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30 March 2000

Ms Leung Siu-kum  
Clerk to Bills Committee  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Leung,

**Companies (Amendment) Bill 2000**

I refer to your letter of 28 March 2000.

As per Members' request, provisions relating to the powers of intervention by the regulatory authorities under the Banking Ordinance (Cap 155) and the Insurance Companies Ordinance (Cap 41) are at Annex for Members' information and reference. Members may wish to note in particular –

- (a) sections 52(1)(C)(I), 53B and 53C of, and the Ninth Schedule to, the Banking Ordinance which set out the power of the "Manager" when he assumes control of an authorised

institution; and

- (b) sections 35(2)(b), 38A and 38B of, and the Seventh Schedule to, the Insurance Companies Ordinance which sets out the power of the "Manager" when he takes over the management of the affairs, business and property of an insurer.

We are looking into the Bills Committee's concern regarding providing more flexibility in respect of the requirement on a company to provide for in a trust account all the arrears it owed to its employees by virtue of the Employment Ordinance (Cap 57), before initiating the corporate rescue procedure. We shall revert once we are in a position to do so.

Yours sincerely,

(L W TING)  
for Secretary for Financial Service

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- (a) reference to an insurer in section 25D included reference to members of Lloyd's; and
- (b) anything done in connection with the transfer by the person authorized in accordance with subsection (1)(b) had been done by members for whom he acted.

[cf. 1982 c. 50 ss. 51 & 52 U.K.]  
(Part IVB added 75 of 1995 s. 6)

**PART V****POWERS OF INTERVENTION****26. Grounds on which powers are exercisable**

(1) Subject to subsection (1A), any power conferred on the Insurance Authority by sections 27 to 35 shall be exercisable in relation to any insurer on any of the following grounds— (*Amended 51 of 1992 s. 6*)

- (a) that the Insurance Authority considers the exercise of the power to be desirable for protecting policy holders or potential policy holders of the insurer against the risk that the insurer may be unable to meet its liabilities or to fulfil the reasonable expectations of policy holders or potential policy holders;
- (b) that it appears to him—
  - (i) that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of this Ordinance or any Ordinance repealed thereby;
  - (ii) that a body corporate of which it is a subsidiary has failed to satisfy an obligation to which it is or was subject by virtue of section 23(6) or any Ordinance repealed by this Ordinance;
- (c) that it appears to him that the insurer has furnished misleading or inaccurate information to the Insurance Authority under or for the purposes of any provision of this Ordinance or any Ordinance repealed thereby;
- (d) that he is not satisfied that adequate arrangements are in force or will be made for the reinsurance of risks against which persons are insured by the insurer in the course of carrying on business, being risks of a class in the case of which he considers that such arrangements are required;
- (e) that there exists a ground on which he would be prohibited by section 8(2) or (3)(b) from authorizing the insurer if it were to make application in that behalf;
- (f) that it appears to him that the circumstance described in section 35AA(1) or (2) exists. (*Added 25 of 1994 s. 11*)

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(1A) The power conferred on the Insurance Authority by section 35(2) shall not be exercisable in relation to any insurer except on the ground specified in subsection (1)(a). (*Added 51 of 1992 s. 6*)

(2) Any power mentioned in subsection (1) shall also be exercisable in relation to any insurer on the ground that the Insurance Authority is not satisfied that the insurer is not to be deemed under section 42(1), for the purposes of section 177 or 327 of the Companies Ordinance (Cap. 32), to be unable to pay its debts.

(3) Subject to subsection (3A), any power conferred on the Insurance Authority by sections 32, 33, 34 and 35(1) shall also be exercisable on the ground that he considers the exercise of that power to be desirable in the general interests of persons who are or may become policy holders of an insurer. (*Amended 8 of 1989 s. 5; 50 of 1992 s. 5; 51 of 1992 s. 6*)

(3A) No power referred to in subsection (3) shall be exercisable in relation to any insurer on the ground specified in that subsection in such a way as to require an insurer to amend either—

- (a) the wording of any policy or class of policies; or
- (b) the premiums payable in respect of any policy or class of policies. (*Added 50 of 1992 s. 5*)

(4) Any power conferred on the Insurance Authority by sections 27 to 32, 34(1) or 35(1) shall also be exercisable, whether or not any of the grounds specified in subsections (1), (2) and (3) exists, in relation to— (*Amended 8 of 1989 s. 5; 51 of 1992 s. 6*)

- (a) any insurer authorized to carry on any class of insurance business;
- (b) any insurer in the case of which a person has, after the commencement of this Ordinance, become a controller within the meaning of section 9(1)(c),

if that power is exercised before the expiration of the period of 5 years ("the relevant period") beginning on the latest date on which the insurer was so authorized or the date on which that person became such a controller, as the case may be; but no requirement imposed by virtue of this subsection shall continue in force after the expiration of the period of 10 years from the beginning of the relevant period.

(5) The Insurance Authority shall not exercise any power conferred on him by section 35 in respect of an insurer unless, in his opinion, the exercise of the powers conferred on him by sections 27 to 34, or the exercise of those powers alone, in respect of the insurer (and whether or not he so exercises any of those powers) would not appropriately safeguard the interests of policy holders or potential policy holders of the insurer. (*Replaced 51 of 1992 s. 6*)

(6) The Insurance Authority shall, when exercising any power conferred by sections 27 to 35, state the ground on which he is exercising it or, if he is exercising it by virtue of subsection (4), that he is so exercising it; but this subsection shall not apply where the Insurance Authority has given notice under section 36 or 37 of the proposed exercise of the power.

(7) The grounds specified in subsections (1)(b) to (e), (2) and (3) are without prejudice to the ground specified in subsection (1)(a).

## 27. Restrictions on new business

(1) The Insurance Authority may require an insurer—

(a) not to effect any contracts of insurance or contracts of insurance of a specified description;

(b) not to vary any contracts of insurance of a specified description, being contracts effected in the course of carrying on insurance business and in force when the requirement is imposed.

(2) A requirement under this section may apply to contracts of insurance whether or not the effecting of them falls within a class of insurance business which the insurer is for the time being authorized to carry on.

## 28. Requirements about investments

(1) The Insurance Authority may require an insurer—

(a) not to make investments of a specified class or description;

(b) to realize, before the expiration of a specified period (or such longer period as the Insurance Authority may allow), the whole or a specified proportion of investments of a specified class or description held by the insurer when the requirement is imposed.

(2) A requirement under this section may be framed so as to apply only to investments which are (or, if made, would be) assets representing a fund maintained by the insurer in respect of its long term business or so as to apply only to other investments. (*Amended 59 of 1993 s. 11*)

## 29. Maintenance of assets in Hong Kong

(1) The Insurance Authority may require that assets of an insurer of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in Hong Kong, and, in imposing any such requirement, he shall have regard to the insurer's arrangements for the reinsurance of risks against which persons are insured by the insurer in the course of carrying on business.

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(2) The Insurance Authority may direct that for the purposes of any requirement under this section assets of a specified class or description shall or shall not be treated as assets maintained in Hong Kong.

(3) The Insurance Authority may direct that for the purposes of any requirement under this section the domestic liabilities of an insurer, or such liabilities of any class or description, shall be taken to be the net liabilities after deducting any part of them which is reinsured.

(4) A requirement imposed under this section may be framed so as to come into effect immediately after the day on which it is imposed or so as to come into effect after the expiration of a specified period (or such longer period as the Insurance Authority may allow).

(5) In this section any reference to a domestic liability of an insurer is a reference to a liability of the business carried on by the insurer in Hong Kong.

(6) Subject to subsection (7), in computing the amount of any liabilities for the purposes of this section all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(7) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with section 8(4); and subsection (6) shall have effect subject to that section. (*Amended 25 of 1994 s. 12*)

**30. Custody of assets**

(1) The Insurance Authority may, in the case of an insurer on which a requirement has been imposed under section 29, impose an additional requirement that the whole or a specified proportion of the assets to which the requirement under that section applies shall be held by a person approved by him for the purposes of the requirement under this section as trustee for the insurer.

(2) Section 29(4) shall apply also to a requirement under this section.

(3) Assets of an insurer held by a person as trustee for an insurer shall be taken to be held by such person in compliance with a requirement imposed under this section if, but only if, they are assets in whose case the insurer has given such person written notice that they are to be held by him in compliance with such a requirement or they are assets into which assets in whose case the insurer has given such person such written notice have, by any transaction or series of transactions, been transposed by him on the instructions of the insurer.

(4) No assets held by a person as trustee for an insurer in compliance with a requirement imposed under this section shall, so long as the requirement is in force, be released except with the consent of the Insurance Authority.

(5) If a mortgage or charge is created by an insurer at a time when there is in force a requirement imposed on the insurer by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee for the insurer in compliance with the requirement, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the insurer.

### 31. Limitation of premium income

(1) The Insurance Authority may require an insurer to take all such steps as are requisite to secure that the aggregate of the premiums—

- (a) to be received by the insurer in consideration of the undertaking by it during a specified period of liabilities in the course of carrying on general business or any specified part of such business; or
- (b) to be received by it in a specified period in consideration of the undertaking by the insurer during that period of liabilities in the course of carrying on long term business or any specified part of such business,

shall not exceed a specified amount.

(2) A requirement under this section may apply either to the aggregate premiums to be received as mentioned in subsection (1) or to the aggregate of those premiums after deducting any premiums payable by the insurer for reinsuring the liabilities in consideration of which the first-mentioned premiums are receivable.

### 32. Actuarial investigations

(1) The Insurance Authority may require an insurer which carries on long term business—

- (a) to cause the person who for the time being is its actuary under section 15 to make an investigation into its financial condition (including a valuation of its liabilities) in respect of that business, or any specified part of that business, as at a specified date;
- (b) to cause an abstract of that person's report of the investigation to be made; and
- (c) to prepare a statement of its long term business or of that part thereof as at that date.

(2) For the purposes of any investigation made in pursuance of a requirement under this section the value of any assets and the amount of any liabilities shall be determined in accordance with section 8(4). (*Amended 25 of 1994 s. 13*)

(3) The form and contents of any abstract or statement made in pursuance of a requirement under this section shall be the same as for an abstract or statement made under section 18.

(4) Two copies of any abstract or statement made in pursuance of a requirement under this section shall be deposited by the insurer with the Insurance Authority on or before such date as he may specify, and 1 of those copies shall be a copy signed by the persons required to sign copies of abstracts or statements made under section 18 which are deposited under section 20.

### **33. Acceleration of information required by accounting provisions**

(1) The Insurance Authority may require any documents which under section 20 are required to be deposited with him by an insurer within the period specified in that section to be deposited with him on or before a specified date before the end of that period, being a date not earlier than 3 months before the end of that period and not earlier than 1 month after the date on which the requirement is imposed.

(2) The Insurance Authority may require any statement which under section 19 is required to be furnished to him by an insurer within a period prescribed under that section to be furnished to him on or before a specified date before the end of that period.

### **34. Power to obtain information and require production of documents**

(1) The Insurance Authority may require an insurer to furnish him, at specified times or intervals, with information about specified matters being, if he so requires, information verified in a specified manner.

(2) The Insurance Authority may—

(a) require an insurer to produce, at such time and place as he may specify, such books or papers as he may specify; or

(b) authorize any person, on producing (if required so to do) evidence of his authority, to require an insurer to produce to him forthwith any books or papers which that person may specify.

(3) Where by virtue of subsection (2) the Insurance Authority or a person authorized by him has power to require the production of any books or papers from any insurer, the Insurance Authority or that person shall have the like power to require production of those books or papers from any person who appears to him to be in possession of them; but where any person from whom such production is required claims a lien on books or papers produced by him, the production shall be without prejudice to the lien.



(4) Any power conferred by or by virtue of subsections (2) and (3) to require an insurer or other person to produce books or papers shall include power—

(a) if the books or papers are produced—

- (i) to take copies of them or extracts from them; and
- (ii) to require that person, or any other person who is a present or past director, controller, auditor or actuary of, or is or was at any time employed by, the insurer in question, to provide an explanation of any of them;

(b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(6) References in this section to books and papers shall be construed as if they were contained in the Companies Ordinance (Cap. 32).

### 35. Residual power to impose requirements, etc.

(1) Subject to section 26(5), the Insurance Authority may require an insurer to take such action in respect of its affairs, business or property as the Insurance Authority considers appropriate.

(2) Without prejudice to subsection (1), but subject to section 26(1A) and (5) and subsections (3) and (4), the Insurance Authority—

(a) may give a direction that, during the period for which the direction is in force, the insurer specified in that direction shall seek advice on the management of its affairs, business and property from an Advisor, for which purpose the Insurance Authority shall appoint a person to be the Advisor of that insurer; or

(b) may give a direction that, during the period for which the direction is in force, the affairs, business and property of the insurer specified in that direction shall be managed by a Manager, for which purpose the Insurance Authority shall appoint a person to be the Manager of that insurer.

(3) The Insurance Authority shall not give a direction under subsection (2) in respect of an insurer in relation to which the Court of First Instance has—

(a) made an order for the winding up of the insurer by the Court of First Instance;

(b) made an order under section 45(1). (*Amended 25 of 1998 s. 2*)

(4) A direction given under subsection (2) in respect of an insurer to which Part XI of the Companies Ordinance (Cap. 32) applies shall, by virtue of this subsection, apply only to—

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- (a) so much of the affairs and business of the insurer as are carried on, or managed, in or from Hong Kong; and
  - (b) so much of the property of the insurer as is located in, or managed from, Hong Kong.
- (5) A direction given under subsection (2) shall—
- (a) be in writing;
  - (b) be served on the insurer specified in the direction;
  - (c) take effect immediately it is so served; and
  - (d) state the name and address of the Advisor or Manager, as the case may be, appointed in respect of that insurer.
- (6) Notice of a direction given under subsection (2)(b) shall be published by the Insurance Authority in the Gazette and in such other ways as appear to him expedient for notifying the public.
- (7) For the avoidance of doubt, it is hereby declared that the exercise of any power conferred on the Insurance Authority by this section shall be without prejudice to the exercise of any of the powers conferred on him by sections 27 to 34.

*(Replaced 51 of 1992 s. 7)*

**35A. Requirement under section 35(1) to make deposit**

- (1) Without limiting the generality of section 35(1), a requirement imposed under that section on an insurer may include a requirement that the insurer— *(Amended 51 of 1992 s. 8)*
- (a) shall make a deposit—
    - (i) of an amount of money specified in that requirement;
    - (ii) with a bank, or a bank belonging to a class of banks, specified in that requirement;
    - (iii) in the name of the Insurance Authority as trustee for the insurer; and
    - (iv) on a date not later than the date specified in that requirement;
  - (b) shall place in the custody of the Insurance Authority, on a date not later than the date specified in that requirement, a receipt, or other document, that evidences, to the satisfaction of the Insurance Authority, that the deposit referred to in paragraph (a) has been made;
  - (c) shall keep the deposit referred to in paragraph (a) free from any charge both on, and from, the day upon which that deposit is made; and
  - (d) shall not—
    - (i) take any action; or

(ii) issue any instruction to any bank at which the deposit referred to in paragraph (a) is held from time to time, which would result in the release of that deposit, or any part of that deposit, to the insurer or to any other person.

(2) Nothing in subsection (1) shall prevent an insurer from using, in such manner as it thinks fit, any interest earned on a deposit made under that subsection by the insurer.

(3) If a charge is created or purported to be created by an insurer at a time when there is in force a requirement under subsection (1), the charge shall, to the extent that it is a charge or purports to be a charge on the deposit referred to in subsection (1)(a) to which the requirement relates, be void against all persons.

(4) For the purposes of this section—

“charge” (押記) includes lien, encumbrance, equitable interest and third party rights;

“deposit” (存款) includes a renewal of a deposit.

(Added 74 of 1985 s. 2)

### 35AA. Maintenance of excess of assets over liabilities etc.

(1) If an insurer fails to maintain an excess of the value of its assets over the amount of its liabilities of such amount as may be prescribed by or determined in accordance with regulations made under section 59(1)(aa), the Insurance Authority may require the insurer— (Amended 29 of 1997 s. 8)

(a) to submit to him a plan for the restoration of a sound financial position;

(b) where the insurer has submitted a plan under paragraph (a), to propose modifications to the plan to the satisfaction of the Insurance Authority if the Insurance Authority considers it inadequate; and

(c) to give effect to any such plan accepted by him as adequate.

(2) If any excess of the value of its assets over the amount of its liabilities maintained by an insurer falls below such amount as may be prescribed by or determined in accordance with regulations made under section 59(1)(aa), the Insurance Authority may require the insurer— (Amended 29 of 1997 s. 8)

(a) to submit to him a short term financial scheme;

(b) where the insurer has submitted a scheme under paragraph (a), to propose modifications to the scheme to the satisfaction of the Insurance Authority if the Insurance Authority considers it inadequate; and

(c) to give effect to any such scheme accepted by him as adequate.

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(3) In determining the value of the assets and the amount of the liabilities of an insurer for the purposes of subsections (1) and (2), the Insurance Authority may take into account any unpaid share capital, future profits and hidden reserves of the insurer.

*(Added 25 of 1994 s. 14)*

**35B. Accounts**

(1) The Insurance Authority shall cause proper accounts to be kept of all transactions concerning deposits referred to in section 35A(1) and shall cause to be prepared for every financial year a statement of such accounts, which statement shall be signed by the Insurance Authority.

(2) The accounts and the signed statement referred to in subsection (1) shall be audited and certified by the Director of Audit, who may make such report thereon as he may think fit.

(3) Section 16 of the Audit Ordinance (Cap. 122) shall not apply to any audit carried out under subsection (2).

*(Added 74 of 1985 s. 2)*

**36. Notice of proposed exercise of power under section 27**

(1) Before exercising with respect to an insurer the power conferred by section 27 the Insurance Authority shall serve on the insurer a written notice stating—

- (a) that the Insurance Authority is considering exercising that power and the ground on which he is considering the exercise of the power; and
- (b) that the insurer may, within the period of 1 month from the date of service of the notice, make written representations to the Insurance Authority and, if the insurer so requests, oral representations to a public officer appointed for the purpose by the Insurance Authority.

(2) This section shall not apply if the ground on which the Insurance Authority proposes to exercise the power relates (as provided in section 26(1)(e)) to the fitness of any person to hold the position of director or controller of the insurer.

(3) A notice under this section shall give particulars of the ground on which the Insurance Authority is considering the exercise of the power except that no particulars need be given if the ground is that mentioned in section 26(2).

(4) Where representations are made in accordance with this section the Insurance Authority shall take them into consideration before exercising the power.

### 37. Notice of proposed exercise of powers on ground of unfitness

(1) Before exercising with respect to an insurer any power or powers conferred by sections 27 to 35 on the ground (as provided in section 26(1)(e)) that any person who is a director or controller of the insurer is not a fit and proper person to hold the position held by him, the Insurance Authority shall serve on that person a written notice stating—

- (a) that the Insurance Authority is considering exercising a power or powers conferred by those sections and the ground on which he is considering the exercise of the power or powers; and
- (b) that the person on whom the notice is served may, within the period of 1 month from the date of service of the notice, make written representations to the Insurance Authority and, if that person so requests, oral representations to a public officer appointed for the purpose by the Insurance Authority.

(2) Unless the Insurance Authority, after considering any representations made in accordance with subsection (1) by the person served with a notice under that subsection, decides not to exercise the power or powers in relation to which the notice was served, he shall before exercising the power or powers serve on the insurer a written notice—

- (a) containing the matters mentioned in subsection (1)(a) and (b), taking references to the person there mentioned as references to the insurer; and
- (b) specifying the power or powers which he proposes to exercise and, if the power or one of them is that conferred by section 35, specifying the manner of its proposed exercise.

(3) A notice under this section shall give particulars of the ground on which the Insurance Authority is considering the exercise of the power or powers in question.

(4) Where representations are made in accordance with this section the Insurance Authority shall take them into consideration before exercising the power or powers in question.

(5) A requirement imposed on an insurer in the exercise of any power or powers to which this section applies may be framed so as to come into effect after the expiration of a specified period (or such longer period as the Insurance Authority may allow) unless before the expiration of that period the person whose fitness is in question has ceased to hold the position concerned.

(6) This section shall not apply, as respects any insurer, in relation to the exercise of any power conferred by sections 27 to 35 where it is exercised by the Insurance Authority—

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- (a) after serving a notice of objection under section 13A on the insurer where the person whose fitness is in question is thereafter appointed as a controller (within the meaning of section 13A(1)) of the insurer, and notwithstanding that an appeal, if any, under section 13A(8) against the decision of the Insurance Authority to serve such a notice on the insurer has not been determined; or
- (b) after serving a preliminary notice under section 13A(5) on the insurer and the person whose fitness is in question, and—
  - (i) the Insurance Authority has neither—
    - (A) notified the insurer under section 13A(2)(b)(iii)(A) that there is no objection to that person being appointed as a controller (within the meaning of section 13A(1)) of the insurer; or (*Amended 35 of 1996 s. 22*)
    - (B) served a notice of objection under section 13A on the insurer in respect of that person; and
  - (ii) that person is appointed as such a controller before the expiration of the period specified in section 13A(2)(b)(iii)(A); or (*Amended 35 of 1996 s. 22*)
- (c) after serving a notice under section 14(4) on the insurer, and notwithstanding that an appeal, if any, under section 14(6) against the decision of the Insurance Authority to serve such a notice has not been determined. (*Replaced 44 of 1990 s. 6*)

**38. Rescission, variation and publication of requirements**

(1) The Insurance Authority may rescind a requirement imposed under sections 27 to 35(1) if it appears to him that it is no longer necessary for the requirement to continue in force, and may from time to time vary any such requirement. (*Amended 51 of 1992 s. 9*)

(2) No requirement imposed by virtue of section 26(4) shall be varied after the expiration of the relevant period mentioned therein except in a manner which relaxes that requirement.

(3) A rescission under subsection (1) of a requirement imposed under section 27 may be limited so as to apply only to contracts of a specified description.

(4) Notice of the imposition of a requirement under the said section 27 and of the rescission or variation of any such requirement shall be published by the Insurance Authority in the Gazette and in such other ways as appear to him expedient for notifying the public.

**38A. Effect of direction given under section 35(2)(b)**

(1) Subject to section 38B(3)(a), immediately upon a direction given under section 35(2)(b) coming into force—

- (a) in respect of an insurer incorporated in Hong Kong, any appointment of a person as a chief executive or director of the insurer which was in force immediately before that direction came into force;
- (b) in respect of an insurer incorporated outside Hong Kong, any appointment of a person as a controller (within the meaning of paragraph (b) of the definition of “controller” in section 13A(1)) of the insurer which was in force immediately before that direction came into force,

shall be deemed to be revoked and, accordingly, that person shall not act or continue to act as such chief executive, director or controller, as the case may be, during the period for which that direction is in force.

(2) An insurer is not required to give any notice to the Insurance Authority pursuant to section 14(1) or (2), and a person is not required to give any notice to an insurer pursuant to section 14(3), as a consequence of the operation of subsection (1).

(3) During the period for which a direction given under section 35(2)(b) is in force in respect of an insurer—

- (a) no meeting of the insurer may be held except with the consent, and in the presence, of the Manager of the insurer;
- (b) no resolution may be passed at a meeting of the insurer except with the consent of the Manager of the insurer.

(4) It is hereby declared that—

- (a) any resolution passed, or purporting to have been passed, in contravention of subsection (3)(b);
- (b) any thing done in reliance on any such resolution,

shall be invalid by reason of that contravention.

(5) Where any member or director of an insurer requests the Manager of the insurer to give a consent referred to in subsection (3)(a), the Manager shall not unreasonably refuse to give that consent.

(6) In this section, “meeting” (會議), in relation to an insurer, means—

- (a) any general meeting of the members of the insurer; or
- (b) any meeting of the directors of the insurer.

*(Added 51 of 1992 s. 10)*

**38B. Powers of Manager**

- (1) The Manager of an insurer—
  - (a) may do all such things as may be necessary for the management of the affairs, business and property of the insurer; and
  - (b) without prejudice to the generality of paragraph (a), shall have, and may exercise, in respect of that insurer, all the powers specified in the Seventh Schedule.
- (2) The Manager of an insurer may require any person who—
  - (a) has ceased to be a chief executive, director or controller (within the meaning of paragraph (b) of the definition of “controller” in section 13A(1)) of the insurer as a consequence of the operation of section 38A(1); or
  - (b) is a controller of the insurer,

to submit such information in relation to the affairs, business and property of the insurer as the Manager may reasonably require for the performance of his functions or the exercise of his powers in respect of the insurer, and such information shall be submitted within such period and in such manner as the Manager may require.

- (3) The Manager of an insurer may—
  - (a) with the approval of the Insurance Authority—
    - (i) if the insurer is incorporated in Hong Kong, appoint any person (including a person referred to in section 38A(1)(a)) to be a chief executive or director of the insurer, whether to fill a vacancy arising from the operation of section 38A(1)(a) or otherwise;
    - (ii) if the insurer is incorporated outside Hong Kong, appoint any person (including a person referred to in section 38A(1)(b)) to be a controller (within the meaning of paragraph (b) of the definition of “controller” in section 13A(1)) of the insurer, whether to fill a vacancy arising from the operation of section 38A(1)(b) or otherwise;
    - (iii) revoke any appointment made pursuant to subparagraph (i) or (ii);
  - (b) call any meeting of the members, directors or creditors of the insurer.

(4) Neither section 13A(2) nor section 14(4) shall apply to any appointment made pursuant to subsection (3)(a)(i) or (ii).

(5) An insurer is not required to give any notice to the Insurance Authority pursuant to section 14(1) or (2), and a person is not required to give any notice to an insurer pursuant to section 14(3), as a consequence of any appointment, or the revocation of any appointment, made pursuant to subsection (3)(a).



(6) During the period for which a direction given under section 35(2)(b) is in force in respect of an insurer, any power conferred on the insurer or its officers or members, whether by this Ordinance or the Companies Ordinance (Cap. 32) or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the Manager of the insurer of his powers is not exercisable except with the consent of the Manager, which consent may be given either generally or in any particular case.

(7) In exercising his powers the Manager of an insurer shall be deemed to act as the insurer's agent and, in relation thereto, section 9 of the Prevention of Bribery Ordinance (Cap. 201) shall apply to—

- (a) the Manager acting as such agent; and
- (b) any person who offers an advantage, within the meaning of that Ordinance, to the Manager acting as such agent,

as if subsections (4) and (5) of that section were omitted.

(8) A person dealing with the Manager of an insurer in good faith and for value is not concerned to inquire whether the Manager is acting within his powers.

*(Added 51 of 1992 s. 10)*

### **38C. Court of First Instance may approve certain resolutions**

(1) During the period for which a direction given under section 35(2)(b) is in force in respect of an insurer, the Court of First Instance may, on the application of the Manager or any member of the insurer, approve or refuse to approve any resolution referred to in section 38A(3)(b) which has been properly moved at a meeting of the insurer but which has not, for whatever reason, been passed. *(Amended 25 of 1998 s. 2)*

(2) On the hearing of an application under subsection (1)—

- (a) the Insurance Authority; and
- (b) the Manager and any member of the insurer concerned (and whether or not the Manager or any such member is the applicant),

shall be entitled to be heard on the application and to call, examine and cross-examine any witness and, if he so thinks fit, support or oppose the making of the application.

(3) In this section, "meeting" (會議), in relation to an insurer, means any general meeting of the members of the insurer.

*(Added 51 of 1992 s. 10)*

### **38D. Duration of direction given under section 35(2)**

(1) The Insurance Authority shall revoke a direction given under section 35(2) if—

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- (a) it appears to him that it is no longer necessary for the direction to remain in force; or
  - (b) it is necessary to do so to give effect to a decision of the Financial Secretary under subsection (2).
- (2) If any person is aggrieved by a direction given under section 35(2), he may appeal against the direction to the Financial Secretary whose decision shall be final.
- (3) The revocation under subsection (1) of a direction given under section 35(2) shall—
- (a) be in writing;
  - (b) be served on—
    - (i) the insurer specified in the direction; and
    - (ii) the Advisor or Manager, as the case may be, of that insurer; and
  - (c) take effect immediately it is so served.
- (4) Notice of a revocation under this section of a direction given under section 35(2)(b) shall be published by the Insurance Authority in the Gazette and in such other ways as appear to him expedient for notifying the public.
- (5) A revocation in writing under subsection (1) of a direction given under section 35(2) includes a copy of the revocation.
- (6) For the avoidance of doubt, it is hereby declared that the revocation under subsection (1) of a direction given under section 35(2)(b) shall not revive any appointment deemed to be revoked as a consequence of the operation of section 38A(1).

*(Added 51 of 1992 s. 10)*

**38E. Advisors and Managers**

- (1) An Advisor or Manager may at any time by notice in writing to the Insurance Authority resign his office, but any such resignation shall not take effect unless and until it is accepted by the Insurance Authority.
- (2) The Insurance Authority may at any time revoke the appointment of an Advisor or Manager.
- (3) Where the office of an Advisor or Manager becomes vacant pursuant to subsection (1) or (2) or due to the death of the holder of that office, the Insurance Authority shall forthwith—
- (a) appoint a person to fill the vacancy; and
  - (b) serve on the insurer concerned a notice in writing specifying the name and address of the person so appointed.
- (4) The appointment of an Advisor or Manager shall be deemed to be revoked immediately upon the revocation under section 38D(1) of the direction given under section 35(2) by virtue of which he holds his office.

(5) The Insurance Authority may at any time determine the remuneration and expenses to be paid by an insurer to an Advisor or Manager appointed in respect of the insurer.

(6) Where the Insurance Authority has made a determination under subsection (5), he shall—

- (a) publish a notice in the Gazette stating—
  - (i) that the determination has been made; and
  - (ii) the name of the insurer to which the determination relates; and
- (b) provide a copy of the determination to any member of that insurer who so requests.

(7) Any remuneration and expenses required by a determination under subsection (5) to be paid by an insurer to an Advisor or Manager—

- (a) is recoverable by the Advisor or Manager, as the case may be, as a civil debt;
- (b) shall, in any winding up of the insurer under the Companies Ordinance (Cap. 32)—
  - (i) in the case of a voluntary winding up, have the same priority as is given under section 256 of that Ordinance to the remuneration of a liquidator;
  - (ii) in the case of a winding up by the Court of First Instance, have the same priority as is given under rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg.) to any costs, charges and expenses incurred by the Official Receiver. (*Amended 25 of 1998 s. 2*)

(8) If any member of an insurer is aggrieved by a determination made under subsection (5) which relates to that insurer, he may, within 1 month after the notice under subsection (6)(a) in respect of that determination has been published in the Gazette, appeal against that determination to the Financial Secretary and the Financial Secretary may thereupon confirm or disallow, vary in such manner as he thinks fit or substitute his own determination for, that determination, and subsection (7) shall apply accordingly.

(9) In subsections (5) and (7)—

“Advisor” (顧問) includes a former Advisor;

“Manager” (經理) includes a former Manager.

(*Added 51 of 1992 s. 10*)

### 39. Power of Financial Secretary to bring civil proceedings on behalf of insurer

(1) Section 147(3) of the Companies Ordinance (Cap. 32) shall have effect in relation to an insurer as if the reference to the report there mentioned included a reference to any information or document obtained under section 34.

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(2) Where under a judgment given or decree pronounced in proceedings brought by virtue of the said section 147(3) on behalf of an insurer a sum is recovered in respect of a loss of assets representing a fund or funds maintained by the insurer in respect of its long term business the court shall direct that the sum shall be treated for the purposes of this Ordinance as assets of that fund or those funds and this Ordinance shall have effect accordingly.

**40. Withdrawal of authorization**

(1) Where an authorized insurer ceases to carry on—  
(a) any insurance business;  
(b) insurance business of any class; or  
(c) insurance business which is part of any class,  
the Insurance Authority may direct that it shall cease to be authorized to carry on—

(i) insurance business;  
(ii) insurance business of that class; or  
(iii) insurance business which is that part of that class,  
as the case may be. (*Replaced 34 of 1988 s. 5*)

(2) Where an insurer authorized to carry on insurance business of any class has not at any time carried on insurance business—

(a) of that class; or  
(b) which is part of that class,  
in or from Hong Kong, and at least 12 months have elapsed since the date of authorization, the Insurance Authority may direct that it shall cease to be authorized to carry on insurance business—

(i) of that class; or  
(ii) which is that part of that class,  
as the case may be. (*Replaced 34 of 1988 s. 5*)

(3) A direction under this section is without prejudice to a subsequent authorization to carry on insurance business of a class to which the direction relates.

(4) Where an authorized insurer ceases to be authorized to carry on insurance business, the Insurance Authority may direct that any matters recorded in respect of that insurer in the register kept under section 5 shall be erased.

(5) Where an authorized insurer ceases to be authorized to carry on insurance business of any class, the Insurance Authority may direct that any matters recorded in respect of that insurer in relation to that class in the register kept under section 5 shall be erased. (*Added 34 of 1988 s. 5*)

**41. Offences under Part V**

(1) Any person who—

- (a) makes default in complying with any requirement imposed under section 27, 28, 29, 30, 31, 32, 33, 34, 35(1) or 35AA; (*Amended 51 of 1992 s. 11; 25 of 1994 s. 15*)
- (b) in purported compliance with a requirement imposed under section 34 furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular; (*Amended 51 of 1992 s. 11*)
- (c) acts or continues to act as a chief executive, director or controller of an insurer in contravention of section 38A(1); (*Added 51 of 1992 s. 11*)
- (d) fails without reasonable excuse to comply with any requirement under section 38B(2); or (*Added 51 of 1992 s. 11*)
- (e) wilfully obstructs, resists or delays—
  - (i) the Manager of an insurer in the lawful performance of his functions, or the lawful exercise of his powers, in respect of the insurer; or
  - (ii) any other person lawfully assisting the Manager in such performance of such functions or such exercise of such powers, (*Added 51 of 1992 s. 11*)

commits an offence and is liable to—

- (i) a fine of \$200,000 and, in the case of an individual, to imprisonment for 2 years; and (*Amended 35 of 1996 s. 23*)
- (ii) in the case of an offence under paragraph (a), a fine of \$1,000 for each day on which the offence continues. (*Amended 35 of 1996 s. 23*)

(2) Where a person is charged with an offence under subsection (1)(a) in respect of his default in complying with a requirement imposed under section 34(2) or (3) to produce any books or papers, it shall be a defence to prove that they were not in his possession or control and that it was not reasonably practicable for him to comply with the requirement.

## PART VI

### INSOLVENCY AND WINDING UP

#### 42. Circumstances in which insurer deemed to be insolvent

(1) Subject to subsection (1A), an insurer shall be deemed for the purposes of sections 177 and 327 of the Companies Ordinance (Cap. 32) to be unable to pay its debts if at any time the value of the assets of the insurer does not exceed the amount of its liabilities by the relevant amount within the meaning of section 10. (*Amended 8 of 1989 s. 6*)

8. Accounts for the last 3 completed financial years and particulars of any reports, resolutions and other circulars issued to shareholders during the last 4 years.
9. Name, place of incorporation and principal activities of all subsidiary companies and of any holding company or ultimate holding company.  
(Note: Shares held by a nominee are to be treated as shares held by his principal).
- †10. In the case of a company to which Part XI of the Companies Ordinance applies—
  - (a) name(s) and address(es) of person(s) residing in Hong Kong authorized to accept on behalf of the company service of process and any notices;
  - (b) date of registration under Part XI of the Companies Ordinance.
- †11. Particulars of circumstances (by reference to section 13B(1) of the Insurance Companies Ordinance) by virtue of which the above-named body corporate became a controller within the meaning of section 13B(1) of this Ordinance.
12. Has any body corporate or insurer with which the above-named body corporate was associated as director or controller (within the meaning of section 9 of this Ordinance) in the last 10 years, in Hong Kong or elsewhere, been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either whilst the above-named body corporate was associated with it or within one year after the above-named body corporate ceased to be associated with it? If so, give full particulars.  
(Note: In relation to a body corporate which is not an insurer, "controller" (控權人) is to be construed as a reference to a person who would, if he were a company, be a holding company of that body in accordance with section 2(7) of the Companies Ordinance).

I certify that the above information is complete and correct to the best of my knowledge and belief and I certify that this notice is served with the knowledge and consent of the above-named body corporate.

Date .....

Signed .....  
(Director/Secretary†  
of body corporate.)

\* Insert name of Insurer.

† Insert name of partnership.

‡ Delete as necessary.

(Sixth Schedule added 44 of 1990 s. 10)

## SEVENTH SCHEDULE

[ss. 38B(1)(b)  
& 59(1)(c)]

(Amended 29 of 1997 s. 14)

### POWERS OF MANAGER OF INSURER

1. Power to take possession of, collect and get in the property of the insurer and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the insurer by public auction or private contract.
3. Power to raise or borrow money and grant security therefor over the property of the insurer.
4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the insurer.

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6. Power to refer to arbitration any question affecting the insurer.
7. Power to effect and maintain insurances in respect of the business and property of the insurer.
8. Power to use the insurer's seal.
9. Power to do all acts and to execute in the name and on behalf of the insurer any deed, receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the insurer.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the insurer.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the insurer.
15. Power to grant or accept a surrender of a lease or tenancy of any of the property of the insurer, and to take a lease or tenancy of any property required or convenient for the business of the insurer.
16. Power to make any arrangement or compromise on behalf of the insurer.
17. Power to call up any uncalled capital of the insurer.
18. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the insurer and to receive dividends, and to accede to trust deeds for the creditors of any such person.
19. Power to present or defend a petition for the winding up of the insurer.
20. Power to make or oppose an application referred to in section 45(1).
21. Power to change the situation of the insurer's registered office.
22. Power to do all other things incidental to the exercise of the powers specified in this Schedule.  
(Seventh Schedule added 51 of 1992 s. 17)

**EIGHTH SCHEDULE**

[s. 25A]

**ASSETS WHICH QUALIFY AS ASSETS IN HONG KONG**

1. The following qualify as assets in Hong Kong—
  - (a) real property, including a leasehold interest therein, located in Hong Kong;
  - (b) computer equipment, office machinery, furniture, motor vehicles and other equipment located in Hong Kong;
  - (c) money, in any currency or monetary unit, deposited and kept in Hong Kong at an authorized institution, as defined in the Banking Ordinance (Cap. 155); (*Amended 51 of 1999 s. 8*)
  - (d) bonds or other securities issued in Hong Kong provided that they are transferable and registrable at a register in Hong Kong and, in the case of bonds or other securities which are evidenced by certificates, the certificates for them are for the time being kept in Hong Kong;
  - (e) bonds or other securities issued outside Hong Kong, the certificates for which are for the time being kept in Hong Kong and which are transferable by delivery, with or without endorsement;

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(b) with effect from such time as is specified by him, being a time reasonable in all the circumstances of such case, an approval granted under subsection (2), or deemed to have been granted under subsection (3), in respect of any overseas banking corporation.

(6) Where the Monetary Authority refuses to grant approval under subsection (2) or revokes an approval under subsection (5), he shall notify the authorized institution or its holding company concerned in writing of the refusal or revocation.

(7) (*Repealed 4 of 1997 s. 27*)

(8) Every director and every manager of an authorized institution or of its holding company which contravenes the condition in subsection (2) or any condition attached under subsection (4) commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 7; or

(b) on summary conviction to a fine at tier 5,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(*Added 94 of 1993 s. 15*)

**PART X****POWERS OF CONTROL OVER AUTHORIZED INSTITUTIONS****52. Powers of Monetary Authority**

(1) Where—

(a) an authorized institution informs the Monetary Authority—

(i) that it is likely to become unable to meet its obligations; or

(ii) that it is insolvent or about to suspend payment;

(b) an authorized institution becomes unable to meet its obligations or suspends payment;

(c) the Monetary Authority is of the opinion that—

(i) an authorized institution is carrying on its business in a manner detrimental to the interests of—

(A) its depositors or potential depositors;

(B) its creditors; or

(C) holders or potential holders of multi-purpose cards issued by it or the issue of which is facilitated by it;

(ii) an authorized institution is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;

(iii) an authorized institution has contravened or failed to comply with any of the provisions of this Ordinance;

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- (iv) an authorized institution has contravened or failed to comply with any condition attached under section 16 to its authorization or approval, the condition specified in section 49(1), the condition specified in section 50(1), the condition specified in section 50(2) or the condition specified in section 51A(2); or
  - (v) his power under section 22(1) to propose to revoke the authorization of an authorized institution is exercisable (and whether or not section 23(1) has been complied with); or (*Replaced 4 of 1997 s. 10*)
  - (d) the Financial Secretary advises the Monetary Authority that he considers it in the public interest to do so,
- the Monetary Authority, after consultation with the Financial Secretary, may exercise such one or more of the following powers as may from time to time appear to him to be necessary—
- (A) to require the institution, by notice in writing served on it, forthwith to take any action or to do any act or thing whatsoever in relation to its affairs, business and property as he may consider necessary (including any requirement imposing restrictions on the banking business, business of taking deposits as a deposit-taking company or business of taking deposits as a restricted licence bank, or business of issuing or facilitating the issue of multi-purpose cards as the case may be, which may be carried on by the institution); (*Replaced 49 of 1995 s. 13. Amended 4 of 1997 s. 10*)
  - (B) subject to subsection (3E), to give a direction that, during the period for which the direction is in force, the institution shall seek advice on the management of its affairs, business and property from an Advisor, for which purpose the Monetary Authority shall appoint a person to be the Advisor of that institution; (*Replaced 49 of 1995 s. 13*)
  - (C) subject to subsections (3D) and (3E), to give a direction that, during the period for which the direction is in force, such of the affairs, business and property of the institution as are specified in the direction shall be managed by a Manager, for which purpose the Monetary Authority shall—
    - (I) appoint a person to be the Manager of that institution; and
    - (II) specify in the direction the primary objective or objectives (not inconsistent with the provisions of this Ordinance) with which the Manager shall comply; (*Replaced 49 of 1995 s. 13*)
  - (D) to report the circumstances to the Governor in Council.

(2) Except in the circumstances specified in subsection (1)(a), the Monetary Authority shall not exercise the power conferred by subsection (1)(D) unless he has—

(a) where the authorized institution is incorporated in Hong Kong and a direction given under subsection (1)(C) is in force in respect of the institution—

(i) given to the institution, and such relevant persons, if any, as he thinks fit, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—

(A) his intention to exercise such power; and

(B) his reasons for the exercise thereof; and

(ii) afforded the institution, and such relevant persons, if any, as he thinks fit, an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Governor in Council); (*Replaced 49 of 1995 s. 13*)

(b) where the authorized institution is incorporated outside Hong Kong and a direction given under subsection (1)(C) is in force in respect of the institution—

(i) given to the institution, at its principal place of business outside Hong Kong, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—

(A) his intention to exercise such power; and

(B) his reasons for the exercise thereof; and

(ii) afforded the institution an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Governor in Council); (*Replaced 49 of 1995 s. 13*)

(c) in any other case—

(i) given to the authorized institution not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating—

(A) his intention to exercise such power; and

(B) his reasons for the exercise thereof; and

(ii) afforded the institution an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Governor in Council). (*Added 49 of 1995 s. 13*)

(2A) The Monetary Authority may give an authorized institution and any relevant person less than the 7 days' notice in writing referred to in subsection (2) where— (*Amended 49 of 1995 s. 13*)

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- (a) he has the consent of the Financial Secretary to do so; and
- (b) to do so is reasonable in the circumstances. (*Added 67 of 1992 s. 3*)

(3) (*Repealed 49 of 1995 s. 13*)

(3A) Subject to subsection (3D), the Monetary Authority may from time to time vary a direction given under subsection (1)(C) in respect of—

- (a) the affairs, business and property specified in the direction of the authorized institution to which the direction relates;
- (b) the primary objective or objectives specified in the direction with which the Manager of the institution shall comply. (*Added 49 of 1995 s. 13*)

(3B) It is hereby declared that any thing done, in reliance on a direction given under subsection (1)(C), at any time before a variation under subsection (3A) of that direction shall not be invalid by reason only of that variation. (*Added 49 of 1995 s. 13*)

(3C) During the period for which a direction given under subsection (1)(C) is in force in respect of an authorized institution, any reference in this Part to—

- (a) the affairs, business or property, or any combination thereof, of the institution; or
- (b) the primary objective or objectives with which the Manager of the institution shall comply,

shall, unless the context otherwise requires, be construed to mean—

- (i) where paragraph (a) is applicable, such affairs, business or property, or combination thereof, as the case may be;
- (ii) where paragraph (b) is applicable, such primary objective or objectives,

specified in that direction as varied from time to time under subsection (3A). (*Added 49 of 1995 s. 13*)

(3D) Notwithstanding any other provision of this Part, no direction given under subsection (1)(C) (including any variation thereof under subsection (3A)) in respect of an authorized institution incorporated outside Hong Kong shall apply to any of the affairs, business or property of the institution except—

- (a) so much of the affairs and business of the institution as are carried on, or managed, in or from Hong Kong; and
- (b) so much of the property of the institution as is either or both of the following—
  - (i) located in, or managed from, Hong Kong;
  - (ii) an asset of the institution's principal place of business in Hong Kong or of any local branch. (*Added 49 of 1995 s. 13*)

(3E) The Monetary Authority shall not give a direction under subsection (1)(B) or (C) in respect of an authorized institution in relation to which the Court of First Instance has made an order for the winding-up of the institution. (*Added 49 of 1995 s. 13. Amended 25 of 1998 s. 2*)

(3F) It is hereby declared that the Monetary Authority may exercise his power under subsection (1)(B) or (C) in such a way as to appoint—

- (a) a company or partnership; or
- (b) without prejudice to the generality of paragraph (a), 2 or more persons,

to be the Advisor or Manager, as the case may be, of an authorized institution. (*Added 49 of 1995 s. 13*)

(3G) Where the Monetary Authority exercises his power under subsection (1)(C) in such a way as to appoint 2 or more persons to be the Manager of an authorized institution, he shall—

- (a) by notice in writing, specify which of the duties and powers imposed or conferred on a Manager under this Ordinance shall be discharged or exercised, as the case may be, in relation to the institution, by—

- (i) any such person alone;
- (ii) any such persons jointly;
- (iii) each such person; and

- (b) attach that notice to the direction concerned given under that subsection served on the institution under section 53A(1),

and the provisions of this Ordinance (including section 53G) shall be read and have effect with such modifications as are necessary to take into account that notice. (*Added 49 of 1995 s. 13*)

(3H) For the avoidance of doubt, it is hereby declared that a person appointed under subsection (1)(B) or (C) to be the Advisor or Manager of an authorized institution may be a person who holds an appointment under section 5A(3) of the Exchange Fund Ordinance (Cap. 66). (*Added 49 of 1995 s. 13*)

(3I) (*Repealed 4 of 1997 s. 27*)

(4) Every director and every manager of an authorized institution which fails to comply with any requirement of the Monetary Authority under subsection (1)(A) commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 9 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

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(5) In this section, "relevant person" (有關人士), in relation to an authorized institution, means any person who—

- (a) is the Manager of the institution;
- (b) is a minority shareholder controller, majority shareholder controller or indirect controller of the institution;
- (c) has ceased to be a chief executive or director of the institution by virtue of section 53B(1)(a);
- (d) is a chief executive or director of the institution by virtue of the operation of section 53B(2). (*Added 49 of 1995 s. 13*)

(*Amended 82 of 1992 s. 25*)

### 53. Powers of Governor in Council

(1) Where—

- (a) the Monetary Authority makes a report to the Governor in Council under section 52(1)(D);
  - (b) any person appeals to the Governor in Council under section 132A(1) against a decision of the Monetary Authority under section 52(1)(A), (B) or (C) or (3A); or (*Amended 49 of 1995 s. 14; 4 of 1997 s. 27*)
  - (c) the Financial Secretary refers a report and his recommendations thereon to the Governor in Council under section 117(5)(c),
- the Governor in Council may, without prejudice to any of the powers conferred on the Monetary Authority by Part V or VI, exercise one or more of the following powers— (*Amended 94 of 1993 s. 17; 49 of 1995 s. 14*)
- (i) to confirm, vary or reverse any requirement, appointment or direction made by the Monetary Authority;
  - (ii) (*Repealed 49 of 1995 s. 14*)
  - (iii) to direct the Financial Secretary to present a petition to the Court of First Instance for the winding-up of the authorized institution or former authorized institution by the Court of First Instance. (*Amended 82 of 1992 s. 25; 25 of 1998 s. 2*)

(2) The Governor in Council may, before considering any report or appeal under subsection (1), seek the advice of the Banking Advisory Committee or the Deposit-taking Companies Advisory Committee, or both, but shall not be bound to follow any such advice.

(3) (*Repealed 49 of 1995 s. 14*)

### 53A. Notification of direction under section 52(1)(B) or (C), etc.

(1) A direction given under section 52(1)(B) or (C) shall—

- (a) be in writing;
  - (b) be served on the authorized institution specified in the direction at its principal place of business in Hong Kong;
  - (c) take effect immediately it is so served; and
  - (d) state the name and address of the Advisor or Manager, as the case may be, appointed in respect of that institution.
- (2) A variation under section 52(3A) of a direction given under section 52(1)(C) shall—
- (a) be in writing;
  - (b) be served on—
    - (i) the authorized institution specified in the direction at its principal place of business in Hong Kong except that, in the case of an authorized institution incorporated outside Hong Kong, it shall be served on the institution's principal place of business outside Hong Kong; and
    - (ii) the Manager of the institution; and
  - (c) take effect immediately it is so served, unless otherwise specified in the variation.
- (3) A direction in writing given under section 52(1)(C), and a variation in writing under section 52(3A) of such a direction, include a copy of the direction or variation, as the case may be.
- (4) Notice of a direction given under section 52(1)(C) shall be published by the Monetary Authority by notice in the Gazette and in such other ways as appear to him expedient for notifying the public.
- (5) Subsection (4) shall apply to a notice under section 52(3G) as it applies to a direction given under section 52(1)(C).

*(Added 49 of 1995 s. 15)*

### **53B. Effect of direction under section 52(1)(C)**

- (1) Subject to subsection (2) and section 53C(3)(a)(i), (b) and (c), immediately upon a direction given under section 52(1)(C) coming into force—
- (a) in respect of an authorized institution incorporated in Hong Kong, any appointment of a person as a chief executive or director of the institution which was in force immediately before that direction came into force;
  - (b) in respect of an authorized institution incorporated outside Hong Kong, any appointment of a person as a chief executive of the institution (in so far as such appointment relates to the business in Hong Kong of the institution) which was in force immediately before that direction came into force,

shall be deemed to be revoked and, accordingly, that person shall not act or continue to act as any such chief executive or director, as the case may be, during the period for which that direction is in force.

(2) An appointment referred to in subsection (1) shall not be revoked under that subsection where the direction concerned given under section 52(1)(C) expressly provides that the appointment shall not be so revoked.

(3) An authorized institution is not required to give any notice to the Monetary Authority pursuant to section 72A(2A) as a consequence of the operation of subsection (1).

(4) During the period for which a direction given under section 52(1)(C) is in force in respect of an authorized institution incorporated in Hong Kong—

(a) no meeting of the institution may be held except with the consent, and in the presence, of the Manager of the institution;

(b) no resolution may be passed at a meeting of the institution except with the consent of the Manager of the institution.

(5) Subject to section 53D, it is hereby declared that—

(a) any resolution passed, or purporting to have been passed, in contravention of subsection (4)(b);

(b) any thing done in reliance on any such resolution, shall be invalid by reason of that contravention.

(6) Where—

(a) any member or director of an authorized institution requests the Manager of the institution to give a consent referred to in subsection (4)(a) in relation to the institution, the Manager shall not unreasonably refuse to give such consent;

(b) such consent is given, the Manager shall attend the meeting of the institution to which such consent relates.

(7) During the period for which a direction given under section 52(1)(C) is in force in respect of an authorized institution incorporated outside Hong Kong—

(a) the institution shall, in respect of any proposed resolution which, whether directly or indirectly, may affect any of the affairs, business and property of the institution, submit to the Manager of the institution, not later than 14 days before the meeting of the institution at which the resolution is to be moved (or such shorter period as is approved by the Manager in any particular case)—

(i) a copy of the resolution; and

(ii) notice in writing of the date, time and place of the meeting;

(b) the Manager may, in respect of a resolution referred to in paragraph (a), by notice in writing served on the institution at its principal place of business outside Hong Kong before the time

specified in the notice under paragraph (a)(ii) as being the time at which the meeting of the institution at which the resolution is to be moved is to be held, object to that resolution if, in his opinion, that resolution, if passed, might adversely affect or conflict with the discharge of his duties or the exercise of his powers in respect of any of the affairs, business and property of the institution.

(8) Subject to section 53D, it is hereby declared that—

(a) any resolution referred to in subsection (7)(a) passed or purporting to have been passed, and in respect of which the Manager of the authorized institution concerned—

(i) has not received a copy thereof under subsection (7)(a)(i);

(ii) has not received notice under subsection (7)(a)(ii) of the date, time and place of the meeting at which the resolution was moved; or

(iii) has made an objection under subsection (7)(b);

(b) any thing done in reliance on any such resolution,

shall be invalid—

(i) by reason of paragraph (a)(i), (ii) or (iii), as the case may be; and

(ii) to the extent that the resolution relates to any of the affairs, business and property of the institution,

until such time, if any, as the Manager, with the consent of the Monetary Authority, serves on the institution at its principal place of business outside Hong Kong a notice in writing stating that the resolution is approved with effect on and after the day on which such notice is so served.

(9) Any person who acts or continues to act as a chief executive or director of an authorized institution in contravention of subsection (1) commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(10) In this section, “meeting” (會議), in relation to an authorized institution—

(a) means—

(i) any general meeting of the members of the institution; or

(ii) any meeting of the directors of the institution; and

(b) if the institution is incorporated outside Hong Kong, includes any meeting of the creditors of the institution.

(*Added 49 of 1995 s. 15*)



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(1) Subject to the primary objective or objectives with which he shall comply, the Manager of an authorized institution—

- (a) may do all such things as may be necessary for the management of the affairs, business and property of the institution; and
- (b) without limiting the generality of paragraph (a), shall have, and may exercise, in respect of that institution, all the powers specified in the Ninth Schedule.

(2) The Manager of an authorized institution may require any person who has ceased to be or who is still a chief executive or director of the institution by virtue of section 53B(1) or (2), as the case may be, to submit such information in relation to the affairs, business and property of the institution as the Manager may reasonably require for the discharge of his duties or the exercise of his powers in respect of the institution, and such information shall be submitted within such period and in such manner as the Manager may require.

(3) Subject to subsection (4), the Manager of an authorized institution may—

- (a) if the institution is incorporated in Hong Kong—
  - (i) appoint any person (including a person referred to in section 53B(1)(a)) to be a chief executive or director of the institution, whether to fill a vacancy arising from the operation of section 53B(1)(a) or otherwise;
  - (ii) at any meeting of the members of the institution, move any resolution which is seconded by a member or which has the approval of the Monetary Authority;
  - (iii) at any meeting of the directors of the institution, move any resolution which is seconded by a director or which has the approval of the Monetary Authority;
  - (iv) call any meeting of the members, directors or creditors of the institution;
- (b) if the institution is incorporated outside Hong Kong, appoint any person (including a person referred to in section 53B(1)(b)) to be a chief executive in respect of the business in Hong Kong of the institution, whether to fill a vacancy arising from the operation of section 53B(1)(b) or otherwise;
- (c) revoke any appointment to which section 53B(2) applies or made pursuant to paragraph (a)(i) or (b).

(4) The Manager of an authorized institution shall not exercise any power conferred on him under subsection (3)(a)(i), (ii) or (iii), (b) or (c) except with the approval of the Monetary Authority.

(5) Section 71(1) shall not apply to any appointment made pursuant to subsection (3)(a)(i) or (b).

(6) An authorized institution is not required to give any notice to the Monetary Authority pursuant to section 72A(2A) as a consequence of any appointment, or the revocation of any appointment, made pursuant to subsection (3)(a)(i), (b) or (c).

(7) During the period for which a direction given under section 52(1)(C) is in force in respect of an authorized institution, any power conferred on—

(a) the institution or a member, director, chief executive, manager or officer of the institution, whether by—

(i) this Ordinance or the Companies Ordinance (Cap. 32);

(ii) the memorandum or articles of association (including, in the case of an authorized institution incorporated outside Hong Kong, the equivalent, in the place where it is incorporated, of the memorandum or articles of association); or

(iii) any other instrument under which it is incorporated;

(b) if the institution is incorporated outside Hong Kong, any relevant office-holder,

which could be exercised in such a way as to interfere with the exercise by the Manager of the institution of his powers is not exercisable except with the consent of the Manager, which consent may be given either generally or in any particular case.

(8) For the avoidance of doubt, it is hereby declared that during the period for which a direction given under section 52(1)(C) is in force in respect of an authorized institution incorporated outside Hong Kong, where there is any conflict or inconsistency between—

(a) a direction given by the Manager of the institution (including a direction to a person referred to in paragraph (b)); and

(b) a direction given by a member, director, chief executive, manager or officer of the institution or any relevant office-holder,

in relation to the affairs, business and property of the institution, the direction referred to in paragraph (a) shall, to the extent of the conflict or inconsistency, as the case may be, prevail over the direction referred to in paragraph (b).

(9) Subject to the primary objective or objectives with which he shall comply, in exercising his powers the Manager of an authorized institution shall be deemed to act as the institution's agent and, in relation thereto, section 9 of the Prevention of Bribery Ordinance (Cap. 201) shall apply to—

(a) the Manager acting as such agent; and

(b) any person who offers an advantage, within the meaning of that Ordinance, to the Manager acting as such agent,

as if subsections (4) and (5) of that section were omitted.

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(10) A person dealing with the Manager of an authorized institution in good faith and for good consideration is not concerned to inquire whether the Manager is—

- (a) acting within his powers;
- (b) complying with the primary objective or objectives.

(11) With the prior approval in writing of the Monetary Authority, the Manager of an authorized institution may, with or without restrictions as he thinks fit, delegate in writing to any person any of the duties and powers imposed or conferred on a Manager under this Ordinance except any such duty or power which he may not discharge or exercise, as the case may be, by virtue of a notice under section 52(3G).

(12) A delegate of the Manager of an authorized institution—

- (a) shall discharge the delegated duties and may exercise the delegated powers as if the delegate were the Manager; and
- (b) shall be presumed to be acting in accordance with the terms of the delegation in the absence of evidence to the contrary.

(13) Any person who fails without reasonable excuse to comply with any requirement under subsection (2) commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(14) Any person who signs any document for the purposes of complying with any requirement under subsection (2) which he knows or reasonably ought to know to be false in a material particular commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (*Amended 4 of 1997 s. 27*)

(15) Any person who produces any book, account, document, security or information for the purpose of complying with any requirement under subsection (2) which is false in a material particular commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (*Amended 4 of 1997 s. 27*)

(16) In this section, “relevant office-holder” (有關人員), in relation to an authorized institution incorporated outside Hong Kong, means any person acting—

(a) in relation to the institution; and

(b) in a place outside Hong Kong,

in any office similar to that of—

(i) a liquidator, provisional liquidator, receiver or manager under the law of insolvency in Hong Kong;

(ii) an administrator under the law of insolvency in the United Kingdom;

(iii) an office specified in a notice under subsection (17) to be an office for the purposes of this definition.

(17) The Financial Secretary may, by notice in the Gazette, specify an office to be an office for the purposes of the definition of “relevant office-holder”.

(18) It is hereby declared that a notice under subsection (17) is subsidiary legislation.

*(Added 49 of 1995 s. 15)*

#### **53D. Court of First Instance may approve certain resolutions**

(1) During the period for which a direction given under section 52(1)(C) is in force in respect of an authorized institution incorporated in Hong Kong, the Court of First Instance may, on the application of—

(a) the Manager of the institution; or

(b) not less than 100 members of, or members holding not less than one-tenth of the total number of issued shares in, the institution, approve or refuse to approve any resolution which—

(i) where paragraph (a) is applicable, was proposed to be moved at a general meeting of the members of the institution but which was not so moved because a quorum for the meeting was not obtained;

(ii) where paragraph (a) or (b) is applicable, has been properly moved at a general meeting of the members of the institution but which has not, for whatever reason, been passed.

(2) During the period for which a direction given under section 52(1)(C) is in force in respect of an authorized institution incorporated outside Hong Kong, the Court of First Instance may, on the application of the institution, approve or refuse to approve any resolution—

(a) which has been passed, or which purports to have been passed, at a meeting within the meaning of section 53B(10);

(b) which is invalid by reason of section 53B(8)(a)(iii); and

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- (c) a copy of which has been provided, in the form in which it was passed, or purports to have been passed, as the case may be, to the Manager by the institution not later than 14 days after the day on which it was passed, or purports to have been passed, as the case may be.
- (3) On the hearing of an application under subsection (1)—
- (a) the Manager and any member of the authorized institution concerned; and
- (b) the Monetary Authority,
- shall be entitled to be heard on the application and to call, examine and cross-examine any witness and, if he so thinks fit, support or oppose the making of the application.
- (4) On the hearing of an application under subsection (2)—
- (a) the Manager, any chief executive (other than a chief executive who either holds his appointment by virtue of the operation of section 53B(2) or is appointed under section 53C(3)(b)) and a director of the authorized institution concerned, and any relevant office-holder within the meaning of section 53C(16); and
- (b) the Monetary Authority,
- shall be entitled to be heard on the application and to call, examine and cross-examine any witness and, if he so thinks fit, support or oppose the making of the application.
- (5) Where the Court of First Instance approves a resolution referred to in subsection (1) or (2), then the resolution shall be deemed to have been passed upon, and shall take effect on and after, that approval or such later time as the Court of First Instance thinks fit.
- (6) For the avoidance of doubt, it is hereby declared that where the Court of First Instance approves a resolution referred to in subsection (1) (where paragraph (ii) of that subsection is applicable) or (2), then section 53B(5) or (8), as the case may be, shall cease to apply to or in relation to the resolution on and after that approval takes effect.

*(Added 49 of 1995 s. 15. Amended 25 of 1998 s. 2)*

### **53E. Court of First Instance may make certain orders**

(1) Where, on the application of the Manager of an authorized institution at any time during the period for which a direction given under section 52(1)(C) is in force in respect of the institution, it appears to the Court of First Instance that—

- (a) any person is about to do an act which, if done, might adversely affect or conflict with; or
- (b) any person has done an act which adversely affects or conflicts with,

the discharge of the Manager's duties or the exercise of the Manager's powers in respect of any of the affairs, business or property of the institution, then, subject to subsection (4), the Court of First Instance may, without prejudice to the operation of any of the other provisions of this Part or to any order the Court of First Instance would be entitled to make otherwise than by or by virtue of this section, make one or more of the following orders—

- (i) if paragraph (a) is applicable, an order restraining the person referred to in that paragraph from doing the act referred to in that paragraph;
- (ii) if paragraph (b) is applicable—
  - (A) an order declaring the act referred to in that paragraph to be invalid with effect on and after the date on which the order is made (but without prejudice to the validity of such act, or any thing done in reliance on such act, before that date);
  - (B) an order declaring any thing done in reliance on such act to be invalid with effect on and after the date on which the order is made (but without prejudice to the validity of such act, or any thing done in reliance on such act, before that date);
- (iii) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
- (iv) any ancillary order which the Court of First Instance considers necessary in consequence of the making of any other order under this section.

(2) The Court of First Instance may, before making an order under subsection (1), direct that notice of the application under that subsection be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) Subject to subsection (4), the Court of First Instance may, of its own volition or on an application made to it for that purpose, by order reverse, vary or discharge an order made under subsection (1) or suspend the operation of such an order.

(4) The Court of First Instance shall, before making an order under subsection (1) or (3), satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

*(Added 49 of 1995 s. 15. Amended 25 of 1998 s. 2)*

#### **53F. Duration of direction under section 52(1)(B) or (C)**

(1) The Monetary Authority shall revoke a direction given under section 52(1)(B) or (C) if—

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- (a) after consultation with the Financial Secretary, it appears to the Monetary Authority that it is no longer necessary for the direction to remain in force; or
- (b) it is necessary to do so to give effect to—
  - (i) a decision of the Governor in Council under section 53(1)(i); or
  - (ii) an order of the Governor in Council under subsection (2).
- (2) The Governor in Council, upon the application of—
  - (a) in the case of an authorized institution the subject of a direction given under section 52(1)(B), the institution;
  - (b) in the case of an authorized institution incorporated in Hong Kong the subject of a direction given under section 52(1)(C), not less than 100 members of, or members holding not less than one-tenth of the total number of issued shares in, the institution;
  - (c) in the case of an authorized institution incorporated outside Hong Kong the subject of a direction given under section 52(1)(C), any chief executive (other than a chief executive who either holds his appointment by virtue of the operation of section 53B(2) or is appointed under section 53C(3)(b)) or director of the institution, or any relevant office-holder within the meaning of section 53C(16),

may, if he is satisfied that it is no longer necessary for the direction to remain in force, order the Monetary Authority to revoke that direction.

(3) The revocation under subsection (1) of a direction given under section 52(1)(B) or (C) shall—

- (a) be in writing;
- (b) be served on—
  - (i) the authorized institution specified in the direction at its principal place of business in Hong Kong except that, in the case of a direction given under section 52(1)(C) in respect of an authorized institution incorporated outside Hong Kong, it shall be served on the institution's principal place of business outside Hong Kong; and
  - (ii) the Advisor or Manager, as the case may be, of that institution; and
- (c) take effect immediately it is so served unless otherwise specified in the revocation.

(4) Notice of a revocation under this section of a direction given under section 52(1)(C) shall be published by the Monetary Authority in the Gazette and in such other ways as appear to him expedient for notifying the public.

(5) A revocation in writing under subsection (1) of a direction given under section 52(1)(B) or (C) includes a copy of the revocation.

(6) For the avoidance of doubt, it is hereby declared that the revocation under subsection (1) of a direction given under section 52(1)(C) shall not revive any appointment deemed to be revoked as a consequence of the operation of section 53B(1).

*(Added 49 of 1995 s. 15)*

### **53G. Advisors, Managers and assistants**

(1) An Advisor or Manager may at any time by notice in writing to the Monetary Authority resign his office, but any such resignation shall not take effect unless and until it is accepted by the Monetary Authority.

(2) The Monetary Authority may at any time revoke the appointment of an Advisor or Manager.

(3) Where the office of an Advisor or Manager becomes vacant pursuant to subsection (1) or (2), or due to the death of the holder of that office, the Monetary Authority shall forthwith—

- (a) appoint a person to fill the vacancy; and
- (b) serve a notice in writing, specifying the name and address of the person so appointed, on the authorized institution concerned at its principal place of business in Hong Kong except that, in the case of an authorized institution incorporated outside Hong Kong the subject of a direction given under section 52(1)(C), it shall be served on the institution's principal place of business outside Hong Kong.

(4) The appointment of an Advisor or Manager shall be deemed to be revoked immediately upon the revocation under section 53F(1) of the direction given under section 52(1)(B) or (C) by virtue of which he holds his office.

(5) Subject to subsection (6), an Advisor or Manager may appoint such technical and professional persons (including any person who has been appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66)) as he thinks fit to assist him in the discharge of his duties and exercise of his powers in respect of any of the affairs, business or property of the authorized institution concerned.

(6) An Advisor or Manager shall not exercise his power under subsection (5)—

- (a) unless he has the approval in writing of the Monetary Authority to do so; and
- (b) except in accordance with the conditions, if any, specified in the approval.

(7) The Monetary Authority, after consultation with the Financial Secretary, may at any time determine the remuneration and expenses to be paid by an authorized institution to—

- (a) the Advisor of the institution or any person appointed under subsection (5) by the Advisor;



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(b) the Manager of the institution or any person appointed under that subsection by the Manager,  
and any such determination may be made whether or not—

- (i) the appointment of the Advisor or Manager or any such person has been revoked or has otherwise terminated;
- (ii) the direction concerned given under section 52(1)(B) or (C) has been revoked.

(8) Where the Monetary Authority has made a determination under subsection (7), he shall—

- (a) if the determination relates to an Advisor of an authorized institution or to any person appointed under subsection (5) by the Advisor, serve a copy of the determination on the institution at its principal place of business in Hong Kong;
- (b) if the determination relates to the Manager of an authorized institution or to any person appointed under subsection (5) by the Manager—
  - (i) as soon as is reasonably practicable, publish a notice in the Gazette stating—
    - (A) that the determination has been made; and
    - (B) the name of that institution;
  - (ii) if the institution is incorporated in Hong Kong, provide a copy of the determination to any member of the institution who so requests;
  - (iii) if the institution is incorporated outside Hong Kong, serve a copy of the determination on the institution at its principal place of business outside Hong Kong and provide a copy of the determination to the chief executive (other than a chief executive who either holds his appointment by virtue of the operation of section 53B(2) or is appointed under section 53C(3)(b)), director or member of the institution, or any relevant office-holder within the meaning of section 53C(16), who so requests.

(9) (*Repealed 4 of 1997 s. 27*)

(10) Without prejudice to the generality of section 131, the Monetary Authority may, after consultation with the Financial Secretary, use the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66) to pay, either in whole or in part, any remuneration and expenses payable pursuant to a determination under subsection (7).

(*Added 49 of 1995 s. 15*)

**53H. Obstruction, etc. of Manager**

Any person who wilfully obstructs, resists or delays—

- (a) the Manager of an authorized institution in the lawful discharge of his duties, or the lawful exercise of his powers, in respect of the institution; or
- (b) any other person lawfully assisting the Manager in such discharge of such duties or such exercise of such powers,
- commits an offence and is liable—
- (i) on conviction upon indictment to a fine at tier 9 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or
- (ii) on summary conviction to a fine at tier 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.
- (Added 49 of 1995 s. 15. Amended 4 of 1997 s. 27)*

54. *(Repealed 49 of 1995 s. 16)*

**55. Examination and investigation  
of authorized institutions, etc.**

(1) Without limiting the generality of section 52, the Monetary Authority may at any time, with or without prior notice to the authorized institution, examine the books, accounts and transactions of any authorized institution and, in the case of an authorized institution incorporated in Hong Kong, any local branch, overseas branch, overseas representative office or subsidiary, whether in or outside Hong Kong, of such institution. *(Amended 23 of 1998 s. 2)*

(2) Without limiting the generality of section 52, the Monetary Authority shall investigate the books, accounts and transactions of an authorized institution—

- (a) if shareholders of the institution holding not less than one-third of the total number of issued shares in the institution, or depositors holding not less than one-tenth of the gross amount of the total deposit liabilities in Hong Kong of the institution or a sum equal to the aggregate of the paid-up share capital of the institution and its published reserve, whichever is the greater, apply to him to make such an investigation and submit to him such evidence as he considers necessary to justify the investigation and furnish such security for the payment of the costs of the investigation as he may require; or

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- (b) if the institution suspends payment or informs him of its intention to suspend payment.
- (3) Where an investigation is made by the Monetary Authority pursuant to subsection (2), the Financial Secretary may order that all expenses incurred in such investigation shall be defrayed—
- (a) by the authorized institution; or
  - (b) if the investigation was made pursuant to subsection (2)(a), either wholly by the persons who applied for the making of the investigation or partly by the authorized institution in such proportions as he considers to be just.
- (4) Subsection (1) shall, subject to such modifications as may be necessary, apply to and in relation to an approved money broker as it applies to and in relation to an authorized institution, and the other provisions of this Ordinance shall be construed accordingly. (*Added 4 of 1997 s. 11*)  
(*Amended 82 of 1992 s. 25*)

**56. Production of authorized institution's,  
etc., books, etc.**

(1) For the purposes of an examination or investigation under section 55, an authorized institution and, in the case of an authorized institution incorporated in Hong Kong, any local branch, overseas branch, overseas representative office or subsidiary, whether in or outside Hong Kong, of such institution shall afford the person carrying out the examination or investigation access to its books and accounts, to documents of title to its assets and other documents, to all securities held by it in respect of its customers' transactions and its cash and to such information and facilities as may be required to conduct the examination or investigation, and shall produce to the person carrying out the examination or investigation such books, accounts, documents, securities, cash or other information as he may require:

Provided that, so far as is consistent with the conduct of the examination or investigation, such books, accounts, documents, securities and cash shall not be required to be produced at such times and such places as shall interfere with the proper conduct of the normal daily business of the institution, local branch, overseas branch, overseas representative office or subsidiary, as the case may be. (*Amended 64 of 1987 s. 12; 23 of 1998 s. 2*)

(2) Every director and every manager of an authorized institution which, without reasonable excuse, contravenes this section (which contravention shall include a contravention by any of the institution's local branches, overseas branches, overseas representative offices or subsidiaries) commits an offence and is liable— (*Amended 64 of 1987 s. 12*)

- (a) on conviction upon indictment to a fine at tier 6 and to imprisonment for 12 months; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (*Amended 4 of 1997 s. 27*)

(3) If any authorized institution or any local branch, overseas branch, overseas representative office or subsidiary of the institution produces any book, account, document, security or information whatsoever under this section which is false in a material particular, every director and every manager of the institution commits an offence and is liable— (*Amended 64 of 1987 s. 12*)

- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (*Amended 4 of 1997 s. 27*)

(4) This section shall, with such modifications as may be necessary, apply to and in relation to an approved money broker as it applies to and in relation to an authorized institution, and the other provisions of this Ordinance shall be construed accordingly. (*Added 4 of 1997 s. 12*)

57-58. (*Repealed 49 of 1995 s. 16*)

## PART XI

### AUDITS AND MEETINGS

#### 59. Audit

(1) Every authorized institution, and its auditors, shall comply with the Companies Ordinance (Cap. 32) with respect to the audit of a company's accounts, whether or not the institution is incorporated under that Ordinance.

(2) The Monetary Authority may, after consultation with an authorized institution, by notice in writing to the institution require the institution to submit to him a report—

- (a) subject to subsection (3), prepared by an auditor or auditors appointed by the institution;
- (b) on such matters as the Monetary Authority may reasonably require for the exercise of his functions under this Ordinance including, but without limiting the generality of such matters, such a report—

19. The authorized institution requests in writing the Monetary Authority to revoke its authorization and the Monetary Authority is satisfied that the interests of depositors of the institution are or will be adequately safeguarded if he complies with that request.

20. The Monetary Authority is satisfied that the authorized institution engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre.

(Eighth Schedule added 49 of 1995 s. 52)

## NINTH SCHEDULE

[ss. 53C(1)(b)  
& 135(3)]

### POWERS OF MANAGER OF AUTHORIZED INSTITUTION

1. Power to take possession of, collect and get in the property of the institution and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to purchase property for the institution.
3. Power to sell or otherwise dispose of the business or property of the institution by public auction or private contract.
4. Power to raise or borrow money and grant security therefor over the business or property of the institution.
5. Power to appoint a solicitor or accountant or other professionally qualified person to act for the institution.
6. Power to exercise any voting rights in respect of any shares which—
  - (a) in the case of an institution incorporated in Hong Kong, are owned by the institution;
  - (b) in the case of an institution incorporated outside Hong Kong, are an asset of the institution's principal place of business in Hong Kong or of any local branch.
7. Power to bring or defend any action or other legal proceedings in the name and on behalf of the institution.
8. Power to give guarantees in the name and on behalf of the institution.
9. Power to refer to arbitration any question affecting the institution.
10. Power to effect and maintain insurances in respect of the business or property of the institution.
11. Power to use the institution's seal.
12. Power to do all acts and to execute in the name and on behalf of the institution any deed, receipt or other document, including power to enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation.
13. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the institution.
14. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ, direct and dismiss employees.
15. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the institution.
16. Power to make any payment which is necessary or incidental to the performance of his duties and the exercise of his powers.
17. Power to carry on the business of the institution.

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