’s authorisation.

Key operators

5. The directors, the investment manager and the custodian are proposed to be the key operators of an OFC. To strengthen investor protection, the key operators will have to meet some basic eligibility requirements. The OFC board will be legally responsible for all the affairs of the OFC and will provide an additional layer of oversight for shareholders. As the investment management functions of the OFC will be delegated to an investment manager, individual directors on the OFC board will not be required to be licensed under the Ordinance. While there is no requirement for the directors to be residents of Hong Kong, each of the non-resident directors of the OFC should appoint a process agent in Hong Kong to accept service of process. Also, the investment managers are required to be those licensed by or registered with the SFC to carry out asset management regulated activity (Type 9 licence).

6. The assets of an OFC must be segregated from that of the investment manager and entrusted to a separate, independent custodian for safekeeping. Aside from a custodian incorporated in Hong Kong, an OFC may also appoint an overseas custodian, provided that it has a place of business or an agent in Hong Kong for the purpose of accepting the service of notices and legal documents in Hong Kong.

Investment scope and fund operation

7. We propose to allow publicly offered OFCs to invest in asset classes in accordance with the SFC's product code requirements and authorisation conditions, i.e. mainly in securities, futures and OTC derivatives. This is on par with the existing regime for publicly offered SFC-authorized funds. For privately offered OFCs, we propose that their investment scope should align with Type 9 (asset management) regulated activity, with a 10% de-minimis exemption for other asset classes.

8. An OFC may also be created as an umbrella fund meaning that the OFC could consist of a number of separately pooled sub-funds and each sub-fund would have a pool of assets that is managed in accordance with the investment objectives and policies for that particular sub-fund. Further, in line with overseas practice, a protected cell structure will be made available for an OFC, such that the assets of a sub-fund of an umbrella OFC belong exclusively to that sub-fund and shall not be used to discharge the liabilities of or claims against the umbrella OFC or any other sub-fund.

Incorporation and registration of an OFC

9. To incorporate an OFC, the applicant should apply to the SFC for registration prior to applying to the Registrar of Companies (“CR”) for incorporation. Once the SFC is satisfied that the registration requirements are met, it will issue a notice of registration to the CR. The CR will incorporate an OFC if it has received the notice of the registration and other relevant documents from the SFC and is satisfied that the requirements for incorporation have been met. The registration of the OFC will take effect only on the day of issue of the certificate of incorporation by the CR. In addition to registration, like other SFC-authorized unit trusts and mutual funds, OFCs which seek to offer their shares to the public must seek the SFC authorization under the Ordinance.

10. Since an OFC is an investment fund vehicle taking a corporate form, OFCs are required to register under the Business Registration Ordinance (Cap. 310) (“BRO”). Under the one-stop company incorporation and business registration regime, the CR will issue to the OFCs the first business registration certificate on behalf of the Commissioner of Inland Revenue simultaneously together with the certificate of incorporation.

Roles of the SFC and the CR

11. In view of an OFC’s nature as an investment fund, the SFC will be the primary regulator responsible for the registration and regulation of OFCs under the Ordinance. The SFC will be empowered by the Ordinance to make subsidiary legislation and to publish a code or guideline to regulate and provide guidance on the incorporation, management, operation, and business of OFCs.

12. The CR will be responsible for the incorporation and administration of statutory corporate filings of OFCs. The CR will keep records of information relating to OFCs and provide the public with services to access the OFC information that it holds.

Termination and winding up of OFCs

13. Given the nature of OFCs as investment funds, which could be terminated for commercial reasons (e.g. changes in the market conditions resulting in the investment strategy becoming unviable; the size of the fund dropping below a certain level; or changing investment trends, etc.),

an OFC should be allowed to be terminated in a more straight-forward and cost efficient manner. We propose that an OFC may apply to the SFC for cancellation of registration voluntarily upon termination.

14. Separately, similar to conventional companies, we propose that winding up of OFCs, whether solvent or insolvent, should be by way of a winding-up process similar to that applicable to conventional companies under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

OTHER OPTIONS

15. We must amend the Ordinance to give effect to the proposed introduction of the OFC structure in Hong Kong. There are no other options.

THE BILL

16. The enabling provisions will be set out in the Bill while the detailed operational and procedural matters will be set out in new subsidiary legislation to be enacted under the Ordinance. The main provisions of the Bill are as follows -

- (a) Clause 6 of the Bill adds to the Ordinance a new Part IVA which relates to OFCs. The major sections in that Part are summarized below:
 - (i) Section 112C provides that a person may apply to the CR for incorporation of an OFC but a certificate of incorporation can only be issued after the CR has received notification of the registration of the proposed company³ from the SFC;
 - (ii) Section 112D empowers the SFC to register a proposed company;
 - (iii) Section 112E specifies the requirements for registration of an OFC, including requirements relating to its directors, investment manager and custodian, and requirements relating to its name and registered office;

³ “Proposed company” is defined in the Bill to mean a company intended to be incorporated under the new Part IVA.

- (iv) Section 112P provides that the amount of the paid up share capital of an OFC is equal to the net asset value of the company;
 - (v) Section 112Q provides for the limited liability of shareholders of OFCs;
 - (vi) Section 112R permits an OFC to divide its scheme property into separate parts, with each part forming a sub-fund;
 - (vii) Section 112S provides that assets of a sub-fund belong exclusively to the sub-fund and can only be used to discharge its liabilities;
 - (viii) Section 112ZF empowers the SFC to give directions to OFCs in specified circumstances;
 - (ix) Section 112ZH enables OFCs to apply for cancellation of their registration while section 112ZI empowers the SFC to cancel the registration of OFCs of its own accord;
 - (x) Sections 112ZK, 112ZL and 112ZM empower the SFC to make rules to provide for, among other things, the carrying on of collective investments by means of OFCs and the regulation of OFCs; and
 - (xi) Section 112ZR empowers the SFC to publish codes and guidelines to provide guidance in respect of matters relating to the incorporation, management, operation and business of OFCs.
- (b) Clause 25 amends section 2(1) of the Inland Revenue Ordinance (Cap. 112) to include the definition of *open-ended fund company*. It also amends the definition of *receiver* in that section.
- (c) Clauses 27, 30, 31 and 32 amend sections 19 and 63 of, and the First Schedule and Schedule 8 to, the Stamp Duty Ordinance (Cap. 117) (“SDO”). A new Schedule 9 is also added to the SDO (clause 33). With these amendments, a

contract note is not required to be executed or stamped for a sale or purchase of any Hong Kong stock referred to in item 1 of Part 2 of new Schedule 9. Further, certain transfers that relate to such sale or purchase are exempt from stamp duty under head 2(4) in the First Schedule to the SDO.

- (d) Clause 34 includes the definition of *open-ended fund company* in section 2(1) of the BRO. It also amends certain definitions in that section to cover an OFC.
- (e) Clause 36 expands the scope of section 5A of the BRO to provide for simultaneous business registration applications for OFCs.

B The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

17. The legislative timetable will be –

Publication in the Gazette	15 January 2016
First Reading and commencement of Second Reading debate	27 January 2016
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

COMMENCEMENT

18. The Bill will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

IMPLICATIONS OF THE PROPOSAL

19. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the Ordinance. There are no significant sustainability implications, and no productivity, environmental, family or

gender implications.

20. On financial and civil service implications, the SFC will be the primary regulator responsible for the registration and regulation of OFCs. The CR will utilize the resources of the Companies Registry Trading Fund to enhance its information system and engage non-civil service contract staff to cater for the processing of incorporation applications and the setting up of a register relating to OFCs for public inspection. As such, there will be no civil service implications to the Government. As regards financial implications, whilst the profits tax exemption regime and stamp duty treatment (i.e. stamp duty will not be payable on initial allotment and cancellation of OFC shares upon redemption for unit trusts) currently applicable to investment funds under unit trust schemes will equally apply to OFCs, it should not give rise to significant revenue loss since OFCs are by nature also investment funds albeit in a different form. If the proposal results in any additional workload on the Judiciary, under the established funding arrangements agreed between the Government and the Judiciary, the Government should provide the Judiciary with the necessary manpower and financial resources relating to this proposal should such needs arise in future.

21. On economic implications, the proposal will diversify our fund domiciliation platform, which will in turn drive demand for professional services such as fund management and investment advice, as well as legal and accounting services. This would help strengthen Hong Kong's position as an international asset management centre and foster the further development of our financial services sector as a whole.

PUBLIC CONSULTATION

22. In March 2014, we conducted a public consultation on the proposal to introduce the OFC structure. A total of 27 written submissions have been received. Respondents were generally supportive of the introduction of a Hong Kong OFC. Comments focused mainly on technical issues. For example, some industry players expressed concerns about the proposed requirements that at least one director of the OFC Board must be a Hong Kong resident and that the custodian must be incorporated in Hong Kong. Industry players had also requested profits tax exemption for onshore privately offered OFCs. We have taken into account the views received in formulating the legislative proposal.

23. We briefed the LegCo Panel on Financial Affairs on the proposal on 7 April 2014. Members generally supported the proposal.

PUBLICITY

24. We will issue a press release upon the gazettal of the Bill, and arrange a spokesperson to answer media enquiries.

BACKGROUND

25. Hong Kong has established itself as an international asset management centre. As at end March 2015, the number of unit trusts and mutual funds authorised by the SFC reached 2 045. There has also been a growing trend in the number of funds domiciling in Hong Kong. The total number of Hong Kong-domiciled funds increased by around 54% in the past three years from 386 in March 2012 to 594 in March 2015, and the proportion of Hong Kong-domiciled funds as a percentage of total number of SFC-authorized unit trusts and mutual funds also went up by 10% for the same period (from 19% in March 2012 to 29% in March 2015). As for the total net asset value, there has been an increase of 27% from US\$1,039 billion to US\$1,322 billion for the three years between December 2011 and December 2014.

ENQUIRIES

26. Enquiries relating to this brief can be directed to Ms Joyce Ho, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2054.

**Financial Services Branch
Financial Services and the Treasury Bureau
13 January 2016**

Securities and Futures (Amendment) Bill 2016

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A BILL

To

Amend the Securities and Futures Ordinance and other enactments to provide for the incorporation, registration, management, operation and regulation of open-ended fund companies; and to provide for related matters and make minor amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Securities and Futures (Amendment) Ordinance 2016.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Enactments amended

- (1) The Securities and Futures Ordinance (Cap. 571) is amended as set out in Part 2.
- (2) The enactments specified in Part 3 are amended as set out in that Part.

Part 2

Amendments to Securities and Futures Ordinance

3. Section 36 amended (rules by Commission)

Section 36(1)(e)—

Repeal

“companies”

Substitute

“corporations”.

4. Section 56 amended (property deposited with recognized clearing house)

Section 56(3)—

Repeal

“the operation of section 633 of the Companies Ordinance (Cap. 622).”

Substitute

“the operation of—

(a) section 633 of the Companies Ordinance (Cap. 622); or

(b) any provision of the OFC rules relating to the rectification of the register of shareholders of an open-ended fund company.”.

5. Section 103 amended (offence to issue advertisements, invitations or documents relating to investments in certain cases)

(1) Section 103(2)—

Repeal paragraph (ga)

Substitute

“(ga) made by or on behalf of a corporation, but only to the extent that the advertisement, invitation or document relates to an offer specified in Part 1 of the Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as read with the other Parts of that Schedule;”.

(2) Section 103(3)(b)—

Repeal

“not a registered company”

Substitute

“neither a registered company nor an open-ended fund company”.

(3) Section 103(3)(c)—

Repeal

“a corporation,”

Substitute

“a corporation that is not an open-ended fund company,”.

6. Part IVA added

After Part IV—

Add

“Part IVA**Open-ended Fund Companies****Division 1—Preliminary****112A. Interpretation of Part IVA**

In this Part—

OFC rules (《開放式基金型公司規則》) means rules made under section 112ZK, 112ZL or 112ZM;

open-ended fund company (開放式基金型公司) means a collective investment scheme constituted as a corporation that holds a certificate of incorporation issued by the Registrar of Companies under section 112C;

proposed company (擬成立公司) means a company intended to be incorporated under this Part;

scheme property (計劃財產), in relation to an open-ended fund company, means the property under the collective investment scheme that is constituted as the company;

sub-custodian (次保管人), in relation to an open-ended fund company, means a person to whom any scheme property of the company is entrusted for safe keeping by virtue of section 112ZA(5)(a) or (b);

sub-fund (子基金)—see section 112R.

112B. Prohibition against carrying on business as open-ended fund company without registration etc.

(1) A person, not being an open-ended fund company that is registered under section 112D, must not—

- (a) carry on business as an open-ended fund company; or
 - (b) hold out as an open-ended fund company.
- (2) A person must not manage any property on behalf of another person who, not being an open-ended fund company that is registered under section 112D—
- (a) carries on business as an open-ended fund company; or
 - (b) holds out as an open-ended fund company.
- (3) A person must not hold out as acting on behalf of another person who, not being an open-ended fund company that is registered under section 112D—
- (a) carries on business as an open-ended fund company; or
 - (b) holds out as an open-ended fund company.
- (4) 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 each 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 each day during which the offence continues.

- (5) A person who, without reasonable excuse, contravenes subsection (2) or (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 each 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 each day during which the offence continues.

Division 2—Incorporation, Registration, Name and Registered Office

112C. Incorporation of open-ended fund company

- (1) Any person may incorporate a company under this Part by delivering to the Registrar of Companies for registration—
 - (a) an incorporation form prescribed by the OFC rules; and
 - (b) a copy of the instrument of incorporation of the proposed company that has been signed in accordance with the OFC rules.
- (2) The documents specified in subsection (1)—
 - (a) must be delivered in the manner prescribed by the OFC rules; and
 - (b) must be accompanied by any document or information prescribed by the OFC rules.
- (3) Subject to subsection (4), if the Registrar of Companies is satisfied that the requirements for incorporation

prescribed by the OFC rules are met with respect to the proposed company, the Registrar—

- (a) must register the documents delivered under subsection (1); and
 - (b) must issue a certificate of incorporation in respect of the proposed company certifying that it is a company incorporated under this Part.
- (4) The Registrar of Companies must not register the relevant documents or issue a certificate of incorporation under subsection (3) unless the Registrar has been notified of the registration of the proposed company under section 112D(7).

112D. Application for registration with Commission before incorporation

- (1) On an application by a person, the Commission may register a proposed company for the purposes of this Part.
- (2) An application for the purposes of subsection (1)—
 - (a) must be made in the manner specified by the Commission; and
 - (b) must be accompanied by any document or information that the Commission requires.
- (3) The registration of a proposed company takes effect on the day on which a certificate of incorporation is issued by the Registrar of Companies under section 112C(3)(b) in respect of it.
- (4) The Commission must refuse to register a proposed company unless it is satisfied that the requirements for registration specified in section 112E will, on the day on

which the registration takes effect, be met with respect to the company.

- (5) Without limiting any other ground on which the Commission may refuse to register a proposed company, the Commission may refuse to do so if it is not satisfied that the registration is in the interest of the investing public.
- (6) On registering a proposed company, the Commission may impose any condition that it considers appropriate.
- (7) The Commission must, as soon as reasonably practicable after registering a proposed company under subsection (1), notify the Registrar of Companies in writing of the registration.
- (8) The Commission must, as soon as reasonably practicable after refusing to register a proposed company under subsection (1), notify the applicant in writing of the refusal and the reasons for it.

112E. Requirements for registration

The requirements for registration specified for the purposes of section 112D(4) are—

- (a) the requirements relating to the name of an open-ended fund company as set out in section 112H(2), (3), (4) and (5);
- (b) the requirement relating to the registered office of an open-ended fund company as set out in section 112I;
- (c) the requirements relating to directors of an open-ended fund company as set out in sections 112U(1), 112V(1), 112W(1) and 112X(1);

- (d) the requirements relating to an investment manager of an open-ended fund company as set out in section 112Z;
- (e) the requirement relating to a custodian of an open-ended fund company as set out in section 112ZA(1); and
- (f) any other requirements for registration prescribed by the OFC rules.

112F. Commission may amend conditions of registration

The Commission may, by notice in writing served on an open-ended fund company, amend or revoke any of the conditions imposed, or impose new conditions, in respect of its registration.

112G. Publication of particulars of open-ended fund company

- (1) The Commission may publish, in any manner it considers appropriate, particulars of an open-ended fund company.
- (2) Particulars published under subsection (1) are not subsidiary legislation.

112H. Name of open-ended fund company

- (1) The name of an open-ended fund company is—
 - (a) the name stated in its certificate of incorporation; or
 - (b) if a change of name has effect under the OFC rules, its new name.
- (2) The name of an open-ended fund company must not—
 - (a) in the opinion of the Commission, be misleading or otherwise undesirable; or

- (b) be the same as the name of another existing open-ended fund company.
- (3) For an open-ended fund company that has an English name only, the name must end with “Open-ended Fund Company” or “OFC”.
- (4) For an open-ended fund company that has a Chinese name only, the name must end with “開放式基金型公司”.
- (5) For an open-ended fund company that has both an English name and a Chinese name—
 - (a) the English name must end with “Open-ended Fund Company” or “OFC”; and
 - (b) the Chinese name must end with “開放式基金型公司”.

112I. Registered office of open-ended fund company

An open-ended fund company must have a registered office in Hong Kong to which all communications and notices may be addressed.

Division 3—Capacity and Powers**112J. Capacity of open-ended fund company**

An open-ended fund company has the capacity, rights, powers and privileges as are prescribed by the OFC rules.

112K. Instrument of incorporation of open-ended fund company

- (1) An open-ended fund company must have an instrument of incorporation prescribing regulations for the company.

- (2) The instrument of incorporation of an open-ended fund company must contain—
 - (a) the name of the company;
 - (b) a statement that the registered office of the company is situated in Hong Kong;
 - (c) the objects of the company;
 - (d) provision as to the kinds of property in which the company is to invest;
 - (e) a statement that the company is an open-ended fund company with variable share capital;
 - (f) a statement that the amount of the paid-up share capital of the company is at all times equal to the net asset value of the company;
 - (g) a statement that the company’s shareholders are not liable for the debts of the company;
 - (h) a statement that the company’s scheme property is entrusted to a custodian of the company for safe keeping in compliance with the law; and
 - (i) any other matters prescribed by the OFC rules.
- (3) For an open-ended fund company with sub-funds, its instrument of incorporation must also contain a statement that the assets of a sub-fund of the company belong exclusively to the sub-fund and are not to be used to discharge the liabilities of, or the claims against, any other person, including the company and any other sub-fund of the company.

112L. Effect of instrument of incorporation

- (1) Subject to this Ordinance, the instrument of incorporation of an open-ended fund company, once registered under this Ordinance—

- (a) has effect as a contract under seal—
 - (i) between the company and each shareholder; and
 - (ii) between a shareholder and each other shareholder; and
- (b) is to be regarded as containing covenants on the part of the company and of each shareholder to observe all the provisions of the instrument.
- (2) Without limiting subsection (1), the instrument of incorporation of an open-ended fund company is enforceable—
 - (a) by the company against each shareholder;
 - (b) by a shareholder against the company; and
 - (c) by a shareholder against each other shareholder.
- (3) Money payable by a shareholder to an open-ended fund company under its instrument of incorporation—
 - (a) is a debt due from the shareholder to the company; and
 - (b) is of the nature of a specialty debt.

Division 4—Contracts

112M. Contracts made by or on behalf of open-ended fund company

- (1) This section applies to—
 - (a) a contract that would be required by law to be in writing and under seal if made between natural persons;

- (b) a contract that would be required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons; and
- (c) a contract that, though made orally and not in writing, would by law be valid if made between natural persons.
- (2) A contract specified in subsection (1)(a) may be made by an open-ended fund company—
 - (a) in writing under the company's common seal (if any); or
 - (b) in writing executed in accordance with the OFC rules and expressed (in whatever words) to be executed by the company.
- (3) A contract specified in subsection (1)(b) may be made on behalf of an open-ended fund company in writing signed by any person acting with the company's authority (whether express or implied).
- (4) A contract specified in subsection (1)(c) may be made on behalf of an open-ended fund company orally by any person acting with the company's authority (whether express or implied).
- (5) A contract made by or on behalf of an open-ended fund company in accordance with this section—
 - (a) is effective in law; and
 - (b) binds the company and its successors and all other parties to the contract.
- (6) A contract made in accordance with this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

112N. Contracts made before open-ended fund company's incorporation

- (1) This section applies if a contract purports to have been made in the name or on behalf of an open-ended fund company before the company was incorporated.
- (2) Subject to any express agreement to the contrary—
 - (a) the contract has effect as a contract made by the person purporting to act for the company or as an agent for the company; and
 - (b) the person is personally liable on the contract and is entitled to enforce the contract.
- (3) After incorporation, the company may ratify the contract to the same extent as if—
 - (a) the company had already been incorporated when the contract was made; and
 - (b) the contract had been made on the company's behalf by an agent acting without the company's authority.
- (4) Despite subsection (2)(b), if the contract is ratified by the company, then on and after the ratification, the liability of the person mentioned in that subsection is not greater than the liability that the person would have incurred if the person had made the contract after the company's incorporation as an agent acting without the company's authority.

112O. Contracts made after cancellation of registration

If—

- (a) an open-ended fund company makes a contract after its registration has been cancelled under section 112ZH or 112ZI; and

- (b) the company fails to comply with any obligation under the contract within 21 days of being called on to do so by the other party to the contract,

the person who has authorized the contract is liable, and if the contract was authorized by 2 or more persons, they are jointly and severally liable, to indemnify that other party in respect of any loss or damage suffered by that other party by reason of the company's failure to comply with the obligation.

Division 5—Share Capital and Shareholders' Liability**112P. Share capital of open-ended fund company**

- (1) An open-ended fund company may issue shares.
- (2) Shares in an open-ended fund company have no nominal value.
- (3) The amount of the paid-up share capital of an open-ended fund company is at all times equal to the net asset value of the company.
- (4) In this section—
net asset value (淨資產值), in relation to an open-ended fund company, means the balance after deducting the total liabilities of the company from its total assets.

112Q. Shareholders' liability

The liability of the shareholders of an open-ended fund company is limited to any amount unpaid on the shares held by the shareholders.

Division 6—Sub-funds**112R. Sub-funds of open-ended fund company**

- (1) The instrument of incorporation of an open-ended fund company may provide for the division of its scheme property into separate parts.
- (2) Each separate part of the scheme property of an open-ended fund company is a sub-fund of the company.

112S. Segregated liability of sub-funds

- (1) The assets of a sub-fund of an open-ended fund company belong exclusively to the sub-fund and must not be used to discharge the liabilities of, or the claims against, any other person, including the company and any other sub-fund of the company.
- (2) Any liability incurred on behalf of, or attributable to, a sub-fund of an open-ended fund company may only be discharged out of the assets of the sub-fund.
- (3) A provision contained in the instrument of incorporation of an open-ended fund company, or in a contract or any other instrument made or executed by an open-ended fund company, is void to the extent that it is inconsistent with subsection (1) or (2).
- (4) An application of, or agreement to apply, assets of a sub-fund of an open-ended fund company in contravention of subsection (1) or (2) is void.
- (5) An open-ended fund company with sub-funds may allocate any assets or liabilities that—
 - (a) it receives or incurs—
 - (i) on behalf of its sub-funds; or

(ii) in order to enable the operation of its sub-funds; and

- (b) are not attributable to any particular sub-fund, between its sub-funds in a manner that it considers is fair to its shareholders.
- (6) A sub-fund of an open-ended fund company is not a legal person separate from the company but the assets of the sub-fund may be subject to orders of the court as if it were a separate legal person.
- (7) Without affecting subsections (1) and (2) and except as provided by the OFC rules, an open-ended fund company may sue and be sued in respect of any sub-fund of the company and may exercise the same rights of set-off in relation to the sub-fund as apply in respect of companies.

Division 7—Directors, Investment Manager, Custodian, Sub-custodian and Auditor**112T. Interpretation of Division 7 of Part IVA**

In this Division—

misconduct (失當行為)—

- (a) in relation to a director of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the director occurring in the course of performing duties as a director in relation to the company;
- (b) in relation to an investment manager of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the investment manager occurring in the course of

performing duties as an investment manager in relation to the company;

- (c) in relation to a custodian of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the custodian occurring in the course of performing duties as a custodian in relation to the company;
- (d) in relation to a sub-custodian of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the sub-custodian occurring in the course of performing duties as a sub-custodian in relation to the company; and
- (e) in relation to an auditor of an open-ended fund company, means negligence, default, breach of duty or breach of trust on the part of the auditor occurring in the course of performing duties as an auditor in relation to the company;

specified officer (指明人員), in relation to an open-ended fund company, means—

- (a) a director of the company;
- (b) an investment manager of the company;
- (c) a custodian of the company;
- (d) a sub-custodian of the company; or
- (e) an auditor of the company.

112U. Directors

- (1) An open-ended fund company must have at least 2 directors.
- (2) The first directors of an open-ended fund company are the persons named as directors in the incorporation form

delivered to the Registrar of Companies under section 112C(1)(a).

- (3) A director of an open-ended fund company owes the open-ended fund company the same fiduciary and other duties that are owed by a director of an ordinary company to the ordinary company.
- (4) In the case of a breach or threatened breach by a director of an open-ended fund company of any of the director's duties referred to in subsection (3), the director is liable to the same consequences as would apply if the director were a director of an ordinary company.
- (5) In this section—

ordinary company (普通公司) means a company formed and registered under the Companies Ordinance (Cap. 622).

112V. Restrictions on body corporate being director

- (1) A body corporate must not be appointed a director of an open-ended fund company.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) However, this section does not affect any liability of a body corporate under this Ordinance for—
 - (a) purporting to act as a director of an open-ended fund company; or
 - (b) acting as a shadow director of an open-ended fund company.

112W. Minimum age for appointment as director

- (1) A person must not be appointed a director of an open-ended fund company unless at the time of appointment the person has attained the age of 18 years.

- (2) An appointment made in contravention of subsection (1) is void.
- (3) However, this section does not affect any liability of a person below the age of 18 years under this Ordinance for—
 - (a) purporting to act as a director of an open-ended fund company; or
 - (b) acting as a shadow director of an open-ended fund company.

112X. Provisions as to undischarged bankrupt acting as director

- (1) A person who is an undischarged bankrupt must not, except with the leave of the Court of First Instance by which the person was adjudged bankrupt—
 - (a) act as a director of an open-ended fund company; or
 - (b) directly or indirectly, be concerned, or take part, in the management of an open-ended fund company.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$700,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 1 year.
- (3) The Court of First Instance must not give leave for the purposes of this section unless a notice of the intention to apply for it has been served on the Official Receiver.
- (4) If the Official Receiver is of opinion that it is contrary to the public interest that an application for leave should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.

112Y. Validity of acts of director

- (1) The acts of a person acting as a director of an open-ended fund company are valid even though it is afterwards discovered—
 - (a) that there was a defect in the appointment of the person as a director;
 - (b) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;
 - (c) that the person had ceased to hold office as a director; or
 - (d) that the person was not entitled to vote on the matter in question.
- (2) Subsection (1) applies even if the appointment of the person as a director is void under section 112V or 112W.

112Z. Investment manager

- (1) An open-ended fund company must have an investment manager who is responsible for managing the scheme property of the company.
- (2) An investment manager of an open-ended fund company must be an intermediary licensed or registered for Type 9 regulated activity.

112ZA. Custodian

- (1) An open-ended fund company must have a custodian.
- (2) All the scheme property of an open-ended fund company must be entrusted to a custodian of the company for safe keeping.
- (3) Despite subsection (2), any scheme property of a class or description specified by the Commission for the

purposes of this subsection is not required to be entrusted to a custodian.

- (4) A custodian of an open-ended fund company must take reasonable care, skill and diligence to ensure the safe keeping of the scheme property of the company that is entrusted to the custodian under subsection (2).
- (5) This section does not prohibit a custodian to whom any scheme property is entrusted for safe keeping from—
 - (a) entrusting to a third party for safe keeping any or all of the scheme property; or
 - (b) authorizing a third party, to whom the custodian has entrusted any scheme property for safe keeping, to entrust any or all of the scheme property to other persons.

112ZB. Auditor

An open-ended fund company must appoint an auditor for each financial year of the company.

112ZC. Provision protecting specified officer from liability void

- (1) This section applies to a provision contained in—
 - (a) the instrument of incorporation of an open-ended fund company; or
 - (b) a contract, or any other instrument, made or executed by an open-ended fund company.
- (2) If a provision purports to exempt a specified officer of the company from any liability that would otherwise attach to the officer in connection with the officer's misconduct, the provision is void.
- (3) If, by a provision, the company directly or indirectly provides an indemnity for a specified officer of the

company against any liability attaching to the officer in connection with the officer's misconduct, the provision is void.

112ZD. Court of First Instance may grant specified officer relief in proceedings for misconduct

- (1) This section applies if, in any proceedings for any misconduct against a specified officer of an open-ended fund company, it appears to the Court of First Instance that the officer—
 - (a) is or may be liable for the misconduct;
 - (b) has acted honestly and reasonably; and
 - (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the officer's appointment).
- (2) The Court of First Instance may relieve the specified officer, either wholly or partly, from the liability on any terms that the Court thinks fit.
- (3) If the case is tried by a judge with a jury, the judge may—
 - (a) withdraw the case in whole or in part from the jury; and
 - (b) direct judgment to be entered for the specified officer on any terms as to costs or otherwise that the judge thinks fit.
- (4) To avoid doubt, this section does not apply in relation to criminal proceedings.

112ZE. Court of First Instance may grant specified officer relief for misconduct on specified officer's application

- (1) A specified officer of an open-ended fund company may apply to the Court of First Instance for relief if the officer has reason to apprehend that a claim will or might be made against the officer for any misconduct.
- (2) On an application by a specified officer of an open-ended fund company, the Court of First Instance may relieve the officer, either wholly or partly, from the liability on any terms that the Court thinks fit if it appears to the Court that the officer—
 - (a) is or may be liable for the misconduct;
 - (b) has acted honestly and reasonably; and
 - (c) ought fairly to be excused for the misconduct, having regard to all the circumstances of the case (including those connected with the officer's appointment).

Division 8—Supervision by Commission**112ZF. Commission's power to give directions**

- (1) The Commission may, by notice in writing, give any of the directions specified in subsection (2) if it appears to the Commission that—
 - (a) with respect to an open-ended fund company, any of the requirements for registration specified in section 112E is no longer met;
 - (b) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has contravened—
 - (i) any of the relevant provisions;

- (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
 - (iii) any of the conditions imposed in respect of the registration of the company;
- (c) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has, in purported compliance with—
- (i) any of the relevant provisions;
 - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
 - (iii) any of the conditions imposed in respect of the registration of the company, knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular;
- (d) an investment manager of an open-ended fund company has contravened any of the terms and conditions of its licence or registration under this Ordinance;
- (e) an investment manager of an open-ended fund company has, in purported compliance with any of the terms and conditions of its licence or registration under this Ordinance, knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular; or
- (f) it is desirable to do so in order to protect the interest of the investing public.

- (2) The directions are—
- (a) a direction to the company or its investment manager that the company is to cease to issue or redeem, or cease to issue and redeem, shares or any class of shares in the company; and
 - (b) a direction to a director of the company that the director is to cease to transfer shares or any class of shares in the company to or from, or to and from, the director's own holding of shares.
- (3) The Commission may, by notice in writing served on the person to whom a direction is given under this section, amend or revoke the direction.
- (4) Subject to subsection (5), if the registration of an open-ended fund company is cancelled under section 112ZH or 112ZI while a direction given under this section in relation to the company is in force—
- (a) the direction is not to be affected in any respect by the cancellation; and
 - (b) this section continues to apply to the company as if its registration had not been cancelled.
- (5) If an order for the winding up of an open-ended fund company is made by the court under section 212 or the OFC rules, a direction given under this section in relation to the company ceases to have effect on the making of the order.

112ZG. Application to Court of First Instance for inquiry into failure to comply with direction

- (1) If a person fails to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance for an inquiry into the failure.

- (2) In the inquiry, the Court of First instance may—
- (a) if satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and
 - (b) if satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and, if applicable, that other person had been guilty of contempt of court.
- (3) If there is a reasonable likelihood that a person will fail to comply with a direction given under section 112ZF, the Commission may apply to the Court of First Instance for an order that—
- (a) the person; and
 - (b) any other person whom the Court is satisfied is able to procure the person to comply with the direction,
- take any action or refrain from taking any action that the Court directs.
- (4) An application under this section must be made by originating summons in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

112ZH. Commission's power to cancel registration on open-ended fund company's application

- (1) Subject to subsection (2), the Commission must cancel the registration under section 112D of an open-ended fund company on an application made by the company in accordance with the OFC rules.

- (2) The Commission may refuse to cancel the registration of an open-ended fund company if it considers that—
 - (a) it is in the public interest that any matter concerning the company should be investigated before its registration is so cancelled; or
 - (b) the cancellation would not be in the interest of the investing public.
- (3) On cancelling the registration of an open-ended fund company, the Commission may impose any condition that it considers appropriate.
- (4) The Commission may, by notice in writing served on an open-ended fund company the registration of which is cancelled, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the cancellation.
- (5) The Commission must not exercise a power under subsection (2), (3) or (4) in relation to an open-ended fund company without first giving the company a reasonable opportunity to be heard.
- (6) If the Commission cancels the registration of an open-ended fund company, it must notify the company in writing of the cancellation.
- (7) If the Commission exercises a power under subsection (2), (3) or (4) in relation to an open-ended fund company, it must notify the company in writing of the exercise and the reasons for it.
- (8) If the Commission cancels the registration of an open-ended fund company, it—
 - (a) must, as soon as reasonably practicable after cancelling the registration, notify the Registrar of Companies in writing of the cancellation; and

- (b) may publish notice of the cancellation and the reason for the cancellation in any manner that it considers appropriate.

112ZI. Commission's power to cancel registration otherwise than on open-ended fund company's application

- (1) The Commission may cancel the registration under section 112D of an open-ended fund company if—
 - (a) it appears to the Commission that, with respect to the company, any of the requirements for registration specified in section 112E is no longer met;
 - (b) it appears to the Commission that the company or a director, an investment manager, a custodian or a sub-custodian of the company has contravened—
 - (i) any of the relevant provisions;
 - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
 - (iii) any of the conditions imposed in respect of the registration of the company;
 - (c) it appears to the Commission that the company or a director, an investment manager, a custodian or a sub-custodian of the company has, in purported compliance with—
 - (i) any of the relevant provisions;
 - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance; or
 - (iii) any of the conditions imposed in respect of the registration of the company,

- knowingly or recklessly provided to the Commission any information that is false or misleading in a material particular;
- (d) the Commission is not satisfied that the continued registration of the company is in the interest of the investing public; or
- (e) an order for the winding up of the company has been made by the court under the OFC rules.
- (2) On cancelling the registration of an open-ended fund company, the Commission may impose any condition that it considers appropriate.
- (3) The Commission may, by notice in writing served on an open-ended fund company the registration of which is cancelled, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the cancellation.
- (4) The Commission must not exercise a power under subsection (1), (2) or (3) in relation to an open-ended fund company without first giving the company a reasonable opportunity to be heard.
- (5) If the Commission exercises a power under subsection (1), (2) or (3) in relation to an open-ended fund company, it must notify the company in writing of the exercise and the reasons for it.
- (6) If the Commission cancels the registration of an open-ended fund company, it—
- (a) must, as soon as reasonably practicable after cancelling the registration, notify the Registrar of Companies in writing of the cancellation; and

- (b) may publish notice of the cancellation and the reasons for the cancellation in any manner that it considers appropriate.

112ZJ. Permission to carry on essential business operations on cancellation of registration

- (1) The Commission may, by notice in writing served on an open-ended fund company the registration of which has been cancelled under section 112ZH or 112ZI, permit the company to carry on essential business operations.
- (2) The registration of an open-ended fund company to which permission is given is, while it carries on essential business operations in accordance with the permission, deemed not to be cancelled for the purposes of this Ordinance.
- (3) On giving permission to an open-ended fund company, the Commission may impose any condition that it considers appropriate.
- (4) A condition imposed under subsection (3) must be specified in the notice in respect of the permission.
- (5) A permission given or a condition imposed in respect of it under subsection (3) takes effect—
- (a) at the time of the service of the notice in respect of the permission; or
- (b) if a later time is specified in the notice, at that time.
- (6) The Commission may, by notice in writing served on an open-ended fund company to which permission is given, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the permission.
- (7) In this section—

essential business operations (必要的業務運作), in relation to an open-ended fund company, means business operations that are essential for closing down its business.

Division 9—Rules made by Commission

112ZK. Commission's power to make rules

- (1) The Commission may make rules to provide for—
 - (a) the carrying on of collective investments by means of open-ended fund companies; and
 - (b) the regulation of open-ended fund companies.
- (2) Rules made under subsection (1) may provide for—
 - (a) the requirements for incorporation of proposed companies;
 - (b) the requirements for registration of proposed companies with the Commission;
 - (c) the naming of open-ended fund companies;
 - (d) the change of names of open-ended fund companies;
 - (e) the capacity, objects, powers, privileges, rights and liabilities of open-ended fund companies;
 - (f) the instruments of incorporation of open-ended fund companies, including the form of such instruments;
 - (g) the requirements relating to the execution of documents by open-ended fund companies;
 - (h) the types of investments that open-ended fund companies may make;

- (i) the management and operation of open-ended fund companies, including their administration and procedure;
 - (j) the management of the scheme property of open-ended fund companies;
 - (k) the accounting and reporting requirements with which open-ended fund companies must comply;
 - (l) the making or issue of statements, certificates or other documents by open-ended fund companies and their officers;
 - (m) the keeping of accounts and records by open-ended fund companies, and the inspection of such accounts and records;
 - (n) the keeping of a register of shareholders and other registers by open-ended fund companies, and the inspection and rectification of such registers;
 - (o) matters relating to the share capital of open-ended fund companies, including valuation, purchase, redemption and transfer of shares, redenomination of share capital and variation of rights attached to shares;
 - (p) the requirements relating to segregating the liabilities of sub-funds of an open-ended fund company; and
 - (q) the cross investments between sub-funds of an open-ended fund company.
- (3) Rules made under subsection (1) may also provide for—
 - (a) the rights, powers and liabilities of a shareholder of an open-ended fund company;

- (b) the rights, powers, duties and liabilities of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company;
 - (c) the eligibility of a person to be a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company;
 - (d) the appointment and removal of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company, including the procedures to be followed when they cease to act;
 - (e) the notification of the appointment and removal of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company; and
 - (f) the notification of changes in the particulars of a director, an investment manager, a custodian, a sub-custodian or an auditor of an open-ended fund company.
- (4) Rules made under subsection (1) may also provide for—
- (a) the procedures to be followed in relation to the giving, amendment and revocation of directions under section 112ZF;
 - (b) the procedures to be followed in relation to the cancellation of the registration of open-ended fund companies under section 112ZH or 112ZI;
 - (c) the merger of 2 or more open-ended fund companies and the reorganization of an open-ended fund company into 2 or more open-ended fund companies;

- (d) matters relating to the arrangements and compromises entered into, or proposed to be entered into, by open-ended fund companies, including the Commission's right to be heard in the related court process and the registration of arrangements and compromises with the Registrar of Companies;
 - (e) the winding up and dissolution of open-ended fund companies, including the grounds and procedures for such winding up and dissolution;
 - (f) the winding up and dissolution of sub-funds of open-ended fund companies, including the grounds and procedures for such winding up and dissolution;
 - (g) the power of the Court of First Instance to make an order to disqualify a person from acting in any capacity in relation to open-ended fund companies or the scheme property of open-ended fund companies, or from acting in any capacity in the promotion or incorporation of proposed companies;
 - (h) a court's functions in relation to any matter concerning open-ended fund companies and sub-funds of open-ended fund companies; and
 - (i) any other thing that, under this Part, is required or permitted to be prescribed or provided by rules.
- (5) Rules made under this section may provide that a person is not excused from complying with a requirement to produce a document or information imposed on the person under those rules only on the ground that to do so might tend to incriminate the person.
- (6) Subsections (2), (3), (4) and (5) do not have the effect of limiting subsection (1).

112ZL. Rules made with consent of Registrar of Companies

- (1) The Commission may, with the consent of the Registrar of Companies, make rules to provide for the functions of the Registrar in relation to open-ended fund companies, including—
- (a) specifying the form of any document required or authorized to be delivered to the Registrar, other than a document the form of which is or may be prescribed by this Ordinance;
 - (b) specifying requirements in relation to documents and information required or authorized to be delivered to the Registrar;
 - (c) keeping records of documents and information relating to open-ended fund companies;
 - (d) keeping a list of the names of open-ended fund companies;
 - (e) establishing and maintaining a register of open-ended fund companies;
 - (f) making available the OFC register for public inspection;
 - (g) issuing copies or certified true copies of documents and information on the OFC register;
 - (h) requiring an open-ended fund company to resolve any inconsistency between information contained in a document registered by the Registrar in respect of the company and any other information relating to the company on the OFC register;
 - (i) ensuring that the OFC register is accurate and up-to-date;
 - (j) annotating the OFC register;

- (k) issuing certificates of change of name; and
 - (l) destroying or disposing of documents and information delivered to the Registrar for registration.
- (2) The Commission may also, with the consent of the Registrar of Companies, make rules to provide for—
- (a) the registration by the Registrar of documents delivered by or on behalf of proposed companies and open-ended fund companies;
 - (b) appeals to the Court of First Instance against a decision of the Registrar to refuse registration of a document;
 - (c) the information to be contained in the OFC register;
 - (d) the withholding of information on the OFC register from public inspection, and the use and disclosure of the withheld information;
 - (e) applications to the Court of First Instance for an order to rectify information on, or to remove information from, the OFC register and the Court's powers in relation to such applications;
 - (f) the Registrar taking part in the proceedings for an order mentioned in paragraph (e) before the Court of First Instance;
 - (g) the forms of the certificates issued by the Registrar;
 - (h) the admissibility in evidence in judicial or other proceedings of documents and information certified to be true by the Registrar;

- (i) the delivery of documents and information required or authorized to be delivered to the Registrar by electronic means;
 - (j) the effect of a discrepancy between a document delivered to the Registrar that is in a language other than English and Chinese and the certified translation of the document;
 - (k) inquiry by the Registrar into acts that would constitute offences relating to the giving of any misleading, false or deceptive information or statement to the Registrar and the delegation of the Registrar's powers to inquire into such acts;
 - (l) calculation of the daily fine imposed under rules made under this section or section 112ZK or 112ZM that make it an offence for failing to comply with a requirement to deliver a document or information to the Registrar under those rules and that impose a fine for each day during which the offence continues;
 - (m) the issue of guidelines by the Registrar and the effect of such guidelines; and
 - (n) the protection and immunity of the Registrar, other public officers and other persons.
- (3) Rules made under this section may provide that a person is not excused from complying with a requirement to produce a document or information imposed on the person under those rules only on the ground that to do so might tend to incriminate the person.
- (4) In this section—
- OFC register** (《開放式基金型公司登記冊》) means the register of open-ended fund companies maintained by

the Registrar of Companies under rules made under this section.

112ZM. Rules made with consent of Official Receiver

The Commission may, with the consent of the Official Receiver, make rules to provide for the functions of the Official Receiver in relation to—

- (a) the winding up and dissolution of open-ended fund companies; and
- (b) the winding up and dissolution of sub-funds of open-ended fund companies.

112ZN. OFC rules may prescribe offences

- (1) The OFC rules may—
 - (a) make it an offence for a person to do, or omit to do, any specified act; and
 - (b) provide that the offence is punishable by a fine, imprisonment or both.
- (2) The OFC rules may provide for defences to any offence prescribed by those rules.
- (3) For an offence punishable on conviction on indictment, the maximum fine that may be prescribed is \$1,000,000 and the maximum imprisonment that may be prescribed is 7 years. In addition, in the case of a continuing offence, a further fine not exceeding level 6 for each day during which the offence continues may be prescribed.
- (4) For an offence punishable on summary conviction, the maximum fine that may be prescribed is \$500,000 and the maximum imprisonment that may be prescribed is 2 years. In addition, in the case of a continuing offence, a

further fine not exceeding level 3 for each day during which the offence continues may be prescribed.

112ZO. Modification or waiver of requirements of OFC rules by notice

- (1) The Commission may, on an application by a person specified in subsection (2), grant a modification or waiver in relation to the person in respect of any of the requirements of the OFC rules.
- (2) The person is—
 - (a) an open-ended fund company;
 - (b) a director of an open-ended fund company;
 - (c) an investment manager of an open-ended fund company;
 - (d) a custodian of an open-ended fund company;
 - (e) a sub-custodian of an open-ended fund company; or
 - (f) an auditor of an open-ended fund company.
- (3) An application for the purposes of subsection (1)—
 - (a) must be made in the manner prescribed by the OFC rules; and
 - (b) must be accompanied by the fee prescribed by regulations made under section 112ZQ for the purposes of this section.
- (4) The Commission may only grant a modification or waiver if it is satisfied that the modification or waiver will not prejudice the interest of the investing public.
- (5) The grant of a modification or waiver in relation to a person is to be effected by a notice in writing served on

the person specifying the period (if any) for which the modification or waiver is in force.

- (6) On granting a modification or waiver, the Commission may impose any condition that it considers appropriate.
- (7) The Commission may, by notice in writing served on a person in relation to whom a modification or waiver is granted, amend or revoke the modification or waiver.
- (8) The Commission may, by notice in writing served on a person in relation to whom a modification or waiver is granted, amend or revoke any of the conditions imposed, or impose new conditions, in respect of the modification or waiver.
- (9) A person who contravenes a condition imposed under subsection (6) or (8), or as amended under subsection (8), commits an offence and is liable on conviction to a fine at level 6.

112ZP. Modification or waiver of requirements of OFC rules by rules

- (1) The Commission may by rules grant a modification or waiver, in relation to a class of open-ended fund companies, or a class of directors, investment managers, custodians, sub-custodians or auditors of open-ended fund companies, in respect of any of the requirements of the OFC rules.
- (2) The Commission may only grant a modification or waiver if it is satisfied that the modification or waiver will not prejudice the interest of the investing public.
- (3) The Commission may specify in the rules the conditions subject to which a modification or waiver is granted.
- (4) The rules may—

- (a) make it an offence for a person to contravene any of the conditions specified in respect of a modification or waiver; and
- (b) provide that the offence is punishable by a fine not exceeding level 6.

Division 10—Miscellaneous

112ZQ. Financial Secretary may make regulations relating to fees

- (1) Despite section 395, the Financial Secretary may make regulations to provide for—
 - (a) the charging or collecting of fees by the Commission—
 - (i) in respect of any things done, or services provided, by the Commission in performing the Commission's functions under this Part or the OFC rules; or
 - (ii) in respect of any things done, or services provided, by the Commission in connection with any other matters specified in the OFC rules;
 - (b) the charging or collecting of fees by the Registrar of Companies—
 - (i) in respect of any things done, or services provided, by the Registrar in performing the Registrar's functions under this Part or the OFC rules; or
 - (ii) in respect of any things done, or services provided, by the Registrar in connection with any other matters specified in the OFC rules; and

- (c) the charging or collecting of fees by the Official Receiver—
 - (i) in respect of any things done, or services provided, by the Official Receiver in performing the Official Receiver's functions under this Part or the OFC rules; or
 - (ii) in respect of any things done, or services provided, by the Official Receiver in connection with any other matters specified in the OFC rules.
- (2) The regulations may—
 - (a) provide for the amount of the fees to be fixed by or determined under the regulations;
 - (b) provide for different fees to be payable in respect of the same matter in different circumstances;
 - (c) specify when and how fees are to be paid; and
 - (d) provide for the waiver of payment of any fee prescribed by the regulations, either generally or in a particular case.
- (3) The Registrar of Companies—
 - (a) may, subject to the approval of the Financial Secretary, determine what fees are chargeable in respect of the things done, or services provided—
 - (i) for which fees are not provided for by the regulations; or
 - (ii) in circumstances other than those for which fees are provided by the regulations; and
 - (b) may charge such fees.

112ZR. Commission may publish codes and guidelines

- (1) The Commission may publish, in the Gazette and in any other manner it considers appropriate, any code or guideline to provide guidance in respect of any matter relating to—
 - (a) the incorporation, registration, management and operation of open-ended fund companies, including their administration and procedure; or
 - (b) the business of open-ended fund companies.
- (2) Without limiting subsection (1), a code or guideline published under that subsection may refer to obligations to observe any other codes or guidelines issued, or requirements imposed, otherwise than by the Commission.
- (3) The Commission may amend any code or guideline published under subsection (1).
- (4) Any amendments made to a code or guideline published under subsection (1) must be published in the Gazette and in any other manner the Commission considers appropriate.
- (5) A code or guideline published under subsection (1)—
 - (a) may be of general or special application and, in particular, may be made so as to apply, or so as not to apply—
 - (i) to a specified extent in relation to a specified person or to members of a specified class of persons; or
 - (ii) in specified circumstances; and

- (b) may make different provisions for different circumstances and provide for different cases or classes of cases.
- (6) A code or guideline published under subsection (1) and all amendments made to it are not subsidiary legislation.

112ZS. Effect of codes and guidelines

- (1) A failure by a person to comply with a provision in a code or guideline does not itself make the person liable to any judicial or other proceedings.
- (2) However, a failure on the part of an intermediary acting as an investment manager of an open-ended fund company, or a representative of such an intermediary, to comply with a provision in a code or guideline may be taken into account in considering, for the purposes of any provision of this Ordinance—
 - (a) in the case of an intermediary, whether it is a fit and proper person to be or to remain licensed or registered;
 - (b) in the case of a representative of an intermediary that is a licensed corporation, whether he or she is a fit and proper person to be or to remain licensed as a representative; or
 - (c) in the case of a representative of an intermediary that is a registered institution, whether he or she is a fit and proper person to be or to remain a person 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 by a registered institution in respect of a regulated activity.

- (3) Despite subsection (1), in any proceedings under this Ordinance before a court—
- (a) a code or guideline is admissible in evidence; and
 - (b) if any provision in a code or guideline appears to the court to be relevant to a question arising in the proceedings, the provision is to be taken into account in determining the question.
- (4) In this section—
code or guideline (守則或指引) means a code or guideline published under section 112ZR.

112ZT. Offence of fraudulent trading

- (1) If any business of an open-ended fund company is carried on—
- (a) with intent to defraud creditors of the company or creditors of any other person; or
 - (b) for any fraudulent purpose,
- every person who is knowingly a party to the carrying on of the business with that intent or for that purpose commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$10,000,000 and to imprisonment for 10 years; or
 - (b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.
- (3) This section applies whether or not the open-ended fund company has been, or is in the course of being, wound up.”.

7. **Section 180 amended (supervision of intermediaries and their associated entities)**
- (1) Section 180(2)(d)—
Repeal the full stop
Substitute
“; or”.
- (2) After section 180(2)(d)—
Add
“(e) any provision in a code or guideline published under this Ordinance.”.
8. **Section 182 amended (investigations by Commission)**
- (1) Section 182(1)(b)(vi)—
Repeal
“; or”
Substitute a semicolon.
- (2) Section 182(1)(b)(vii), after “transactions;”—
Add
“or”.
- (3) After section 182(1)(b)(vii)—
Add
“(viii) the management of an open-ended fund company or the management or safe keeping of the scheme property of an open-ended fund company;”.
- (4) Section 182(1)(d)—
Repeal
“(vii)”

Substitute

“(viii)”.

- (5) Section 182(1)(f)—

Repeal

“; or”

Substitute a semicolon.

- (6) After section 182(1)(f)—

Add

“(fa) the Commission has reason to inquire whether, with respect to an open-ended fund company, any of the requirements for registration specified in section 112E is no longer met;

(fb) the Commission has reason to inquire whether any of the conditions imposed in respect of the registration of an open-ended fund company has been or is being complied with; or”.

- (7) Section 182(1)(g)—

Repeal

“or (f)”

Substitute

“, (f), (fa) or (fb)”.

9. Section 193 amended (interpretation of Part IX)

- (1) Section 193(1), definition of
- misconduct*
- , paragraph (c)—

Repeal

“; or”

Substitute a semicolon.

- (2) Section 193(1), definition of
- misconduct*
- , paragraph (d)—

Repeal

“public interest,”

Substitute

“public interest; or”.

- (3) Section 193(1), definition of
- misconduct*
- , after paragraph (d)—

Add

“(e) an act or omission that—

(i) relates to the carrying on of any activity, other than a regulated activity, that an intermediary may carry on for an open-ended fund company under this Ordinance; and

(ii) in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest.”.

- (4) Section 193(2)—

Repeal

“or (d)”

Substitute

“, (d) or (e)”.

- (5) Section 193(3)—

Repeal

“paragraph (d)”

Substitute

“paragraphs (d) and (e)”.

- (6) Section 193(3), after “set out in”—

Add

“any code or guideline published under section 112ZR,”.

10. Section 201 amended (general provisions relating to exercise of powers under Division 2 or 3)

Section 201(5)—

Repeal

“or 214”

Substitute

“, 214, 214A or 214B”.

11. Section 212 amended (winding-up orders and bankruptcy orders)

After section 212(1)—

Add

“(1A) If it appears to the Commission that it is desirable in the public interest that an open-ended fund company should be wound up, the Commission may present a petition for the company to be wound up under the OFC rules on the ground that it is just and equitable that the company should be so wound up, and those rules apply to such a petition as they apply in relation to a petition presented under them.”.

12. Section 213 amended (injunctions and other orders)

(1) After section 213(3)—

Add

“(3A) The Court of First Instance may also, on the application of the Commission, make any of the orders specified in subsection (3B) if—

- (a) an open-ended fund company or a director, an investment manager, a custodian or a sub-custodian of an open-ended fund company has contravened—
 - (i) any of the relevant provisions;
 - (ii) any notice or requirement given or made by the Commission under or pursuant to this Ordinance;
 - (iii) any of the conditions imposed in respect of the registration of the company; or
 - (iv) any direction given by the Commission under or pursuant to this Ordinance; or
- (b) an investment manager of an open-ended fund company has contravened any of the terms and conditions of its licence or registration under this Ordinance.

(3B) The orders specified for the purposes of subsection (3A) are—

- (a) for an open-ended fund company without sub-funds—
 - (i) an order removing a director of the company;
 - (ii) an order removing an investment manager of the company;
 - (iii) an order removing a custodian of the company;
 - (iv) an order removing a sub-custodian of the company;
 - (v) an order requiring a part of the investments of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the

- part to be distributed to shareholders of the company in accordance with the OFC rules;
- (vi) an order requiring all of the investments of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company to be distributed to shareholders of the company in accordance with the OFC rules; and
- (vii) an order requiring the company to be wound up under the OFC rules; and
- (b) for an open-ended fund company with sub-funds—
- (i) any of the orders specified in paragraph (a);
- (ii) an order requiring the investments made in respect of a part of a sub-fund of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the part to be distributed to shareholders of the company in accordance with the OFC rules;
- (iii) an order requiring all of the investments made in respect of a sub-fund of the company to be realized and the funds remaining after the discharge of the liabilities (if any) of the company attributable to the sub-fund to be distributed to shareholders of the company in accordance with the OFC rules; and
- (iv) an order requiring a sub-fund of the company to be wound up under the OFC rules.”
- (2) Section 213(4), after “subsection (1)”—
- Add**
- “or (3A)”.

- (3) Section 213(5), after “subsection (1)”—
- Add**
- “or (3A)”.
- (4) Section 213(6), after “subsection (1)”—
- Add**
- “or (3A)”.
- (5) Section 213(7), after “under subsection (1)”—
- Add**
- “or (3A)”.
- (6) Section 213(7)(a), after “to (v)”—
- Add**
- “or (3A)(a) or (b)”.
- (7) Section 213(7), Chinese text—
- Repeal**
- “參與” (wherever appearing)
- Substitute**
- “從事”.
- (8) Section 213(8), after “subsection (1)”—
- Add**
- “or (3A)”.
- (9) Section 213(9), after “subsection (1)”—
- Add**
- “, (3A)”.
- (10) After section 213(10)—
- Add**
- “(11) In this section—

sub-fund (子基金)—see section 112R.”.

13. Sections 214A and 214B added

Part X, Division 2, after section 214—

Add

“214A. Remedies in cases of unfair prejudice etc. to interests of shareholders of open-ended fund companies

- (1) The Commission may by petition apply to the Court of First Instance for an order under this section if it appears to the Commission that at any time since the incorporation of an open-ended fund company, the business or affairs of the company have been conducted in a manner—
- (a) oppressive to its shareholders or any part of its shareholders;
 - (b) involving defalcation, fraud, misfeasance or other misconduct towards it or its shareholders or any part of its shareholders;
 - (c) resulting in its shareholders or any part of its shareholders not having been given all the information with respect to its business or affairs that they might reasonably expect; or
 - (d) unfairly prejudicial to its shareholders or any part of its shareholders.
- (2) If, on an application under subsection (1), the Court of First Instance is of the opinion that the business or affairs of an open-ended fund company have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or a failure to act, the Court may—

- (a) make an order restraining the carrying out, or requiring the carrying out, of an act;
 - (b) make an order requiring the company to bring in its name any proceedings that the Court considers appropriate against any persons, and on any terms, specified in the order;
 - (c) make an order appointing a receiver or manager of the whole or any part of the property or business of the company, specifying the powers and duties of the receiver or manager and fixing his or her remuneration;
 - (d) make an order that a person wholly or partly responsible for the business or affairs of the company having been so conducted must not, without the leave of the Court—
 - (i) be, or continue to be, a director, an investment manager, a liquidator, or a receiver or manager of the property or business, of the company or any other corporation; or
 - (ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the company or any other corporation; or
 - (e) make any other order the Court considers appropriate, whether for regulating the conduct of the business or affairs of the company in the future, or for the purchase of the shares of any shareholders of the company by other shareholders of the company or by the company, or otherwise.
- (3) An order under subsection (2)(d) must specify the period for which it is to have effect and such a period must not exceed 15 years.

- (4) The Court of First Instance must, as soon as reasonably practicable after making an order under subsection (2)(d), file the order with the Registrar of Companies.

214B. Order under section 214A altering open-ended fund company's instrument of incorporation

- (1) If an order made under section 214A alters the instrument of incorporation of an open-ended fund company, despite any other provisions of this Ordinance but subject to the provisions of the order, the company does not have the power, without the leave of the Court of First Instance, to make any further alteration to the instrument that is inconsistent with the order.
- (2) If the instrument of incorporation of an open-ended fund company is altered by an order made under section 214A—
- (a) the alteration has the same effect as if duly made by a resolution of the company; and
- (b) this Ordinance applies to the instrument as altered accordingly.
- (3) An open-ended fund company must, within 14 days after an order altering its instrument of incorporation is made under section 214A, deliver an office copy of the order to the Registrar of Companies for registration under this Ordinance.
- (4) An open-ended fund company must, within 14 days after the leave of the Court of First Instance to alter its instrument of incorporation is given, deliver an office copy of the leave to the Registrar of Companies for registration under this Ordinance.
- (5) An open-ended fund company that contravenes subsection (3) or (4) commits an offence and is liable on

conviction to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

- (6) In this section—
alter (改動) includes add to.”

14. Section 336 amended (register of interests in shares and short positions)

Section 336(9)—

Repeal

“Subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall”

Substitute

“If a listed corporation that is not an open-ended fund company ceases to be a listed corporation, it must, subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32),”.

15. Section 352 amended (register of directors' and chief executives' interests and short positions)

Section 352(10)—

Repeal

“Subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall”

Substitute

“If a listed corporation that is not an open-ended fund company ceases to be a listed corporation, it must, subject to

section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32),”.

16. Section 378 amended (preservation of secrecy, etc.)

After section 378(3)(b)—

Add

“(ba) to a person who is a liquidator appointed under the OFC rules;”.

17. Section 379 amended (avoidance of conflict of interests)

Section 379(2)(b), after “Court of First Instance under”—

Add

“the OFC rules;”.

18. Section 400 amended (service of notices, etc.)

(1) After section 400(1)(b)—

Add

“(ba) in the case of an open-ended fund company, it is—

- (i) delivered to any officer of the company by hand;
- (ii) left at, or sent by post to, the company’s registered office in Hong Kong;
- (iii) sent by facsimile transmission to its last known facsimile number; or
- (iv) sent by electronic mail transmission to its last known electronic mail address;”.

(2) Section 400(1)(e), after “a company,”—

Add

“ an open-ended fund company;”.

19. Schedule 1 amended (interpretation and general provisions)

Schedule 1, Part 1, section 1—

Add in alphabetical order

“*OFC rules* (《開放式基金型公司規則》) has the meaning given by section 112A of this Ordinance;

open-ended fund company (開放式基金型公司) has the meaning given by section 112A of this Ordinance;

scheme property (計劃財產) has the meaning given by section 112A of this Ordinance;”.

20. Schedule 2 amended (Securities and Futures Commission)

(1) Schedule 2, Part 2, section 2(74), after “213(1)”—

Add

“or (3A)”.

(2) Schedule 2, Part 2, after section 2(75)—

Add

“(75A) to apply to the Court of First Instance, under section 214A(1) of this Ordinance;”.

21. Schedule 5 amended (regulated activities)

Schedule 5, Part 2, definition of *dealing in securities*, after paragraph (xi)—

Add

“(xia) being an open-ended fund company, issues any advertisement, invitation or document in respect of the shares in the company;”.

22. Schedule 8 amended (Securities and Futures Appeals Tribunal)

Schedule 8, Part 2, Division 1, after item 15—

	Add	
“15A.	Section 112D(1) of this Ordinance	Refusal to register a proposed company.
15B.	Section 112D(6) of this Ordinance	Imposition of any condition.
15C.	Section 112F of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
15D.	Section 112ZF(1) of this Ordinance	Direction to a person.
15E.	Section 112ZF(3) of this Ordinance	Amendment of any direction.
15F.	Section 112ZH(2) of this Ordinance	Refusal to cancel registration.
15G.	Section 112ZH(3) of this Ordinance	Imposition of any condition.
15H.	Section 112ZH(4) of this Ordinance.	Amendment or revocation of any condition, or imposition of any new condition.
15I.	Section 112ZI(1) of this Ordinance	Cancellation of registration.
15J.	Section 112ZI(2) of this Ordinance	Imposition of any condition.
15K.	Section 112ZI(3) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
15L.	Section 112ZJ(3) of this Ordinance	Imposition of any condition.
15M.	Section 112ZJ(6) of this Ordinance	Amendment or revocation of any condition, or imposition

		of any new condition.
15N.	Section 112ZO(6) of this Ordinance	Imposition of any condition.
15O.	Section 112ZO(7) of this Ordinance	Amendment or revocation of a modification or waiver.
15P.	Section 112ZO(8) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.”.

Part 3

Related Amendments

Division 1—Amendment to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

23. **Section 168R amended (register of disqualification orders)**

Section 168R(5), definition of *disqualification order*, paragraph (c), after “214(2)(d),”—

Add

“214A(2)(d),”.

Division 2—Amendment to Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. 1)

24. **Schedule 1 amended**

Schedule 1, Form D.O. 1, item (1), after—

“

Section 214(2)(d) of SFO	
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 ”

Add

“

Section 214A(2)(d) of SFO	
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 ”.

Division 3—Amendments to Inland Revenue Ordinance (Cap. 112)

25. **Section 2 amended (interpretation)**

(1) Section 2(1), definition of *receiver*—

Repeal

“or liquidator”

Substitute

“, provisional liquidator or liquidator”.

(2) Section 2(1)—

Add in alphabetical order

“*open-ended fund company* (開放式基金型公司) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571);”.

26. **Section 57 amended (principal officer to act on behalf of a corporation or body of persons)**

(1) Section 57—

Repeal subsection (1)

Substitute

“(1) The following person is answerable for doing all the acts, matters or things that are required to be done under the provisions of this Ordinance by a corporation or body of persons—

(a) for a corporation that is an open-ended fund company, any director or investment manager or the provisional liquidator or liquidator of the corporation;

(b) for any other corporation, the secretary, manager, any director or the provisional liquidator or liquidator of the corporation;

(c) for a body of persons, its principal officer.”.

(2) Section 57(2)—

Repeal

everything before “is ordinarily”

Substitute

“(2) If no person specified in subsection (1)”.

(3) After section 57(2)—

Add

“(3) In this section—

investment manager (投資經理) means an investment manager within the meaning of section 112Z of the Securities and Futures Ordinance (Cap. 571).”.

Division 4—Amendments to Stamp Duty Ordinance (Cap. 117)

27. **Section 19 amended (contract notes, etc. in respect of sale and purchase of Hong Kong stock)**

Section 19(1DA), after “Schedule 8”—

Add

“or Part 2 of Schedule 9”.

28. **Section 30A added**

After section 30—

Add

“30A. Sub-schemes under unit trust schemes

- (1) This section applies if the trust instrument of a unit trust scheme (*main scheme*) provides for the division of its trust property into separate parts.
- (2) The main scheme is to be regarded as not being a unit trust scheme for the purposes of this Ordinance.

(3) Each separate part of the trust property (*sub-scheme*) is to be regarded as a unit trust scheme for the purposes of this Ordinance.

(4) If subsection (3) applies, a reference in this Ordinance to a person interested in or entitled to a unit under a unit trust scheme is a reference to a person who owns a unit issued in respect of a sub-scheme.”.

29. **Part IVA added**

After Part IV—

Add

“Part IVA

Open-ended Fund Companies

37A. **Interpretation of Part IVA**

In this Part—

investment manager (投資經理) means an investment manager within the meaning of section 112Z of the Securities and Futures Ordinance (Cap. 571);

open-ended fund company (開放式基金型公司) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571);

scheme property (計劃財產) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571).

37B. Application of certain provisions relating to unit trust schemes to open-ended fund companies

Sections 19, 19A, 30, 47A and 47B apply in relation to an open-ended fund company as if—

- (a) a reference in those sections to a unit trust scheme were a reference to an open-ended fund company;
- (b) a reference in those sections to a unit under a unit trust scheme were a reference to a share of an open-ended fund company;
- (c) a reference in sections 19, 19A and 30 to a manager under a unit trust scheme were a reference to an investment manager of an open-ended fund company;
- (d) a reference in sections 19A and 30 to a trustee under a unit trust scheme were a reference to an open-ended fund company;
- (e) a reference in sections 19A and 30 to the trust property of a unit trust scheme were a reference to the scheme property of an open-ended fund company;
- (f) a reference in section 30 to a person interested in or entitled to a unit under a unit trust scheme were a reference to a shareholder of an open-ended fund company;
- (g) a reference in section 47A to a manager of a fund that is a unit trust scheme were a reference to an investment manager of an open-ended fund company; and
- (h) a reference in section 47A to a trustee of a fund that is a unit trust scheme were a reference to an open-ended fund company.

37C. Sub-funds of open-ended fund companies

- (1) This section applies if the instrument of incorporation of an open-ended fund company (*main company*) provides for the division of its scheme property into separate parts.
- (2) The main company is to be regarded as not being an open-ended fund company for the purposes of this Ordinance.
- (3) Each separate part of the scheme property (*sub-fund*) is to be regarded as an open-ended fund company for the purposes of this Ordinance.
- (4) If subsection (3) applies, a reference in section 37B(f) to a shareholder of an open-ended fund company is a reference to a person who owns a share issued in respect of a sub-fund.”.

30. Section 63 amended (regulations)

Section 63(c)—

Repeal

“Schedule 8”

Substitute

“Schedules 8 and 9”.

31. First Schedule amended

- (1) First Schedule—

Repeal

“& 8]”

Substitute

“, 8 & 9]”.

- (2) First Schedule, head 2(4), Note 2, after “Schedule 8”—
Add
“or Part 3 of Schedule 9”.

32. Schedule 8 amended (transactions and transfers relating to exchange traded funds)

Schedule 8—

Repeal

“Sch.]”

Substitute

“Sch. & Sch. 9”.

33. Schedule 9 added

After Schedule 8—

Add

“Schedule 9

[ss. 19 & 63 &
1st Sch.]

**Transactions and Transfers Relating to
Authorized Open-ended Collective Investment
Schemes**

Part 1

Interpretation

1. In this Schedule—

allotment (分配)—

- (a) for a share or unit of an authorized open-ended collective investment scheme that is not a unit trust scheme, means the issue of the share or unit; and
- (b) for a unit of an authorized open-ended collective investment scheme that is a unit trust scheme, means the issue of the unit, and includes the sale of the unit effected by the managers under the scheme in the circumstances described in section 19(1A)(b)(ii);

authorized open-ended collective investment scheme (認可開放式集體投資計劃) means an open-ended collective investment scheme (as defined by section 1 of Part 1 of Schedule 8) authorized under section 104 of the Securities and Futures Ordinance (Cap. 571);

sale (售賣) and *sale or purchase* (售賣或購買) have the meaning given by section 19(16).

2. For the purposes of this Schedule, there is a redemption of a share or unit of an authorized open-ended collective investment scheme if the share or unit is cancelled or extinguished after—

- (a) the share or unit is transferred to the scheme; or
- (b) a person authorizes or requires the scheme to treat the person as no longer interested in the share or unit.

Part 2

Transactions to which Section 19(1) does not Apply

1. A sale or purchase of any Hong Kong stock that satisfies both of the following conditions—
 - (a) the sale or purchase is made in consideration of any allotment or redemption of a share or unit of an authorized open-ended collective investment scheme;
 - (b) the value of the Hong Kong stock is proportionate to the value of the share or unit.

Part 3

Transfers on which Stamp Duty under Head 2(4) in First Schedule is not Payable

1. A transfer executed for a sale or purchase of Hong Kong stock referred to in item 1 of Part 2 of this Schedule.
2. An instrument that is deemed under section 30(3) to be a transfer of a unit under a unit trust scheme by way of sale falling within head 2(4) in the First Schedule where the sale satisfies both of the conditions specified in item 1 of Part 2 of this Schedule.”

Division 5—Amendments to Business Registration Ordinance (Cap. 310)

34. Section 2 amended (interpretation and application)

- (1) Section 2(1), definition of *incorporation form*, after “(Cap. 622)”—

Add

“or section 112C(1)(a) of the Securities and Futures Ordinance (Cap. 571)”.

- (2) Section 2(1), definition of *incorporation submission*—

Repeal

everything after “means”

Substitute

“—

- (a) a submission made for the purpose of forming a company under section 67 of the Companies Ordinance (Cap. 622); or
- (b) a submission made for the purpose of incorporating a company under section 112C of the Securities and Futures Ordinance (Cap. 571);”.

- (3) Section 2(1), definition of *place of business*, paragraph (a)—

Repeal

“; and”

Substitute a semicolon.

- (4) Section 2(1), definition of *place of business*, after paragraph (a)—

Add

“(ab) an open-ended fund company, its registered office; and”.

(5) Section 2(1)—

Add in alphabetical order

“*open-ended fund company* (開放式基金型公司) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571);”

(6) Section 2(1A)(a)(ii)—

Repeal

“; or”

Substitute a semicolon.

(7) After section 2(1A)(a)—

Add

“(ab) an open-ended fund company; or”.

(8) Section 2(1A)(b), Chinese text, before “屬《公司條例》”—

Add

“任何公司如”.

35. Section 3 amended (persons answerable for doing all acts, etc. required to be done)

Section 3(3)—

Repeal

everything after “company,”

Substitute

“the following person is answerable for doing that act or thing—

- (a) for a company that is an open-ended fund company, any director or investment manager (within the meaning of section 112Z of the

Securities and Futures Ordinance (Cap. 571)) of the company;

- (b) for any other company, the secretary, manager or any director of the company.”.

36. Section 5A amended (simultaneous business registration applications of companies incorporated under Companies Ordinance)

(1) Section 5A, heading, after “**Ordinance**”—

Add

“or open-ended fund companies”.

(2) Section 5A(1)(b), after “be formed”—

Add

“, or the open-ended fund company to be incorporated,”.

(3) Section 5A(2), after “company” (wherever appearing)—

Add

“or open-ended fund company”.

37. Section 6 amended (registration of business and issue of business registration certificate)

(1) After section 6(4)—

Add

“(4AA) The Commissioner is also not required to register the business or branch of the business, or to issue a business registration certificate or branch registration certificate, if the application is made by an open-ended fund company for registration by a name that is not the name of the company.”.

(2) Section 6(4A)—

Repeal

“subsection (4)—”

Substitute

“subsections (4) and (4AA)—”.

- (3) Section 6(4A)(b)—

Repeal

“subsection (4)(b) or (c)”

Substitute

“subsection (4)(b) or (c) or (4AA)”.

- (4) Section 6(4D)—

Repeal

“subsection (4)(b) or (c)” (wherever appearing)

Substitute

“subsection (4)(b) or (c) or (4AA)”.

- (5) Section 6(4F)—

Repeal

“subsection (4)(b) or (c)”

Substitute

“subsection (4)(b) or (c) or (4AA)”.

38. Section 7A amended (refund of prescribed business registration fees, prescribed branch registration fees or levies)

- (1) Section 7A(2)(a)—

Repeal

“section 6(4)”

Substitute

“section 6(4) and (4AA)”.

- (2) After section 7A(3)(ab)—

Add

“(ac) an open-ended fund company;”.

39. Section 8 amended (information to be furnished)

- (1) After section 8(2B)—

Add

“(2BA) If an open-ended fund company delivers to the Registrar under the OFC rules a notice of a change of its name or the address of its registered office, the Registrar must transmit the particulars to the Commissioner as soon as practicable after the notice is registered or recorded under those rules.”.

- (2) After section 8(5)—

Add

“(6) In this section—

OFC rules (《開放式基金型公司規則》) has the meaning given by section 112A of the Securities and Futures Ordinance (Cap. 571).”.

40. Section 9 amended (exemption from payments of fees for small businesses)

After section 9(6)(a)—

Add

“(ab) any open-ended fund company;”.

41. Section 15 amended (offences)

Section 15(2A)—

Repeal

everything after “8(2B)”

Substitute

“or (2BA) are false, inaccurate or incomplete, the Commissioner may—

- (a) for particulars transmitted in respect of an open-ended fund company, inform the Registrar and the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571) accordingly; or
- (b) for particulars transmitted in respect of any other company, inform the Registrar accordingly.”.

Division 6—Amendments to Business Registration Regulations (Cap. 310 sub. leg. A)

42. Regulation 3A amended (business particulars in relation to simultaneous business registration applications)

- (1) Regulation 3A(3)(a)(iii)—

Repeal

“; and”

Substitute a semicolon.

- (2) After regulation 3A(3)(a)—

Add

“(ab) in the case of an open-ended fund company—

- (i) the name of the company;
- (ii) the address of the registered office of the company;
- (iii) the date of the incorporation of the company; and”.

Division 7—Amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B)

43. Schedule 1 amended (services to be provided by the trading fund)

Schedule 1, after section 4—

Add

- “4A. Administering and enforcing the provisions of the Securities and Futures Ordinance (Cap. 571) relating to open-ended fund companies, including facilitating the incorporation of open-ended fund companies and maintaining a register of open-ended fund companies.”.

Division 8—Amendments to Contracts (Rights of Third Parties) Ordinance (Cap. 623)

44. Section 3 amended (application)

- (1) Section 3(2)(f), Chinese text—

Repeal

“及”.

- (2) Section 3(2)(g)—

Repeal

“(Cap. 622).”

Substitute

“(Cap. 622);”.

- (3) After section 3(2)(g)—

Add

- “(h) the instrument of incorporation of an open-ended fund company having effect as a contract under seal under section 112L of the Securities and Futures Ordinance (Cap. 571).”.
-

Explanatory Memorandum

The main purpose of this Bill is to amend the Securities and Futures Ordinance (Cap. 571) (*SFO*) and other enactments, including the Inland Revenue Ordinance (Cap. 112) (*IRO*), the Stamp Duty Ordinance (Cap. 117) (*SDO*) and the Business Registration Ordinance (Cap. 310) (*BRO*), to provide for the incorporation of open-ended fund companies (*OFCs*) and the regulation of such companies and their business.

Part 1—Preliminary

2. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to SFO

3. Clause 6 adds a new Part IVA to the SFO. That Part is divided into 10 Divisions.
4. Division 1 contains preliminary provisions. New section 112A contains definitions used in new Part IVA. The terms “OFC rules”, “open-ended fund company”, “proposed company”, “scheme property”, “sub-custodian” and “sub-fund” are defined or explained in that section.
5. New section 112B makes it an offence for a person to carry on business as an OFC or hold out as an OFC when it is not one. It also provides for other related offences.
6. Division 2 contains provisions relating to the incorporation, registration, name and registered office of OFCs.
7. New section 112C provides for the incorporation of OFCs. To incorporate an OFC, an incorporation form and a copy of the instrument of incorporation of the proposed OFC are required to be delivered to the Registrar of Companies (*Registrar*) for registration. The Registrar will, if satisfied that the requirements for incorporation prescribed by the OFC rules are met with respect to

the proposed OFC, register those documents and issue a certificate of incorporation in respect of the proposed OFC. However, before doing so, the Registrar must have first received notification from the Securities and Futures Commission (*SFC*) that it has registered the proposed OFC under new section 112D.

8. New section 112D provides for registration of proposed OFCs with the SFC before incorporation. It should be noted that the registration of a proposed OFC only takes effect on the day of issue of the certificate of incorporation in respect of the proposed OFC by the Registrar under new section 112C. Before registering a proposed OFC, the SFC must be satisfied that the requirements for registration specified in new section 112E will be met with respect to the proposed OFC on the day the registration takes effect.
9. New section 112E specifies the requirements for registration of proposed OFCs.
10. New section 112F empowers the SFC to amend or revoke conditions imposed in respect of the registration of OFCs and to impose new conditions.
11. New section 112G empowers the SFC to publish particulars of OFCs in any manner it considers appropriate.
12. New section 112H contains requirements relating to the names of OFCs. The English name of an OFC must end with "Open-ended Fund Company" or "OFC" while the Chinese name of an OFC must end with "開放式基金型公司".
13. New section 112I requires an OFC to have a registered office in Hong Kong to which all communications and notices may be addressed.
14. Division 3 contains provisions relating to the capacity and powers of OFCs. New section 112J provides that an OFC has the capacity, rights, powers and privileges as are prescribed by the OFC rules.

15. New section 112K requires an OFC to have an instrument of incorporation and sets out the information to be contained in the instrument of incorporation.
16. New section 112L explains the effect and enforceability of the instrument of incorporation of an OFC.
17. Division 4 contains provisions relating to contracts made by or on behalf of OFCs. New section 112M sets out the execution requirements of deeds and other documents by OFCs.
18. New section 112N deals with contracts made in the name or on behalf of an OFC before its incorporation.
19. New section 112O deals with contracts made by an OFC after cancellation of its registration.
20. Division 5 contains provisions relating to the share capital of OFCs and shareholders' liability. New section 112P provides that shares in an OFC have no nominal value and that the amount of the paid-up share capital of an OFC is at all times equal to its net asset value.
21. New section 112Q provides that the liability of the shareholders of an OFC is limited to any amount unpaid on the shares held by the shareholders.
22. Division 6 contains provisions relating to sub-funds of OFCs. New section 112R provides that the instrument of incorporation of an OFC may provide for the division of its scheme property into separate parts and each such part is a sub-fund of the OFC.
23. New section 112S provides for the segregated liability of sub-funds of OFCs. It provides that the assets of a sub-fund of an OFC must not be used to discharge the liabilities of the OFC or any other sub-fund of the OFC, and any liability incurred on behalf of a sub-fund may only be discharged out of its assets. It also provides that a sub-fund is not a legal person but its assets may be subject to orders of the court as if it were a legal person.

24. Division 7 contains provisions relating to the directors, investment managers, custodians, sub-custodians and auditors of OFCs. New section 112T contains definitions used in that Division. The terms “misconduct” and “specified officer” are defined in that section.
25. New section 112U requires an OFC to have at least 2 directors. It also provides that directors of an OFC owe the OFC the same fiduciary and other duties that directors of a company registered under the Companies Ordinance (Cap. 622) owe to that company.
26. New section 112V disqualifies bodies corporate from being appointed as directors of OFCs.
27. New section 112W disqualifies persons below the age of 18 years from being appointed as directors of OFCs.
28. New section 112X provides that undischarged bankrupts must not act as directors of OFCs or be concerned, or take part, in the management of OFCs unless they have obtained leave of the Court of First Instance (*CFI*).
29. New section 112Y provides that the acts of an OFC’s director are valid even if the director’s appointment is subsequently found to have been defective or void.
30. New section 112Z requires an OFC to have an investment manager who must be an intermediary licensed or registered for Type 9 regulated activity.
31. New section 112ZA requires an OFC to have a custodian to whom scheme property of the OFC must be entrusted for safe keeping.
32. New section 112ZB requires an OFC to appoint an auditor for each financial year of the OFC.
33. New section 112ZC provides that provisions in an OFC’s instrument of incorporation or in contracts made by an OFC that exempt specified officers of the OFC from liabilities for

- misconduct are void. Indemnities provided by OFCs to specified officers against such liabilities are also void.
34. New section 112ZD provides for the power of the CFI to relieve a specified officer of an OFC from liability in any proceedings for misconduct against the officer.
35. New section 112ZE provides for the power of the CFI to relieve a specified officer of an OFC from liability for misconduct on an application by the officer.
36. Division 8 contains provisions relating to supervision of OFCs by the SFC. New section 112ZF empowers the SFC to give directions to OFCs in specified circumstances. The directions may include a direction to cease to issue or redeem shares in the OFCs.
37. New section 112ZG enables the SFC to apply to the CFI for an inquiry into a person’s failure to comply with a direction given under new section 112ZF. It also enables the SFC to apply to the CFI for an order where a person will likely fail to comply with such a direction.
38. New section 112ZH empowers the SFC to cancel the registration of an OFC on an application by the OFC.
39. New section 112ZI empowers the SFC to cancel the registration of an OFC of its own accord in specified circumstances.
40. New section 112ZJ empowers the SFC to permit an OFC the registration of which has been cancelled to carry on business operations that are essential for closing down its business.
41. Division 9 contains provisions relating to rules made by the SFC. New section 112ZK empowers the SFC to make rules to provide for the carrying on of collective investments by means of OFCs and the regulation of OFCs. Rules made under that section may provide for, among others, incorporation requirements, registration

- requirements and requirements relating to segregating the liabilities of sub-funds of an OFC.
42. New section 112ZL empowers the SFC to make rules to provide for, among others, the functions of the Registrar. Rules under that section can only be made with the consent of the Registrar.
 43. New section 112ZM empowers the SFC to make rules to provide for the functions of the Official Receiver in relation to the winding up and dissolution of OFCs and sub-funds of OFCs. Rules under that section can only be made with the consent of the Official Receiver.
 44. New section 112ZN provides that the OFC rules may prescribe offences. It also sets out the maximum penalties that may be prescribed for such offences.
 45. New section 112ZO empowers the SFC to grant a modification or waiver in respect of any requirement of the OFC rules on an application by an OFC or an OFC's director, investment manager, etc.
 46. New section 112ZP empowers the SFC to grant a modification or waiver in respect of any requirement of the OFC rules by rules.
 47. Division 10 contains miscellaneous provisions. New section 112ZQ empowers the Financial Secretary to make regulations to provide for the charging of fees by the SFC, the Registrar and the Official Receiver in respect of things done or services provided by them.
 48. New section 112ZR empowers the SFC to publish codes and guidelines to provide guidance in respect of matters relating to the incorporation, registration, management and operation of OFCs and the business of OFCs.
 49. New section 112ZS provides for the effect of codes and guidelines published under new section 112ZR.

50. New section 112ZT makes it an offence to carry on any business of an OFC with intent to defraud its creditors.
51. Clauses 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17 and 18 contain consequential amendments to sections 36(1)(e), 56(3), 103(2) and (3), 180(2), 182(1), 193(1), (2) and (3), 201(5), 212, 213, 336(9), 352(10), 378(3), 379(2)(b) and 400(1) of the SFO. Clauses 19, 20 and 21 contain consequential amendments to section 1 of Part 1 of Schedule 1, section 2 of Part 2 of Schedule 2, and the definition of *dealing in securities* in Part 2 of Schedule 5 to the SFO.
52. Clause 13 adds new sections 214A and 214B to the SFO, which mirror the existing section 214 of the SFO. New section 214A provides for the SFC's power to apply to the CFI for an order if it appears to the SFC that the business or affairs of an OFC have been conducted in a manner unfairly prejudicial to the interests of its shareholders. New section 214B deals with the situation where an order made under new section 214A alters or adds to the instrument of incorporation of an OFC.
53. Clause 22 amends Division 1 of Part 2 of Schedule 8 to the SFO to include decisions made by the SFC under new Part IVA. A person aggrieved by any of those decisions may apply to the Securities and Futures Appeals Tribunal for a review of the decision under section 217 of the SFO.

Part 3—Related Amendments

54. Division 1 deals with an amendment to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
55. Clause 23 amends the definition of *disqualification order* in section 168R(5) of that Ordinance so that an order made under new section 214A(2)(d) of the SFO falls within that definition.
56. Division 2 deals with an amendment to the Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. I).

57. Clause 24 amends Form D.O. 1 in Schedule 1 to that Regulation to include a reference to new section 214A(2)(d) of the SFO. Under section 4(2) of that Regulation, a prescribed officer of the court is to furnish the Registrar with the particulars of a disqualification order in that Form.
58. Division 3 deals with amendments to the IRO.
59. Clause 25 amends section 2(1) of the IRO to include the definition of *open-ended fund company*. It also amends the definition of *receiver* in that section.
60. Clause 26 amends section 57 of the IRO to specify who is to be answerable for doing all the acts, matters or things that are required to be done under the IRO by an OFC.
61. Division 4 deals with amendments to the SDO.
62. Clauses 27, 30, 31 and 32 amend sections 19 and 63 of, and the First Schedule and Schedule 8 to, the SDO. Clause 33 adds a new Schedule 9 to the SDO. With these amendments, a contract note is not required to be executed or stamped for a sale or purchase of any Hong Kong stock referred to in item 1 of Part 2 of new Schedule 9. Further, certain transfers that relate to such sale or purchase are exempt from stamp duty under head 2(4) in the First Schedule to the SDO.
63. Clause 28 adds a new section 30A to the SDO. New section 30A provides that if the trust instrument of a unit trust scheme (*main scheme*) provides for the division of its trust property into separate parts, each separate part of the trust property is to be regarded as a unit trust scheme for the purposes of the SDO and the main scheme is not to be regarded as a unit trust scheme for those purposes.
64. Clause 29 adds a new Part IVA (new sections 37A, 37B and 37C) to the SDO to make certain provisions of the SDO that relate to unit trust schemes applicable to OFCs. It also provides that if the instrument of incorporation of an OFC (*main company*) provides

- for the division of its scheme property into separate parts, each separate part of the scheme property is to be regarded as an OFC for the purposes of the SDO and the main company is not to be regarded as an OFC for those purposes.
65. Division 5 deals with amendments to the BRO.
66. Clause 34 includes the definition of *open-ended fund company* in section 2(1) of the BRO. It also amends certain definitions in that section to cover an OFC.
67. Clause 35 amends section 3(3) of the BRO to specify who is to be answerable for doing any act or thing that is required to be done under the BRO by an OFC.
68. Clause 36 expands the scope of section 5A of the BRO to provide for simultaneous business registration applications of OFCs.
69. Clause 37 amends section 6 of the BRO mainly to provide that the Commissioner of Inland Revenue (*Commissioner*) is not required to register the business or branch of the business, or to issue a business registration certificate or branch registration certificate, if the application is made by an OFC for registration by a name that is not the name of the OFC.
70. Clause 38 amends section 7A of the BRO to deal with whether an OFC is entitled to be refunded the prescribed business registration fees, prescribed branch registration fees or levies paid in respect of a business or a branch of a business.
71. Clause 39 amends section 8 of the BRO to require the Registrar to transmit certain particulars to the Commissioner if there is a change in the name, or the address of the registered office, of an OFC.
72. Clause 40 amends section 9 of the BRO so that that section does not apply to an OFC.
73. Clause 41 amends section 15 of the BRO to provide that if the Commissioner has reason to believe that any particulars transmitted

under new section 8(2BA) of the BRO are false, inaccurate or incomplete, the Commissioner may inform the Registrar and the SFC accordingly.

74. Division 6 deals with amendments to the Business Registration Regulations (Cap. 310 sub. leg. A).
75. Clause 42 amends regulation 3A of those Regulations to specify the particulars that the Registrar is required to transmit to the Commissioner under section 5C(5)(b) of the BRO in respect of an OFC for a simultaneous business registration application.
76. Division 7 deals with an amendment to the Resolution of the Legislative Council establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B).
77. Clause 43 adds a new section 4A to Schedule 1 to that Resolution. That Schedule sets out the services to be provided under the Companies Registry Trading Fund. The service mentioned in new section 4A is the service of administering and enforcing the provisions of the SFO relating to OFCs.
78. Division 8 deals with amendments to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).
79. Clause 44 amends section 3(2) of that Ordinance to exclude the instrument of incorporation of an OFC from the application of that Ordinance.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	36	Rules by Commission	E.R. 3 of 2015	12/11/2015
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- (1) Without prejudice to section 398(7) and (8), the Commission may make rules in respect of the following matters-
- (a) the listing of securities, and in particular-
 - (i) prescribing the requirements to be met before securities may be listed;
 - (ii) prescribing the procedure for dealing with applications for the listing of securities;
 - (iii) providing for the cancellation of the listing of any specified securities if the Commission's requirements for listing, or the requirements of the undertaking referred to in paragraph (e), are not complied with or the Commission considers that such action is necessary to maintain an orderly market in Hong Kong;
 - (b) the conditions subject to which, and the circumstances in which, a recognized exchange company shall suspend dealings in securities or shall direct that dealings in securities recommence;
 - (c) the procedure for and the method of allotment of any securities arising out of an offer made to members of the public in respect of those securities;
 - (d) persons who may be admitted as an exchange participant of a recognized exchange company;
 - (e) requiring companies the securities of which are listed or accepted for listing to enter into an undertaking in the form prescribed in the rules with a recognized exchange company which may operate a stock market under section 19 to provide such information at such times as may be specified, and to carry out such duties in relation to its securities as may be imposed, in the undertaking;
 - (f) requiring a recognized exchange company which has become aware of any matter which adversely affects, or is likely to adversely affect, the ability of any exchange participant of the company to meet its obligations as an exchange participant, to make a report concerning the matter to the Commission as soon as reasonably practicable after becoming aware of the matter;
 - (g) requiring a recognized exchange company when it expels any of its exchange participants, or suspends any of its exchange participants from trading on the recognized stock market or recognized futures market it operates or through its facilities, or requests any of its exchange participants to resign as an exchange participant, to notify the Commission of that fact within 3 business days after the expulsion, suspension or making of the request (as the case may be) and, in addition, to cause the expulsion, suspension or request to be notified to the public in such manner and within such period as may be prescribed in the rules;
 - (h) any matter which is to be or may be prescribed by rules made under section 23.
- (2) Before making any rules in respect of any matter specified in subsection (1), the Commission shall consult-
- (a) the Financial Secretary; and
 - (b) the recognized exchange company or all the recognized exchange companies (as the case may be) to which that matter relates.
- (3) Nothing in this section prevents a recognized exchange company from making rules under section 23 on any matter referred to in subsection (1), but any such rules shall have effect only to the extent that they are not repugnant to any rule made by the Commission under subsection (1).

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	56	Property deposited with recognized clearing house	E.R. 3 of 2015	12/11/2015
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- (1) Subject to subsections (2) and (3), where any property is deposited as market collateral by a clearing participant with a recognized clearing house in accordance with the rules of the clearing house, then, notwithstanding any other enactment or rule of law, no action, claim or demand, either civil or criminal, in respect of any right, title or interest in such property held or enjoyed by any person lies, or shall be commenced or allowed, against the clearing house or its nominees.
- (2) The operation of subsection (1) in respect of any property deposited as market collateral with a recognized clearing house is subject to the modifications and exclusions provided in the rules of the clearing house.
- (3) This section does not operate to prejudice the operation of section 633 of the Companies Ordinance (Cap 622). (Amended 28 of 2012 ss. 912 & 920)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	103	Offence to issue advertisements, invitations or documents relating to investments in certain cases	L.N. 163 of 2013	03/03/2014

- (1) Subject to subsections (2), (3) and (5) to (9), a person commits an offence if he issues, or has in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to the public-
- (a) to enter into or offer to enter into-
 - (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
 - (ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or (Replaced 8 of 2011 s. 3)
 - (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,
- unless the issue is authorized by the Commission under section 105(1).
- (2) Subsection (1) does not apply to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document-
- (a) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of-
 - (i) listed securities; or
 - (ii) unlisted securities (excluding unlisted securities that are structured products); (Replaced 8 of 2011 s. 3)
 - (b) made by or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent) in respect of futures contracts;
 - (c) made by or on behalf of-
 - (i) an authorized financial institution (whether acting as principal or agent); or
 - (ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent), in respect of leveraged foreign exchange contracts;
 - (d) made by or on behalf of a recognized exchange company or recognized clearing house in respect of the provision of services by such recognized exchange company or recognized clearing house (as the case may be);
 - (e) made by or on behalf of a corporation in respect of securities (excluding securities that are structured products) of the corporation, or of a related corporation of the corporation, to-
 - (i) holders of securities (excluding securities that are structured products) of the corporation or related corporation;
 - (ii) creditors of the corporation or related corporation;
 - (iii) employees employed by the corporation or related corporation; or
 - (iv) agents acting in a professional capacity on behalf of the corporation or related corporation; (Replaced 8 of 2011 s. 3)
 - (f) made by or on behalf of the Government in respect of securities or structured products issued by it; (Amended 8 of 2011 s. 3)
 - (g) made by or on behalf of a credit union in respect of shares in the credit union;
 - (ga) to the extent that the advertisement, invitation or document relates to an offer falling within paragraph (b)(ii) of the definition of *prospectus* in section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); (Added 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)
 - (h) made by or on behalf of a person acting as a trustee of a trust, not being a collective investment scheme, to beneficiaries under the trust; or
 - (i) made by or on behalf of a person who is engaged in the business of selling and purchasing property other than securities or structured products (whether acting as principal or agent) in the ordinary course of that business. (Amended 8 of 2011 s. 3)
- (3) Subsection (1) does not apply to the issue, or the possession for the purposes of issue-
- (a) of-
 - (i) a prospectus which complies with or is exempt from compliance with Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32);
 - (ii) in the case of a corporation incorporated outside Hong Kong, a prospectus which complies with or is

- exempt from compliance with Part XII of that Ordinance;
- (iii) a publication falling within section 38B(2) of that Ordinance; (Replaced 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)
- (b) of a document relating to the securities of a body corporate incorporated in Hong Kong that is not a registered company, being a document which-
- (i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and (Amended 28 of 2012 ss. 912 & 920)
- (ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation;
- (c) of a form of application for the shares or debentures of a corporation, where it is issued, or the possession is for the purposes of issue, together with-
- (i) a prospectus with respect to those shares or debentures which complies with or is exempt from compliance with Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or (Amended 28 of 2012 ss. 912 & 920)
- (ii) in the case of a body corporate incorporated in Hong Kong that is not a registered company, a document containing all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a corporation incorporated outside Hong Kong and the document were a prospectus issued by that corporation with respect to those shares or debentures;
- (d) of a form of application for the securities of a corporation, where it is issued, or the possession is for the purposes of issue, in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;
- (e) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit by an authorized financial institution;
- (ea) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a currency-linked instrument, an interest rate-linked instrument or a currency and interest rate-linked instrument by an authorized financial institution; (Added 8 of 2011 s. 3)
- (f) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a certificate of deposit-
- (i) the amount or denomination of which is not less than the sum specified in Part 1 of Schedule 4; and
- (ii) by-
- (A) a multilateral agency; or
- (B) a bank incorporated outside Hong Kong and having no place of business in Hong Kong, where the Monetary Authority has declared in writing that he is satisfied that the bank is likely to be adequately supervised by the relevant authority of any place in which it is incorporated or has its principal place of business;
- (g) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of any instrument specified in Part 2 of Schedule 4 (other than a certificate of deposit), where the amount or denomination of the instrument is not less than the sum specified in Part 1 of Schedule 4 and the instrument-
- (i) is issued by an authorized financial institution or a multilateral agency, or by an exempted body which, if it is a corporation or a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4, complies with the relevant condition;
- (ii) is issued by a corporation which complies with the relevant condition, and is guaranteed by an authorized financial institution or a multilateral agency, or by an exempted body (other than a corporation specified in item 11 of Part 3 of Schedule 4 which does not comply with the relevant condition, or a wholly owned subsidiary of the corporation); or
- (iii) is issued by a wholly owned subsidiary specified in item 11 of Part 3 of Schedule 4 and is guaranteed by the corporation of which it is such a subsidiary and which complies with the relevant condition;
- (h) of any advertisement, invitation or document made in respect of the issue of securities the listing of which on a recognized stock market has been approved by the recognized exchange company by which the recognized stock market is operated, where the advertisement, invitation or document complies with the rules made under section 23 or 36 governing the listing of securities, except to the extent that compliance is,

- in accordance with those rules, waived, modified or not required;
- (i) of any advertisement, invitation or document made in respect of securities regulated in a jurisdiction outside Hong Kong which have been admitted to trading on a recognized stock market under or pursuant to rules made under section 23 or 36;
 - (j) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to persons outside Hong Kong; (Replaced 8 of 2011 s. 3)
 - (k) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to professional investors. (Replaced 8 of 2011 s. 3)
- (4) A person who commits an offence under subsection (1) is liable-
- (a) on conviction on indictment to a fine of \$500000 and to imprisonment for 3 years and, in the case of a continuing offence, to a further fine of \$20000 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 \$10000 for every day during which the offence continues.
- (5) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue-
- (a) as or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) any advertisement, invitation or document made in respect of-
 - (i) listed securities; or
 - (ii) unlisted securities (excluding unlisted securities that are structured products); (Replaced 8 of 2011 s. 3)
 - (b) as or on behalf of an intermediary licensed or registered for Type 2 or Type 5 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of futures contracts;
 - (c) as or on behalf of-
 - (i) an authorized financial institution (whether acting as principal or agent); or
 - (ii) an intermediary licensed for Type 3 regulated activity (whether acting as principal or agent), any advertisement, invitation or document made in respect of leveraged foreign exchange contracts.
- (6) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues any advertisement, invitation or document, or has any advertisement, invitation or document in his possession for the purposes of issue-
- (a) in the case of any advertisement, invitation or document made in respect of any of the following to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such an intermediary that carries on such a regulated activity for the intermediary-
 - (i) listed securities; or
 - (ii) unlisted securities (excluding unlisted securities that are structured products); (Replaced 8 of 2011 s. 3)
 - (b) in the case of any advertisement, invitation or document made in respect of futures contracts, to an intermediary licensed or registered for Type 2 or Type 5 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary; or
 - (c) in the case of any advertisement, invitation or document made in respect of leveraged foreign exchange contracts, to-
 - (i) an authorized financial institution; or
 - (ii) an intermediary licensed for Type 3 regulated activity, or a representative of such intermediary that carries on such regulated activity for such intermediary.
- (7) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues, or has in his possession for the purposes of issue, any advertisement, invitation or document if-
- (a) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of a business (whether or not carried on by him), the principal purpose of which was receiving and issuing materials provided by others;
 - (b) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised-
 - (i) where the business was carried on by him, by himself or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, by himself; and

- (c) for the purposes of the issue-
- (i) where the business was carried on by him, he or any officer, employee or agent of his; or
 - (ii) where the business was not carried on by him, he, did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be).
- (8) A person shall not be regarded as committing an offence under subsection (1) by reason only that he issues by way of live broadcast, or has in his possession for the purposes of issue by way of live broadcast, any advertisement, invitation or document if-
- (a) the advertisement, invitation or document (as the case may be) was so issued, or possessed for the purposes of issue, in the ordinary course of the business of a broadcaster (whether or not he was such broadcaster);
 - (b) the contents of the advertisement, invitation or document (as the case may be) were not, wholly or partly, devised-
 - (i) where he was the broadcaster, by himself or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, by himself;
 - (c) for the purposes of the issue-
 - (i) where he was the broadcaster, he or any officer, employee or agent of his; or
 - (ii) where he was not the broadcaster, he, did not select, add to, modify or otherwise exercise control over the contents of the advertisement, invitation or document (as the case may be); and
 - (d) in relation to the broadcast-
 - (i) where he was the broadcaster, he; or
 - (ii) where he was not the broadcaster, he believed and had reasonable grounds to believe that the broadcaster, acted in accordance with the terms and conditions of the licence (if any) by which he or the broadcaster (as the case may be) became entitled to broadcast as a broadcaster and with any code of practice or guidelines (however described) issued under or pursuant to the Telecommunications Ordinance (Cap 106) or the Broadcasting Ordinance (Cap 562) and applicable to him or the broadcaster (as the case may be) as a broadcaster.
- (9) It is a defence to a charge for an offence under subsection (1) for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence with which he is charged.
- (10) For the purposes of any proceedings under this section-
- (a) an advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, to the doing of any act referred to in subsection (1)(a) or (b) shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to do such act;
 - (b) an advertisement, invitation or document which is or contains an invitation directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public shall be regarded as an advertisement, invitation or document (as the case may be) which is or contains an invitation to the public.
- (11) Nothing in subsection (2)(a), (b), (c) or (i) or (5)(a), (b) or (c) applies to anything done by any person in respect of any interest in a collective investment scheme that is not authorized by the Commission under section 104.
- (12) In this section-
- guaranteed** (作出擔保) means guaranteed fully, unconditionally, irrevocably and in writing;
- registered company** (註冊公司) means a company registered under the Companies Ordinance (Cap 622) or the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920)
- relevant condition** (有關條件), in relation to a corporation (including a wholly owned subsidiary of any other corporation), means a condition that the amount by which the aggregate of the corporation's assets exceeds the aggregate of its liabilities, as calculated in accordance with generally accepted accounting principles, is not less than the sum specified in Part 4 of Schedule 4.

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Section:	180	Supervision of intermediaries and their associated entities	19 of 2015	13/11/2015
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- (1) Subject to subsections (9) and (10), an authorized person may at any reasonable time, for the purpose of ascertaining whether an intermediary or an associated entity of an intermediary is complying or has complied with, or is likely to be able to comply with, the requirement specified in subsection (2)-
- (a) enter-
- (i) in the case of an intermediary-
- (A) where it is a licensed corporation, its premises as approved by the Commission under section 130(1); or
- (B) where it is a registered institution, the premises of the registered institution; or
- (ii) in the case of an associated entity of an intermediary, the premises of the associated entity;
- (b) inspect, and make copies or otherwise record details of, any record or document relating to-
- (i) the business conducted by the intermediary or the associated entity (as the case may be);
- (ii) any transaction carried out by a related corporation of the intermediary or the associated entity (as the case may be); or
- (iii) any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be); and
- (c) make inquiries of-
- (i) the intermediary or the associated entity (as the case may be);
- (ii) a related corporation of the intermediary or the associated entity (as the case may be);
- (iii) subject to subsection (7), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in paragraph (b), concerning any record or document referred to in paragraph (b), or concerning any transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the intermediary or the associated entity (as the case may be).
- (2) The requirement specified for the purposes of subsection (1) is the requirement not to contravene-
- (a) any provision of this Ordinance;
- (ba) any provision of Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615); (Added 15 of 2011 s. 89)
- (b) any notice or requirement given or made under or pursuant to any of the relevant provisions;
- (c) any of the terms and conditions of any licence or registration under this Ordinance;
- (d) any other condition imposed under or pursuant to any provision of this Ordinance.
- (3) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(b) may require-
- (a) the intermediary or the associated entity (as the case may be);
- (b) a related corporation of the intermediary or the associated entity (as the case may be);
- (c) subject to subsection (8), any other person, whether or not connected with the intermediary or the associated entity (as the case may be), whom the authorized person has reasonable cause to believe has information relating to, or is in possession of, any record or document referred to in subsection (1)(b),
- to-
- (i) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and
- (ii) answer any question regarding the record or document.
- (4) Subject to subsections (9) and (10), an authorized person in exercising any of his powers under subsection (1)(c) may require the intermediary or the associated entity, the related corporation or the other person (as the case may be) referred to in subsection (1)(c), to-
- (a) give the authorized person access to any record or document referred to in subsection (1)(b), and produce, within the time and at the place specified by him, the record or document; and
- (b) answer any question raised for the purposes of subsection (1)(c).
- (4A) Subject to subsection (10), if the Commission decides to provide assistance in relation to a licensed corporation under section 186(2A), an authorized person may require the licensed corporation or a related corporation of the licensed corporation to-
- (a) provide to the authorized person, within the time and at the place specified by the authorized person, a copy of any record or document relating to-

- (i) any regulated activity carried on by the licensed corporation; or
 - (ii) any transaction or activity which was undertaken in the course of, or which may affect, any regulated activity carried on by the licensed corporation; and
- (b) answer any question raised by the authorized person regarding any record, document, regulated activity, transaction or activity referred to in paragraph (a). (Added 19 of 2015 s. 22)
- (5) An authorized person may in writing require the person giving an answer under this section to verify within a reasonable period specified in the requirement the answer by statutory declaration, which may be taken by the authorized person.
- (6) If a person does not give an answer in accordance with a requirement under this section for the reason that the answer was not within his knowledge, an authorized person may in writing require the person to verify within a reasonable period specified in the requirement by statutory declaration, which may be taken by the authorized person, that he was unable to comply or fully comply (as the case may be) with the requirement for that reason.
- (7) An authorized person shall not exercise any of his powers under subsection (1)(c)(iii) unless he has reasonable cause to believe that the information sought cannot be obtained by the exercise of any of the powers under subsection (1)(c)(i) or (ii).
- (8) An authorized person shall not exercise any of his powers under subsection (3)(c) unless he has reasonable cause to believe that the record or document or the information sought cannot be obtained by the exercise of any of the powers under subsection (3)(a) or (b).
- (9) This section shall not be construed as requiring an authorized financial institution, not being the intermediary or the associated entity in question as referred to in subsection (1) or a related corporation of the intermediary or the associated entity (as the case may be), to disclose any information or produce any record or document relating to the affairs of a customer unless the relevant authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.
- (10) Before an authorized person exercises any power under this section (other than subsection (1)(c)(iii) or (3)(c)) in respect of a corporation-
- (a) where the corporation is an authorized financial institution or a corporation which, to the knowledge of the authorized person, is a controller of an authorized financial institution, or has as its controller an authorized financial institution, or has a controller that is also a controller of an authorized financial institution, the authorized person shall consult the Monetary Authority; or
 - (b) where the corporation is an insurer authorized under the Insurance Companies Ordinance (Cap 41), the authorized person shall consult the Insurance Authority.
- (11) The relevant authority may authorize in writing any person as an authorized person for the purposes of this section.
- (12) The relevant authority shall furnish an authorized person authorized by it with a copy of his authorization, and the authorized person, when exercising any power under this section, shall as soon as reasonably practicable produce a copy of the authorization for inspection.
- (13) Where a copy of any record or document is supplied or made for the purpose of complying with a requirement imposed under this section and a facility of a person other than the relevant authority is used to make the copy, the relevant authority shall reimburse the expenses which, in the opinion of the relevant authority, have been reasonably incurred by the person in making the copy.
- (14) A person who, without reasonable excuse, fails to comply with a requirement imposed on him by an authorized person under this section commits an offence and is liable-
- (a) on conviction on indictment to a fine of \$200000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (15) A person who-
- (a) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the record or document or the answer is false or misleading in a material particular,
- commits an offence and is liable-
- (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (16) A person who-
- (a) with intent to defraud-

- (i) fails to comply with a requirement imposed on him by an authorized person under this section; or
- (ii) in purported compliance with a requirement imposed on him by an authorized person under this section, produces any record or document or gives an answer which is false or misleading in a material particular; or
- (b) being an officer or employee of a corporation, with intent to defraud causes or allows the corporation to-
 - (i) fail to comply with a requirement imposed on it by an authorized person under this section; or
 - (ii) in purported compliance with a requirement imposed on it by an authorized person under this section, produce any record or document or give an answer which is false or misleading in a material particular,
 commits an offence and is liable-
 - (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 7 years; or
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(17) In this section-

authorized person (獲授權人) means a person authorized under subsection (11);

controller (控制人) means a person who is an indirect controller or a majority shareholder controller as defined in section 2(1) of the Banking Ordinance (Cap 155);

relevant authority (有關當局) means-

- (a) where-
 - (i) the intermediary in question as referred to in subsection (1) is a registered institution; or
 - (ii) the associated entity in question as referred to in that subsection is the associated entity of a registered institution,
 the Monetary Authority; or
- (b) in any other case, the Commission.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	182	Investigations by Commission*	19 of 2015	13/11/2015

Remarks:

- + Provision marked with symbol "+" has not yet come into operation.
- ** Subsection (1)(da) (in so far as it relates to the contravention of the reporting obligation and the record keeping obligation) shall come into operation on 10 July 2015. Please see paragraph (f) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).
- # The amendment to section 182(1)(g) by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, except in so far as it relates to the new section 182(1)(db) of the Ordinance. Please see paragraph (g) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

(1) Where-

- (a) the Commission has reasonable cause to believe that an offence under any of the relevant provisions may have been committed;
- (b) the Commission has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with-
 - (i) dealing in any securities or futures contract or trading in any leveraged foreign exchange contract;
 - (ii) the management of investment in any securities, futures contract or leveraged foreign exchange contract;
 - (iii) offering or making any structured product, leveraged foreign exchange contract or collective investment scheme; (Amended 8 of 2011 s. 9)
 - (iv) giving advice in relation to the allotment of securities, or the acquisition or disposal of, or investment in, any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme; or (Amended 8 of 2011 s. 9)
 - (v) any transaction involving securities margin financing;

- (c) the Commission has reasonable cause to believe that market misconduct may have taken place;
 - (ca) the Commission has reasonable cause to believe that a breach of a disclosure requirement may have taken place under Part XIVA; (Added 9 of 2012 s. 4)
 - (d) the Commission has reasonable cause to believe that the manner in which a person has engaged or is engaging in any of the activities referred to in paragraph (b)(i) to (v) is not in the interest of the investing public or in the public interest;
 - ** (da) the Commission has reasonable cause to believe that a prescribed person other than an authorized financial institution or an approved money broker may have contravened the reporting obligation, clearing obligation, trading obligation or record keeping obligation; (Added 6 of 2014 s. 18)
 - + (db) the Commission has reasonable cause to believe that a registered SIP may have failed to comply with a requirement made under section 101X; (Added 6 of 2014 s. 18)
 - (e) the Commission-
 - (i) for the purpose of considering whether to exercise any power under section 194 or 196, has reason to inquire whether any person is or was at any time guilty of misconduct, or is not a fit and proper person, as described in section 194(1) or (2) or 196(1) or (2); or
 - (ii) for the purpose of assisting the Monetary Authority to consider whether to exercise any power under section 58A or 71C of the Banking Ordinance (Cap 155), has reason to inquire whether any person-
 - (A) is or was at any time guilty of misconduct, or is not or has ceased to be a fit and proper person, as described in section 58A(1) of that Ordinance; or
 - (B) is or was at any time guilty of misconduct, or should cease to be regarded as a fit and proper person, as described in section 71C(4) of that Ordinance;
 - (f) the Commission has reason to inquire whether any of the conditions imposed in respect of an authorization under section 104, 104A or 105 are being complied with; or (Amended 8 of 2011 s. 9)
 - # (g) a matter in respect of the investigation of which the Commission decides to provide assistance under section 186(1) or (2) is, in the opinion of the Commission, of a nature similar to the matter described in paragraph (a), (b), (c), (d), (da), (db), (e) or (f) as that which the Commission has reasonable cause to believe or has reason to inquire (as the case may be), (Amended 6 of 2014 s. 18; 19 of 2015 s. 23)
- the Commission may in writing direct one or more of its employees or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate any of the matters referred to in paragraphs (a) to (g).
- (2) The costs and expenses incurred by an investigator, other than an employee of the Commission, are to be paid out of moneys provided by the Legislative Council.
 - (3) The Commission shall furnish an investigator with a copy of his direction or appointment (as the case may be), and the investigator, before first imposing any requirement on a person under section 183(1), (2) or (3), shall produce a copy of the direction or appointment (as the case may be) to that person for inspection.
 - (4) Before the Commission directs any of its employees, or appoints any person-
 - (a) to investigate any matter under subsection (1)(e)(i), to the extent that the investigation is for the purpose of considering whether to exercise any power under section 196; or
 - (b) to investigate any matter under subsection (1)(e)(ii),
 the Commission shall consult the Monetary Authority.

Note:

* (Replaced 6 of 2014 s. 18)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	193	Interpretation of Part IX	L.N. 95 of 2015	10/07/2015

Remarks:

* Provision marked with asterisk (*) has not yet come into operation. Please see paragraph (l) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

(1) In this Part, unless the context otherwise requires-

Companies Register (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)

disciplinary power (紀律懲處權) means—

- *(a) in section 197A, a power that may be exercised by the Commission under section 197A(1); and
- (b) in Divisions 4 and 5, a power that may be exercised by the Monetary Authority under section 203A(1); (Added 6 of 2014 s. 27)

misconduct (失當行為) means-

- (a) a contravention of any of the relevant provisions;
- (b) a contravention of any of the terms and conditions of any licence or registration under this Ordinance;
- (c) a contravention of any other condition imposed under or pursuant to any provision of this Ordinance, or of any condition attached or amended under section 71C(2)(b) or (9) or 71E(3) of the Banking Ordinance (Cap 155); or
- (d) an act or omission relating to the carrying on of any regulated activity for which a person is licensed or registered which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest,

and **guilty of misconduct** (犯失當行為) shall be construed accordingly. (Amended 28 of 2012 ss. 912 & 920)
(Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

- (2) In this Part, where an intermediary 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 subsection (1) 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-
 - (a) in the case of a licensed corporation, another person as-
 - (i) a responsible officer of the licensed corporation; or
 - (ii) a person involved in the management of the business of the licensed corporation; or
 - (b) in the case of a registered institution, another person as-
 - (i) an executive officer of the registered institution; or
 - (ii) a person involved in the management of the business constituting any regulated activity for which the registered institution is or was (as the case may be) registered,the conduct shall also be regarded as misconduct on the part of that other person, and **guilty of misconduct** shall also be construed accordingly.
- (3) For the purposes of paragraph (d) of the definition of **misconduct** in subsection (1), the Commission 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 it has had regard to such of the provisions set out in any code of conduct published under section 169 or any code or guideline published under section 399 as are in force at the time of occurrence of, and applicable in relation to, the act or omission.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	201	General provisions relating to exercise of powers under Division 2 or 3*	L.N. 95 of 2015	10/07/2015

Remarks:

#The amendment to section 201(5) by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, except in so far as it relates to the new section 101Y of the Ordinance. Please see paragraph (o) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

- (1) In reaching a decision under section 194(1) or (2), 195(1), (2) or (7), 196(1) or (2) or 197(1) or (2), the Commission may have regard to any information or material in its possession which is relevant to the decision, regardless of how the information or material has come into its possession.
- (2) The revocation or suspension of any licence or registration under Division 2 or 3 does not operate so as to- (Amended 6 of 2014 s. 34)
 - (a) avoid or affect an agreement, transaction or arrangement entered into by the licensed person or registered institution (as the case may be) whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension;
 - (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.
- (3) Where at any time the Commission is contemplating exercising any power in respect of a person under section

- 194(1) or (2), 195(1)(a), (b) or (c), (2) or (7), 196(1) or (2) or 197(1)(a) or (b) or (2), it may, where it considers it appropriate to do so in the interest of the investing public or in the public interest, by agreement with the person-
- (a) exercise any power the Commission may exercise in respect of the person under this Part (whether or not the same as the power the exercise of which has been contemplated); and
 - (b) take such additional action as it considers appropriate in the circumstances of the case.
- (4) Where the Commission exercises any power or takes any additional action in respect of a person under subsection (3)-
- (a) it shall comply with section 198(2) and (3), as if section 198(2) and (3), in addition to applying to the exercise of power under the sections specified therein, also applies with necessary modifications to the taking of any additional action under subsection (3); and
 - (b) subject to the agreement of the person, it is not obliged to comply with section 198(1).
- #(5) Nothing in this Part affects the power of the Court of First Instance to make any order or exercise any other power under or pursuant to section 101F, 101Y, 211, 212, 213 or 214. (Amended 6 of 2014 s. 34)

Note:

* (Amended 6 of 2014 s. 34)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	212	Winding-up orders and bankruptcy orders	L.N. 163 of 2013	03/03/2014
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- (1) If-
- (a) a corporation, other than an authorized financial institution, is of a class of corporations which the Court of First Instance has jurisdiction to wind up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); and (Amended 28 of 2012 ss. 912 & 920)
 - (b) it appears to the Commission that it is desirable in the public interest that the corporation should be wound up,
- the Commission may present a petition for the corporation to be wound up under that Ordinance on the ground that it is just and equitable that the corporation should be so wound up, and that Ordinance shall apply to such petition as it applies in relation to a petition presented under that Ordinance.
- (2) If-
- (a) grounds exist for the presentation of a petition for a bankruptcy order against a licensed representative by his creditor in accordance with the Bankruptcy Ordinance (Cap 6); and
 - (b) it appears to the Commission that it is desirable in the public interest to present a petition for a bankruptcy order against the licensed representative in accordance with that Ordinance,
- the Commission may present a petition for a bankruptcy order against the licensed representative in accordance with that Ordinance, and that Ordinance shall apply to such petition as it applies in relation to a petition presented by a creditor.
- (3) The Commission shall-
- (a) before presenting a petition under subsection (1) against a corporation that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing; and
 - (b) where before the presentation of the petition it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed presentation of the petition by notice in writing, forthwith after the presentation of the petition inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	213	Injunctions and other orders	E.R. 2 of 2012	02/08/2012
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- (1) Where-
- (a) a person has-
 - (i) contravened-
 - (A) any of the relevant provisions;

- (B) any notice or requirement given or made under or pursuant to any of the relevant provisions;
- (C) any of the terms and conditions of any licence or registration under this Ordinance; or
- (D) any other condition imposed under or pursuant to any provision of this Ordinance;

- (ii) aided, abetted, or otherwise assisted, counselled or procured a person to commit any such contravention;
- (iii) induced, whether by threats, promises or otherwise, a person to commit any such contravention;
- (iv) directly or indirectly been in any way knowingly involved in, or a party to, any such contravention; or
- (v) attempted, or conspired with others, to commit any such contravention; or

(b) it appears, whether or not during the course or as a result of the exercise of any power under Part VIII, to the Commission that any of the matters referred to in paragraph (a)(i) to (v) has occurred, is occurring or may occur,

the Court of First Instance, on the application of the Commission, may, subject to subsection (4), make one or more of the orders specified in subsection (2).

(2) The orders specified for the purposes of subsection (1) are-

- (a) an order restraining or prohibiting the occurrence or the continued occurrence of any of the matters referred to in subsection (1)(a)(i) to (v);
- (b) where a person has been, or it appears that a person has been, is or may become, involved in any of the matters referred to in subsection (1)(a)(i) to (v), whether knowingly or otherwise, an order requiring the person to take such steps as the Court of First Instance may direct, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into;
- (c) an order restraining or prohibiting a person from acquiring, disposing of, or otherwise dealing in, any property specified in the order;
- (d) an order appointing a person to administer the property of another person;
- (e) an order declaring a contract relating to any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme to be void or voidable to the extent specified in the order; (Amended 8 of 2011 s. 10)
- (f) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing any act specified in the order;
- (g) any ancillary order which the Court of First Instance considers necessary in consequence of the making of any of the orders referred to in paragraphs (a) to (f).

(3) The Commission shall-

- (a) before making an application pursuant to subsection (1) for an order affecting any person that is an exchange participant or a clearing participant, use its best endeavours to inform the recognized exchange company or the recognized clearing house (as the case may be) of the proposed application by notice in writing; and
- (b) where before the making of the application it has not informed the recognized exchange company or the recognized clearing house (as the case may be) of the proposed application by notice in writing, forthwith after the making of the application inform the recognized exchange company or the recognized clearing house (as the case may be) thereof by notice in writing.

(4) The Court of First Instance shall, before making an order under subsection (1), satisfy itself, so far as it can reasonably do so, that it is desirable that the order be made, and that the order will not unfairly prejudice any person.

(5) The Court of First Instance may, before making an order under subsection (1), direct that a notice of the application made in respect thereof be given to the persons it considers appropriate, or be published in the manner it considers appropriate, or both.

(6) Where the Court of First Instance considers it desirable to do so, it may grant such interim order as it considers appropriate pending the determination of an application made pursuant to subsection (1).

(7) An order may be made under subsection (1) whether or not it appears to the Court of First Instance that-

- (a) the person against whom the order is made intends to engage again, or to continue to engage, in any of the matters referred to in subsection (1)(a)(i) to (v);
- (b) the person against whom the order is made has previously engaged in any of such matters;
- (c) there is an imminent danger of damage to any person in the event of the order not being made.

(8) Where the Court of First Instance has power to make an order against a person under subsection (1), it may, in addition to or in substitution for such order, make an order requiring the person to pay damages to any other

person.

- (9) The Court of First Instance may reverse, vary or discharge an order made or granted by it under subsection (1) or (6) or suspend the operation of the order.
- (10) A notice published under subsection (5) is not subsidiary legislation.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Section:	336	Register of interests in shares and short positions	L.N. 162 of 2013; L.N. 163 of 2013	03/03/2014

- (1) Every listed corporation shall keep a register of interests in shares and short positions.
- (2) Whenever a listed corporation receives information from a person given in performance of a duty imposed on him by any provision of Divisions 2 to 5, the listed corporation is under a duty to record in the register, against the person's name, the information received and the date of the entry.
- (3) Without prejudice to subsection (2), where a listed corporation receives a notification which includes a statement that the person giving the notification, or any other person, has ceased to be a party to an agreement to which section 317 applies, the listed corporation is under a duty to record that information against the name of the person who has ceased to be a party to that agreement in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).
- (4) A duty imposed by subsection (2) or (3) shall be performed within 3 business days after the day on which that duty arises.
- (5) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or equity derivatives.
- (6) The register must be so made up that the entries against the several names recorded in it appear in chronological order.
- (7) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.
- (8) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.
- (9) Subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), if the corporation ceases to be a listed corporation, it shall continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation. (Amended 28 of 2012 ss. 912 & 920)
- (10) The register and any index-
- (a) shall be kept-
- (i) if the corporation's register of members is kept at its registered office, at the corporation's registered office;
- (ii) if the corporation's register of members is not so kept, at the corporation's registered office or the place where the register of members is kept; or
- (iii) if the corporation does not have a registered office in Hong Kong, at the corporation's principal place of business in Hong Kong; and
- (b) shall, for the purposes of Divisions 2 to 5 and for the purposes of-
- (i) enabling members of the public to ascertain-
- (A) the identities and the particulars of persons who are or were the true owners of, or have or had any interest or short position in, voting shares in the listed corporation; (Amended 28 of 2012 ss. 912 & 920 and L.N. 162 of 2013)
- (B) the nature and the particulars of the interest or short position; and
- (C) the capacity in which a person holds or held the interest or short position; and
- (ii) providing the investing public with information to enable them to make informed investment decisions,
- be made available for inspection in accordance with section 340. (Amended 28 of 2012 ss. 912 & 920)
- (11) (Repealed 28 of 2012 ss. 912 & 920)
- (12) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of-

- (a) the place where the register is kept; and
 - (b) any change in that place,
- unless the register has at all times been kept at the corporation's registered office.
- (13) The duty imposed by subsection (12) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).
 - (14) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.
 - (15) For the purposes of this section, a reference to books and papers in section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section. (Amended 28 of 2012 ss. 912 & 920)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	352	Register of directors' and chief executives' interests and short positions	L.N. 163 of 2013	03/03/2014
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- (1) Every listed corporation shall keep a register of directors' and chief executives' interests and short positions.
- (2) Whenever a listed corporation receives information from a director or chief executive given in performance of a duty of disclosure imposed on him by any provision of Divisions 7 to 9, the listed corporation is under a duty to record in the register, against the director's name or the chief executive's name (as the case may be), the information received and the date of the entry.
- (3) The listed corporation is also under a duty, whenever it grants to a director or chief executive a right to subscribe for shares in or debentures of the listed corporation, to record in the register against his name-
 - (a) the date on which the right is granted;
 - (b) the period during which, or the time at which, the right is exercisable;
 - (c) the consideration for the grant (or, if there is no consideration, that fact); and
 - (d) the description of the shares or debentures involved, the number of those shares or amount of those debentures, and the price to be paid for them (or the consideration, if otherwise than in money).
- (4) Whenever the right referred to in subsection (3) is exercised by a director or chief executive, the listed corporation is under a duty to record in the register against his name-
 - (a) that fact (identifying the right);
 - (b) the number of shares or amount of debentures in respect of which it is exercised; and
 - (c) if-
 - (i) they were registered in his name, that fact; or
 - (ii) they were not registered in his name, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of 2 persons or more) with the number of the shares or amount of the debentures registered in the name of each of them.
- (5) A duty imposed by subsection (2), (3) or (4) shall be performed within 3 business days after the day on which that duty arises.
- (6) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or debentures or equity derivatives.
- (7) The register must be so made up that the entries against the several names recorded in it appear in chronological order.
- (8) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.
- (9) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.
- (10) Subject to section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), if the corporation ceases to be a listed corporation, it shall continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation. (Amended 28 of 2012 ss. 912 & 920)
- (11) The register and any index-
 - (a) shall be kept at the place where the corporation's register of interests in shares and short positions is kept;

and

- (b) shall, for the purposes of Divisions 7 to 9 and for the purposes of-
- (i) enabling members of the public to ascertain-
 - (A) the identities and the particulars of directors and chief executives (as well as their spouses and minor children) who have or had any interest or short position in shares in, or any interest in debentures of, the listed corporation or any associated corporation of the listed corporation;
 - (B) the nature and the particulars of the interest or short position; and
 - (C) the capacity in which a person holds or held the interest or short position; and
 - (ii) providing the investing public with information to enable them to make informed investment decisions,
be made available for inspection in accordance with section 355. (Amended 28 of 2012 ss. 912 & 920)
- (12) (Repealed 28 of 2012 ss. 912 & 920)
- (13) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of-
- (a) the place where the register is kept; and
 - (b) any change in that place,
- unless the register has at all times been kept at the corporation's registered office.
- (14) The duty imposed by subsection (13) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).
- (15) The register shall be produced at the commencement of the corporation's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.
- (16) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.
- (17) For the purposes of this section, a reference to books and papers in section 283 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section. (Amended 28 of 2012 ss. 912 & 920)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	378	Preservation of secrecy, etc.	19 of 2015	13/11/2015
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- (1) Subject to subsection (13A), except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person- (Amended 6 of 2014 s. 39)
- (a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;
 - (b) shall not communicate any such matter to any other person; and
 - (c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.
- (2) Nothing in subsection (1) applies to-
- (a) the disclosure of information which has already been made available to the public;
 - (b) the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, or any investigation carried out under the relevant provisions or otherwise, in Hong Kong; (Amended 6 of 2014 s. 39)
 - (c) the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
 - (d) the disclosure of information by a person in connection with any judicial or other proceedings to which the person is a party;

- (e) the disclosure of information in accordance with an order of a court, or in accordance with a law or a requirement made under a law;
 - (ea) the disclosure of information to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap 581) for the purpose of enabling or assisting the Board to perform its functions under section 5(a), (d) and (e) of that Ordinance; (Added 7 of 2004 s. 55)
 - (f) the communication of any information or opinion to which section 381(1) applies (whether with or without reference to section 381(2))-
 - (i) to the Commission in the manner described in section 381(1);
 - (ii) where section 381(4) applies, to the Insurance Authority or the Monetary Authority (as the case may be) in the manner described in section 381(4).
- (3) Notwithstanding subsection (1), the Commission may disclose information-
- (a) in the form of a summary compiled from any information in the possession of the Commission, including information provided by persons under any of the relevant provisions, if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from it;
 - (b) to a person who is a liquidator appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); (Amended 28 of 2012 ss. 912 & 920)
 - (c) to the Market Misconduct Tribunal;
 - (d) to the Securities and Futures Appeals Tribunal;
 - (ea) to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615); (Added 15 of 2011 s. 90)
 - (e) to the Monetary Authority, if-
 - (i) the information relates to-
 - (A) any business of a registered institution which constitutes a regulated activity for which the registered institution is registered; or
 - (B) any business of an associated entity that is an authorized financial institution, which is that of receiving or holding client assets of the intermediary of which the associated entity is an associated entity; or
 - (ii) in the opinion of the Commission the condition specified in subsection (5) is satisfied;
 - (f) if in the opinion of the Commission the condition specified in subsection (5) is satisfied, to-
 - (i) the Chief Executive;
 - (ii) the Financial Secretary;
 - (iii) the Secretary for Justice;
 - (iv) (Repealed L.N. 106 of 2002);
 - (v) the Insurance Authority;
 - (vi) the Registrar of Companies;
 - (vii) the Official Receiver;
 - (viii) the Mandatory Provident Fund Schemes Authority;
 - (ix) the Privacy Commissioner for Personal Data;
 - (x) the Ombudsman;
 - (xi) a public officer authorized by the Financial Secretary under subsection (12);
 - (xia) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap 588); (Added 18 of 2006 s. 86)
 - (xii) an inspector appointed by the Financial Secretary to investigate the affairs of a corporation;
 - (xiii) a recognized exchange company;
 - (xiv) a recognized clearing house;
 - (xv) a recognized exchange controller;
 - (xvi) a recognized investor compensation company;
 - (xvii) a person authorized to provide authorized automated trading services under section 95(2);
 - (g) if in the opinion of the Commission the condition specified in subsection (5) is satisfied-
 - (i) to an authority or regulatory organization outside Hong Kong which, or to a companies inspector outside Hong Kong who, in the opinion of the Commission satisfies the requirements referred to in subsection (6)(a) and (b);
 - (ii) to-

- (A) the Hong Kong Institute of Certified Public Accountants; (Amended 23 of 2004 s. 56)
 - (B) any other body prescribed by rules made under section 397 for the purposes of this subparagraph, with a view to its taking of, or otherwise for the purposes of, any disciplinary action against any of its members;
- (h) to a person who is or was an auditor appointed under any provision of this Ordinance, for the purpose of enabling or assisting the Commission to perform its functions under any of the relevant provisions;
 - (i) where the information is obtained by an investigator under section 183, to-
 - (i) the Financial Secretary;
 - (ii) the Secretary for Justice;
 - (iii) the Commissioner of Police;
 - (iv) the Commissioner of the Independent Commission Against Corruption;
 - (v) the Market Misconduct Tribunal;
 - (vi) the Securities and Futures Appeals Tribunal;
 - (j) for the purpose of, or otherwise in connection with, an audit required by section 16;
 - (k) with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, also with the consent of the person to whom the information relates.
- (4) Notwithstanding subsection (1), a person who is or was an auditor appointed in relation to a licensed corporation or an associated entity of a licensed corporation under section 159 or 160, and a person who is or was an employee or agent of such auditor, may disclose information obtained or received by him in the course of performing his duties as such auditor or as an employee or agent of such auditor (as the case may be)-
- (a) for the purposes of any judicial or other proceedings arising out of the performance of his duties as such auditor or as an employee or agent of such auditor (as the case may be);
 - (b) in the case of a person who is or was an employee or agent of an auditor, to the auditor.
- (5) The condition referred to in subsection (3)(e), (f) and (g) is that-
- (a) it is desirable or expedient that the information should be disclosed pursuant to subsection (3)(e), (f) or (g) (as the case may be) in the interest of the investing public or in the public interest; or
 - (b) the disclosure will enable or assist the recipient of the information to perform its or his functions and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.
- (6) Where the Commission is satisfied, for the purposes of subsection (3)(g)(i), that an authority, regulatory organization or companies inspector outside Hong Kong-
- (a) performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises or investigates banking, insurance or other financial services or the affairs of corporations; and
 - (b) is subject to adequate secrecy provisions,
- the Commission shall as soon as reasonably practicable thereafter cause the name of the authority, regulatory organization or companies inspector (as the case may be) to be published in the Gazette.
- (7) Where information is disclosed by a specified person pursuant to subsection (1), or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b))- (Amended 19 of 2015 s. 27)
- (a) the person to whom that information is so disclosed; or
 - (b) any other person obtaining or receiving the information, whether directly or indirectly, from the person referred to in paragraph (a),
- shall not disclose the information, or any part thereof, to any other person, unless-
- (i) the Commission consents to the disclosure;
 - (ia) if the specified person is a recognized exchange company, the Commission or the recognized exchange company consents to the disclosure; (Added 19 of 2015 s. 27)
 - (ii) the information or the part thereof (as the case may be) has already been made available to the public;
 - (iii) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
 - (iv) the disclosure is in connection with any judicial or other proceedings to which the person or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or
 - (v) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.
- (8) Where information is disclosed to an auditor in the circumstances described in subsection (4)(b)-

- (a) the auditor; or
- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the auditor, shall not disclose the information, or any part thereof, to any other person, unless-
 - (i) in the case of the auditor, the disclosure is for the purpose described in subsection (4)(a);
 - (ii) the Commission consents to the disclosure;
 - (iii) the information or the part thereof (as the case may be) has already been made available to the public;
 - (iv) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;
 - (v) the disclosure is in connection with any judicial or other proceedings to which the auditor or the other person referred to in paragraph (a) or (b) (as the case may be) is a party; or
 - (vi) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.
- (9) The Commission, in disclosing any information in any of the circumstances described in subsection (3) or in granting any consent pursuant to subsection (7)(i) or (ia) or (8)(ii), may impose such conditions as it considers appropriate. (Amended 19 of 2015 s. 27)
- (9A) A recognized exchange company, in granting a consent pursuant to subsection (7)(ia), may impose any condition that it considers appropriate. (Added 19 of 2015 s. 27)
- (10) A person who contravenes subsection (1) commits an offence and is liable-
 - (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (11) Where a person discloses any information in contravention of subsection (7) or (8) and, at the time of disclosure— (Amended 6 of 2014 s. 39 and E.R. 2 of 2015)
 - (a) in the case of a contravention of subsection (7), the person knew or ought reasonably to have known that the information was previously disclosed to the person or to any other person (as the case may be) pursuant to subsection (1) or in any of the circumstances described in subsection (2), (3) or (4) (other than subsections (2)(a), (3)(a), (g)(i) and (k) and (4)(b)), unless the person proves that the person had reasonable grounds to believe that subsection (7)(i), (ia), (ii), (iii), (iv) or (v) applied to the disclosure of the information by the person; or (Amended 19 of 2015 s. 27)
 - (b) in the case of a contravention of subsection (8), the person knew or ought reasonably to have known that the information was previously disclosed to the person or an auditor (as the case may be) in the circumstances described in subsection (4)(b), unless the person proves that the person had reasonable grounds to believe that subsection (8)(i), (ii), (iii), (iv), (v) or (vi) applied to the disclosure of the information by the person, the person commits an offence and is liable- (Amended 6 of 2014 s. 39 and E.R. 2 of 2015)
 - (i) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (12) The Financial Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(f)(xi).
- (13) Any matter published under subsection (6) is not subsidiary legislation.
- (13A) This section does not apply to a person referred to in section 381A(1) in respect of—
 - (a) a matter that comes to the person's knowledge—
 - (i) because of a reason referred to in section 381A(2)(a)(i); or
 - (ii) as described in section 381A(2)(a)(ii) or (iii); or
 - (b) a record or document that is in the person's possession because of a reason referred to in section 381A(2)(c)(i), (ii) or (iii). (Added 6 of 2014 s. 39)
- (14) (Repealed 9 of 2012 s. 44)
- (15) In this section-

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

specified person (指明人士) means-

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

- (i) a person appointed under any of the relevant provisions;
- (ii) a person performing any function under or carrying into effect any of the relevant provisions; or
- (iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	379	Avoidance of conflict of interests	L.N. 163 of 2013	03/03/2014
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- (1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme- (Amended 8 of 2011 s. 11)
 - (a) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of this Ordinance; or
 - (b) which transaction he knows is otherwise being considered by the Commission.
- (2) Subsection (1) does not apply to any transaction which a holder of securities or a structured product effects or causes to be effected by reference to any of his rights as such holder- (Amended 8 of 2011 s. 11)
 - (a) to exchange the securities or structured product or to convert the securities or structured product to another form of securities or structured product; (Replaced 8 of 2011 s. 11)
 - (b) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the Companies Ordinance (Cap 622) or the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920)
 - (c) to subscribe for other securities or another structured product or dispose of a right to subscribe for other securities or another structured product;
 - (d) to charge or pledge the securities or structured product to secure the repayment of money;
 - (e) to realize the securities or structured product for the purpose of repaying money secured under paragraph (d); or
 - (f) to realize the securities or structured product in the course of performing a duty imposed by law. (Amended 8 of 2011 s. 11)
- (3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to-
 - (a) any securities, futures contract, leveraged foreign exchange contract, structured product, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or structured product- (Amended 8 of 2011 s. 11)
 - (i) in which he has an interest;
 - (ii) in which a corporation, in the shares of which he has an interest, has an interest; or
 - (iii) which-
 - (A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest; (Amended 8 of 2011 s. 11)
 - (B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the same issuer, and of the same class, as those in which he has an interest; or
 - (C) in the case of a structured product, is interests, rights or property based on a structured product of or issued by the same issuer, and of the same class, as that in which he has an interest; or (Added 8 of 2011 s. 11)
 - (b) a person-
 - (i) by whom he is or was employed;
 - (ii) of whom he is or was a client;
 - (iii) who is or was his associate; or
 - (iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.
- (4) A person who, without reasonable excuse, contravenes subsection (1) or (3) commits an offence and is liable-
 - (a) on conviction on indictment to a fine of \$1000000 and to imprisonment for 2 years; or

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

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
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Section:	400	Service of notices, etc.	L.N. 163 of 2013	03/03/2014
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(1) Subject to sections 111, 141 and 374 and any rules made under section 233 or 269, any written notice or direction or other document (however described) to be, or required to be, issued or served (however described) to or on any person, other than the Commission, for the purposes of this Ordinance shall for all purposes be regarded as duly issued or served if- (Amended 28 of 2012 ss. 912 & 920)

(a) in the case of an individual, it is-

(i) delivered to him by hand;

(ii) left at, or sent by post to, his last known business or residential address; (Amended 28 of 2012 ss. 912 & 920)

(iii) sent by facsimile transmission to his last known facsimile number; or

(iv) sent by electronic mail transmission to his last known electronic mail address;

(b) in the case of a company, it is-

(i) delivered to any officer of the company by hand;

(ii) left at, or sent by post to, the company's registered office in Hong Kong; (Amended 28 of 2012 ss. 912 & 920)

(iii) sent by facsimile transmission to its last known facsimile number; or

(iv) sent by electronic mail transmission to its last known electronic mail address;

(c) in the case of a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622), it is- (Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

(i) delivered by hand to, or sent by post to, the authorized representative at the representative's address as shown in the Companies Register; (Amended 28 of 2012 ss. 912 & 920)

(ii) sent by facsimile transmission to the last known facsimile number of the person; or

(iii) sent by electronic mail transmission to the last known electronic mail address of the person;

(d) in the case of a partnership, it is-

(i) delivered to any partner of the partnership by hand;

(ii) left at, or sent by post to, the last known principal place of business of the partnership;

(iii) sent by facsimile transmission to the last known facsimile number of the partnership; or

(iv) sent by electronic mail transmission to the last known electronic mail address of the partnership; or

(e) in the case of a body corporate (other than a company, a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622) or the Commission) or an unincorporated body (other than a partnership), or a tribunal, it is- (Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

(i) delivered to any officer of the body or the tribunal (as the case may be) by hand;

(ii) left at, or sent by post to, the last known principal place of business of the body or the tribunal (as the case may be);

(iii) in the case of the body, sent by facsimile transmission to the last known facsimile number of the body;

or

(iv) in the case of the body, sent by electronic mail transmission to the last known electronic mail address of the body.

(2) In this section-

authorized representative (獲授權代表) means an authorized representative as defined by section 774(1) of the Companies Ordinance (Cap 622);

Companies Register (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (Cap 622). (Added 28 of 2012 ss. 912 & 920)

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Schedule:	1	Interpretation and General Provisions	19 of 2015	13/11/2015
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Remarks:

#The amendment to Schedule 1, Part 1, section 1 by the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) has come into operation on 10 July 2015, in so far as it relates to paragraphs (a) and (b) of the new definition of *market contract*. Please see paragraph (t) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

[sections 2, 19, 66, 101A, 102, 164, 171,
174, 175, 202, 381E, 392A & 406
& Schedules 9 & 10]
(Amended 8 of 2011 s. 14;
6 of 2014 s. 52)

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;

approved money broker (核准貨幣經紀) has the meaning given by section 2(1) of the Banking Ordinance (Cap 155); (Added 6 of 2014 s. 52)

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 a registered non-Hong

Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622), which- (Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

- (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 3A 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; (Amended 9 of 2012 s. 53)
- (ab) a Saturday; and (Added 9 of 2012 s. 53)
- (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); (Replaced 23 of 2004 s. 56)

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

clearing house (結算所) means a person-

- (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
- (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, 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 622); (Amended 28 of 2012 ss. 912 & 920)

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 articles of association of the corporation; or (Amended 28 of 2012 ss. 912 & 920)
- (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, of the voting power at general meetings of the corporation;
- (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);

currency and interest rate-linked instrument (貨幣及利率掛鈎票據) means-

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both

the return and the amount due) or the method of settlement is determined by reference to a combination of-

- (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; and
 - (ii) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency and interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency and interest rate-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)

currency-linked instrument (貨幣掛鈎票據) means-

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
 - (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices; or
 - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)

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-
 - (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 debt securities of a corporation, whether constituting a charge on the assets of the corporation or not; (Amended 8 of 2011 s. 14)

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;

disclosure proceedings (關於披露的研訊程序) has the meaning given by section 307I(1) of this Ordinance; (Added 9 of 2012 s. 11)

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 chief executive officer 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 (whether or not acting in any other capacity under that Part); (Amended 15 of 2006 s. 5)

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;
- (e) any structured product; (Added 8 of 2011 s. 14)

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;
 - (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, and registered by the name Hong Kong Futures Exchange Limited, under the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920)

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;

holding company (控權公司) means, in relation to a corporation, any other corporation of which it is a subsidiary; (Replaced 28 of 2012 ss. 912 & 920)

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);

interest rate-linked instrument (利率掛鈎票據) means-

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
 - (i) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices; or
 - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more

interest rates or interest rate indices; or

- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as interest rate-linked instruments in accordance with the notice; (Added 8 of 2011 s. 14)

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;

MA investigator (金管局調查員) has the meaning given by section 178 of this Ordinance; (Added 6 of 2014 s. 52)

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) a contract that is subject to the rules of a recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a novation, for the purpose of the clearing and settlement of a transaction in securities or futures contracts that is—
- (i) effected on a recognized stock market or a recognized futures market; or
- (ii) subject to the rules of a recognized exchange company;
- (b) a contract that is subject to the rules of a recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a novation, for the purpose of the clearing and settlement of an OTC derivative transaction; or
- (c) a contract that is—
- (i) subject to the rules of a designated CCP (as defined by section 101A of this Ordinance) that is a provider of authorized automated trading services and specified by the Commission by notice published in the Gazette under section 1C; and
- (ii) entered into by the designated CCP with any one of its members, whether or not pursuant to a

novation, for the purpose of the clearing and settlement of an OTC derivative transaction;
(Replaced 6 of 2014 s. 52)

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- (Amended 15 of 2006 s. 5)

- (a) the chairman of the Commission; or
- (b) the chief executive officer or any other executive director or non-executive director of the Commission (whether or not acting in any other capacity under Part 1 of Schedule 2 to this Ordinance); (Amended 15 of 2006 s. 5)

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;

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 (whether or not acting in any other capacity under that Part); (Amended 15 of 2006 s. 5)

non-Hong Kong company (非香港公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap 622); (Added 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)

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);

OTC derivative product (場外衍生工具產品) has the meaning given by section 1B; (Added 6 of 2014 s. 52)

OTC derivative transaction (場外衍生工具交易) means a transaction in an OTC derivative product; (Added 6 of 2014 s. 52)

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;

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;

prescribed person (訂明人士) has the meaning given by section 101A of this Ordinance; (Added 6 of 2014 s. 52)

printed licence (印副本牌照) means a certificate printed on paper or in any other physical form certifying the grant of a licence (whether issued before, on or after the commencement date[^] of Part 2 of the Securities and Futures (Amendment) Ordinance 2015 (19 of 2015)); (Added 19 of 2015 s. 12)

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);

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;

property (財產) includes-

- (a) money, goods, choses in action and land, whether in Hong Kong or elsewhere; and
- (b) 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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32); (Replaced 30 of 2004 s. 3. Amended 28 of 2012 ss. 912 & 920)

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) a credit rating specified in Part 5; or
- (b) 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-

- (a) an authorized financial institution;
- (b) in relation to a particular transaction conducted by a corporation licensed for Type 3 regulated activity, another corporation which is also so licensed; or
- (c) 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-

- (a) 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
- (b) 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;

record keeping obligation (備存紀錄責任) has the meaning given by section 101A of this Ordinance; (Added 6 of 2014 s. 52)

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 21(1) of the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)

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 Ordinance (《有關條例》) means the Companies Ordinance (Cap 32) as in force from time to time before the commencement date* of section 2 of Schedule 9 to the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)

relevant provisions (有關條文) means the provisions of-

- (a) this Ordinance;
- (b) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), so far as those Parts relate, directly or indirectly, to the performance of functions relating to prospectuses, whether or not such functions have been made the subject of a transfer order under section 25 or 68 of this Ordinance; (Added 15 of 2011 s. 91. Amended 28 of 2012 ss. 912 & 920)
- (ba) Part 5 of the Companies Ordinance (Cap 622), so far as that Part relates, directly or indirectly, to the performance of functions relating to-
 - (i) the buy-back by a corporation of its own shares; or
 - (ii) 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; (Added 28 of 2012 ss. 912 & 920)
- (c) Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) 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. Amended 28 of 2012 ss. 912 & 920)
- (d) Part 2 (except section 6) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615); (Added 15 of 2011 s. 91)

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;

reporting obligation (匯報責任) has the meaning given by section 101A of this Ordinance; (Added 6 of 2014 s. 52)

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;
- (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; (Amended 8 of 2011 s. 14)
- (g) a structured product that does not come within any of paragraphs (a) to (f) but in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance, (Added 8 of 2011 s. 14)

but does not include-

- (i) shares or debentures of a company that is a private company within the meaning of section 11 of the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)
- (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);
- (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 (excluding a debenture that is a structured product in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance); (Amended 8 of 2011 s. 14)
- (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;

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 provision (指明條文) means each of the following—

- (a) Part IIIA of this Ordinance and subsidiary legislation made under it;
- (b) Division 3A of Part VIII of this Ordinance;
- (c) sections 185, 187, 190 and 191 of this Ordinance to the extent to which they relate to an investigation of any matter under section 184A of this Ordinance;
- (d) sections 186A, 385A and 388A of this Ordinance;
- (e) Divisions 4 and 5 of Part IX of this Ordinance;
- (f) Division 1A of Part XVI of this Ordinance; (Added 6 of 2014 s. 52)

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, and registered by the name The Stock Exchange of Hong Kong Limited, under the relevant Ordinance; (Amended 28 of 2012 ss. 912 & 920)

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;

structured product (結構性產品) has the meaning given by section 1A of this Part; (Added 8 of 2011 s. 14)

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; 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920)

1A. Meaning of *structured product*

(1) In this Ordinance, subject to subsection (2), **structured product** (結構性產品) means-

- (a) an instrument under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of-
 - (i) changes in the price, value or level (or a range within the price, value or level) of any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;
 - (ii) changes in the price, value or level (or a range within the price, value or level) of any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; or
 - (iii) the occurrence or non-occurrence of any specified event or events (excluding an event or events relating only to the issuer or guarantor of the instrument or to both the issuer and the guarantor);
- (b) a regulated investment agreement; or
- (c) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as structured products in accordance with the notice.

(2) A **structured product** does not include-

- (a) a debenture issued for capital fund raising purposes that is convertible into or exchangeable for shares (whether issued or unissued) of the issuer of the debenture or of a related corporation of the issuer;
- (b) a subscription warrant issued for capital fund raising purposes that entitles the holder to subscribe for shares (whether issued or unissued) of the issuer of the warrant or of a related corporation of the issuer;
- (c) a collective investment scheme;
- (d) a depositary receipt;
- (e) a debenture that would come within subsection (1)(a) only because it has a variable interest rate that is reset periodically to equate to a money market or interbank reference interest rate that is widely quoted

- (whether or not subject to a predetermined maximum or minimum rate) plus or minus a specified rate (if any);
- (f) a product under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to securities of a corporation, or of a related corporation of the corporation, and that is issued by the corporation only to a person who is-
 - (i) a bona fide employee or former employee of the corporation or of a related corporation of the corporation; or
 - (ii) a spouse, widow, widower, minor child (natural or adopted) or minor step-child of a person referred to in subparagraph (i);
 - (g) a product that may be possessed, promoted, offered, sold, printed or published only-
 - (i) under a licence, permission or other authorization under the Betting Duty Ordinance (Cap 108) or the Gambling Ordinance (Cap 148); or
 - (ii) under the Government Lotteries Ordinance (Cap 334);
 - (h) an instrument issued in relation to-
 - (i) a contest authorized by section 37 of the Broadcasting Ordinance (Cap 562); or
 - (ii) a contest included in a service licensed under Part 3A of the Telecommunications Ordinance (Cap 106);
 - (i) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap 41); or
 - (j) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as structured products in accordance with the notice.

(Added 8 of 2011 s. 14)

1B. Meaning of *OTC derivative product*

(1) In this Ordinance, subject to subsections (2) and (3)—

OTC derivative product (場外衍生工具產品) means a structured product.

(2) An ***OTC derivative product*** does not include—

- (a) securities that are traded on a recognized stock market;
- (b) a futures contract that is traded on a recognized futures market;
- (c) a securities or futures contract that is—
 - (i) traded on a stock market or futures market prescribed under section 392A of this Ordinance; and
 - (ii) cleared through a clearing house prescribed under that section;
- (d) a structured product that is offered to the public, the issue of any advertisement, invitation or document relating to which is authorized under section 105(1) of this Ordinance;
- (e) a structured product in the form of debt security the payment under which is derived from cash flows generated by an underlying pool of assets;
- (f) an instrument that—
 - (i) is in the form of shares, stocks, debentures, loan stocks, funds, bonds, notes, deposits or certificates of deposits or in the form of any other type of instrument prescribed under section 392A of this Ordinance; and
 - (ii) has an embedded feature that makes it a structured product;
- (g) a spot contract;
- (h) a structured product that is offered—
 - (i) within an offer period that is not more than 2 weeks; and
 - (ii) to multiple persons on identical terms, other than the consideration to be paid for the product; or
- (i) a structured product, or a structured product of a class or description, prescribed under section 392(1)(b)(vii) of this Ordinance as a product that is not to be regarded as an OTC derivative product in accordance with the notice.

(3) An OTC derivative product also includes a product prescribed by notice under section 392(1)(a)(vii) of this Ordinance as a product that is to be regarded as an OTC derivative product in accordance with the notice.

(4) In this section—

spot contract (現貨合約) means a contract for the sale of any type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate under the terms of which the settlement

of the contract is scheduled to be made within the longest of the following periods—

- (a) if the contract is—
 - (i) entered into in Hong Kong, 2 business days after the date of entering into the contract; or
 - (ii) settled outside Hong Kong, 2 days on which each settlement facility necessary to settle the transaction is open for business, after the date of entering into the contract;
- (b) the period generally accepted in the market for that type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate as the standard delivery period.

(Added 6 of 2014 s. 52)

2. References to subsidiary

- (1) For the purposes of this Ordinance, a corporation shall be regarded as a subsidiary of another corporation if-
 - (a) the other corporation-
 - (i) controls the composition of its board of directors;
 - (ii) controls more than half of its voting power at general meetings; or
 - (iii) holds more than half of its issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital); or
 - (b) it is a subsidiary of a corporation which is the other corporation's subsidiary.
- (2) For the purposes of subsection (1), in determining whether a corporation is a subsidiary of another corporation-
 - (a) any shares held or power exercisable by the other corporation in a fiduciary capacity shall be regarded as not held or exercisable by it;
 - (b) subject to paragraphs (c) and (d), any shares held or power exercisable-
 - (i) by a nominee for the other corporation (except where the other corporation is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of the other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,shall be regarded as held or exercisable by the other corporation;
 - (c) any shares held or power exercisable by a person under a debenture of the corporation or under a trust deed for securing the issue of the debenture shall be disregarded; and
 - (d) any shares held or power exercisable by, or by a nominee for, the other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (c), shall be regarded as not held or exercisable by the other corporation if the ordinary business of the other corporation or its subsidiary (as the case may be) includes the lending of money and the shares are held or power is exercisable by way of security only for a transaction entered into in the ordinary course of that business.

3. References to related corporation

For the purposes of this Ordinance-

- (a) 2 or more corporations shall be regarded as related corporations of each other if one of them is-
 - (i) the holding company of the other;
 - (ii) a subsidiary of the other; or
 - (iii) a subsidiary of the holding company of the other;
- (b) when an individual-
 - (i) controls the composition of the board of directors of one or more corporations;
 - (ii) controls more than half of the voting power at general meetings of one or more corporations; or
 - (iii) holds more than half of the issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital) of one or more corporations,each of the corporations referred to in subparagraph (i), (ii) or (iii), and each of their subsidiaries, shall be regarded as related corporations of each other.

4. References to controlling the composition of a corporation's board of directors

- (1) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by another corporation if the other corporation, by the exercise of some power exercisable by it, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.
- (2) For the purposes of subsection (1), a corporation shall be regarded as being able to appoint or remove a director of another corporation if-
 - (a) the appointment or removal cannot occur without the corporation exercising a power; or
 - (b) the appointment of a person as a director of the other corporation follows necessarily from his being a director or other officer of the corporation.
- (3) For the purposes of this Ordinance, the composition of a corporation's board of directors shall be regarded as controlled by an individual if the individual, by the exercise of some power exercisable by him, can, without the consent or concurrence of any other person, appoint or remove all or a majority of the directors of the corporation.
- (4) For the purposes of subsection (3), an individual shall be regarded as being able to appoint or remove a director of a corporation if-
 - (a) the appointment or removal cannot occur without the individual exercising a power; or
 - (b) the appointment of a person as a director of the corporation follows necessarily from his being a director or other officer of another corporation and his appointment as a director or other officer of the other corporation cannot occur without the individual exercising a power.

5. References to wholly owned subsidiary

For the purposes of this Ordinance, a body corporate shall be regarded as the wholly owned subsidiary of another body corporate if it has no members except that other, that other's nominee, that other's wholly owned subsidiary (as construed in accordance with this section), such wholly owned subsidiary's nominee, or any combination thereof.

6. References to substantial shareholder

- (1) For the purposes of this Ordinance, a person shall, in relation to a corporation, be regarded as a substantial shareholder of the corporation if he, either alone or with any of his associates-
 - (a) has an interest in shares in the corporation-
 - (i) the aggregate number of which shares is equal to more than 10% of the total number of issued shares of the corporation; or (Amended 28 of 2012 ss. 912 & 920)
 - (ii) which entitles the person, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation; or
 - (b) holds shares in any other corporation which entitles him, either alone or with any of his associates and either directly or indirectly, to exercise or control the exercise of 35% or more of the voting power at general meetings of the other corporation, or of a further corporation, which is itself entitled, either alone or with any of its associates and either directly or indirectly, to exercise or control the exercise of more than 10% of the voting power at general meetings of the corporation.
- (2) For the purposes of subsection (1), a person shall be regarded as being entitled to exercise or control the exercise of 35% or more of the voting power at general meetings of a corporation indirectly if he, either alone or with any of his associates, has an interest in shares in a further corporation which entitles him, either alone or with any of his associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the further corporation which is itself entitled, either alone or with any of its associates, to exercise or control the exercise of 35% or more of the voting power at general meetings of the first-mentioned corporation.

7. References to securities of a corporation

In this Ordinance, a reference to securities (however described) as those of a corporation shall, unless the context otherwise requires, be construed as a reference to securities (having the applicable meaning, whether under section 1 or otherwise) which are-

- (a) issued, made available or granted by the corporation;
- (b) proposed to be issued, made available or granted by the corporation; or
- (c) proposed to be issued, made available or granted by the corporation when it is incorporated.

8. References to interest of investing public

In this Ordinance, a reference to the interest of the investing public does not include any interest the taking into consideration of which is or is likely to be contrary to the public interest.

9. References to conditions

In this Ordinance, unless the context otherwise requires, a reference to any condition imposed under or pursuant to any provision of this Ordinance shall, in any case where the condition has been amended (however described) under or pursuant to any provision of this Ordinance, be construed as a reference to the condition as so amended.

10. References relating to regulated activity

In this Ordinance-

- (a) unless otherwise defined or excluded or the context otherwise requires, a person shall be regarded as carrying on a regulated activity if-
 - (i) he carries on a business in a regulated activity; or
 - (ii) he performs for or on behalf of or by arrangement with a person carrying on a business in a regulated activity, any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;
- (b) a person shall be regarded as carrying on a regulated activity for an intermediary if he performs for or on behalf of or by arrangement with the intermediary any regulated function (as defined in section 113(1) of this Ordinance) in relation to the regulated activity;
- (c)
 - (i) a corporation licensed under section 116 or 117 of this Ordinance to carry on a regulated activity shall be regarded as being licensed for that regulated activity;
 - (ii) an individual licensed under section 120 or 121 of this Ordinance to carry on a regulated activity for a licensed corporation shall be regarded as being licensed for that regulated activity.

11. References to contravention, etc.

In this Ordinance, unless the context otherwise requires-

- (a) a reference to contravention shall-
 - (i) be construed as including a reference to failure to comply; and
 - (ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision;
- (b) a reference to failure to comply shall-
 - (i) be construed as including a reference to contravention; and
 - (ii) in relation to any provision of any Ordinance, be construed as including a reference to the commission of an offence under the provision.

12. References to Ordinance

For the avoidance of doubt, in this Ordinance, a reference to this or any other Ordinance, whether generally or specifically and whether by reference to the short title of the Ordinance or otherwise, shall, unless the context otherwise requires, be construed as including any subsidiary legislation made under this or that other Ordinance (as the case may be).

13. Notes in Ordinance

A note located in the text of this Ordinance is provided for information only and has no legislative effect.

(Added 9 of 2012 s. 11)

14. Commencement of subsidiary legislation

Without limiting section 28(5) of the Interpretation and General Clauses Ordinance (Cap 1), if any subsidiary legislation made under this Ordinance is to come into operation on a day to be notified in the Gazette-

- (a) the notice may fix different days for a provision of the subsidiary legislation to come into operation for different purposes; and
- (b) different notices may fix different days for the provision to come into operation for different purposes.

(Added 5 of 2015 s. 17)

Part 2

Specified Futures Exchanges

1. ASX Limited
2. Australian Securities Exchange Limited
3. BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
4. Board of Trade of the City of Chicago, Inc.
5. Chicago Board Options Exchange, Incorporated
6. Chicago Mercantile Exchange Inc.
7. China Financial Futures Exchange
8. Commodity Exchange, Inc.
9. Dalian Commodity Exchange
10. Eurex Frankfurt AG
11. Eurex Zürich AG
12. Euronext Amsterdam N.V.
13. Euronext Paris S.A.
14. Hong Kong Futures Exchange Limited
15. ICE Futures Canada, Inc.
16. ICE Futures U.S., Inc.
17. Korea Exchange, Inc.
18. LIFFE Administration and Management
19. Montréal Exchange Inc.
20. Multi Commodity Exchange of India Limited
21. National Commodity & Derivatives Exchange Limited
22. NASDAQ OMX PHLX LLC
23. NASDAQ OMX Stockholm AB
24. New York Mercantile Exchange, Inc.
25. New Zealand Futures and Options Exchange Limited
26. NYSE Arca, Inc.
27. Osaka Securities Exchange Co., Ltd.
28. Shanghai Futures Exchange
29. Singapore Exchange Derivatives Trading Limited
30. The London Metal Exchange Limited
31. Tokyo Financial Exchange Inc.
32. Tokyo Grain Exchange Inc.
33. Tokyo Stock Exchange, Inc.
34. Zhengzhou Commodity Exchange

(Replaced L.N. 94 of 2012)

Part 3

Specified Stock Exchanges

1. ASX Limited

2. BSE Limited
3. Borsa Italiana S.p.A.
4. Bursa Malaysia Securities Berhad
5. Deutsche Börse AG
6. Euronext Amsterdam N.V.
7. Euronext Brussels S.A./N.V.
8. Euronext Paris S.A.
9. Korea Exchange, Inc.
10. London Stock Exchange plc
11. Montréal Exchange Inc.
12. Nagoya Stock Exchange, Inc.
13. NASDAQ OMX Copenhagen A/S
14. NASDAQ OMX Helsinki Ltd
15. NASDAQ OMX Stockholm AB
16. National Stock Exchange of India Limited
17. New York Stock Exchange LLC
18. NYSE Amex LLC
19. NZX Limited
20. Osaka Securities Exchange Co., Ltd.
21. Oslo Børs ASA
22. Singapore Exchange Securities Trading Limited
23. SIX Swiss Exchange AG
24. Sociedad Rectora de la Bolsa de Valores de Madrid, S.A. (Sociedad Unipersonal)
25. Société de la Bourse de Luxembourg S.A.
26. The NASDAQ Stock Market LLC
27. The Philippine Stock Exchange, Inc.
28. The Stock Exchange of Hong Kong Limited
29. The Stock Exchange of Thailand
30. Tokyo Stock Exchange, Inc.
31. TSX Inc.
32. Wiener Börse AG

(Replaced L.N. 94 of 2012)

Part 4

Multilateral Agencies

1. The African Development Bank
2. The Asian Development Bank
3. The European Bank for Reconstruction and Development
4. The European Investment Bank
5. The Inter-American Development Bank
6. The International Bank for Reconstruction and Development (commonly known as the World Bank)
7. The International Finance Corporation (an affiliate of the World Bank)

Part 5

Qualifying Credit Rating

1. A Moody's Investors Service rating of-
 - (a) A3 or above for long term debt; or
 - (b) Prime-3 or above for short term debt.
2. A Standard & Poor's Corporation rating of-
 - (a) A or above for long term debt; or
 - (b) A-3 or above for short term debt.

Note:

* **Commencement date : 3 March 2014.**

^ **Commencement date: 13 November 2015.**

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Schedule:	2	Securities and Futures Commission	19 of 2015	13/11/2015

[sections 3, 7 & 10 &
Schedules 1 & 10]

Part 1

Constitution and Proceedings of Commission, etc.

Chairman, chief executive officer and other members of Commission

(Amended 15 of 2006 s. 6)

1. The Commission shall consist of a chairman, a chief executive officer and such number of other executive directors and non-executive directors as is determined by the Chief Executive, all of whom shall be appointed by the Chief Executive as follows- (Amended 15 of 2006 s. 6)
 - (a) the number of members of the Commission shall not be less than 8; and
 - (b) the number of non-executive directors of the Commission shall exceed the number of executive directors of the Commission. (Replaced 15 of 2006 s. 6)
2. (Repealed 15 of 2006 s. 6)
3. When the membership of the Commission ceases to comply with the requirements of section 1, the Chief Executive shall as soon as reasonably practicable thereafter make the necessary appointment to ensure that the requirements are complied with.

Deputy chairman and vacancies in office of chairman or deputy chairman

4. The Chief Executive may appoint an executive director or non-executive director of the Commission to be the deputy chairman of the Commission. (Amended 15 of 2006 s. 6)
5. If the office of chairman of the Commission is vacant or the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause, the deputy chairman appointed under section 4 shall act as chairman in his place.
6. Notwithstanding that a deputy chairman has been appointed under section 4, the chairman of the Commission may, where there is no designation under section 7, designate an executive director or non-executive director of the Commission to act as chairman of the Commission for any period during which both he and the deputy chairman are unable to act as chairman due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation. (Amended 15 of 2006 s. 6)
7. If-
 - (a) no deputy chairman has been appointed under section 4 or the office of deputy chairman of the Commission is vacant; or
 - (b) the deputy chairman appointed under section 4 is unable to act as chairman due to illness, absence from Hong Kong or any other cause, and there is no designation under section 6,the Financial Secretary may designate an executive director or non-executive director of the Commission to act

as chairman of the Commission for any period during which the chairman of the Commission is unable to act as chairman due to illness, absence from Hong Kong or any other cause. (Amended 15 of 2006 s. 6)

8. A designation under section 7 ceases to have effect when-
 - (a) it is revoked by the Financial Secretary;
 - (b) where the designation is under section 7(a), an appointment is made under section 4; or
 - (c) where the designation is under section 7(b), the deputy chairman appointed under section 4 is able to act as chairman,whichever is the earlier.
9. A deputy chairman of the Commission who acts as chairman of the Commission under section 5, or an executive director or non-executive director of the Commission who acts as chairman of the Commission in accordance with a designation under section 6 or 7, shall be deemed for all purposes to be the chairman of the Commission. (Replaced 15 of 2006 s. 6)
- 9A. Notwithstanding section 9-
 - (a) an executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission; and
 - (b) a non-executive director of the Commission shall not cease to be regarded as such only because of his acting as chairman of the Commission. (Added 15 of 2006 s. 6)

Vacancy in office of chief executive officer

(Added 15 of 2006 s. 6)

- 9B. The Chief Executive may designate an executive director of the Commission to act as chief executive officer of the Commission for any period during which the chief executive officer of the Commission is unable to act as chief executive officer due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation. (Added 15 of 2006 s. 6)
- 9C. An executive director of the Commission who acts as chief executive officer of the Commission shall be deemed for all purposes to be the chief executive officer of the Commission. (Added 15 of 2006 s. 6)

Functions and office of members, etc.

(Amended 15 of 2006 s. 6)

- 9D. Subject to the other provisions of this Ordinance, the chairman, deputy chairman and chief executive officer of the Commission shall have such functions as are assigned to them by the Commission. (Added 15 of 2006 s. 6)
10. The terms and conditions of the office of a member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be determined by the Chief Executive. (Amended 15 of 2006 s. 6)
11. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) may at any time resign his office by notice in writing to the Chief Executive. (Amended 15 of 2006 s. 6)
12. A member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) shall be paid by the Commission such remuneration, allowances or expenses as the Chief Executive may determine. (Amended 15 of 2006 s. 6)
13. The Chief Executive may by notice in writing remove from office any member of the Commission (whether as the chairman, deputy chairman, chief executive officer or otherwise) whose removal appears to him to be desirable for the effective performance by the Commission of its functions. (Amended 15 of 2006 s. 6)

Meetings

14. Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman, deputy chairman, chief executive officer, or any 2 other members, of the Commission. (Amended 15 of 2006 s. 6)
15. At a meeting of the Commission-
 - (a) if the chairman of the Commission is present, he shall be the chairman of the meeting;
 - (b) if the chairman of the Commission is not present but the deputy chairman of the Commission is present, the deputy chairman shall be the chairman of the meeting; or
 - (c) if neither the chairman nor the deputy chairman of the Commission is present, the members of the Commission present shall choose one of their number to be the chairman of the meeting.
16. The quorum for a meeting of the Commission is not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission.
- 16A. For the purpose of forming a quorum under section 16-
 - (a) subject to paragraph (b), the chairman of the Commission shall be counted as a non-executive director of the Commission; and
 - (b) notwithstanding sections 9 and 9A-
 - (i) an executive director of the Commission who acts as chairman of the Commission shall only be counted as an executive director of the Commission; and
 - (ii) a non-executive director of the Commission who acts as chairman of the Commission shall only be counted as a non-executive director of the Commission. (Added 15 of 2006 s. 6)
17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.
18. Each member of the Commission present at a meeting of the Commission has one vote.
19. Every question for decision at a meeting of the Commission shall be determined by a majority of votes of its members present and, in the event that voting is equally divided, the chairman of the meeting shall, subject to section 20, have a casting vote.
20. The chairman of a meeting of the Commission shall not exercise a casting vote in respect of any question for decision at the meeting until after he has consulted the Financial Secretary on the question.

Written resolution

21. Where a resolution-
 - (a) is in writing; and
 - (b) is signed by such number of members of the Commission as-
 - (i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and
 - (ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,

the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.
22. For the purposes of section 21, a resolution to which that section applies may be-
 - (a) in the form of one document; or
 - (b) in the form of more than one document, each in the like form and signed by one or more members of the Commission.
23. Where a resolution is in the form of more than one document as described in section 22(b), the requirement under section 21(b) shall be regarded as having been satisfied if the documents together bear the signatures of

such number of members of the Commission as is specified in section 21(b)(i) and (ii).

24. For the purposes of sections 21 to 23-
- (a) a document shall be regarded as having been signed by a member of the Commission if a telex, cable, facsimile or electronic transmission of a document bears the signature of the member; and
 - (b) a resolution to which section 21 applies shall be regarded as made on the date on which the resolution is signed by the last person signing as a member of the Commission for the purposes of that section.

Seal, and regulation of administration, etc.

25. The Commission shall have a seal, the affixing of which shall be authenticated by the signature of the chairman or the deputy chairman of the Commission, or by the signature of such other member of the Commission as is authorized by it to act in that behalf.
26. The Commission shall organize and regulate its administration, procedure and business in such manner as it considers will, subject to the requirements of this Ordinance, best ensure the performance of its functions.

Advisory Committee

27. The Advisory Committee shall consist of-
- (a) the chairman of the Commission;
 - (aa) the chief executive officer of the Commission; (Added 15 of 2006 s. 6)
 - (b) not more than 2 other executive directors of the Commission who shall be appointed by the Commission;
 - (c) not less than 8 (but not more than 12) other members who shall be appointed by the Chief Executive after consultation with the Commission.
28. A meeting of the Advisory Committee may be convened by-
- (a) the chairman of the Commission; (Amended 15 of 2006 s. 6)
 - (aa) the chief executive officer of the Commission; or (Added 15 of 2006 s. 6)
 - (b) any 3 other members of the Advisory Committee.
29. At a meeting of the Advisory Committee-
- (a) if the chairman of the Commission is present, he shall be the chairman of the meeting; or
 - (b) if the chairman of the Commission is not present, the members of the Advisory Committee present shall choose one of their number to be the chairman of the meeting.
30. Where a member of the Advisory Committee appointed under section 27(b) ceases to be an executive director of the Commission, he ceases to be a member of the Advisory Committee.
31. A member of the Advisory Committee appointed under section 27(b) or (c) may at any time resign his office by notice in writing to-
- (a) where he has been appointed under section 27(b), the Commission; or
 - (b) where he has been appointed under section 27(c), the Chief Executive.
32. The Chief Executive may by notice in writing remove from office any member of the Advisory Committee appointed under section 27(c).

Part 2

Non-Delegable Functions of Commission

1. Any function of the Commission to make subsidiary legislation under or pursuant to any Ordinance.
2. The following functions of the Commission-

- (1) to borrow money, under section 5(4)(d) of this Ordinance;
- (1A) to establish a wholly owned subsidiary, under section 5(4)(da) of this Ordinance; (Added 9 of 2012 s. 33)
- (2) (Repealed 19 of 2015 s. 28)
- (3) to establish any committee, under section 8(1) of this Ordinance;
- (4) to refer any matter to a committee, under section 8(2) of this Ordinance;
- (5) to appoint a person to be a member or chairman of a committee, under section 8(3) of this Ordinance;
- (6) to withdraw a reference from a committee, or to revoke an appointment of a member or chairman of a committee, under section 8(5) of this Ordinance;
- (7) to submit to the Chief Executive estimates, under section 13(2) of this Ordinance;
- (8) to prepare any financial statements, under section 15(2) of this Ordinance;
- (9) to prepare any report, under section 15(3) of this Ordinance;
- (10) to appoint auditors, under section 16(1) of this Ordinance;
- (11) (Repealed 9 of 2012 s. 47)
- (12) to recognize a company as an exchange company under, or to impose conditions pursuant to, section 19(2) of this Ordinance;
- (13) to amend or revoke conditions, or impose new conditions, under section 19(3) of this Ordinance;
- (14) to give a company a reasonable opportunity of being heard, under section 19(7) of this Ordinance;
- (15) to request a recognized exchange company to make or amend rules, under section 23(3) of this Ordinance;
- (16) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 24(3) of this Ordinance;
- (17) to advise the Financial Secretary to extend time, pursuant to section 24(6) of this Ordinance;
- (18) to declare any class of rules to be a class of rules which are not required to be approved, under section 24(7) of this Ordinance;
- (19) to request the Chief Executive in Council to transfer any function of the Commission, under section 25(1) of this Ordinance;
- (20) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 25(7) of this Ordinance;
- (21) to approve the appointment of a person as chief executive, pursuant to section 26 of this Ordinance;
- (22) to withdraw recognition of a recognized exchange company, under section 28(1)(a) of this Ordinance;
- (23) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 28(1)(b) of this Ordinance;
- (24) to direct a recognized exchange company to cease to provide or operate facilities or to cease to provide services, under section 29(1) of this Ordinance;
- (25) to extend a direction, under section 29(3) of this Ordinance;
- (26) to recognize a company as a clearing house under, or to impose conditions pursuant to, section 37(1) of this Ordinance;
- (27) to amend or revoke conditions, or impose new conditions, under section 37(2) of this Ordinance;
- (28) to give a company a reasonable opportunity of being heard, under section 37(5) of this Ordinance;
- (29) to request a recognized clearing house to make or amend rules, under section 40(4) of this Ordinance;
- (30) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 41(3) of this Ordinance;
- (31) to advise the Financial Secretary to extend time, pursuant to section 41(6) of this Ordinance;
- (32) to declare any class of rules to be a class of rules which are not required to be approved, under section 41(7) of this Ordinance;
- (33) to withdraw recognition of a recognized clearing house, under section 43(1)(a) of this Ordinance;
- (34) to direct a recognized clearing house to cease to provide or operate facilities, under section 43(1)(b) of this Ordinance;
- (35) to recognize a company as an exchange controller under, or to impose conditions pursuant to, section 59(2) of this Ordinance;
- (36) to amend or revoke conditions, or impose new conditions, under section 59(3) of this Ordinance;
- (37) to direct a person to take specified steps, under section 59(9)(c) of this Ordinance;
- (38) to give a company a reasonable opportunity of being heard, under section 59(18) of this Ordinance;
- (39) to approve the increase or decrease of any interest a recognized exchange controller has in a

- recognized exchange company or recognized clearing house, pursuant to section 60(a) of this Ordinance;
- (40) to approve a person for becoming a minority controller of a recognized exchange controller, recognized exchange company or recognized clearing house, pursuant to section 61(1) of this Ordinance;
 - (41) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 67(3) of this Ordinance;
 - (42) to advise the Financial Secretary to extend time, pursuant to section 67(6) of this Ordinance;
 - (43) to declare any class of rules to be a class of rules which are not required to be approved, under section 67(7) of this Ordinance;
 - (44) to request the Chief Executive in Council to transfer any function of the Commission, under section 68(1) of this Ordinance;
 - (45) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 68(7) of this Ordinance;
 - (46) to approve the appointment of a person as chief executive or chief operating officer, pursuant to section 70(1) of this Ordinance;
 - (47) to remove a person from the office of a chief executive or chief operating officer, under section 70(2) of this Ordinance;
 - (48) to withdraw recognition of a recognized exchange controller, under section 72(1)(i) of this Ordinance;
 - (49) to direct a company to take specified steps, under section 72(1)(ii) of this Ordinance;
 - (50) to give a recognized exchange controller a reasonable opportunity of being heard, pursuant to section 72(2) of this Ordinance;
 - (51) to make statement in writing, pursuant to section 74(1) of this Ordinance;
 - (52) to direct a recognized exchange controller or a relevant corporation to take specified steps, under section 75(1) of this Ordinance;
 - (53) to approve a fee, pursuant to section 76(1) of this Ordinance;
 - (54) to recognize a company as an investor compensation company under, or to impose conditions pursuant to, section 79(1) of this Ordinance;
 - (55) to amend or revoke conditions, or impose new conditions, under section 79(2) of this Ordinance;
 - (56) to give a company a reasonable opportunity of being heard, under section 79(5) of this Ordinance;
 - (57) to request the Chief Executive in Council to transfer any function of the Commission, under section 80(1) of this Ordinance;
 - (58) to request the Chief Executive in Council to order that the Commission resume any function, pursuant to section 80(7) of this Ordinance;
 - (59) to refuse to give approval to any rules or amendment of any rules, or any part thereof, under section 83(3) of this Ordinance;
 - (60) to advise the Financial Secretary to extend time, pursuant to section 83(6) of this Ordinance;
 - (61) to declare any class of rules to be a class of rules which are not required to be approved, under section 83(7) of this Ordinance;
 - (62) to withdraw recognition of a recognized investor compensation company, under section 85(1) of this Ordinance;
 - (63) to approve the conduct of activities or businesses, pursuant to section 90(1) of this Ordinance;
 - (64) to serve a notice, under section 92(1) of this Ordinance;
 - (65) to extend the period during which a restriction notice is to remain in force, under section 92(7) of this Ordinance;
 - (66) to apply to the Court of First Instance, pursuant to section 92(9) of this Ordinance;
 - (67) to make a suspension order, under section 93(1) of this Ordinance;
 - (68) to extend the period during which a suspension order is to remain in force, under section 93(9) of this Ordinance;
 - (69) to appoint any person, other than an employee of the Commission, to investigate any of the matters referred to in section 182(1)(a) to (g) of this Ordinance, under section 182(1) of this Ordinance;
 - (70) to cause a report to be published, under section 183(6) of this Ordinance;
 - (71) to impose a prohibition or requirement, under section 204, 205 or 206 of this Ordinance;
 - (72) to withdraw, substitute or vary a prohibition or requirement, under section 208(1) of this Ordinance;
 - (73) to present a petition, under section 212 of this Ordinance;

- (74) to apply to the Court of First Instance, pursuant to section 213(1) of this Ordinance;
- (75) to apply to the Court of First Instance, under section 214(1) of this Ordinance;
- (76) to specify the time at which a specified decision is to take effect, under section 232(3) of this Ordinance;
- (77) to establish a compensation fund, under section 236 of this Ordinance;
- (78) to borrow, or to charge any investments by way of security, under section 237(2)(a) of this Ordinance;
- (79) to appoint an auditor, under section 240(5) of this Ordinance;
- (80) (Repealed 9 of 2012 s. 47)
- (81) to institute proceedings in the Market Misconduct Tribunal under section 252(1) of this Ordinance (Replaced 9 of 2012 s. 27)
- (81A) to institute disclosure proceedings under section 307I(1) of this Ordinance; (Added 9 of 2012 s. 12)
- (82) to publish guidelines, under section 309(1) of this Ordinance;
- (83) to make an application, pursuant to section 385(1) of this Ordinance;
- (84) to consult the Financial Secretary, under section 396(1) of this Ordinance;
- (85) to make recommendation to the Chief Executive in Council, under section 396(2) of this Ordinance;
- (86) to appoint members of the Advisory Committee, under section 27(b) of Part 1;
- (87) to direct any specified securities to be subject to restrictions, under section 1(2) of Part 6 of Schedule 3 to this Ordinance;
- (88) to apply to the Court of First Instance, pursuant to section 1(6)(a) of Part 6 of Schedule 3 to this Ordinance;
- (89) to apply to the Court of First Instance, pursuant to section 1(7) of Part 6 of Schedule 3 to this Ordinance.

(Format changes—E.R. 2 of 2012)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Schedule:	5	Regulated Activities	L.N. 95 of 2015	10/07/2015

Remarks:

Provision marked with asterisk () has not yet come into operation. Please see paragraph (x) of the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 (L.N. 95 of 2015).

[sections 114, 118, 139 &
142 & Schedule 1]

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; (Amended L.N. 28 of 2011)
- Type 10 : providing credit rating services. (Added L.N. 28 of 2011)

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;
- (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 8 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;
- (iva) a person-
 - (A) who is licensed or registered for Type 9 regulated activity;
 - (B) who provides a service of managing a portfolio of futures contracts under a collective investment scheme for another person that the person is permitted to provide under that licence or registration; and (Amended 6 of 2014 s. 53)
 - (C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B); (Added L.N. 197 of 2005)
- (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 8 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;

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;
- (iva) a person-

- (A) who is licensed or registered for Type 9 regulated activity;
- (B) who provides a service of managing a portfolio of securities under a collective investment scheme for another person that the person is permitted to provide under that licence or registration; and (Amended 6 of 2014 s. 53)
- (C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B); (Added L.N. 197 of 2005)
- (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 8 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 or issuing of such analyses or reports that falls within the meaning of *advising on corporate finance* or *providing credit rating services*; (Amended L.N. 28 of 2011; 6 of 2014 s. 53)

asset management (資產管理) means-

- (a) real estate investment scheme management; or
- (b) securities or futures contracts management; (Added L.N. 197 of 2005)

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;

credit ratings (信貸評級) means opinions, expressed using a defined ranking system, primarily regarding the creditworthiness of-

- (a) a person other than an individual;
- (b) debt securities;
- (c) preferred securities; or
- (d) an agreement to provide credit; (Added L.N. 28 of 2011)

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-
 - (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);
 - (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; (Amended 28 of 2012 ss. 912 & 920)
- (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) applies, or would apply if not excluded by section 38(5)(b) or 38A of that Ordinance; and (Amended 28 of 2012 ss. 912 & 920)
 - (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) or, in the case of a corporation incorporated outside Hong Kong, Part XII of that Ordinance; or (Amended 28 of 2012 ss. 912 & 920)
 - (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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) in relation to a collective investment scheme that is a corporation- (Amended 28 of 2012 ss. 912 & 920)
 - (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 8 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; (Amended L.N. 197 of 2005)
- (xiv) is licensed or registered for Type 9 regulated activity and performs the act solely for the purposes of carrying on that regulated activity; or (Amended L.N. 197 of 2005)
- (xv) in any case where each of the parties to the transaction or proposed transaction under which securities are or will be acquired, disposed of, subscribed for or underwritten as described in paragraph (a) is an authorized financial institution, is an approved money broker and performs the act for each of the parties to the transaction or proposed transaction; (Added L.N. 197 of 2005. Amended 6 of 2014 s. 53)

debt securities (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; (Added L.N. 28 of 2011)

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-

- (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;
- (ia) by a person for the purpose of performing the person's functions as a recognized clearing house; (Added 6 of 2014 s. 53)
- (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 and every party to which is a corporation or a limited partnership registered under the Limited Partnerships Ordinance (Cap 37); (Amended 6 of 2014 s. 53)
- (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 contract 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;

*(xia) that is an OTC derivative dealing act carried out by a person who is licensed for Type 12 regulated activity and is carried out wholly incidentally to the carrying on of that regulated activity; (Added 6 of 2014 s. 53)

(xib) that is an act that constitutes entering into a market contract; (Added 6 of 2014 s. 53)

(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;

(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;

preferred securities (優先證券) means preference shares, preferred shares or preferred stock; (Added L.N. 28 of 2011)

providing credit rating services (提供信貸評級服務) means-

(a) preparing credit ratings-

(i) for dissemination to the public, whether in Hong Kong or elsewhere; or

(ii) with a reasonable expectation that they will be so disseminated; or

(b) preparing credit ratings-

(i) for distribution by subscription, whether in Hong Kong or elsewhere; or

(ii) with a reasonable expectation that they will be so distributed,

but does not include-

(c) preparing, pursuant to a request made by a person, a credit rating which is exclusively prepared for, and provided to, the person and that is neither intended for dissemination to the public or distribution by subscription, whether in Hong Kong or elsewhere, nor reasonably expected to be so disseminated or distributed; or

(d) gathering, collating, disseminating or distributing information concerning the indebtedness or credit history of any person; (Added L.N. 28 of 2011)

real estate investment scheme management (房地產投資計劃管理), in relation to a person, means providing a service of operating a collective investment scheme for another person by the person, where-

(a) the property that is being managed under the scheme consists primarily of immovable property; and

(b) the scheme is authorized under section 104 of this Ordinance; (Added L.N. 197 of 2005)

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 shares to facilitate acquisitions or holdings of securities; or (Amended 28 of 2012 ss. 912 & 920)
- (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; (Amended L.N. 197 of 2005)

securities or futures contracts management (證券或期貨合約管理), 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- (Amended L.N. 197 of 2005)

- (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;
- (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 8 of the Trustee Ordinance (Cap 29) which provides such service wholly incidental to the discharge of its duty as such. (Amended L.N. 197 of 2005)

(Amended E.R. 2 of 2014)

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
- (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.

(Format changes—E.R. 1 of 2013)

Chapter:	571	Securities and Futures Ordinance	Gazette Number	Version Date
Schedule:	8	Securities and Futures Appeals Tribunal	19 of 2015	13/11/2015

[sections 215, 216, 217, 218,
219, 222, 232, 233 &
234 & Schedule 10]

Part 1

Appointment of Members and Proceedings of Tribunal, etc.

- In this Schedule, unless the context otherwise requires-
appeal panel (上訴委員會) means the panel of persons appointed under section 2;
application for review (覆核申請) has the meaning assigned to it by section 215 of this Ordinance;
chairman (主席) means the chairman of the Tribunal;
judge (法官) has the meaning assigned to it by section 215 of this Ordinance;
member (成員) means a member of the Tribunal;
ordinary member (普通成員) means a member other than the chairman;
panel member (上訴委員) means a member of the appeal panel;
parties (各方) has the meaning assigned to it by section 215 of this Ordinance;
relevant authority (有關當局) has the meaning assigned to it by section 215 of this Ordinance;
review (覆核) has the meaning assigned to it by section 215 of this Ordinance;
Secretary (局長) means the Secretary for Financial Services and the Treasury; (Amended L.N. 106 of 2002)
specified decision (指明決定) has the meaning assigned to it by section 215 of this Ordinance;
Tribunal (審裁處) has the meaning assigned to it by section 215 of this Ordinance.

Appointment of appeal panel

- The Chief Executive shall appoint persons to a panel comprising such number of members, who are not public officers, as he considers appropriate.
- Subject to sections 4 and 5, a panel member shall be appointed for such period as the Chief Executive considers appropriate, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
- A panel member may at any time resign his office by notice in writing to the Chief Executive.
- The Chief Executive may by notice in writing remove a panel member from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
- For the avoidance of doubt, section 216(5) of this Ordinance does not require the appointment of persons to more than one panel under section 2.

Appointment of chairman

- The chairman shall be appointed by the Chief Executive on the recommendation of the Chief Justice.
- Subject to sections 9 to 11, the chairman shall be appointed for a term of 3 years or appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
- The chairman may at any time resign his office by notice in writing to the Chief Executive.

10. The Chief Executive, after consultation with the Chief Justice, may by notice in writing remove the chairman from office on the grounds of incapacity, bankruptcy, neglect of duty, conflict of interest or misconduct.
11. If a review has been commenced by the Tribunal but not completed before the expiry of the chairman's term of office, the Chief Executive may authorize the chairman to continue to act as the chairman for the purpose of completing the review.

Appointment of ordinary members

12. For the purpose of determining a review, the Secretary on the recommendation of the chairman shall appoint 2 panel members as ordinary members in relation to the review.
13. Subject to sections 14 and 15, an ordinary member shall be appointed to act in relation to any specified review, and may, subject to the other provisions of this Ordinance, from time to time be reappointed.
14. An ordinary member may at any time resign his office by notice in writing to the Secretary.
15. Where an ordinary member ceases to be a panel member, he ceases to be such ordinary member.

Sittings

16. The chairman shall convene such sittings of the Tribunal as are necessary to determine a review.
17. Before convening a sitting under section 16 in respect of a review, the Tribunal may give directions to the parties to the review concerning procedural matters to be complied with by the parties and the time within which the parties are required to comply with such matters.
18. Subject to section 19, at any sitting of the Tribunal-
 - (a) the chairman and 2 ordinary members shall be present;
 - (b) the chairman shall preside; and
 - (c) every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman alone.
19. At any sitting of the Tribunal held in respect of any matter which is determined by the chairman alone as the sole member of the Tribunal under section 31 or 32, the chairman only shall be present, and every question before the Tribunal shall be determined by him.
20. Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting or any part thereof shall not be held in public in which case it may hold the sitting or the part thereof (as the case may be) in private.
21. Where an application is made pursuant to section 20 for a determination that a sitting or any part thereof shall not be held in public, any hearing of the application shall be held in private.
22. The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard-
 - (a) in person or, in the case of the relevant authority or a corporation, through an officer or employee of the relevant authority or the corporation (as the case may be); and
 - (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.
23. The chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.
24. The order of proceedings at any sitting of the Tribunal shall be determined by the Tribunal in the manner most appropriate to the circumstances of the case.

Preliminary conferences and consent orders

25. At any time after an application for review has been made, the chairman may-
- (a) on his own motion or on the application of any of the parties to the review;
 - (b) if he considers it appropriate to do so, after consideration of any material that has been submitted to the Tribunal in relation to the application for review by the parties to the review; and
 - (c) if the parties agree or, in the case of an application made by any party pursuant to paragraph (a), the other party agrees,
- direct that a conference, to be attended by the parties or their representatives and presided over by the chairman shall be held for the purposes of-
- (i) enabling the parties to prepare for the conduct of the review;
 - (ii) assisting the Tribunal to determine issues for the purposes of the review; and
 - (iii) generally securing the just, expeditious and economical conduct of the review.
26. At a conference held in accordance with a direction of the chairman under section 25, the chairman may-
- (a) give any direction he considers necessary or desirable for securing the just, expeditious and economical conduct of the review; and
 - (b) endeavour to secure that the parties to the review make all agreements as they ought reasonably to have made in relation to the review.
27. After a conference has been held in accordance with a direction of the chairman under section 25, the chairman shall report to the Tribunal on such matters relating to the conference as he considers appropriate.
28. At any time after an application for review has been made, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if-
- (a) the parties to the review request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and
 - (b) the parties consent to all of the terms of the order.
29. Notwithstanding Part XI of this Ordinance or any other provisions of this Schedule, where under section 28 the Tribunal or the chairman makes any order, the order shall, for all purposes, be regarded as an order made by the Tribunal or the chairman (as the case may be) under the provision in question in compliance with the requirements otherwise applicable to the making of the order.
30. In sections 28 and 29, **order** (命令) includes any finding, determination and any other decision.

Chairman as sole member of Tribunal

31. Where, at any time after an application for review has been made but before any sitting of the Tribunal is held to determine the review, the parties to the review have, by notice in writing given to the Tribunal, informed the Tribunal that they have agreed that the review may be determined by the chairman alone as the sole member of the Tribunal, the chairman may determine the review as the sole member of the Tribunal.
32. Where-
- (a) an application is made to the Tribunal pursuant to section 217(4) of this Ordinance for the grant of an extension of the time within which an application for review shall be made; or
 - (b) an application is made to the Tribunal under section 227(2) of this Ordinance for a stay of execution of a specified decision,
- the chairman may determine the application as the sole member of the Tribunal.
33. Where section 31 or 32 applies, the Tribunal constituted by the chairman as the sole member of the Tribunal shall, for all purposes, be regarded as the Tribunal constituted also by 2 ordinary members.

34. After the chairman has made any determination under section 31, or made any determination in respect of an application described in section 32(b), the chairman shall report to the Tribunal the making of the determination and the reasons therefor and such other matters relating to the determination as he considers appropriate.
35. Where-
- (a) there is an application described in section 32(b); and
 - (b) the chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, or considers it improper or undesirable that he should perform his functions in relation to the application,
- a judge within the meaning of paragraph (a) of the definition of *judge* in section 215 of this Ordinance shall, upon appointment by the Chief Justice for the purpose, determine the application as if he were the chairman duly appointed under this Ordinance, and the provisions of this Ordinance shall apply to him accordingly.

Miscellaneous

36. Except as otherwise provided in this Ordinance, the Tribunal and its members, and any party, witness, counsel, solicitor, or any other person involved, in a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

Part 2

Specified Decisions

Division 1—Specified Decisions Made by Commission

Item	Provision	Description of decision
1.	Section 93(12) of this Ordinance	Requirement to pay costs or expenses.
2.	Section 95(2) of this Ordinance	Refusal to grant an authorization, or imposition of any condition.
3.	Section 97(1) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
4.	Section 98(1) of this Ordinance	Withdrawal of an authorization.
4	Section 101H(1)(a) or (b) of this Ordinance	Refusal to grant an exemption, or imposition of any condition. (Added 6 of 2014 s. 54)
A.		
4	Section 101H(2)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition. (Added 6 of 2014 s. 54)
B.		
5.	Section 104(1) of this Ordinance	Refusal to authorize a collective investment scheme, or imposition of any condition.
6.	Section 104(3) of this Ordinance	Refusal to approve an individual nominated in respect of a collective investment scheme.
7.	Section 104(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a collective investment scheme.
8.	Section 104(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
8A.	Section 104A(1) of this Ordinance	Refusal to authorize a structured product, or imposition of any conditions. (Added 8 of 2011 s. 15)
8B.	Section 104A(3) of this Ordinance	Refusal to approve an individual nominated in respect of a structured product. (Added 8 of 2011 s. 15)
8C.	Section 104A(4)(a) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition. (Added 8 of 2011 s. 15)
8D.	Section 104A(4)(b) of this Ordinance	Withdrawal of approval of an individual nominated in respect of a structured product. (Added 8 of 2011 s. 15)
9.	Section 105(1) of this Ordinance	Refusal to authorize the issue of any advertisement, invitation or document, or imposition of any condition.

10	Section 105(3) of this Ordinance	Refusal to approve an individual nominated in respect of the issue of any advertisement, invitation or document.
11	Section 105(3) of this Ordinance	Withdrawal of approval of an individual nominated in respect of the issue of any advertisement, invitation or document.
12	Section 105(4) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
13	Section 106(1) of this Ordinance	Withdrawal of an authorization.
14	Section 106(3) of this Ordinance	Refusal to withdraw an authorization.
15	Section 106(4) of this Ordinance	Imposition of any condition.
16	Section 116(1) of this Ordinance	Refusal to grant a licence.
17	Section 116(6) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
18	Section 117(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
19	Section 117(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
20	Section 119(1) of this Ordinance	Refusal to grant registration.
21	Section 119(5) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
22	Section 120(1) of this Ordinance	Refusal to grant a licence.
23	Section 120(5) of this Ordinance	Imposition of any condition.
24	Section 120(7) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
25	Section 121(1) of this Ordinance	Refusal to grant a licence for a period not exceeding 3 months.
26	Section 121(3) of this Ordinance	Imposition of any condition.
27	Section 121(5) of this Ordinance	Amendment or revocation of any condition, or imposition of any new condition.
28	Section 122(1) of this Ordinance	Refusal to approve an accreditation.
29	Section 122(2) of this Ordinance	Refusal to approve a transfer of an accreditation.
30	Section 124(1) of this Ordinance	Refusal to issue a duplicate printed licence or certificate of registration. (Amended 19 of 2015 s. 13)
31	Section 126(1) of this Ordinance	Refusal to approve a person as a responsible officer.
32	Section 126(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.
33	Section 127(1) of this Ordinance	Refusal to vary any regulated activity.
34	Section 130(1) of this Ordinance	Refusal to approve premises.
35	Section 132(1) of this Ordinance	Refusal to approve a person to become or continue to be a substantial shareholder.
36	Section 132(3) of this Ordinance	Imposition, amendment or revocation of any condition, or imposition of any new condition.

37	Section 133(1) of this Ordinance	Direction to a licensed corporation.
38	Section 133(2) of this Ordinance	Direction to a person.
39	Section 134(1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of this Ordinance	Refusal to grant a modification or waiver.
40.	Section 134(4) of this Ordinance	Amendment of a modification or waiver, imposition, amendment or revocation of any condition, or imposition of any new condition.
40	Section 145A(1) of this Ordinance	Variation of any financial resources rule. (Added 6 of 2014 s. 54)
A.		
41	Section 146(2) or (5)(b) of this Ordinance	Imposition of any condition.
42	Section 146(5)(a) of this Ordinance	Suspension of a licence.
43	Section 146(6) or (7) of this Ordinance	Amendment of any condition.
44	Section 147(3)(a) of this Ordinance	Suspension of a licence.
45	Section 147(3)(b) of this Ordinance	Imposition of any condition.
46	Section 147(4) or (5) of this Ordinance	Amendment of any condition.
47	Section 159(1) of this Ordinance	Appointment of an auditor.
48	Section 159(4) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
49	Section 160(1) of this Ordinance	Appointment of an auditor.
50	Section 160(8) of this Ordinance	Direction to pay any of the costs and expenses of any examination and audit.
51	Section 194(1)(i), (ii), (iii) or (iv) of this Ordinance	Exercise of power to revoke or suspend a licence or the approval of a person as a responsible officer, to publicly or privately reprimand a person, or to impose a prohibition on a person.
52	Section 194(2) of this Ordinance	Order to pay a pecuniary penalty.
53	Section 195(1)(a), (b) or (c) of this Ordinance	Revocation or suspension of a licence.
54	Section 195(2) of this Ordinance	Revocation of a licence.
55	Section 195(7) of this Ordinance	Revocation or suspension of the approval of a person as a responsible officer.
56	Section 196(1)(i), (ii) or (iii) of this Ordinance	Exercise of power to revoke or suspend any registration, to publicly or privately reprimand a person, or to impose a prohibition on a person.
57	Section 196(2) of this Ordinance	Order to pay a pecuniary penalty.
58	Section 197(1)(a) or (b) of this Ordinance	Revocation or suspension of any registration.
59	Section 197(2) of this Ordinance	Revocation of any registration.
60	Section 202(1) of this Ordinance	Requirement to transfer records.
61	Section 203(1F) of this Ordinance	Imposition of any condition. (Amended 19 of 2015 s. 26)

62	Section 204(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning transactions, etc.
63	Section 205(1)(a) or (b) of this Ordinance	Prohibition or requirement imposed on a licensed corporation concerning relevant property.
64	Section 206(1) of this Ordinance	Requirement imposed on a licensed corporation to maintain property.
65	Section 208(1)(b) of this Ordinance	Substitution or variation of a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
66	Section 208(1) of this Ordinance	Refusal to withdraw, substitute or vary a prohibition or requirement under section 204, 205 or 206 of this Ordinance.
67	Section 309(2) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
68	Section 309(3) of this Ordinance	Refusal to grant an exemption, or imposition of any condition.
69	Section 309(4)(a) or (b) of this Ordinance	Suspension or withdrawal of an exemption, or amendment of any condition.
70	Section 403 of this Ordinance	Imposition of any condition.
71	Section 38A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)	Refusal to issue a certificate of exemption, or imposition of any condition. (Amended 28 of 2012 ss. 912 & 920)
72	Section 342A(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)	Refusal to issue a certificate of exemption, or imposition of any condition. (Amended 28 of 2012 ss. 912 & 920)
73	Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)	Objection to a listing of securities. (Added L.N. 231 of 2002)
74	Section 6(3)(b) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V)	Imposition of any condition. (Added L.N. 231 of 2002)
75	Section 8(3) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Refusal to approve a corporation as an approved lending agent. (Added L.N. 231 of 2002)
76	Section 8(4) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Imposition of any condition. (Added L.N. 231 of 2002)
77	Section 8(6) of the Securities and Futures (Disclosure of Interests-Securities Borrowing and Lending) Rules (Cap 571 sub. leg. X)	Withdrawal of an approval. (Added L.N. 231 of 2002)
78	Section 4(4)(c) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap 571 sub. leg. Y)	Refusal to give notice. (Added L.N. 231 of 2002)

Division 2—Specified Decisions Made by Monetary Authority

Item	Provision	Description of decision
1	Section 58A(1)(c) or (d) of the Banking Ordinance (Cap 155)	Removal or suspension of relevant particulars of a relevant individual from the register.
2	Section 71C(1) of the Banking Ordinance (Cap 155)	Refusal to give consent.
3	Section 71C(2)(b) of the Banking Ordinance (Cap 155)	Attachment of any condition.

4	Section 71C(4)(c) or (d) of the Banking Ordinance (Cap 155)	Withdrawal or suspension of consent.
5	Section 71C(9) of the Banking Ordinance (Cap 155)	Attachment or amendment of any condition.
6	Section 71E(3) of the Banking Ordinance (Cap 155)	Attachment or amendment of any condition.
7	Section 203A(1)(a), (b) or (c) of this Ordinance	Exercise of power to publicly or privately reprimand a person, to impose a prohibition on a person, or to order to pay a pecuniary penalty. (Added 6 of 2014 s. 54)

Division 3—Specified Decisions Made by Commission or Recognized Investor Compensation Company

Item	Provision	Description of decision
1	Section 4(4) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Refusal to determine that a claim which is not lodged within the time limit provided in section 4(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T) is not barred. (Added L.N. 231 of 2002)
2	Section 7(1)(a), (b) or (c) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Determination as to whether there has been a default, as to the date of default, or as to whether a claimant is entitled to compensation. (Added L.N. 231 of 2002)
3	Section 7(2) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Determination of a provisional amount of compensation. (Added L.N. 231 of 2002)
4	Section 9(3) of the Securities and Futures (Investor Compensation-Claims) Rules (Cap 571 sub. leg. T)	Aggregation of separate claims or parts of those claims. (Added L.N. 231 of 2002)

Part 3

Division 1—Specified Decisions Referred to in Section 217(3)(b) of this Ordinance

Item	Description of specified decision	Provisions
1	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

Division 2—Specified Decisions Referred to in Section 218(4)(a) of this Ordinance

Item	Description of specified decision	Provisions
1	A specified decision set out in item 56 or 57 of Division 1 of Part 2.	Sections 58A(1) and 71C(4) of the Banking Ordinance (Cap 155).

Division 3—Specified Decisions Referred to in Section 218(4)(b) of this Ordinance

Item	Description of specified decision	Provision
1	A specified decision set out in item 1 or 4 of Division 2 of Part 2.	Section 196(1) and (2) of this Ordinance.

Division 4—Specified Decisions Referred to in Section 232(1) of this Ordinance

Item	Description of specified decision	Provision
1 .	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
2 .	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.

Division 5—Specified Decisions Referred to in Section 232(2) of this Ordinance

Item	Description of specified decision	Provision
1 .	A specified decision set out in item 3 of Division 1 of Part 2.	Section 97(2) of this Ordinance.
2 .	A specified decision set out in item 4 of Division 1 of Part 2.	Section 98(6) of this Ordinance.
3 .	A specified decision set out in item 17 of Division 1 of Part 2.	Section 116(7) of this Ordinance.
4 .	A specified decision set out in item 19 of Division 1 of Part 2.	Section 117(4) of this Ordinance.
5 .	A specified decision set out in item 21 of Division 1 of Part 2.	Section 119(6) of this Ordinance.
6 .	A specified decision set out in item 24 of Division 1 of Part 2.	Section 120(8) of this Ordinance.
7 .	A specified decision set out in item 27 of Division 1 of Part 2.	Section 121(6) of this Ordinance.
8 .	A specified decision set out in item 36 of Division 1 of Part 2.	Section 132(4) of this Ordinance.
8 A	A specified decision set out in item 40A of Division 1 of Part 2.	Section 145A(8) of this Ordinance. (Added 6 of 2014 s. 54)
9 .	A specified decision set out in item 42 of Division 1 of Part 2.	Section 146(9) of this Ordinance.
10 .	A specified decision set out in item 41 or 43 of Division 1 of Part 2.	Section 146(10) of this Ordinance.
11 .	A specified decision set out in item 44 of Division 1 of Part 2.	Section 147(7) of this Ordinance.
12 .	A specified decision set out in item 45 or 46 of Division 1 of Part 2.	Section 147(8) of this Ordinance.
13 .	A specified decision set out in item 61 of Division 1 of Part 2.	Section 203(3) of this Ordinance.
14 .	A specified decision set out in item 62, 63, 64 or 65 of Division 1 of Part 2.	Section 209(1) of this Ordinance.
15 .	A specified decision set out in item 6 of Division 2 of Part 2.	Section 71E(4) of the Banking Ordinance (Cap 155).
16 .	A specified decision set out in item 73 of Division 1 of Part 2.	Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V). (Added L.N. 231 of 2002)
17 .	A specified decision set out in item 74 of Division 1 of Part 2.	Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (Cap 571 sub. leg. V).

(Added L.N. 231 of 2002)
(Format changes—E.R. 1 of 2013)

Chapter:	32	Companies (Winding Up and Miscellaneous Provisions) Ordinance	Gazette Number	Version Date
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Section:	168R	Register of disqualification orders	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) The Financial Secretary may make regulations requiring officers of courts to furnish the Registrar with such particulars as the regulations may specify of cases in which-
- (a) a disqualification order is made; or
 - (b) any action is taken by a court in consequence of which such an order is varied or ceases to be in force; or
 - (c) leave is granted by a court for a person subject to such an order to do anything which otherwise the order prohibits him from doing,
- and the regulations may specify the time within which, and the form and manner in which, such particulars are to be furnished.
- (2) The Registrar shall, from the particulars so furnished, maintain a register of orders and of cases in which leave has been granted as mentioned in subsection (1)(c).
- (3) When an order of which entry is made in the register ceases to be in force, the Registrar shall delete the entry from the register and all particulars relating to it which have been furnished to him under this section.
- (4) The register shall be open to inspection on payment of such fee as may be payable under a regulation made under section 26 of the Companies Ordinance (Cap 622). (Amended 28 of 2012 ss. 912 & 920)
- (5) For the purposes of this section-

court (法院) includes-

- (a) a magistrate;
- (b) a Tribunal within the meaning of section 2 of the repealed Ordinance; and
- (c) the Market Misconduct Tribunal within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571);

disqualification order (取消資格令) means an order of the court under-

- (a) section 168E, 168F, 168G, 168H, 168J or 168L;
- (b) section 23(1)(a) or 24(1) of the repealed Ordinance; or
- (c) section 214(2)(d), 257(1)(a), 258(1) or 303(2)(a) of the Securities and Futures Ordinance (Cap 571);

repealed Ordinance (已廢除條例) means the Securities (Insider Dealing) Ordinance (Cap 395) repealed under the Securities and Futures Ordinance (Cap 571). (Replaced 5 of 2002 s. 407)

Chapter:	32I	COMPANIES (DISQUALIFICATION ORDERS) REGULATION	Gazette Number	Version Date
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Schedule:	1		L.N. 163 of 2013	03/03/2014
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[section 4(1)(a)]

FORM D.O. 1

COMPANIES (WINDING UP AND MISCELLANEOUS PROVISIONS) ORDINANCE

(Cap 32)

Particulars of a disqualification order

Pursuant to section 168R

To the Registrar of Companies

I furnish the following particulars of a disqualification order made against a person as required by the Companies (Disqualification Orders) Regulation-

- (1) Section of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (**C(WUMP)O**), the repealed Securities (Insider Dealing) Ordinance ("SIDO") or the Securities and Futures Ordinance ("SFO") under which the order was made+-

Section 168E of C(WUMP)O	
Section 168F of C(WUMP)O	
Section 168G of C(WUMP)O	
Section 168H of C(WUMP)O	
Section 168J of C(WUMP)O	
Section 168L of C(WUMP)O	
Section 23(1)(a) of SIDO	
Section 24(1) of SIDO	
Section 214(2)(d) of SFO	
Section 257(1)(a) of SFO	
Section 258(1) of SFO	
Section 303(2)(a) of SFO	

- (2) Particulars of the person against whom the order was made-

- (a) if an individual

Forename (Note 2)	_____	* (_____)
Surname (Note 3)	_____	* (_____)
Usual residential address at the date of the order (Note 4)	_____ _____ _____	
Hong Kong identity card No., if any (Note 5)	_____	
Number and issuing country of any passport (Note 6)	_____ _____	

- (b) if a body corporate

Corporate name	_____ _____	
Registered No.	_____	
Address of registered	_____	

or principal office in Hong Kong at the date of the order	_____

(3) Date on which the order was made-

Day	Month	Year
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(4) Period of disqualification specified in the order-

Signed _____ Date _____

Name _____ Position _____

Court++ _____

+ Please tick appropriate box

* Note 1

++ Please state full name

- Notes**
1. In the case of a Chinese individual, the Chinese characters for any forename or surname, if they are used by such individual, must be included.
 2. "Forename" includes a Christian or given name.
 3. "Surname" in the case of a person usually known by a title different from his surname, means that title.
 4. Usual residential address must be given. "Residential address" does not include an address at a hotel unless the person to whom it relates is stated to have no other permanent address nor does it include a post office box number unless coupled with a residential address.
 5. "Identity card" means an identity card issued under the Registration of Persons Ordinance (Cap 177). If none, please state "None".
 6. If the Hong Kong identity card number of the person has been given, there is no need to give this information.

(46 of 2000 s. 40; 5 of 2002 s. 407; 28 of 2012 ss. 912 & 920)
(Enacted 1994)

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
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Section:	2	Interpretation	L.N. 163 of 2013	03/03/2014
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(1) In this Ordinance, unless the context otherwise requires-

active partner (積極參與的合夥人), in relation to a partnership, means a partner who takes an active part in the control, management, or conduct of the trade or business of such partnership;

agent (代理人), in relation to a non-resident person or to a partnership in which any partner is a non-resident person, includes-

- (a) the agent, attorney, factor, receiver, or manager in Hong Kong of such person or partnership, and
- (b) any person in Hong Kong through whom such person or partnership is in receipt of any profits or income arising in or derived from Hong Kong;

approved charitable donation (認可慈善捐款) means a donation of money to any charitable institution or trust of a public character which is exempt from tax under section 88 or to the Government, for charitable purposes;

(Replaced 13 of 1971 s. 2. Amended 76 of 1975 s. 2; 74 of 1981 s. 4; 30 of 1990 s. 2; 78 of 1999 s. 7)

arrangement (安排) includes-

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action or course of action or course of conduct; (Added 32 of 1998 s. 3)

assessable income (應評稅入息) means the assessable income of a person in any year of assessment as ascertained in accordance with sections 11B, 11C and 11D; and **net assessable income** (應評稅入息實額) means assessable income as adjusted in accordance with section 12; (Replaced 71 of 1983 s. 2)

assessable profits (應評稅利潤) means the profits in respect of which a person is chargeable to tax for the basis period for any year of assessment, calculated in accordance with the provisions of Part 4; (Replaced 28 of 1964 s. 2)

assessor (評稅主任) means an assessor appointed under this Ordinance;

assistant commissioner (助理局長) means an assistant commissioner of Inland Revenue appointed under this Ordinance;

authorized representative (獲授權代表) means a person authorized in writing by any other person to act on his behalf for the purposes of this Ordinance; (Replaced 7 of 1975 s. 2)

basis period (評稅基期) for any year of assessment is the period on the income or the profits of which tax for that year ultimately falls to be computed; (Amended 36 of 1955 s. 3)

bill of sale (賣據) means a bill of sale registrable under the Bills of Sale Ordinance (Cap 20);

Board of Review (稅務上訴委員會) means the Board of Review referred to in section 65; (Added 4 of 2010 s. 2)

body of persons (團體) means any body politic, corporate or collegiate and any company, fraternity, fellowship and society of persons whether corporate or not corporate; (Added 36 of 1955 s. 3)

business (業務) includes agricultural undertaking, poultry and pig rearing and the letting or sub-letting by any corporation to any person of any premises or portion thereof, and the sub-letting by any other person of any premises or portion of any premises held by him under a lease or tenancy other than from the Government; (Replaced 35 of 1965 s. 2. Amended 19 of 1996 s. 15)

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** (訂明的票據) in section 137B of the Banking Ordinance (Cap 155), includes any right or interest referred to in paragraph (b) of that definition in respect of such document; (Added 30 of 1981 s. 2. Amended 94 of 1993 s. 36)

Commissioner (局長) means the Commissioner of Inland Revenue appointed under this Ordinance; (Replaced 26 of 1969 s. 3)

common parts (公用部分), in relation to any land or buildings or land and buildings-

- (a) means the whole of the land or buildings or land and buildings, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and
- (b) includes, unless so specified or designated in the instrument mentioned in paragraph (a), those parts of a building specified in Schedule 1 to the Building Management Ordinance (Cap 344); (Added 4 of 2010 s. 2)

conditional sale agreement (有條件售賣協議) means an agreement for the sale of goods under which the purchase price or part of the purchase price is payable by instalments, and the property in the goods remains in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled; (Added 32 of 1998 s. 3)

corporation (法團) means any company which is either incorporated or registered under any enactment or charter in force in Hong Kong or elsewhere but does not include a co-operative society or a trade union; (Amended 2 of 1971 s. 2)

debenture (債權證) means a debenture as defined in section 2(1) of the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)

deposit (存款) means a deposit as defined in section 2(1) of the Banking Ordinance (Cap 155); (Added 29 of 1982 s. 2. Amended 27 of 1986 s. 137)

deputy commissioner (副局長) means a deputy commissioner of Inland Revenue appointed under this Ordinance; (Amended 48 of 1995 s. 2)

digital signature (數碼簽署) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)

electronic record (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)

executor (遺囑執行人) means any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the author of the trust;

financial institution (財務機構), means-

- (a) an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap 155);
- (b) any associated corporation of such an authorized institution which, being exempt by virtue of section 3(2)(a) or (b) or (c) of the Banking Ordinance (Cap 155), would have been liable to be authorized as a deposit-taking company or restricted licence bank under that Ordinance had it not been so exempt; (Replaced 27 of 1986 s. 137. Amended 3 of 1990 s. 55; 49 of 1995 s. 53)

grandparent or grandparent of his or her spouse (該人的或其配偶的祖父母或外祖父母), in relation to any person, means-

- (a) a natural grandfather or grandmother of the person or his or her spouse;
- (b) an adoptive grandparent of the person or his or her spouse (whether an adoptive parent of a natural parent, adoptive parent or step parent of the person or his or her spouse, or a natural parent of an adoptive parent of the person or his or her spouse);
- (c) a step grandparent of the person or his or her spouse (whether a step parent of a natural parent, adoptive parent or step parent of the person or his or her spouse, or a natural parent of a step parent of the person or his or her spouse); or
- (d) in the case of a deceased spouse, a person who would have been the grandparent of the person's spouse by reason of any of the provisions of paragraphs (a) to (c) if the spouse had not died; (Added 31 of 1998 s. 3)

hire-purchase agreement (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee; (Added 32 of 1998 s. 3)

Hong Kong currency (港幣) means money which is legal tender in Hong Kong; (Added 29 of 1982 s. 2)

husband (丈夫) means a married man whose marriage is a marriage within the meaning of this section; (Added 43 of 1989 s. 2)

incapacitated person (無行為能力的人) means any minor, lunatic, idiot, or person of unsound mind;

inspector (稅務督察) means an inspector appointed under this Ordinance; (Added 36 of 1955 s. 3)

lease (租約), in relation to any machinery or plant, includes-

- (a) any arrangement under which a right to use the machinery or plant is granted by the owner of the machinery or plant to another person; and
- (b) any arrangement under which a right to use the machinery or plant, being a right derived directly or indirectly from a right referred to in paragraph (a), is granted by a person to another person,

but does not include a hire-purchase agreement or a conditional sale agreement unless, in the opinion of the Commissioner, the right under the agreement to purchase or obtain the property in the goods would reasonably be expected not to be exercised; (Added 32 of 1998 s. 3)

limited partnership (有限責任合夥) has the same meaning as in section 3 of the Limited Partnerships Ordinance (Cap 37); (Added 47 of 1992 s. 2)

mandatory contributions (強制性供款), in relation to a mandatory provident fund scheme, means mandatory contributions paid to the scheme in accordance with the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)

mandatory provident fund scheme (強制性公積金計劃) means a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)

marriage (婚姻) means-

- (a) any marriage recognized by the law of Hong Kong; or
- (b) any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so, but shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a man and any wife other than the principal wife, and **married** (結婚) shall be construed accordingly; (Added 43 of 1989 s. 2)

mortgage (按揭) means a security by way of mortgage or equitable mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money thereafter to be lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be, and includes-

- (a) conditional surrender by way of mortgage, or further charge, of or affecting any property whatsoever; and
- (b) any conveyance of any property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; and
- (c) any instrument for defeating or making redeemable, or explaining or qualifying any conveyance, transfer or disposition of any property whatsoever, apparently absolute, but intended only as a security; and
- (d) any instrument relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatsoever or creating a charge on any property whatsoever; and
- (e) any mortgage by an equitable owner of his equitable rights; and
- (f) any warrant of attorney to enter up judgment; (Replaced 79 of 1979 s. 2) [cf. 1891 c. 39 s. 86 U.K.]

net chargeable income (應課稅入息實額) means net chargeable income calculated in accordance with section 12B; (Added 71 of 1983 s. 2)

occupational retirement scheme (職業退休計劃) has the meaning assigned to it by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); (Added 76 of 1993 s. 2)

owner (擁有人), in respect of land or buildings or land and buildings, includes-

- (a) a person holding the land or buildings or land and buildings directly from the Government;
- (b) a beneficial owner;
- (c) a tenant for life;
- (d) a mortgagor;
- (e) a mortgagee in possession;
- (f) a person with adverse title to land receiving rent from buildings or other structures erected on that land;
- (g) a person who is making payments to a co-operative society registered under the Co-operative Societies Ordinance (Cap 33) for the purpose of the purchase of the land or buildings or land and buildings;
- (h) a person who holds land or buildings or land and buildings subject to a ground rent or other annual charge;
- (i) (in so far as common parts are concerned) a corporation registered under section 8 of the Building Management Ordinance (Cap 344) or a person who, on the person's own behalf or on behalf of another person, receives any consideration, in money or money's worth, in respect of the right of use of any common parts solely or with another; and
- (j) an executor of the estate of an owner; (Replaced 4 of 2010 s. 2)

parent or parent of his or her spouse (該人的或其配偶的父或母), in relation to any person, means-

- (a) a parent of whose marriage the person or his or her spouse is the child;
- (b) the natural father or mother of the person or his or her spouse;
- (c) a parent by whom the person or his or her spouse was adopted;
- (d) a step parent of the person or his or her spouse; or
- (e) in the case of a deceased spouse, a person who would have been the parent of the person's spouse by reason of any of the provisions of paragraphs (a) to (d) if the spouse had not died; (Added 31 of 1998 s. 3)

password (通行密碼) means any combination of letters, characters, numbers or other symbols selected by a person and approved by the Commissioner for use in systems designated by the Commissioner for the purpose of authenticating the person's identification in communicating with the Commissioner in relation to a return required to be furnished under this Ordinance; (Added 5 of 2003 s. 2)

person (人、人士) includes a corporation, partnership, trustee, whether incorporated or unincorporated, or body of persons; (Amended 2 of 1971 s. 2; 30 of 1981 s. 2)

precedent partner (首合夥人) means the partner who, of the active partners resident in Hong Kong-

- (a) is first named in the agreement of partnership; or
- (b) if there is no agreement, is specified by name or initials singly or with precedence to the other partners in the usual name of the partnership; or
- (c) is first named in any statutory statement of the names of the partners;

profits arising in or derived from Hong Kong (於香港產生或得自香港的利潤) for the purposes of Part 4 shall, without in any way limiting the meaning of the term, include all profits from business transacted in Hong Kong, whether directly or through an agent;

receiver (接管人) includes any receiver or liquidator, and any assignee, trustee, or other person having the possession or control of the property of any person by reason of insolvency or bankruptcy;

recognized certificate (認可證書) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)

recognized occupational retirement scheme (認可職業退休計劃) means an occupational retirement scheme-

- (a) which, prior to the commencement* of section 2 of the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993), was a retirement scheme approved by the Commissioner under section 87A where such approval has not subsequently been withdrawn;
- (b) registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap 426);
- (c) in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap 426) and has not been withdrawn;
- (d) which is operated by an employer who is-
 - (i) the government of a country or territory outside Hong Kong; or
 - (ii) any agency or undertaking of or by such a government which is not operated for the purpose of gain; or (Amended 19 of 1996 s. 3)
- (e) contained in or otherwise established by an Ordinance other than the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 76 of 1993 s. 2. Amended 4 of 1998 s. 6)

recognized retirement scheme (認可退休計劃) means-

- (a) a recognized occupational retirement scheme; or
- (b) a mandatory provident fund scheme; (Added 31 of 1998 s. 3)

return (報稅表) includes any return furnished under section 51AA, irrespective of the manner in which that return is furnished; (Added 5 of 2003 s. 2)

river trade limits (內河航限) has the same meaning as in the Merchant Shipping Ordinance (Cap 281); (Added 47 of 1992 s. 2)

specified form (指明的格式) means a form specified under section 86; (Added 43 of 1989 s. 2. Amended 5 of 2003 s. 2)

spouse (配偶) means a husband or wife; (Added 43 of 1989 s. 2)

standard rate (標準稅率) means the rate specified in Schedule 1; (Added 30 of 1950 Schedule)

tax (稅、稅款、稅項) except for the purposes of Parts 12 and 13, means any tax imposed by this Ordinance (including provisional salaries tax charged under Part 10A, provisional profits tax charged under Part 10B and provisional property tax charged under Part 10C) other than additional tax, but for the purposes of Parts 12 and 13 **tax** (稅、稅款、稅項) includes additional tax; (Replaced 26 of 1969 s. 3. Amended 8 of 1973 s. 2; 7 of 1975 s. 2; 8 of 1983 s. 2)

telefiling system (電話報稅系統) means a system that enables a person to furnish to the Commissioner certain returns or information by using a telephone; (Added 5 of 2003 s. 2)

trade (行業、生意) includes every trade and manufacture, and every adventure and concern in the nature of trade;

trustee (受託人) includes any trustee, guardian, curator, manager, or other person having the direction, control, or management of any property on behalf of any person, but does not include an executor;

voluntary contributions (自願性供款), in relation to a mandatory provident fund scheme, means voluntary contributions paid to the scheme in accordance with section 11 of the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)

wife (妻子) means a married woman whose marriage is a marriage within the meaning of this section; (Replaced 43

of 1989 s. 2)

year of assessment (課稅年度) means the period of 12 months commencing on 1 April in any year; (Replaced 30 of 1950 Schedule)

year preceding a year of assessment (任何課稅年度的上一年) means the period of 12 months ending on 31 March immediately prior to such year of assessment.

(Amended 36 of 1955 s. 3; 9 of 1958 s. 2; 26 of 1969 s. 3; 7 of 1986 s. 12; 76 of 1993 s. 2; 12 of 1999 s. 3)

(2) For the purposes of the definition of **financial institution** (財務機構) in subsection (1)-

associated corporation (相聯法團), in relation to an authorized institution, means-

- (a) a corporation over which the institution has control;
- (b) a corporation which has control over the institution; or
- (c) a corporation which is under the control of the same person as is the institution; (Replaced 49 of 1995 s. 53)

control (控制), in relation to a corporation, means the power of a person to secure-

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

(Added 73 of 1978 s. 2)

(2A) For the purposes of the definition of **recognized occupational retirement scheme** (認可職業退休計劃) in subsection (1)-

(a) a scheme which is registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap 426) shall upon registration be regarded as a recognized occupational retirement scheme as from-

- (i) the date on which the application for such registration was made; or
- (ii) the date on which the terms of the scheme came into effect, whichever is the earlier; and

(b) a scheme in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap 426) and has not been withdrawn shall upon the issue of the certificate be regarded as a recognized occupational retirement scheme as from-

- (i) the date on which the application for the certificate was made; or
- (ii) the date on which the terms of the scheme came into effect, whichever is the earlier:

Provided that if such date is earlier than the first commencement date of the Occupational Retirement Schemes Ordinance (Cap 426), the scheme shall be regarded as a recognized occupational retirement scheme as from such commencement date. (Added 76 of 1993 s. 2)

(3) For the purposes of this Ordinance a husband and wife shall be deemed to be living apart when they are living apart-

- (a) under a decree or order of a competent court in or outside Hong Kong;
- (b) under a duly executed deed of separation or any instrument of similar effect; or
- (c) in such circumstances that the Commissioner is of the opinion the separation is likely to be permanent. (Added 43 of 1989 s. 2)

(4) Whether or not a person who is or was formerly a member of a mandatory provident fund scheme has permanently departed from Hong Kong is, for the purposes of this Ordinance, to be determined by reference to regulations in force under the Mandatory Provident Fund Schemes Ordinance (Cap 485). (Added 4 of 1998 s. 6)

(5) In this Ordinance, a reference to the act of signing a return required to be furnished under this Ordinance includes a reference to-

- (a) the affixing of a digital signature to; or (Amended 14 of 2004 s. 29)
- (b) the inclusion of a password with,

the return for the purpose of authenticating or approving it. (Added 5 of 2003 s. 2)

(6) For the purposes of subsection (5)(a), a digital signature shall be-

- (a) supported by a recognized certificate;

- (b) generated within the validity of that certificate; and
(c) used in accordance with the terms of that certificate. (Added 14 of 2004 s. 29)
- (7) For the purposes of subsection (6)(a), a digital signature is taken to be supported by a recognized certificate if it is taken to be supported by that certificate under section 2(2) of the Electronic Transactions Ordinance (Cap 553). (Added 14 of 2004 s. 29)
- (8) In subsection (6)(b), *within the validity of that certificate* (在該證書的有效期內) has the meaning assigned to it by section 6(2) of the Electronic Transactions Ordinance (Cap 553). (Added 14 of 2004 s. 29)
(Amended E.R. 1 of 2012)

Note:

* **Commencement date: 19 November 1993.**

Chapter:	112	Inland Revenue Ordinance	Gazette Number	Version Date
Section:	57	Principal officer to act on behalf of a corporation or body of persons	E.R. 1 of 2012	09/02/2012

- (1) The secretary, manager, any director or the liquidator of a corporation and the principal officer of a body of persons shall be answerable for doing all such acts, matters, or things as are required to be done under the provisions of this Ordinance by such corporation or body of persons.
- (2) If no secretary, manager, director or liquidator of a corporation or no principal officer of a body of persons is ordinarily resident in Hong Kong, the corporation or body of persons, as the case may be, shall inform the Commissioner, and keep him so informed at all times, of the name and address of an individual ordinarily resident in Hong Kong who shall be answerable for doing all such acts, matters, or things as are required to be done under the provisions of this Ordinance by such corporation or body of persons. (Amended 7 of 1986 s. 12)

(Replaced 2 of 1971 s. 35)

Chapter:	117	Stamp Duty Ordinance	Gazette Number	Version Date
Section:	19	Contract notes, etc. in respect of sale and purchase of Hong Kong stock	E.R. 3 of 2015	12/11/2015

- (1) Subject to this section, any person who effects any sale or purchase of Hong Kong stock as principal or agent shall- (Amended 77 of 1981 s. 5)
- (a) forthwith make and execute a contract note;
- (b) cause the note to be stamped under head 2(1) or (2) in the First Schedule or, in the case of a note to which section 45 or 47F applies, under section 13(2)- (Amended 43 of 1991 s. 5; 10 of 2013 s. 29)
- (i) in the case of a sale or purchase effected in Hong Kong, not later than 2 days thereafter;
- (ii) in any other case, not later than 30 days thereafter;
- (c) if he is the agent, transmit the stamped note to his principal; (Amended 43 of 1991 s. 5)
- (d) cause an endorsement to be made on the instrument of transfer of the stock, or cause a stamp certificate to be issued in respect of the instrument, to the effect that- (Amended 21 of 2003 s. 11)
- (i) stamp duty has been paid on the contract note under head 2(1) or (2) in the First Schedule; or
- (ii) in the case of a contract note to which section 45 or 47F applies, the contract note has been stamped under section 13(2). (Replaced 43 of 1991 s. 5. Amended 10 of 2013 s. 29)
- (1A) Subsection (1) shall not apply to a sale or purchase of a unit under a unit trust scheme-
- (a) where the sale or purchase is effected by extinguishing such unit; or
- (b) where the sale or purchase of the unit is effected by the managers under the unit trust scheme and their power to effect such sale or purchase arises-
- (i) from the transfer to them of that or some other unit within the immediately preceding 2 months; or
- (ii) otherwise than from a previous transfer to them of that or some other unit. (Added 77 of 1981 s. 5)
- (1B) It shall not be obligatory for an endorsement to be made under subsection (1)(d) where, at the time of the sale or purchase of Hong Kong stock-

- (a) the instrument of transfer of such stock is in the custody of a recognized clearing house in accordance with the rules of the clearing house; or
 - (b) the Hong Kong stock is registered in the name of a recognized clearing house or its nominee. (Added 40 of 1992 s. 2)
- (1C) Subsection (1) shall not apply to a sale or purchase of Hong Kong stock effected under a market contract. (Added 68 of 1992 s. 20)
- (1D) (a) Subsection (1) shall not apply to any sale or purchase of Hong Kong stock specified as an exempted transaction in the Fourth Schedule.
- (b) Any transfer made for the purpose of effectuating any sale or purchase of Hong Kong stock specified as an exempted transaction in the Fourth Schedule shall not be chargeable with stamp duty under head 2(4) in the First Schedule. (Added 33 of 1998 s. 6)
- (1DA) Subsection (1) does not apply to a transaction specified in Part 2 of Schedule 8. (Added 4 of 2015 s. 3)
- (1E) (a) Subject to paragraph (c), in the case of a transaction whereby the beneficial interest in Hong Kong stock passes otherwise than on sale and purchase, where the transaction-
- (i) is not effectuated by way of a transfer chargeable with stamp duty under head 2(3) in the First Schedule, but is effectuated by any other means, whether by electronic means or by means of an entry in any recording or book-keeping system or otherwise; and
 - (ii) is effectuated whether under or through a recognized clearing house or any other person or organization,
- the transaction shall, for the purposes of this Ordinance, be deemed to be a sale and purchase of Hong Kong stock.
- (b) For the purposes of this section and head 2(1) in the First Schedule, in a transaction which is deemed to be a sale and purchase of Hong Kong stock under paragraph (a)-
 - (i) the person disposing of the stock in the transaction shall be deemed to be the person effecting the sale in the sale and purchase;
 - (ii) the person acquiring the stock in the transaction shall be deemed to be the person effecting the purchase in the sale and purchase;
 - (iii) where the person maintaining the record of the transaction is not the principal effecting the sale and purchase, the person shall, save in the case of a recognized clearing house, be deemed to be the agent effecting the sale and purchase; and
 - (iv) the value of the stock in the transaction shall be deemed to be the amount or value of the consideration for the sale and purchase.
 - (c) Paragraph (a) shall not apply to a transaction of the kind referred to in that paragraph where the transaction would, if it were effectuated by way of a transfer chargeable with stamp duty under head 2(3) in the First Schedule, be a transfer of the kind referred to in section 27(5). (Added 33 of 1998 s. 6)
- (1F) For the purposes of subsection (1), where-
- (a) any sale or purchase of Hong Kong stock is effected by an exchange participant, whether as principal or agent;
 - (b) the contract note required to be made under subsection (1) in respect of the sale or purchase is one to which an agreement under section 5A relates; and
 - (c) the contract note is made by the exchange participant,
- the contract note shall, whether or not it has been executed by the exchange participant, be regarded as having been so executed. (Added L.N. 90 of 1999 and 44 of 1999 s. 17. Amended 12 of 2000 s. 23)
- (2) A contract note required to be made under subsection (1) shall state the following-
- (a) whether the person effecting the sale or purchase of the Hong Kong stock is acting as principal or agent and, if as agent, the name of his principal;
 - (b) the date of the transaction and of the making of the contract note;
 - (c) the quantity and description of such Hong Kong stock;
 - (d) the price per unit of such Hong Kong stock and the amount of the consideration or, in the case of an exchange, particulars of the property for which such Hong Kong stock is exchanged; and
 - (e) the date of settlement.
- (3) No agent or other person shall have any legal claim to any charge for brokerage, commission or agency with reference to the sale or purchase of any Hong Kong stock if he fails to comply with the provisions of this section.
- (4) The stamp duty paid in respect of a contract note may be added to any charge for brokerage or agency and shall

- be recoverable as part of such charge.
- (5) Where a contract note relates to the sale or purchase of more than one description of Hong Kong stock, the note shall be deemed to be as many contract notes as there are descriptions of Hong Kong stock sold or purchased.
 - (6) If in the case of a sale or purchase of any Hong Kong stock effected by a person who is not resident in Hong Kong, the stamp duty specified in head 2(1) in the First Schedule is not paid, there shall be charged on the instrument of transfer, in addition to the stamp duty otherwise chargeable thereon, stamp duty equal to the amount of the stamp duty so payable in respect of such sale or purchase; and in respect of stamp duty charged on an instrument of transfer under this subsection, the transferee shall be the person liable for stamping such instrument and the time for stamping it shall be 30 days after execution thereof.
 - (7) Where any instrument of transfer is stamped under subsection (6), the Collector shall endorse the instrument, or issue a stamp certificate in respect of the instrument, to that effect in such manner as he may think fit. (Amended 21 of 2003 s. 11)
 - (8) An instrument of transfer of any Hong Kong stock shall not be duly stamped unless-
 - (a) it is endorsed under subsection (1)(d) or (7) in respect of both sale and purchase; (Amended 40 of 1992 s. 2)
 - (b) it is endorsed by the Collector in such manner as he may think fit to the effect that-
 - (i) stamp duty has been paid in respect thereof under head 2(3) in the First Schedule; or
 - (ii) no stamp duty is chargeable thereon under subsection (6) or head 2(1) or 2(3) in the First Schedule; or (Amended 43 of 1991 s. 5; 40 of 1992 s. 2)
 - (c) the Hong Kong stock is transferred to a recognized clearing house, or its nominee, in accordance with the rules of the clearing house. (Added 40 of 1992 s. 2)
 - (9) An endorsement under subsection (1) in respect of stamp duty paid-
 - (a) under head 2(1) in the First Schedule may be made by the Collector or any person authorized by the Collector in that behalf;
 - (b) under head 2(2) in the First Schedule shall be made by the Collector, in such manner as the Collector may think fit.
 - (9A) An endorsement under subsection (1)(d)(ii) shall be made by the Collector in such manner as he thinks fit. (Added 43 of 1991 s. 5)
 - (10) Any person who makes an endorsement for the purposes of subsection (1)(d) which is false in a material particular commits an offence.
 - (10A) In relation to a sale or purchase of a unit under a unit trust scheme other than a sale or purchase referred to in subsection (1A), the obligations imposed by this section (other than subsection (1)(c)) and head 2(1) in the First Schedule on any person other than the managers under the unit trust scheme shall be carried out by the managers in addition to any obligation so imposed on them, and for that purpose subsection (2)(a) shall not apply. (Added 77 of 1981 s. 5)
 - (11) Subject to subsections (12), (12A) and (13), nothing in this section shall apply to-
 - (a) a stock borrowing; or
 - (b) a stock return. (Replaced 67 of 1989 s. 3)
 - (12) Where, in respect of a stock borrowing-
 - (a) the borrower ceases to be required to make a stock return in accordance with the stock borrowing and lending agreement to which the stock borrowing relates, in respect of the borrowed stock or part thereof or its reasonable equivalent (other than that which is the subject of the stock return referred to in paragraph (c)), pursuant to the stock borrowing and lending agreement or to any other agreement reached with the lender of the borrowed stock (whether by settlement or otherwise); (Replaced L.N. 90 of 1999 and 44 of 1999 s. 17)
 - (b) the borrowed stock or part thereof or its reasonable equivalent was used for a purpose other than a specified purpose; or (Amended L.N. 90 of 1999 and 44 of 1999 s. 17)
 - (c) the borrower fails to comply with any demand made by the lender of the borrowed stock under the stock borrowing and lending agreement to which the stock borrowing relates to make a stock return in respect of the borrowed stock or part thereof or its reasonable equivalent,
 such stock borrowing shall, for the purposes of this Ordinance, be deemed to be a sale and a purchase of-
 - (i) where paragraph (a) applies, the borrowed stock or part thereof, or the reasonable equivalent, which is the subject of the stock return the borrower ceases to be required to make as described in that paragraph;
 - (ii) where paragraph (b) applies, the borrowed stock or part thereof which, or the borrowed stock or part thereof the reasonable equivalent of which, was used for a purpose other than a specified purpose as described in

that paragraph; or

- (iii) where paragraph (c) applies, the borrowed stock or part thereof, or the reasonable equivalent, which is the subject of the stock return referred to in that paragraph. (Amended L.N. 90 of 1999 and 44 of 1999 s. 17)
- (12AA) This Ordinance, except subsection (1)(d), shall apply to the sale and purchase referred to in subsection (12) as if that sale and purchase were effected in Hong Kong-
 - (a) by the borrower who obtained the relevant borrowed stock;
 - (b) on the specified day; and
 - (c) for a consideration calculated at the previous closing price of Hong Kong stock of the same description as the stock which is the subject of the sale and purchase or, if there is more than one description of the stock, at their respective previous closing prices as quoted on the relevant recognized stock market. (Added L.N. 90 of 1999 and 44 of 1999 s. 17. Amended 5 of 2002 s. 407)
- (12A) Subsection (11) shall not apply to any stock borrowing or stock return, unless-
 - (a) an executed copy of the stock borrowing and lending agreement under which the stock borrowing and stock return are provided for, or a copy of the stock borrowing and lending agreement which is shown to the satisfaction of the Collector as a true copy thereof;
 - (b) such fee as may be specified by the Financial Secretary for the purposes of this subsection by notice in the Gazette; and
 - (c) such other documents, and such particulars and information as the Collector may require, are provided by the borrower to the Collector at any time after the stock borrowing and lending agreement is executed but before the expiry of 30 days after the stock borrowing is effected. (Replaced L.N. 90 of 1999 and 44 of 1999 s. 17)
- (13) A borrower who has effected any stock borrowings under a stock borrowing and lending agreement, an executed copy of which has been provided to the Collector in accordance with subsection (12A), shall- (Amended 33 of 1998 s. 6)
 - (a) keep a book in such form;
 - (b) enter in such book, in respect of such stock borrowings and any stock returns made in respect of such stock borrowings, such particulars; and
 - (c) furnish to the Collector a return-
 - (i) in such form;
 - (ii) containing such particulars in respect of such book; and
 - (iii) at such times,as the Collector may require. (Added 67 of 1989 s. 3)
- (14) A borrower who, with intent to defraud the Government of any stamp duty, causes or allows-
 - (a) an entry to be made in a book kept under subsection (13)(a); or
 - (b) any particular to be furnished in a return made to the Collector under subsection (13)(c), which he knows or has reasonable grounds for believing to be false or misleading in a material respect commits an offence. (Replaced 70 of 1994 s. 4)
- (15) A borrower who fails to comply with the requirements of subsection (13) shall incur a penalty at level 2 which shall be recoverable by the Collector as a civil debt due to the Government. (Replaced 70 of 1994 s. 4. Amended L.N. 338 of 1995; 12 of 1999 s. 3)

(16) In this section-

allotment (分配), in relation to units under a unit trust scheme, means the issue of such units;

borrowed stock (被借用證券), in relation to a stock borrowing, means any Hong Kong stock obtained by a borrower under such stock borrowing; (Replaced 70 of 1994 s. 4)

borrower (借用人), means a person who is eligible to obtain Hong Kong stock under a stock borrowing and lending agreement; (Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6)

lender (借出人) means a person who is eligible to lend Hong Kong stock under a stock borrowing and lending agreement; (Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6)

market contract (市場合約) means a market contract within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Added 68 of 1992 s. 20. Amended 62 of 1995 s. 12; 5 of 2002 s. 407)

previous closing price (先前收市價格), in relation to Hong Kong stock, means the previous closing price of such Hong Kong stock as determined in accordance with the rules and practices of the recognized exchange company

that operates the relevant stock market; (Amended 5 of 2002 s. 407)

reasonable equivalent (合理對等項目), in relation to any stock obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of **stock borrowing and lending agreement**, means any stock or monies which, in the opinion of the Collector, can, as a result of the occurrence of a relevant event, be reasonably and fairly be regarded as the equivalent of the stock so obtained; (Added L.N. 90 of 1999 and 44 of 1999 s. 17)

recognized clearing house (認可結算所) means a recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Replaced 68 of 1992 s. 20. Amended 62 of 1995 s. 12; 5 of 2002 s. 407)

relevant event (有關事件), in relation to any stock obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of **stock borrowing and lending agreement**, means-

(a) the exercise of any of the powers conferred by section 53(1)(a) to (d) of the relevant Ordinance; (Replaced 28 of 2012 ss. 912 & 920)

(ab) the exercise of any of the powers conferred by section 170(2)(a) to (e) and 174(1) of the Companies Ordinance (Cap 622); or (Added 28 of 2012 ss. 912 & 920)

(b) any other event,

which, in the opinion of the Collector, makes any requirement to return stock of the same quantity and description as the stock so obtained either impracticable or inappropriate; (Added L.N. 90 of 1999 and 44 of 1999 s. 17)

rules (規章), in relation to a recognized clearing house and a recognized exchange company, has the same meaning as it has in relation to those bodies in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Replaced 5 of 2002 s. 407)

sale or purchase (售賣或購買) includes any disposal or acquisition (other than an allotment) for valuable consideration, and exchange, and any transaction in respect of which an instrument is deemed by virtue of section 30(3), (4) or (5) to be a transfer by way of sale, and any reference to **sale** (售賣) or **purchase** (購買) shall be construed accordingly;

specified day (指明日期), in relation to a stock borrowing, means-

(a) where subsection (12)(a) applies, the day on which the borrower ceases to be required to make a stock return as described in that subsection;

(b) where subsection (12)(b) applies, the day on which the borrowed stock referred to in that subsection was obtained under the stock borrowing and lending agreement to which the stock borrowing relates; or

(c) where subsection (12)(c) applies, the day on which the borrower fails to comply with any demand as described in that subsection; (Replaced L.N. 90 of 1999 and 44 of 1999 s. 17)

specified payment (指明付款), in relation to any stock, means a payment of an amount equivalent to the amount of any dividend, interest and other distribution payable in respect of the stock or its reasonable equivalent or both by the issuer of the stock or its reasonable equivalent or by any other person to the holder of the stock or its reasonable equivalent during the period after the stock is obtained pursuant to the provisions referred to in paragraph (a)(i)(A) or (b)(i)(A) of the definition of **stock borrowing and lending agreement** and before a return or delivery is required to be made in accordance with the provisions referred to in paragraph (a)(i)(B) or (b)(i)(B) of that definition; (Added L.N. 90 of 1999 and 44 of 1999 s. 17)

specified purpose (指明用途), in relation to the borrowing of stock by any person, means-

(a) the settling of a sale of Hong Kong stock wherever effected, whether by the person himself or another person;

(b) the settling of a future sale of Hong Kong stock, whether agreed or not when such borrowing is effected and whether by the person himself or another person;

(c) the replacement, in whole or in part, of Hong Kong stock obtained by the person under another stock borrowing;

(d) the on-lending of the stock borrowed to another person who effects a stock borrowing in respect of such stock on-lent; or

(e) such other purpose as the Collector may, in writing, allow either generally or in any particular case; (Added 70 of 1994 s. 4. Amended 33 of 1998 s. 6)

stock borrowing (證券借用) means the obtaining by a borrower from a lender, under a stock borrowing and lending agreement, of Hong Kong stock the sale and purchase of which in Hong Kong are subject to the rules and

practices of the recognized exchange company that operates the relevant stock market, whether the Hong Kong stock is so obtained- (Amended L.N. 90 of 1999 and 44 of 1999 s. 17; 5 of 2002 s. 407)

- (a) directly from the lender; or
- (b) indirectly under or through a recognized clearing house and in accordance with the rules of that recognized clearing house which constitute the stock borrowing and lending agreement; (Replaced 70 of 1994 s. 4. Amended 33 of 1998 s. 6)

stock borrowing and lending agreement (證券借用及借出協議) means-

- (a) an agreement which-
 - (i) contains-
 - (A) provisions providing for the obtaining of any stock by a person from any other person;
 - (B) provisions requiring-
 - (I) the return of stock of the same quantity and description as the stock obtained pursuant to the provisions referred to in sub-subparagraph (A); or
 - (II) the delivery of the reasonable equivalent of the stock so obtained; and
 - (C) provisions which-
 - (I) require a specified payment to be made by the person by whom the stock is obtained pursuant to the provisions referred to in sub-subparagraph (A) to the person from whom the stock is obtained pursuant to the provisions; or
 - (II) provide for an arrangement which, in the opinion of the Collector, can be regarded as a fair and proper alternative to the requirement to make the specified payment; and
 - (ii) does not, in the opinion of the Collector, have the effect of reducing the risk of loss or opportunity for gain, in respect of the stock, of the person from whom the stock is obtained pursuant to the provisions referred to in subparagraph (i)(A); or
- (b) the rules of a recognized clearing house which-
 - (i) contain the following provisions approved by the Collector-
 - (A) provisions providing for the obtaining of any stock by a participant of the clearing system of the recognized clearing house from any other participant of such clearing system;
 - (B) provisions requiring-
 - (I) the return of stock of the same quantity and description as the stock obtained pursuant to the provisions referred to in sub-subparagraph (A); or
 - (II) the delivery of the reasonable equivalent of the stock so obtained; and
 - (C) provisions which-
 - (I) require a specified payment to be made by the participant by whom the stock is obtained pursuant to the provisions referred to in sub-subparagraph (A) to the participant from whom the stock is obtained pursuant to the provisions; or
 - (II) provide for an arrangement which, in the opinion of the Collector, can be regarded as a fair and proper alternative to the requirement to make the specified payment;
 - (ii) do not, in the opinion of the Collector, have the effect of reducing the risk of loss or opportunity for gain, in respect of the stock, of the person from whom the stock is obtained pursuant to the provisions referred to in subparagraph (i)(A); and
 - (iii) are subscribed to by participants of the clearing system of the recognized clearing house as a precondition for their obtaining of any stock within the meaning of subparagraph (i)(A); (Replaced L.N. 90 of 1999 and 44 of 1999 s. 17)

stock return (證券交還), in relation to a stock borrowing, means a transaction by which a borrower, in accordance with the stock borrowing and lending agreement to which the stock borrowing relates-

- (a) returns any stock which is of the same description as the borrowed stock (other than that which is the subject of a sale and purchase referred to in subsection (12)); or
- (b) delivers any reasonable equivalent of the borrowed stock (other than that which is the subject of a sale and purchase referred to in subsection (12)),

whether or not the return or delivery is made- (Amended L.N. 90 of 1999 and 44 of 1999 s. 17)

- (i) directly to the lender; or
- (ii) indirectly under or through a recognized clearing house and in accordance with the rules of that recognized clearing house which constitute the stock borrowing and lending agreement; (Replaced 70 of 1994 s. 4. Amended 33 of 1998 s. 6)

transaction (交易), in relation to a stock return, includes the return by a borrower to a lender of a lesser quantity of stock than that obtained by him on the day that the borrowed stock was so obtained. (Added 70 of 1994 s. 4)
(Amended 70 of 1994 s. 4)

Chapter:	117	Stamp Duty Ordinance	Gazette Number	Version Date
Section:	63	Regulations	4 of 2015	13/02/2015

The Financial Secretary may by regulations- (Amended 12 of 1999 s. 3; 5 of 2000 s. 4)

- (a) specify the transactions or dealings in respect of Hong Kong stock that constitute jobbing business for the purposes of this Ordinance;
- (b) prescribe the procedure for stamping contract notes made and executed in respect of any jobbing business;
- (c) amend the Second and the Fourth Schedules, and Schedule 8. (Amended 33 of 1998 s. 10; 4 of 2015 s. 4)

Chapter:	117	Stamp Duty Ordinance	Gazette Number	Version Date
Schedule:	1		4 of 2015	13/02/2015

[sections 2, 4, 5, 5A, 13, 18D, 19, 19A, 20, 29, 29A, 29AB, 29AC, 29AD, 29AE, 29AH, 29AI, 29AJ, 29AK, 29AL, 29AM, 29AN, 29AO, 29AP, 29AQ, 29AR, 29AS, 29BA, 29BB, 29BC, 29BD, 29BE, 29BF, 29BG, 29BH, 29BI, 29BJ, 29BK, 29C, 29CA, 29CB, 29CC, 29D, 29DA, 29DB, 29DC, 29DE, 29DF, 29DG, 29DH, 29G, 29H, 30, 44, 45, 47B, 47F, 47G, 63A, 70 & 71 & 2nd Schedule & Schedules 7 & 8]

(Replaced 14 of 2011 s. 15. Amended 10 of 2013 s. 34; 2 of 2014 s. 20; 14 of 2014 s. 28; 4 of 2015 s. 5)

Nature of Instrument	(A) Stamp Duty (B) Time for stamping (C) Persons liable
<p>HEAD 1: IMMOVABLE PROPERTY IN HONG KONG</p> <p>Agreement for Lease, See LEASE and section 16 (Amended 14 of 2014 s. 28)</p> <p>(1) CONVEYANCE ON SALE CHARGEABLE WITH AD VALOREM STAMP DUTY (Amended 14 of 2014 s. 28)</p> <p><u>SCALE 1—</u></p> <p>(a) if the amount or value of the consideration does not exceed \$2000000 and the instrument is certified in accordance with section 29 at \$2000000</p> <p>(b) if the amount or value of the consideration exceeds \$2000000 but does not exceed \$2176470 and the instrument is certified in accordance with section 29 at \$2176470</p>	<p>(A)(a) 1.5% of the amount or value of the consideration</p> <p>(b) \$30000 plus 20% of the amount by which the amount or</p>

		value of the consideration exceeds \$2000000
(c)	if the amount or value of the consideration exceeds \$2176470 but does not exceed \$3000000 and the instrument is certified in accordance with section 29 at \$3000000	(c) 3% of the amount or value of the consideration
(d)	if the amount or value of the consideration exceeds \$3000000 but does not exceed \$3290330 and the instrument is certified in accordance with section 29 at \$3290330	(d) \$90000 plus 20% of the amount by which the amount or value of the consideration exceeds \$3000000
(e)	if the amount or value of the consideration exceeds \$3290330 but does not exceed \$4000000 and the instrument is certified in accordance with section 29 at \$4000000	(e) 4.5% of the amount or value of the consideration
(f)	if the amount or value of the consideration exceeds \$4000000 but does not exceed \$4428580 and the instrument is certified in accordance with section 29 at \$4428580	(f) \$180000 plus 20% of the amount by which the amount or value of the consideration exceeds \$4000000
(g)	if the amount or value of the consideration exceeds \$4428580 but does not exceed \$6000000 and the instrument is certified in accordance with section 29 at \$6000000	(g) 6% of the amount or value of the consideration
(h)	if the amount or value of the consideration exceeds \$6000000 but does not exceed \$6720000 and the instrument is certified in accordance with section 29 at \$6720000	(h) \$360000 plus 20% of the amount by which the amount or value of the consideration exceeds \$6000000
(i)	if the amount or value of the consideration exceeds \$6720000 but does not exceed \$20000000 and the instrument is certified in	(i) 7.5% of the amount or value of the

	accordance with section 29 at \$20000000		consideration
(j)	if the amount or value of the consideration exceeds \$20000000 but does not exceed \$21739130 and the instrument is certified in accordance with section 29 at \$21739130	(j)	\$1500000 plus 20% of the amount by which the amount or value of the consideration exceeds \$20000000
(k)	in any other case (Added 14 of 2014 s. 28)	(k)	8.5% of the amount or value of the consideration
		(B)	30 days after the execution; but see Note 2 to this sub-head
		(C)	All parties, and all other persons executing; but see Notes 2 and 7 to this sub-head
	<u>SCALE 2</u> — (Added 14 of 2014 s. 28)		
(a)	where the amount or value of the consideration does not exceed \$2000000 and the instrument is certified in accordance with section 29 at \$2000000	(A)(a)	\$100 (Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)
(b)	where the amount or value of the consideration exceeds \$2000000 but does not exceed \$2351760 and the instrument is certified in accordance with section 29 at \$2351760	(b)	\$100 plus 10% of the amount by which the amount or value of the consideration exceeds \$2000000 (Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)
(c)	where the amount or value of the consideration exceeds \$2351760 but does not	(c)	1.5% of the amount or

exceed \$3000000 and the instrument is certified in accordance with section 29 at \$3000000

(d) where the amount or value of the consideration exceeds \$3000000 but does not exceed \$3290320 and the instrument is certified in accordance with section 29 at \$3290320

(e) where the amount or value of the consideration exceeds \$3290320 but does not exceed \$4000000 and the instrument is certified in accordance with section 29 at \$4000000

(f) where the amount or value of the consideration exceeds \$4000000 but does not exceed \$4428570 and the instrument is certified in accordance with section 29 at \$4428570

value of the consideration
(Replaced
L.N. 32 of
2007 and 13
of 2007 s. 3)

(d) \$45000 plus 10% of the amount by which the amount or value of the consideration exceeds \$3000000
(Replaced
L.N. 90 of
1999 and 44
of 1999 s.
22.
Amended
L.N. 32 of
2007 and 13
of 2007 s. 3)

(e) 2.25% of the amount or value of the consideration
(Replaced
L.N. 90 of
1999 and 44
of 1999 s.
22.
Amended
L.N. 32 of
2007 and 13
of 2007 s. 3)

(f) \$90000 plus 10% of the amount by which the amount or value of the consideration exceeds \$4000000
(Replaced
L.N. 90 of
1999 and 44

(g) where the amount or value of the consideration exceeds \$4428570 but does not exceed \$6000000 and the instrument is certified in accordance with section 29 at \$6000000

(h) where the amount or value of the consideration exceeds \$6000000 but does not exceed \$6720000 and the instrument is certified in accordance with section 29 at \$6720000

(i) where the amount or value of the consideration exceeds \$6720000 but does not exceed \$20000000 and the instrument is certified in accordance with section 29 at \$20000000

of 1999 s. 22.
Amended
L.N. 32 of 2007 and 13 of 2007 s. 3)

(g) 3% of the amount or value of the consideration
(Replaced
L.N. 90 of 1999 and 44 of 1999 s. 22.
Amended
L.N. 32 of 2007 and 13 of 2007 s. 3)

(h) \$180000 plus 10% of the amount by which the amount or value of the consideration exceeds \$6000000
(Added
L.N. 90 of 1999 and 44 of 1999 s. 22.
Amended
L.N. 32 of 2007 and 13 of 2007 s. 3)

(i) 3.75% of the amount or value of the consideration
(Replaced
L.N. 18 of 2010 and 16 of 2010 s. 4)

(j) where the amount or value of the consideration exceeds \$20000000 but does not exceed \$21739120 and the instrument is certified in accordance with section 29 at \$21739120

(k) in any other case

(j) \$750000 plus 10% of the amount by which the amount or value of the consideration exceeds \$20000000 (Added L.N. 18 of 2010 and 16 of 2010 s. 4)

(k) 4.25% of the amount or value of the consideration (Added L.N. 18 of 2010 and 16 of 2010 s. 4)

(B) 30 days after the execution; but see Note 2 to this sub-head

(C) persons executing; but see Notes 2 and 7 to this sub-head (Replaced 36 of 1994 s. 3. Amended 14 of 2014 s. 28)

And see sections 2, 4, 22, 23, 24, 25, 27, 28, 29, 39, 43, 44 and 45 (Amended 14 of 2014 s. 28)

Note 1A

This sub-head applies to a conveyance on sale according to section 29AI (Added 14 of 2014 s. 28)

Note 1B

Scale 2 of this sub-head applies in relation to the stamp duty chargeable on a conveyance on sale by which a leasehold interest in land is transferred to, or vested in, a person by another person (*transferor*) if it is shown to the satisfaction of the Collector that the leasehold interest was acquired by the transferor under an instrument that was stamped or chargeable with stamp duty under sub-head (2) (Added 14 of 2014 s. 28)

Note 1C

Scale 2 of this sub-head applies in relation to the stamp duty chargeable on a lease or an agreement for a lease if the lease or agreement is chargeable with stamp duty as a conveyance on sale under section 27(1) by virtue of section 27(4) (Added 14 of 2014 s. 28)

Note 1

Scale 2 of this sub-head applies in relation to the stamp duty chargeable by reference to it by virtue of sub-head (2)(a), in a case where part of the consideration for a lease consists of rent, as if paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) in Scale 2 and the words “in any other case” in paragraph (k) in Scale 2 were omitted (Replaced 14 of 2014 s. 28)

Note 2

In the case of a vesting order consequential upon an order for sale or partition or a foreclosure order, the time for stamping shall be before the order is signed by the Registrar and the persons liable shall be the persons obtaining the order

Note 3

In the case of a foreclosure order, the stamp duty chargeable thereon shall not exceed the stamp duty which would be chargeable thereon by reference to the value of the property to which the order relates

Note 4

A foreclosure order shall not be duly stamped unless the Collector has stamped it under section 13(3)(b)

Note 5

In the case of a conveyance on sale of immovable property executed after a chargeable agreement for sale has been made in respect of that property, this sub-head is subject to section 29D (Added 8 of 1992 s. 6. Amended 14 of 2014 s. 28)

Note 6

(Repealed 33 of 1998 s. 11)

Note 7

This sub-head is subject to sections 29DE, 29DF, 29DG and 29DH (Added 14 of 2014 s. 28)

Exchange, Instruments effecting—see sections 25(7), 29AO and 29AP (Replaced 14 of 2014 s. 28)

(1AA) CONVEYANCE ON SALE CHARGEABLE WITH SPECIAL STAMP DUTY

Part 1—for residential property acquired on or after 20 November 2010 but before 27 October 2012 (Added 2 of 2014 s. 20)

(a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired

(A)(a) 15% of the amount or value of the consideration

- (b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day
- (c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day

- (b) 10% of the amount or value of the consideration
- (c) 5% of the amount or value of the consideration

(B) The same time as that which applies to a conveyance on sale specified under sub-head (1)

(C) The same parties as those who are liable in respect of a conveyance on sale specified under sub-head (1)

Part 2—for residential property acquired on or after 27 October 2012

- (a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired
- (b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day
- (c) if the residential property is disposed of within a period of 36 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day

(Added 2 of 2014 s. 20)

(A)(a) 20% of the amount or value of the consideration

(b) 15% of the amount or value of the consideration

(c) 10% of the amount or value of the consideration

(B) The same time as that which applies to a conveyance on sale specified under sub-head

Note 1

This sub-head is subject to sections 29D and 29DA

Note 2

- (a) If only part of the residential property is disposed of within a period specified in the first column of this sub-head, the special stamp duty chargeable under this sub-head is the percentage (specified opposite to that period) of the amount or value of the consideration for that part as indicated by the parties to the conveyance on sale concerned to the Collector (*part consideration*)
- (b) If different parts of the residential property are disposed of within different periods specified in the first column of this sub-head, the special stamp duty chargeable in respect of any of those parts under this sub-head is the percentage (specified opposite to the period applicable to that part) of the amount or value of the consideration for that part as indicated by the parties to the conveyance on sale concerned to the Collector (*part consideration*), and the special stamp duty chargeable in respect of the property under this sub-head is the total of the special stamp duty chargeable in respect of those parts
- (c) If the Collector is of the opinion that the part consideration does not represent the value of the part concerned, the Collector may substitute that value for the part consideration for the purpose of the calculation of special stamp duty chargeable under this sub-head

(Added 14 of 2011 s. 15)

(1AAB) CONVEYANCE ON SALE CHARGEABLE WITH BUYER'S STAMP DUTY

- (1)
(C) The same parties as those who are liable in respect of a conveyance on sale specified under sub-head (1)

- (A) 15% of the amount or value of the consideration
(B) The same time as that which applies to a conveyance on sale specified under sub-head (1)
(C) The transferee

Note

This sub-head is subject to sections 29D, 29DB and 29DC
(Added 2 of 2014 s. 20)

(1A) AGREEMENT FOR SALE CHARGEABLE WITH
AD VALOREM STAMP DUTY (Amended 14 of
2014 s. 28)

SCALE 1—

- | | |
|---|--|
| (a) if the amount or value of the consideration does not exceed \$2000000 and the instrument is certified in accordance with section 29G at \$2000000 | (A)(a) 1.5% of the amount or value of the consideration |
| (b) if the amount or value of the consideration exceeds \$2000000 but does not exceed \$2176470 and the instrument is certified in accordance with section 29G at \$2176470 | (b) \$30000 plus 20% of the amount by which the amount or value of the consideration exceeds \$2000000 |
| (c) if the amount or value of the consideration exceeds \$2176470 but does not exceed \$3000000 and the instrument is certified in accordance with section 29G at \$3000000 | (c) 3% of the amount or value of the consideration |
| (d) if the amount or value of the consideration exceeds \$3000000 but does not exceed \$3290330 and the instrument is certified in accordance with section 29G at \$3290330 | (d) \$90000 plus 20% of the amount by which the amount or value of the consideration exceeds \$3000000 |
| (e) if the amount or value of the consideration exceeds \$3290330 but does not exceed \$4000000 and the instrument is certified in accordance with section 29G at \$4000000 | (e) 4.5% of the amount or value of the consideration |
| (f) if the amount or value of the consideration | (f) \$180000 |

exceeds \$4000000 but does not exceed \$4428580 and the instrument is certified in accordance with section 29G at \$4428580

plus 20% of the amount by which the amount or value of the consideration exceeds \$4000000

(g) if the amount or value of the consideration exceeds \$4428580 but does not exceed \$6000000 and the instrument is certified in accordance with section 29G at \$6000000

(g) 6% of the amount or value of the consideration

(h) if the amount or value of the consideration exceeds \$6000000 but does not exceed \$6720000 and the instrument is certified in accordance with section 29G at \$6720000

(h) \$360000 plus 20% of the amount by which the amount or value of the consideration exceeds \$6000000

(i) if the amount or value of the consideration exceeds \$6720000 but does not exceed \$20000000 and the instrument is certified in accordance with section 29G at \$20000000

(i) 7.5% of the amount or value of the consideration

(j) if the amount or value of the consideration exceeds \$20000000 but does not exceed \$21739130 and the instrument is certified in accordance with section 29G at \$21739130

(j) \$1500000 plus 20% of the amount by which the amount or value of the consideration exceeds \$20000000

(k) in any other case
(Added 14 of 2014 s. 28)

(k) 8.5% of the amount or value of the consideration

(B) 30 days after

the relevant date (within the meaning of section 29B(3)); but see Notes 2 and 3 to this sub-head

(C) All parties except a party who on the relevant date (within the meaning of section 29B(3)) does not know that the agreement affects that party, and all other persons executing; but see Note 7 to this sub-head

SCALE 2— (Added 14 of 2014 s. 28)

(a) where the amount or value of the consideration does not exceed \$2000000 and the instrument is certified in accordance with section 29G at \$2000000

(b) where the amount or value of the consideration exceeds \$2000000 but does not exceed \$2351760 and the instrument is certified in accordance with section 29G at \$2351760

(c) where the amount or value of the consideration exceeds \$2351760 but does not exceed \$3000000 and the instrument is certified in accordance with section 29G at \$3000000

(A)(a) \$100
(Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)

(b) \$100 plus 10% of the amount by which the amount or value of the consideration exceeds \$2000000
(Replaced L.N. 32 of 2007 and 13 of 2007 s. 3)

(c) 1.5% of the amount or value of the consideration
(Replaced L.N. 32 of

(d) where the amount or value of the consideration exceeds \$3000000 but does not exceed \$3290320 and the instrument is certified in accordance with section 29G at \$3290320

(e) where the amount or value of the consideration exceeds \$3290320 but does not exceed \$4000000 and the instrument is certified in accordance with section 29G at \$4000000

(f) where the amount or value of the consideration exceeds \$4000000 but does not exceed \$4428570 and the instrument is certified in accordance with section 29G at \$4428570

2007 and 13
of 2007 s. 3)

(d) \$45000 plus 10% of the amount by which the amount or value of the consideration exceeds \$3000000
(Replaced L.N. 90 of 1999 and 44 of 1999 s. 22.
Amended L.N. 32 of 2007 and 13 of 2007 s. 3)

(e) 2.25% of the amount or value of the consideration
(Replaced L.N. 90 of 1999 and 44 of 1999 s. 22.
Amended L.N. 32 of 2007 and 13 of 2007 s. 3)

(f) \$90000 plus 10% of the amount by which the amount or value of the consideration exceeds \$4000000
(Replaced L.N. 90 of 1999 and 44 of 1999 s. 22.
Amended L.N. 32 of 2007 and 13

- | | | | | |
|-----|---|---------------|-----|---|
| (g) | where the amount or value of the consideration exceeds \$4428570 but does not exceed \$6000000 and the instrument is certified in accordance with section 29G at \$6000000 | of 2007 s. 3) | (g) | 3% of the amount or value of the consideration
(Replaced L.N. 90 of 1999 and 44 of 1999 s. 22.
Amended L.N. 32 of 2007 and 13 of 2007 s. 3) |
| (h) | where the amount or value of the consideration exceeds \$6000000 but does not exceed \$6720000 and the instrument is certified in accordance with section 29G at \$6720000 | | (h) | \$180000 plus 10% of the amount by which the amount or value of the consideration exceeds \$6000000
(Added L.N. 90 of 1999 and 44 of 1999 s. 22.
Amended L.N. 32 of 2007 and 13 of 2007 s. 3) |
| (i) | where the amount or value of the consideration exceeds \$6720000 but does not exceed \$20000000 and the instrument is certified in accordance with section 29G at \$20000000 | | (i) | 3.75% of the amount or value of the consideration
(Replaced L.N. 18 of 2010 and 16 of 2010 s. 4) |
| (j) | where the amount or value of the consideration exceeds \$20000000 but does not exceed \$21739120 and the instrument is certified in accordance with section 29G at \$21739120 | | (j) | \$750000 plus 10% of the amount by which the amount or value of the consideration |

(k) in any other case

n exceeds
\$20000000
(Added L.N.
18 of 2010
and 16 of
2010 s. 4)

(k) 4.25% of the
amount or
value of the
consideration
(Added L.N.
18 of 2010
and 16 of
2010 s. 4)

*(B) 30 days after
the relevant
date (within
the meaning of
section
29B(3)); but
see Notes 2
and 3 to this
sub-head
(Amended
L.N. 90 of
1999 and 44 of
1999 s. 22; 14
of 2011 s. 15)

(C) All parties
except a party
who on the
relevant date
(within the
meaning of
section 29B(3))
does not know
that the
agreement
affects him, and
all other
persons
executing; but
see Note 7 to
this sub-head
(Replaced 36 of
1994 s. 3.
Amended 14 of
2014 s. 28)

And see section 4 and Part IIIA

Note 1

This sub-head applies to an agreement for sale

according to section 29BA (Replaced 14 of 2014 s. 28)

Note 1A

Scale 2 of this sub-head applies in relation to the stamp duty chargeable on an agreement for sale if it is shown to the satisfaction of the Collector that-

- (a) the agreement is an instrument which, if implemented, would be implemented by a conveyance on sale; and
- (b) the conveyance on sale would, by the operation of Note 1B to sub-head (1), be chargeable with stamp duty under Scale 2 of sub-head (1) (Added 14 of 2014 s. 28)

Note 2

If, within the first 14 days of the time for stamping, an agreement for sale is superseded by another agreement for sale made between the same parties and on the same terms, executed in accordance with section 29B(1), and containing the matters specified in section 29B(5)-

- (aa) for the purposes of Part IIIA and this sub-head, the second-mentioned agreement is deemed to be made on the relevant date (within the meaning of section 29B(3)); (Added L.N. 90 of 1999 and 44 of 1999 s. 22)
- *(a) notwithstanding paragraph (aa), the time for stamping the second-mentioned agreement is not later than 30 days after it was executed; and (Amended L.N. 90 of 1999 and 44 of 1999 s. 22; 14 of 2011 s. 15)
- *(b) if the second-mentioned agreement is duly stamped or stamped under section 5(1), 13(2) or 18E(1), the obligation to stamp any preceding agreement between the same parties and on the same terms is discharged (Amended L.N. 90 of 1999 and 44 of 1999 s. 22; 21 of 2003 s. 25; 14 of 2011 s. 15)

*Note 3

Subject to Note 2, if 2 or more agreements for sale are made between the same parties and on the same terms-

- (a) for the purposes of Part IIIA and this sub-head, all of the agreements are deemed to be made on the relevant date (within the meaning of section 29B(3)); and
- (b) where any of the agreements is duly stamped or stamped under section 5(1), 13(2) or 18E(1)- (Amended 21 of 2003 s. 25; 14 of 2011 s. 15)
 - (i) the other agreements are each chargeable with stamp duty of \$100; and
 - (ii) notwithstanding paragraph (a), the time for stamping each of the other agreements is not later than 30 days after it was executed (Replaced

L.N. 90 of 1999 and 44 of 1999 s.
22. Amended 14 of 2011 s. 15)

Note 4

Where 2 agreements for sale are made in respect of the same, or part of the same, property and involve a common purchaser (but are not made between the same parties), this sub-head is subject to section 29C(5)

Note 5

For the purposes of Notes 2, 3 and 4, and if the immovable property concerned is residential property, 2 or more persons are treated as the same person if, on the date of the agreement made between those persons-

- (a) they are closely related;
- (b) each of them is acting on his or her own behalf; and
- (c) each of them is not a beneficial owner of any other residential property in Hong Kong (Replaced 14 of 2014 s. 28)

Note 6

(Repealed 33 of 1998 s. 11)

Note 7

This sub-head is subject to sections 29D, 29DE, 29DF, 29DG and 29DH (Added 14 of 2014 s. 28)

(1B) AGREEMENT FOR SALE CHARGEABLE WITH SPECIAL STAMP DUTY

Part 1—for residential property acquired on or after 20 November 2010 but before 27 October 2012 (Added 2 of 2014 s. 20)

- (a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired
- (b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day
- (c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day

- (A)(a) 15% of the amount or value of the consideration
- (b) 10% of the amount or value of the consideration
- (c) 5% of the amount or value of the consideration
- (B) The same time as that which applies to an agreement for sale specified under sub-head (1A)

Part 2—for residential property acquired on or after 27 October 2012

- (a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired
- (b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day
- (c) if the residential property is disposed of within a period of 36 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day
(Added 2 of 2014 s. 20)

Note 1

This sub-head is subject to sections 29C and 29CA

Note 2

- (a) If only part of the residential property is disposed of within a period specified in the first column of this sub-head, the special stamp duty chargeable under this sub-head is the percentage (specified opposite to that period) of the amount or value of the

(C) The same parties as those who are liable in respect of an agreement for sale specified under sub-head (1A)

(A)(a) 20% of the amount or value of the consideration

(b) 15% of the amount or value of the consideration

(c) 10% of the amount or value of the consideration

(B) The same time as that which applies to an agreement for sale specified under sub-head (1A)

(C) The same parties as those who are liable in respect of an agreement for sale specified under sub-head (1A)

consideration for that part as indicated by the parties to the agreement concerned to the Collector (*part consideration*)

- (b) If different parts of the residential property are disposed of within different periods specified in the first column of this sub-head, the special stamp duty chargeable in respect of any of those parts under this sub-head is the percentage (specified opposite to the period applicable to that part) of the amount or value of the consideration for that part as indicated by the parties to the agreement concerned to the Collector (*part consideration*), and the special stamp duty chargeable in respect of the property under this sub-head is the total of the special stamp duty chargeable in respect of those parts
- (c) If the Collector is of the opinion that the part consideration does not represent the value of the part concerned, the Collector may substitute that value for the part consideration for the purpose of the calculation of special stamp duty chargeable under this sub-head

Note 3
(Repealed 14 of 2014 s. 28)

Note 4
Notes 2, 3 and 4 to head 1(1A) apply to special stamp duty chargeable on an agreement for sale of residential property under this sub-head as they apply to stamp duty chargeable under head 1(1A); and for the purposes of applying those Notes to special stamp duty, 2 or more persons are treated as the same person if they are closely related (Replaced 14 of 2014 s. 28)
(Added 14 of 2011 s. 15)

(1C) AGREEMENT FOR SALE CHARGEABLE WITH BUYER'S STAMP DUTY

- (A) 15% of the amount or value of the consideration
- (B) The same time as that which applies to an agreement for sale specified under sub-head (1A)
- (C) The purchaser

Note 1
This sub-head is subject to sections 29C, 29CB and 29CC

Note 2
(Repealed 14 of 2014 s. 28)

Note 3

Notes 2, 3 and 4 to head 1(1A) apply to buyer's stamp duty chargeable on an agreement for sale of residential property under this sub-head as they apply to stamp duty chargeable under head 1(1A); and for the purposes of applying those Notes to buyer's stamp duty, 2 or more persons are treated as the same person if they are closely related (Replaced 14 of 2014 s. 28)

(Added 2 of 2014 s. 20)

(2) LEASE

(a) where the consideration or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock or security

(b) where the consideration or any part of the consideration is any rent

(i) where the term is not defined or is uncertain;

(ii) where the term specified in the lease does not exceed one year;

(iii) where the term specified in the lease exceeds one year but does not exceed three years;

(iv) where the term specified in the lease exceeds three years

(A) The same duty as on a conveyance on sale for the same consideration (see Note 1 to sub-head (1))

(B) 30 days after execution

(C) All parties, and all other persons executing

(A)(i) 25 cents for every \$100 or part thereof of the yearly or average yearly rent

(ii) 25 cents for every \$100 or part thereof of the total rent payable over the term of the lease

(iii) 50 cents for every \$100 or part thereof of the yearly or average yearly rent

(iv) \$1 for every \$100 or part thereof of

- (c) Lease executed in pursuance of a duly stamped agreement for lease

- the yearly or average yearly rent
- (B) 30 days after execution
- (C) All parties, and all other persons executing
- (A) \$3
- (B) 30 days after execution
- (C) All parties, and all other persons executing

And see sections 2, 16, 17, 27, 39, 42 and 43

Partition, Instruments effecting-see section 25(7)

Voluntary Chargeable Agreements for Sale-see section 29F (Added 8 of 1992 s. 6)

Voluntary Disposition inter vivos - see section 27

HEAD 2: HONG KONG STOCK

- (1) CONTRACT NOTE for the sale or purchase of any Hong Kong stock not being jobbing business on every note required to be made under section 19(1)

- (A) 0.1% of the amount of the consideration or of its value at the date on which the contract note falls to be executed: but see Note to this sub-head (Amended 18 of 1998 s. 2; 22 of 2000 s. 2; 22 of 2001 s. 4)
- (B) 2 days after the sale or purchase if effected in Hong Kong: see section 19(1)(b)(i) 30 days after the sale or purchase if effected elsewhere: see section 19(1)(b)(ii)

<p>And see sections 2, 4, 5, 5A, 6, 19, 20, 23, 24, 27 and 45</p>	<p>(C) The agent or, where no agent, the principal effecting the sale or purchase</p>
<p>Note Where the consideration or any part of the consideration consists of any security not being stock, the amount due upon such security for principal and interest on the date on which the contract note falls to be executed shall be taken to be its value at that date</p>	
<p>(2) CONTRACT NOTE in respect of jobbing business on every note required to be made under section 19(1)</p>	<p>(A) \$5 (B) 2 days after the sale or purchase: see section 19(1)(b)(i) (C) The exchange participant effecting the sale or purchase (Amended 12 of 2000 s. 23)</p>
<p>And see sections 2, 4, 19 and 20 (3) TRANSFER operating as a voluntary disposition inter vivos or made for the purpose of effectuating a transaction whereby the beneficial interest in Hong Kong stock passes otherwise than on sale and purchase, including a foreclosure order (Amended 33 of 1998 s. 11)</p>	<p>(A) \$5 and 0.2% of the value of the stock; but see Note 4 to this sub-head (Amended 18 of 1998 s. 2; 22 of 2000 s. 2; 22 of 2001 s. 4; 4 of 2015 s. 5) (B) 7 days after execution or, if executed elsewhere than in Hong Kong, 30 days after execution; but see Note 1 to this sub-head (C) The transferor and the transferee; but see Note 1 to this sub-head</p>
<p>And see sections 4, 19, 27, 28, 30, 44 and 45</p>	

Note 1

In the case of a foreclosure order, the time for stamping shall be before the order is signed by the Registrar and the persons liable shall be the persons obtaining the order

Note 2

In the case of a foreclosure order, the stamp duty chargeable thereon shall not exceed the stamp duty which would have been chargeable thereon by reference to the amount of the debt to which the order relates

Note 3

A foreclosure order shall not be duly stamped unless the Collector has stamped it under section 13(3)(b)

Note 4

Stamp duty under this sub-head is not payable on a transfer specified in Part 3 of Schedule 8 (Added 4 of 2015 s. 5)

(4) TRANSFER of any other kind

- (A) \$5; but see Notes 1 and 2 to this sub-head (Amended 4 of 2015 s. 5)
- (B) Before execution or, if executed elsewhere than in Hong Kong, 30 days after execution
- (C) The transferor and the transferee

And see sections 5, 7, 19, 30, 47A and 47B (Amended 70 of 2000 s. 3; 34 of 2003 s. 8)

Note 1

No stamp duty under this sub-head shall be payable on a transfer executed by a recognized clearing house (within the meaning of section 19(16)) or its nominee-
(a) as the transferor of the Hong Kong stock; and
(b) in accordance with the rules (within the meaning of section 19(16)) of the clearing house

(Replaced 40 of 1992 s. 7. Amended 4 of 2015 s. 5)

Note 2

Stamp duty under this sub-head is not payable on a transfer specified in Part 4 of Schedule 8

Added 4 of 2015 s. 5)

HEAD 3: HONG KONG BEARER INSTRUMENT

(1) HONG KONG BEARER INSTRUMENT issued in respect of any stock other than-

- (A) \$3 per \$100 or part thereof of

- (a) (Repealed 43 of 1991 s. 7)
- (b) units in a unit trust scheme under the terms of which the funds of the trust cannot be invested in any investment other than loan capital

And see sections 2 and 5(5)
(Replaced 21 of 1986 s. 2)

- (2) HONG KONG BEARER INSTRUMENT given in substitution for a like instrument duly stamped under sub-head (1) of this head

And see sections 2 and 5(5)

**HEAD 4: DUPLICATES AND
 COUNTERPARTS**

DUPLICATE OR COUNTERPART of any instrument chargeable with any stamp duty

- market value on issue
- (B) Before issue
- (C) The person by whom or on whose behalf the instrument is issued and any person who acts as the agent of that person for the purposes of the issue

- (A) \$5
- (B) Before issue
- (C) The person by whom or on whose behalf the instrument is issued and any person who acts as the agent of that person for the purposes of the issue

- (A) Where the stamp duty on the original instrument does not amount to \$5, the same stamp duty as on the original; in any other case, \$5: but see Note to this head
- (B) 7 days after execution, or such longer period as the time for stamping the original instrument

And see section 8

Note

If in the case of a lease or agreement for a lease the stamp duty payable in respect thereof is limited in accordance with section 42(2) or 43(2) to 50% of the stamp duty chargeable thereon, the stamp duty chargeable on a duplicate or counterpart thereof shall be limited to 50% of the stamp duty otherwise chargeable under this head

would allow
(C) -

(Amended 29 of 1988 s. 2; 43 of 1991 s. 7; 85 of 1991 s. 6; 8 of 1992 s. 6; 36 of 1992 s. 3; 40 of 1992 s. 7; L.N. 50 of 1993; 31 of 1993 s. 2)

(Format changes—E.R. 1 of 2015)

Note:

* The amendments made by L.N. 90 of 1999 and Ord. No. 44 of 1999 to paragraph (B), Note 2(a) and (b) and Note 3 under head 1(1A) of the First Schedule shall only apply to an agreement for sale, or an unwritten sale agreement, as defined in section 29A(1), if the relevant date within the meaning of section 29B(3) is, in so far as such agreement for sale or unwritten sale agreement (as the case may be) is concerned, on or after 1 April 1999.

Chapter:	117	Stamp Duty Ordinance	Gazette Number	Version Date
Schedule:	8	Transactions and Transfers Relating to Exchange Traded Funds	4 of 2015	13/02/2015

[sections 19 & 63 &
1st Schedule]

Part 1

Interpretation

1. In this Schedule—

collective investment scheme (集體投資計劃) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571);

constitutive documents (組成文件), in relation to a collective investment scheme, means the principal documents governing the establishment of the scheme;

exchange traded fund (交易所買賣基金) means an open-ended collective investment scheme the shares or units of which are listed or traded on a recognized stock market;

offering document (要約文件), in relation to a collective investment scheme, means a document—

(a) inviting participation in the scheme by prospective shareholders or prospective unit holders of the scheme; and

(b) containing information relating to the establishment or administration of the scheme;

open-ended collective investment scheme (開放式集體投資計劃) means a collective investment scheme the shares or units of which may be repurchased or redeemed at the request of any of its shareholders or unit holders—

(a) at a price calculated wholly or mainly by reference to the net asset value of the scheme; and

(b) in accordance with the frequency for repurchase or redemption, requirements and procedures set out in the offering document or constitutive documents of the scheme;

purchase (購買), **sale** (售賣) and **sale or purchase** (售賣或購買) have the meaning given by section 19(16).

Part 2

Transactions to which Section 19(1) does not Apply

1. A sale or purchase of a share or unit of an exchange traded fund.
2. A transaction that is deemed under section 19(1E)(a) or (12) to be a sale and purchase of Hong Kong stock where the stock involved is a share or unit of an exchange traded fund.

Part 3

Transfers on which Stamp Duty under Head 2(3) in First Schedule is not Payable

1. A transfer executed for a transaction by which the beneficial interest in a share or unit of an exchange traded fund passes otherwise than on sale and purchase.
2. An instrument that is deemed under section 30(3) to be a transfer operating as a voluntary disposition inter vivos under section 27(4) where the unit trust scheme involved is an exchange traded fund.

Part 4

Transfers on which Stamp Duty under Head 2(4) in First Schedule is not Payable

1. A transfer executed for a transaction by which a share or unit of an exchange traded fund is transferred.
2. An instrument that is deemed under section 30(3), (4) or (5) to be a transfer falling within head 2(4) in the First Schedule where the unit trust scheme involved is an exchange traded fund.

(Schedule 8 added 4 of 2015 s. 6)

Chapter:	310	BUSINESS REGISTRATION ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation and application*	L.N. 163 of 2013	03/03/2014
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- (1) In this Ordinance, unless the context otherwise requires-
- "branch registration application" (分行登記申請) means an application under section 5(3); (Added 13 of 2010 s. 3)
- "business" (商業、業務) means any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain and also means a club; (Amended L.N. 88 of 1975; 32 of 1975 s. 2)
- "business registration application" (商業登記申請) means an application under section 5(1); (Added 13 of 2010 s. 3)
- "certification" (核證) means certification by the Commissioner under section 19; (Added 56 of 1984 s. 2)
- "club" (會社) means any corporation or association of persons formed for the purpose of affording its members facilities for social intercourse or recreation and which-
- (a) provides services for its members (whether or not for the purposes of gain); and
 - (b) has club premises of which its members have a right of exclusive use; (Added L.N. 88 of 1975; 32 of 1975 s. 2)
- "Commissioner" (局長) means the Commissioner of Inland Revenue appointed under the Inland Revenue Ordinance (Cap 112);
- "company registration application" (公司註冊申請) means an application for registration under section 776 of the Companies Ordinance (Cap 622); (Added 13 of 2010 s. 3. Amended 28 of 2012 ss. 912 & 920)
- "duplicate" (複本) in relation to a branch registration certificate means a duplicate thereof issued under regulations made under section 14; (Added 56 of 1984 s. 2)
- "duplicate" (複本) in relation to a business registration certificate means a duplicate thereof issued under regulations

- made under section 14; (Added 56 of 1984 s. 2)
- "electronic record" (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 13 of 2010 s. 3)
- "function" (職能) includes a power and a duty; (Added 13 of 2010 s. 3)
- "incorporation form" (法團成立表格) means the incorporation form referred to in section 67(1)(b)(i) of the Companies Ordinance (Cap 622); (Added 13 of 2010 s. 3. Amended 28 of 2012 ss. 912 & 920)
- incorporation submission** (成立法團遞呈) means a submission made for the purpose of forming a company under section 67 of the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)
- "levy" (徵費) means an amount prescribed in item 3 of the Table in Schedule 2 and determined in accordance with sections 3 and 4 of that Schedule; (Replaced 13 of 2010 s. 3)
- "non-Hong Kong company" (非香港公司) means a company incorporated outside Hong Kong; (Added 13 of 2010 s. 3)
- "non-Hong Kong company registration form" (非香港公司註冊表格) means a company registration application in the specified form referred to in section 776(4) of the Companies Ordinance (Cap 622); (Added 13 of 2010 s. 3. Amended 28 of 2012 ss. 912 & 920)
- "place of business" (營業地點) includes in relation to-
- (a) a company incorporated in Hong Kong under the Companies Ordinance (Cap 622), or under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap 622), its registered office; and (Amended 28 of 2012 ss. 912 & 920 and E.R. 1 of 2014)
 - (b) a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622), the address of any person whose name has been delivered to the Registrar for registration under Part XI of the Companies Ordinance (Cap 32) as in force at the time of the delivery or under Part 16 of the Companies Ordinance (Cap 622), as the case may be; (Replaced 28 of 2012 ss. 912 & 920)
- "prescribed branch registration fee" (訂明的分行登記費) means a fee prescribed in item 2 of the Table in Schedule 2 and determined in accordance with section 2 of that Schedule; (Replaced 13 of 2010 s. 3)
- "prescribed business registration fee" (訂明的商業登記費) means a fee prescribed in item 1 of the Table in Schedule 1 and determined in accordance with section 2 of that Schedule; (Replaced 13 of 2010 s. 3)
- "prescribed document fee" (訂明文件費) means the fee for the issue of documents under sections 19 and 19A prescribed by regulations made under section 14; (Replaced 3 of 1999 s. 2)
- "Protection of Wages on Insolvency Fund" (破產欠薪保障基金) means the fund deemed to be established and continued in existence under section 6 of the Protection of Wages on Insolvency Ordinance (Cap 380); (Added 12 of 1985 s. 29 (1))
- "register" (登記冊) means the register of businesses kept by the Commissioner;
- "Registrar" (處長) means the Registrar of Companies appointed under section 21(1) of the Companies Ordinance (Cap 622); (Added 13 of 2010 s. 3. Amended 28 of 2012 ss. 912 & 920)
- "Secretary" (政策局局長) means the Secretary for Financial Services and the Treasury; (Added 13 of 2010 s. 3)
- "simultaneous business registration application" (同步商業登記申請) means a business registration application deemed to have been made under section 5A(2)(a) or 5B(2); (Added 13 of 2010 s. 3)
- "valid branch registration certificate" (有效分行登記證) means a certificate which is issued by the Commissioner under section 6, or any duplicate branch registration certificate, and which has not expired; (Added 56 of 1984 s. 2)
- "valid business registration certificate" (有效商業登記證) means a certificate which is issued by the Commissioner under section 6 or had been issued under the Business Regulation Ordinance 1952 (14 of 1952), or any duplicate business registration certificate, and which has not expired. (Amended 56 of 1984 s. 2)
(Amended 28 of 2012 ss. 912 & 920)
- (1A) For the purposes of this Ordinance- (Amended 28 of 2012 ss. 912 & 920)
- (a) a company-
 - (i) that is incorporated in Hong Kong under the Companies Ordinance (Cap 622) or was incorporated under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap 622); and
 - (ii) that is not otherwise liable to be registered under this Ordinance; or

(b) a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622) that is not otherwise liable to be registered under this Ordinance, (Amended 28 of 2012 ss. 912 & 920) shall, notwithstanding any deemed cessation of business under section 6(4F) or any notification of cessation of business which may be furnished under section 8(2), be deemed to be a person carrying on business and shall be liable to be registered under this Ordinance. (Added L.N. 95 of 1976; 27 of 1976 s. 2. Amended 3 of 1999 s. 2; 13 of 2010 s. 3)

(1B) This Ordinance shall apply to-

- (a) a company deemed to be a person carrying on business under subsection (1A);
- (b) a person deemed to be a person carrying on business under section 3(4); and
- (c) a person deemed to be a person carrying on business at a branch of a business under section 3(4AA),

as it applies to a person carrying on business or to a person carrying on business at a branch of a business. (Added 3 of 1999 s. 2)

(1C) This Ordinance applies to-

- (a) a person who makes an incorporation submission; and (Amended 28 of 2012 ss. 912 & 920)
- (b) a person who makes a company registration application. (Added 13 of 2010 s. 3)

(2) The functions conferred on the Commissioner under this Ordinance may be performed by any officer of the Inland Revenue Department authorized by the Commissioner, either generally or particularly, subject to the instructions of the Commissioner. (Replaced 13 of 2010 s. 3)

(3) The following functions may be performed by any officer of the Companies Registry authorized by the Registrar, either generally or particularly, subject to the instructions of the Registrar-

- (a) functions authorized under this Ordinance to be performed by the Registrar on behalf of the Commissioner;
- (b) functions delegated by the Commissioner to the Registrar under this Ordinance;
- (c) functions conferred on the Registrar under this Ordinance. (Added 13 of 2010 s. 3)

Note:

* (Amended 13 of 2010 s. 3)

Chapter:	310	BUSINESS REGISTRATION ORDINANCE	Gazette Number	Version Date
Section:	3	Persons answerable for doing all acts, etc. required to be done	L.N. 75 of 1999	01/04/1999

(1) The expression in this Ordinance "person carrying on business" (經營業務的人) means-

- (a) in the case of a single person or corporate body, such person or corporate body;
- (b) in the case of a business carried on by a partnership, all partners; and
- (c) in the case of a business carried on by any other body of persons, the principal officers of such body;

Provided that no person who, for the purposes of section 8 of the Inland Revenue Ordinance (Cap 112), is deemed to have an office or employment of profit shall by reason solely thereof be deemed to be carrying on business for the purposes of this Ordinance.

- (2) (a) Any act or thing required by or under this Ordinance to be done by any person carrying on business shall, if such person is an incapacitated person or is absent, be deemed to be required to be done by the trustee of such incapacitated person or by the agent of such absent person, as the case may be.
- (b) For the purposes of this subsection a person shall be deemed to be absent where, the Commissioner having posted a registered letter to such person's place of business, he fails to attend during ordinary office hours the place specified therein within 7 days of the posting of such letter.

(3) Where the person carrying on business who is required under this Ordinance to do any act or thing is a company, the secretary, manager, or any director of such company shall be answerable for the doing of such act or thing.

(4) Where the Commissioner serves notice on any person to the effect that he will be deemed to be a person carrying on business, he shall be so deemed unless within 1 month from the date of service of such notice he proves to the satisfaction of the Commissioner that he is not carrying on business. (Amended 6 of 1994 s. 56)

(4AA) Where the Commissioner serves notice on any person to the effect that he will be deemed to be a person carrying on business at a branch of a business, the person shall be so deemed unless within 1 month from the date of

service of such notice the person proves to the satisfaction of the Commissioner that he is not carrying on business at a branch of a business. (Added 3 of 1999 s. 3)

(4A) A notice under subsection (4) or (4AA) shall include a statement of the reasons for the service of the notice and where such person fails to satisfy the Commissioner as provided in that subsection he may appeal in the manner provided by section 17. (Added 6 of 1994 s. 56. Amended 3 of 1999 s. 3)

(5) For the purposes of this section-

"agent" (代理人) in relation to an absent person includes-

- (a) the agent, attorney, factor, receiver, or manager in Hong Kong of such person; and
- (b) any person in Hong Kong through whom such person is in receipt of any profits or income arising in or derived from the business; (Amended 56 of 1984 s. 3)

"incapacitated person" (無行為能力的人) means any minor, lunatic, idiot, or person of unsound mind;

"trustee" (受託人) includes any trustee, guardian, curator, manager or other person having the direction, control, or management of any property on behalf of any person, but does not include an executor.

Chapter:	310	BUSINESS REGISTRATION ORDINANCE	Gazette Number	Version Date
Section:	5A	Simultaneous business registration applications of companies incorporated under Companies Ordinance	L.N. 163 of 2013	03/03/2014

(1) At the time an incorporation submission is made, the person who made the submission must— (Amended 28 of 2012 ss. 912 & 920)

- (a) pay to the Commissioner the prescribed business registration fee and levy; and
- (b) deliver a notice in a form specified by the Commissioner under section 5D(1), to indicate whether the person intends that the company to be formed will make an election under section 6(5C)(c).

(2) If the person complies with subsection (1), on the incorporation of the company— (Amended 28 of 2012 ss. 912 & 920)

- (a) the company is deemed to have made a business registration application; and
- (b) if the person has, under subsection (1)(b), indicated the intent to make an election under section 6(5C)(c), the company is deemed to have made an election under section 6(5C)(c).

(Added 13 of 2010 s. 6. Amended 28 of 2012 ss. 912 & 920)

Chapter:	310	BUSINESS REGISTRATION ORDINANCE	Gazette Number	Version Date
Section:	6	Registration of business and issue of business registration certificate	L.N. 168 of 2010	21/02/2011

(1) The Commissioner must register each business for which a business registration application is made or is deemed to be made under this Ordinance as soon as practicable after the prescribed business registration fee and levy are paid. (Replaced 13 of 2010 s. 7)

(1A) The Commissioner must register each branch of a business for which a branch registration application is made under this Ordinance as soon as practicable after the prescribed branch registration fee and levy are paid. (Replaced 13 of 2010 s. 7)

(2) Businesses registered under the Business Regulation Ordinance 1952 (14 of 1952) shall for the purposes of this Ordinance be deemed to have been registered under this section.

(3) The Commissioner must issue a business registration certificate for the relevant business as soon as practicable after—

- (a) the Commissioner has decided to register the business;
- (b) the prescribed business registration fee and levy are paid under section 7 or under an order of a magistrate made under section 15; or
- (c) an exemption is granted under section 9. (Replaced 13 of 2010 s. 7)

(3A) The Commissioner must issue a branch registration certificate for the relevant branch of a business as soon as practicable after—

- (a) the Commissioner has decided to register the branch; or
- (b) the prescribed branch registration fee and levy are paid under section 7 or under an order of a

magistrate made under section 15. (Replaced 13 of 2010 s. 7)

(3B) A business registration certificate under subsection (3) or a branch registration certificate under subsection (3A) may be issued in any manner the Commissioner thinks fit. (Added 13 of 2010 s. 7)

(3C) Without limiting the powers of the Commissioner under subsection (3B), the Commissioner may issue a certificate in the form of an electronic record. (Added 13 of 2010 s. 7)

(4) The Commissioner shall not be required to register any business or branch of a business or to issue a business registration certificate or a branch registration certificate where application is made for registration-

- (a) of a business or a branch which is unlawful;
- (b) by a name which suggests that the business is incorporated with limited liability when it is not, or, where the business is incorporated with limited liability, by a name which suggests that the business is incorporated under a different name; or (Replaced 3 of 1999 s. 6)
- (c) by a name which suggests a connection with the Government or any public body when no such connection exists or has existed. (Replaced 79 of 1992 s. 3)

(4A) If the Commissioner has decided not to register a business or a branch of a business for any of the reasons specified in subsection (4)—

- (a) the Commissioner must notify the applicant concerned in writing of the decision and the reason for it; and
- (b) if the decision is made for the reason specified in subsection (4)(b) or (c), the applicant must make a new business registration application or branch registration application, as the case may be, under a different name within 1 month of the notification. (Replaced 13 of 2010 s. 7)

(4B) Where at any time after a business or a branch of a business has been registered the Commissioner, on the ground that a court or other competent authority has decided that such business or branch is unlawful, decides that such business or branch should not have been registered for the reason specified in subsection (4)(a)-

- (a) the Commissioner shall remove the entry in respect of the business or of the branch, as the case may be, from the register; and
- (b) the Commissioner shall as soon as practicable after the removal publish a notice in the Gazette of the removal and on publication such business or branch, as the case may be, shall be deemed to have never been registered. (Added 3 of 1999 s. 6)

(4C) Any person aggrieved by a decision of the Commissioner made under subsection (4B) may, within 28 days of the publication of the notice of removal referred to in paragraph (b) of that subsection, appeal to the Court of First Instance against the removal and the Court of First Instance may make such order thereon as it may deem just, including an order as to costs. (Added 3 of 1999 s. 6)

(4D) If—

- (a) at any time after a business or a branch of a business has been registered it appears to the Commissioner that the business or branch should not have been registered for the reason specified in subsection (4)(b) or (c); or
- (b) on notification of a change of the name of a business or a branch of a business under section 8(1), (1A)(b) or (1B) or on the submission of the name of a business under section 8(1A)(a), it appears to the Commissioner that the business or branch should not be registered under the new name for the reason specified in subsection (4)(b) or (c),

the Commissioner must issue a notice to the person carrying on the business or branch requesting the person to notify the Commissioner in writing, within 3 months of the issue of that notice, of a change to a different name that does not fall within the description in subsection (4)(b) or (c). (Replaced 13 of 2010 s. 7)

(4E) A notice issued by the Commissioner under subsection (4D) shall include a statement of the reasons therefor and the person issued with the notice may appeal in the manner provided in section 17. (Added 3 of 1999 s. 6)

(4F) If no notification of a change to a different name that does not fall within the description in subsection (4)(b) or (c) is given in accordance with the requirements of subsection (4D), or no appeal has been lodged under subsection (4E), or an appeal lodged under subsection (4E) has been determined otherwise than in favour of the appellant, the business or branch, as the case may be, shall be deemed to have ceased to be carried on at the expiration of the 3 months period referred to in subsection (4D) or immediately after the appeal has been so determined, as the case may be, and the Commissioner shall record such cessation on the register accordingly. (Added 3 of 1999 s. 6. Amended 13 of 2010 s. 7)

(4G) Where a business or a branch of a business is deemed to have ceased to be carried on under subsection (4F), the Commissioner shall as soon as practicable thereafter, notify the person served with the notice under subsection

(4D) of such cessation, and publish the name, business registration number, business address and the date of the cessation in the Gazette. (Added 3 of 1999 s. 6)

(5) A business registration certificate and a branch registration certificate shall be valid until the expiry date endorsed thereon, and no such certificate shall be valid unless it bears an endorsement to the effect that-

(a) the prescribed business registration fee or the prescribed branch registration fee, as the case may be, and the levy have been paid; or (Replaced 56 of 1984 s. 5)

(b) in the case of a business registration certificate, no fee is payable. (Replaced 56 of 1984 s. 5)

(5A) The expiry date endorsed on a business registration certificate shall be the date of the expiration of-

(a) where the certificate is an applicable business registration certificate in respect of which an election has been made under subsection (5C), 3 years from the date of commencement endorsed thereon; or

(b) in any other case, 1 year from the date of commencement endorsed thereon. (Added L.N. 90 of 1999 and 44 of 1999 s. 26)

(5B)(a) The expiry date endorsed on a branch registration certificate issued in respect of a branch of a business shall-

(i) where there is a relevant business registration certificate, be the same as the expiry date endorsed on the relevant business registration certificate; or

(ii) where there is no relevant business registration certificate, be such date as the Commissioner shall reasonably decide having regard to the circumstances of the case.

(b) In this subsection, "relevant business registration certificate" (有關商業登記證), in relation to a branch registration certificate issued in respect of a branch of a business, means a business registration certificate issued in respect of the business on which-

(i) the date of commencement endorsed is the same as the date of commencement endorsed on the branch registration certificate; or

(ii) the date of commencement endorsed is earlier than the date of commencement endorsed on the branch registration certificate, but the expiry date endorsed is not earlier than the date of commencement endorsed on the branch registration certificate. (Added L.N. 90 of 1999 and 44 of 1999 s. 26)

(5C) A person carrying on business may-

(a) where a valid business registration certificate has been issued in respect of the business, by notice in writing given to the Commissioner not later than 1 month before the expiry date endorsed on the certificate;

(b) where a business registration application for the business is made within 1 year of the commencement of the business, by a statement in the application; or

(c) in relation to a simultaneous business registration application, (Added 13 of 2010 s. 7)

elect that the expiry date to be endorsed on all applicable business registration certificates to be issued at any time thereafter in respect of the business shall be the date of the expiration of 3 years from the date of commencement endorsed thereon. (Added L.N. 90 of 1999 and 44 of 1999 s. 26. Amended 13 of 2010 s. 7)

(5D)(a) Where a person has made an election as regards a business under subsection (5C)-

(i) the election shall be irrevocable in respect of the first applicable business registration certificate that has been or may be issued in respect of the business after the election is made;

(ii) subject to subparagraph (i), the election may be revoked by the person by notice in writing given to the Commissioner at any time not later than 1 month before the expiry date endorsed on a valid business registration certificate where the expiry date is endorsed in accordance with the election.

(b) Where an election is revoked under paragraph (a)(ii), the election shall be regarded as not having been made in respect of any business registration certificate that may be issued after the revocation is made. (Added L.N. 90 of 1999 and 44 of 1999 s. 26)

(5E) In this section, a reference to applicable business registration certificate is a reference to-

(a) in relation to an election made in the manner specified in subsection (5C)(a), a business registration certificate on which the date of commencement endorsed-

(i) shall be a date after the expiry date endorsed on the valid business registration certificate referred to in that subsection; and

(ii) shall not be a date before the commencement of the Revenue Ordinance 1999 (44 of 1999);

(b) in relation to an election made in the manner specified in subsection (5C)(b), a business registration certificate on which the date of commencement endorsed shall not be a date before the commencement

of the Revenue Ordinance 1999 (44 of 1999). (Added L.N. 90 of 1999 and 44 of 1999 s. 26)

(6) The issue of a business registration certificate or a branch registration certificate in respect of any business shall not be deemed to imply that the requirements of any law in relation to such business or to the persons carrying on the same or employed therein have been complied with. (Amended 79 of 1992 s. 3)

(7) Where a body corporate makes a business registration application and the body corporate is not incorporated in Hong Kong, the Commissioner shall record its place of incorporation after its name on the register in a manner he sees fit. (Added 3 of 1999 s. 6. Amended 13 of 2010 s. 7)

(Amended 56 of 1984 s. 5)

Chapter:	310	BUSINESS REGISTRATION ORDINANCE	Gazette Number	Version Date
Section:	7A	Refund of prescribed business registration fees, prescribed branch registration fees or levies	L.N. 163 of 2013	03/03/2014

(1) Any prescribed business registration fee, prescribed branch registration fee or levy paid is not to be refunded except where it is provided otherwise in this section or any other provision of this Ordinance.

(2) Subject to subsection (3), the Commissioner must refund any prescribed business registration fee or prescribed branch registration fee, as the case may be, or levy paid in respect of a business or a branch of a business—

- (a) as soon as practicable after the Commissioner has given the notification under section 6(4A) if the Commissioner has decided not to register the business or branch for any of the reasons specified in section 6(4); or
- (b) as soon as practicable if the Commissioner has removed the entry in respect of the business or branch from the register under section 6(4B), and there is no appeal against the removal under section 6(4C) or an appeal under section 6(4C) is unsuccessful or withdrawn.

(3) Except in the case of a branch of a business, subsection (2)(b) does not entitle the following companies to any refund—

- (a) a company incorporated under the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)
- (ab) a company incorporated under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)
- (b) a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622); (Replaced 28 of 2012 ss. 912 & 920)
- (c) a company incorporated outside Hong Kong that has established a place of business in Hong Kong, but has ceased to have any such place of business before the repeal of Part XI of the Companies Ordinance (Cap 32) as in force from time to time before the commencement date** of section 2 of Schedule 9 to the Companies Ordinance (Cap 622). (Added 28 of 2012 ss. 912 & 920)

(4) If the Registrar refuses an incorporation submission made on or after the day on which section 6 of the Business Registration (Amendment) Ordinance 2010 (13 of 2010) comes into operation*, the Commissioner must as soon as practicable refund to the person who made the submission the prescribed business registration fee and levy paid under section 5A(1)(a). (Amended 28 of 2012 ss. 912 & 920)

(Added 13 of 2010 s. 9)

Note:

* In operation on 21 February 2011.

** Commencement date : 3 March 2014.

Chapter:	310	BUSINESS REGISTRATION ORDINANCE	Gazette Number	Version Date
Section:	8	Information to be furnished	L.N. 163 of 2013	03/03/2014

(1) If there is any change in the particulars of a business as set out in the form of application for registration (whether such form was submitted under this Ordinance or under the Business Regulation Ordinance 1952 (14 of 1952)), any person carrying on such business shall within 1 month of such change notify the Commissioner in writing thereof. (Amended 13 of 2010 s. 10)

(1A) In respect of a simultaneous business registration application relating to an incorporation submission— (Amended 28 of 2012 ss. 912 & 920)

- (a) the relevant company must, within 1 month of the date on which it commences to carry on the relevant business, submit to the Commissioner in writing the particulars prescribed in regulations made under section 14; and
- (b) if there is any change in those particulars, the company must within 1 month of that change notify the Commissioner of it in writing. (Added 13 of 2010 s. 10)

(1B) In respect of a simultaneous business registration application relating to a company registration application, if there is—

- (a) any change in the particulars submitted by the non-Hong Kong company under section 5B(1)(b)(i); or
- (b) in the case the company is not registered under Part 16 of the Companies Ordinance (Cap 622)— (Amended 28 of 2012 ss. 912 & 920)
 - (i) a change of its corporate name or an alteration of the address of its principal place of business in Hong Kong; or
 - (ii) an alteration of its authorized representative or an alteration of name and address of its authorized representative,

the company must within 1 month of that change or alteration notify the Commissioner of it in writing. (Added 13 of 2010 s. 10)

(2) Where a business ceases to be carried on, any person who was carrying on such business shall, within 1 month of the cessation, notify the Commissioner in writing thereof.

(2A) Where a person gives notice to the Commissioner in any return or other document submitted in accordance with the Inland Revenue Ordinance (Cap 112) of any matter required to be notified under this section, the person is to be treated as having notified the Commissioner of that matter under this section. (Added 79 of 1992 s. 5. Amended 13 of 2010 s. 10)

(2B) If a company—

- (a) delivers a notice of a change of company name under section 107(2) of the Companies Ordinance (Cap 622) or delivers a notice of a change of address of its registered office under section 658(3) of that Ordinance; (Replaced 28 of 2012 ss. 912 & 920)
- (b) delivers under section 778 of that Ordinance a return containing particulars required by that section; (Replaced 28 of 2012 ss. 912 & 920)
- (c) delivers a return under section 791(1) of that Ordinance for a change of its authorized representative or a change of the name and address of its authorized representative; or (Added 28 of 2012 ss. 912 & 920)
- (d) delivers a return under section 791(1) of that Ordinance for a change of the address of its principal place of business in Hong Kong, (Added 28 of 2012 ss. 912 & 920)

the Registrar must transmit the particulars to the Commissioner as soon as practicable after the notice or return is registered or recorded under that Ordinance, and if the company is subject to subsection (1), on the registration or recording, it is to be treated as having notified the Commissioner of the change or alteration under that subsection. (Added 13 of 2010 s. 10)

(2C) If there is a replacement of a company's name under section 110 of the Companies Ordinance (Cap 622), the Registrar must transmit the particulars to the Commissioner as soon as practicable after the replacement, and if the company is subject to subsection (1), on the replacement, it is to be treated as having notified the Commissioner of the replacement under that subsection. (Added 13 of 2010 s. 10. Amended 28 of 2012 ss. 912 & 920)

(3) (Repealed 79 of 1992 s. 5)

(4) To obtain full information for the purposes of this Ordinance, the Commissioner may give notice in writing to any person, appearing to him to be a person able to furnish information, requiring him— (Amended L.N. 374 of 1991)

- (a) to supply such particulars as the Commissioner may deem necessary; or
- (b) to attend at a time and place to be named by the Commissioner for the purpose of being examined respecting such information.

(5) In this section references to a business include references to a branch of that business. (Added 56 of 1984 s. 7)

Chapter:	310	BUSINESS REGISTRATION ORDINANCE	Gazette Number	Version Date
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Section:	9	Exemption from payments of fees for small businesses	L.N. 163 of 2013	03/03/2014
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(1) Upon application being made to the Commissioner in the manner prescribed, he shall exempt from the payment of the prescribed business registration fee and levy any person carrying on a business which is shown to his satisfaction- (Amended 56 of 1984 s. 8)

- (a) in the case of any business except a new business or any business whose profits are derived primarily from the sale of services to have total sales not exceeding an average of the sum specified in item 2 of Schedule 1; or (Amended 33 of 1994 s. 4)
- (b) in the case of any business whose profits are derived primarily from the sale of services except a new business, to have total sales or receipts not exceeding an average of the sum specified in item 3 of Schedule 1; or (Amended 33 of 1994 s. 4)
- (c) in the case of a new business is unlikely to have total sales or receipts, as the case may be, exceeding the averages referred to in paragraph (a) or (b) respectively.

The average in each case shall be based on the sales or receipts for the period of 6 months immediately preceding the making of the application or on such other information as the Commissioner may see fit to accept.

(2) An application under this section shall be made not later than-

- (a) 1 month before the date of expiry of a current business registration certificate; or
- (b) in the case of a new business 1 month after application for the registration of such business under section 5:

Provided that the Commissioner may extend such period if he sees fit.

(3) Where an exemption is granted under subsection (1) the Commissioner shall issue a business registration certificate endorsed to that effect, and such exemption shall apply to the period of 12 months immediately following the date of commencement endorsed thereon or to such further period or periods not exceeding 3 years as the Commissioner may direct.

(4) The liability to pay the prescribed business registration fee and levy shall not be affected by the making of any application under subsection (1) unless the Commissioner shall otherwise direct, and where an exemption is granted after the prescribed business registration fee and levy have been paid such fee and levy shall be refunded. (Amended 56 of 1984 s. 8)

(5) Where an exemption is not granted under subsection (1) the Commissioner shall so notify the person making the application therefor by notice in writing served either personally or by registered post and such person may appeal in the manner provided by section 17. (Replaced 6 of 1994 s. 56)

(5A) A notice under subsection (5) shall include a statement of the reasons why an exemption is not granted. (Added 6 of 1994 s. 56)

(6) This section shall not apply to- (Added L.N. 95 of 1976; 27 of 1976 s. 3. Amended 28 of 2012 ss. 912 & 920)

- (a) any company which is incorporated in Hong Kong under-
 - (i) the Companies Ordinance (Cap 622); or
 - (ii) a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap 622);
- (b) any non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622); or
- (c) any company incorporated outside Hong Kong that has established a place of business in Hong Kong, but has ceased to have any such place of business before the repeal of Part XI of the Companies Ordinance (Cap 32) as in force from time to time before the commencement date* of section 2 of Schedule 9 to the Companies Ordinance (Cap 622). (Amended 28 of 2012 ss. 912 & 920)

Note:

* **Commencement date : 3 March 2014.**

Chapter:	310	BUSINESS REGISTRATION ORDINANCE	Gazette Number	Version Date
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Section:	15	Offences	L.N. 168 of 2010	21/02/2011
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(1) Any person who-

- (a) acts under this Ordinance without taking an oath of secrecy as required by section 4(2);
- (b) acts contrary to the provisions of section 4(1) or to an oath taken under subsection (2) thereof;

- (c) fails to make any application required under section 5 or 6; (Amended 79 of 1992 s. 7)
- (d) fails to pay any fee or levy required under section 7, and any sum added thereto under section 11; (Amended 56 of 1984 s. 13)
- (e) fails to notify the Commissioner of the non-receipt of a notice by the Commissioner under section 7(2);
- (f) fails to furnish any information required under section 8 or to comply with any notice or requirement of the Commissioner under such section;
- (g) fails to display a valid business registration certificate or a valid branch registration certificate as required under section 12; (Amended 56 of 1984 s. 13)
- (h) commits forgery of any document provision for which is made in this Ordinance;
- (i) makes any statement or furnishes any information to the Commissioner under the provisions of this Ordinance whether such statement or information is verbal or in writing, which is false in any material particular or by reason of the omission of any material particular and which he either knows or has reason to believe to be false; or
- (j) resists or obstructs an inspector in the performance of his duties under this Ordinance,

shall be guilty of an offence, and shall be liable to a fine at level 2 and to imprisonment for 1 year. (Amended 79 of 1992 s. 7; L.N. 338 of 1995)

(1A) Where a person is convicted of an offence under subsection (1)(c) or (f) the magistrate may, in addition to any penalty that may be imposed, order that the person shall within a time specified in the order do the act which he has failed to do, and a person who does not comply with such an order commits an offence and is liable to a fine at level 2 and to imprisonment for 1 year. (Added 79 of 1992 s. 7. Amended L.N. 338 of 1995)

(1B) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder. (Added 3 of 1999 s. 10)

- (2) (a) Where any person is convicted of any of the acts or omissions set out in subsection (1)(c), (d), (e), (h) or (i) the magistrate shall, in addition to any penalty that may be imposed, make an order that such person shall pay to the Commissioner the fees and levy and any sums added thereto by the Commissioner, which would have been payable by him over the period of the preceding 6 years had the provisions of this Ordinance been complied with and had he committed no offence thereunder.
- (b) In making an order for payment under paragraph (a) the magistrate-
 - (i) shall require that the amount payable in respect of the 2 years immediately preceding the date of conviction be paid forthwith to the Commissioner; and
 - (ii) may allow time for the payment of the remainder of the amount specified in the order in accordance with the provisions of section 41 of the Magistrates Ordinance (Cap 227); and
 - (iii) may impose a period of imprisonment for non-payment of the amount specified in the order calculated in accordance with the provisions of section 68 of the Magistrates Ordinance (Cap 227).
- (c) For the purposes of this subsection, the Commissioner shall be deemed to have-
 - (i) called upon the person making application to pay the prescribed business registration fee or prescribed branch registration fee, as the case may be, and levy in accordance with section 7(1); and
 - (ii) imposed the sum to be added to the prescribed business registration fee or prescribed branch registration fee, as the case may be, and levy for the non-payment thereof in accordance with section 11. (Amended L.N. 64 of 1974; 30 of 1974 s. 3; 56 of 1984 s. 13)

(2A) If the Commissioner has reason to believe that any particulars transmitted by the Registrar under section 5C(5)(b) or 8(2B) are false, inaccurate or incomplete, the Commissioner may inform the Registrar accordingly. (Amended 13 of 2010 s. 13)

(3) No prosecution under this section shall be commenced save within 6 years from the date of the commission of the offence.

(4) In this section, "forgery" (偽造) has the meaning assigned to that term by Part IX of the Crimes Ordinance (Cap 200). (Replaced 49 of 1992 s. 5)

Chapter:	310A	BUSINESS REGISTRATION REGULATIONS	Gazette Number	Version Date
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Regulation:	3A	Business particulars in relation to simultaneous business registration applications	L.N. 163 of 2013	03/03/2014
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(1) The particulars to be submitted, under section 5B(1)(b)(i) of the Ordinance, at the time a company registration application is made are as follows—

- (a) a Chinese name, an English name or both a Chinese name and an English name under which the business is carried on;
- (b) the description and nature of the business;
- (c) the date of the commencement of the business.

(2) The particulars to be submitted, under section 8(1A)(a) of the Ordinance, within 1 month of the date of commencement of a company's business are as follows—

- (a) a Chinese name, an English name or both a Chinese name and an English name under which the business is carried on;
- (b) the description and nature of the business;
- (c) the date of the commencement of the business.

(3) The particulars that the Registrar is required to transmit to the Commissioner under section 5C(5)(b) of the Ordinance are as follows—

- (a) in the case of a company incorporated under the Companies Ordinance (Cap 622)— (28 of 2012 ss. 912 & 920)
 - (i) the name of the company;
 - (ii) the address of the registered office of the company;
 - (iii) the date of the incorporation of the company; and
- (b) in the case of a non-Hong Kong company—
 - (i) the name of the company;
 - (ii) the place of incorporation of the company;
 - (iii) the address of the principal place of business of the company in Hong Kong;
 - (iv) the date on which the company established its place of business in Hong Kong;
 - (v) the name and capacity of the person who has signed the related non-Hong Kong company registration form;
 - (vi) the name and address in Hong Kong of the company's authorized representative referred to in section 776(4)(c) of the Companies Ordinance (Cap 622); (28 of 2012 ss. 912 & 920)
 - (vii) the date of the registration of the company under Part 16 of the Companies Ordinance (Cap 622) (unless the Registrar has refused to register the company under that Part). (28 of 2012 ss. 912 & 920)

(13 of 2010 s. 21)

Chapter:	430B	COMPANIES REGISTRY TRADING FUND	Gazette Number	Version Date
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Schedule:	1	SERVICES TO BE PROVIDED BY THE TRADING FUND	E.R. 2 of 2014	10/04/2014
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[paragraph (b)]

1. Administering and enforcing the provisions of the Companies Ordinance (Cap 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), including facilitating the incorporation of new companies and maintaining registers of companies and charges.
(28 of 2012 ss. 912 & 920)
2. Administering and enforcing the provisions of the Limited Partnerships Ordinance (Cap 37), including maintaining the register of limited partnerships.
3. Administering and enforcing the provisions of Part 8 of the Trustee Ordinance (Cap 29), including maintaining the Register of Trust Companies.
(E.R. 2 of 2014)

4. Administering and enforcing the provisions of the Registered Trustees Incorporation Ordinance (Cap 306), including maintaining the register of incorporated trustees.
 5. Making available, where the Registrar of Companies is so required or permitted by law, information registered or filed with the Registrar.
 6. Monitoring the adequacy of the regulatory framework embodied in any Ordinance referred to in this Schedule and in other Ordinances where the Registrar of Companies has been specified, and advising the Government on any need for change.
 - 6A. Supporting the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap 588) in the performance of its functions by—
 - (a) providing the service of the Registrar of Companies as an ex officio member of the Council; and
 - (b) making contributions, whether in cash or in kind, to sponsor the performance by the Council of any of its functions. (18 of 2006 s. 82)
 7. Any service that the Registrar of Companies may be authorized to provide under or by virtue of any other Ordinance.
 8. Providing advice or information on any matter that lies within the expertise of the Registrar of Companies.
 9. Any service incidental to or conducive to the provision of any of the services specified in this Schedule.
- (Enacted 1993)

Chapter:	623	Contracts (Rights of Third Parties) Ordinance	Gazette Number	Version Date
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Section:	3	Application		
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Remarks:

Not yet in operation

- (1) This Ordinance applies to a contract entered into on or after the date on which this Ordinance comes into operation.
- (2) This Ordinance does not apply to any of the following—
 - (a) a bill of exchange, a promissory note or any other negotiable instrument;
 - (b) a deed of mutual covenant as defined by section 2 of the Building Management Ordinance (Cap 344);
 - (c) a covenant relating to land;
 - (d) subject to subsection (3), a contract of carriage within the meaning of the Bills of Lading and Analogous Shipping Documents Ordinance (Cap 440);
 - (e) a contract for the carriage of goods by air governed by the Carriage by Air Ordinance (Cap 500);
 - (f) a letter of credit;
 - (g) a company's articles having effect as a contract under seal under section 86 of the Companies Ordinance (Cap 622).
- (3) A third party may invoke section 4 to enforce a term of a contract referred to in subsection (2)(d) that excludes or limits liability.
- (4) This Ordinance does not confer a right on a third party to enforce a term of a contract of employment against an employee.
- (5) In this section—

bill of exchange (匯票) means a bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap 19);

contract of employment (僱傭合約) has the meaning given by section 2(1) of the Employment Ordinance (Cap 57);

negotiable instrument (可流轉票據) includes any instrument embodying a monetary obligation and transferable by delivery, or by delivery and indorsement, whether or not the instrument is capable of being transferred free from

equities;

promissory note (承付票) means a promissory note within the meaning of section 89 of the Bills of Exchange Ordinance (Cap 19).