Banking Ordinance

(Cap. 155)

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To regulate banking business and the business of taking deposits; to make provision for the supervision of authorized institutions so as to provide a measure of protection to depositors; to promote the general stability and effective working of the banking system; to make provision for the supervision of money brokers; and to provide for matters incidental thereto or connected therewith.

(Amended 4 of 1997 s. 2)

[1 September 1986]

*(*Format changes—E.R. 1 of 2013)*

Editorial Note:
* The title of the Ordinance has been updated to the current legislative styles.

Part I

Preliminary

*(*Format changes—E.R. 1 of 2013)*

Editorial Note:
* The format of Part I has been updated to the current legislative styles.

1. Short title

(1) This Ordinance may be cited as the Banking Ordinance.

(2) *(Omitted as spent—E.R. 1 of 2013)*

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

accounts (帳目) means any accounts, whether kept in writing or print or by any machine or device;

advertisement (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means; *(Replaced 32 of 2001 s. 2)*

Advisor (顧問), in relation to an authorized institution, means the person appointed, pursuant to section 52(1)(B), to be the Advisor of the institution; *(Added 49 of 1995 s. 2)*

approval (核准)—

(a) in relation to a company proposing to act as a money broker, means the approval of the company under section 118C(1)(a) to act as a money broker;

(b) in relation to a money broker, means the certificate of approval held by the broker; *(Added 4 of 1997 s. 3)*

approved currency (核准貨幣) means a currency—

(a) freely convertible into Hong Kong dollars; or

(b) approved by the Monetary Authority; *(Added 64 of 1987 s. 2. Amended 82 of 1992 s. 11)*

approved money broker (核准貨幣經紀) means a money broker which holds a valid certificate of approval; *(Added 4 of 1997 s. 3)*

associate (相聯者), in relation to a person entitled to exercise, or control the exercise of, voting power in relation to, or holding shares in, a company, means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they act together in exercising their voting power in relation to it; *(Added 95 of 1991 s. 2)*

auditor (核數師) means a certified public accountant (practising) as defined in the Professional Accountants Ordinance (Cap. 50); *(Amended 23 of 2004 s. 56)*

authorization (認可) means, as the case requires—

(a) the authorization under section 16 of a company to carry on banking business, a business of taking deposits as a deposit-taking company or a business of taking deposits as a restricted licence bank, as the case may be;

(b) the banking licence, registration or restricted banking licence, as the case may be, held by an authorized institution; *(Added 49 of 1995 s. 2)*

authorized institution (認可機構) means—

(a) a bank; *(Amended 3 of 1990 s. 2)*

(b) a restricted licence bank; or *(Replaced 3 of 1990 s. 2)*

(c) a deposit-taking company; *(Added 3 of 1990 s. 2)*

authorized institution incorporated in Hong Kong (在香港成立為法團的認可機構) means an authorized institution incorporated in Hong Kong by or under the Companies Ordinance (Cap. 622), a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622) or any other Ordinance and any reference to a bank incorporated in Hong Kong, a deposit-taking company incorporated in Hong Kong or a restricted licence bank incorporated in Hong Kong shall be construed accordingly; *(Amended 3 of 1990 s. 2; 28 of 2012 ss. 912 & 920)*

authorized institution incorporated outside Hong Kong (在香港以外成立為法團的認可機構) means an authorized institution incorporated by or under the law or other authority in any place outside Hong Kong; *(Amended 3 of 1990 s. 2; 94 of 1993 s. 2)*

automated teller machine (自動櫃員機) means a terminal device, whether installed by an authorized institution or by some other person, which is linked directly or indirectly to a computer system used by an authorized institution and which provides facilities to customers of the institution; *(Replaced 32 of 2001 s. 2)*

bank (銀行) means a company which holds a valid banking licence; *(Amended 43 of 1990 s. 2)*

Banking Advisory Committee (銀行業務諮詢委員會) means the Banking Advisory Committee established by section 4;

banking business (銀行業務) means the business of either or both of the following—

(a) receiving from the general public money on current, deposit, savings or other similar account repayable on demand or within less than the period specified in item 1 of the First Schedule or with a period of call or notice of less than that period, other than any float or SVF deposit as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584); *(Amended 4 of 1997 s. 3; 18 of 2015 s. 56)*

(b) paying or collecting cheques drawn by or paid in by customers;

banking licence (銀行牌照) means a banking licence granted under section 16; *(Amended 43 of 1990 s. 2)*

Basel Committee (巴塞爾委員會) means the Basel Committee on Banking Supervision, whose secretariat is hosted by the Bank for International Settlements in Basel, Switzerland, that seeks to promote sound standards of banking supervision worldwide; *(Added 3 of 2012 s. 3)*

capital base (資本基礎), in relation to an institution, means the sum of—

(a) the following amounts, but in each case only to the extent prescribed by the Monetary Authority in rules made under section 97C(1), namely— *(Amended 3 of 2012 s. 3)*

(i) the paid-up capital of the institution;

(ii) the amount standing to the credit of the share premium account (if any) of the institution; *(Amended 28 of 2012 ss. 912 & 920)*

(iii) the audited retained earnings of the institution; and

(iv) the published reserves of the institution; and

(b) the amounts of such other resources of the institution as may for the purposes of this paragraph be prescribed by the Monetary Authority in rules made under section 97C(1); *(Added 19 of 2005 s. 7. Amended 3 of 2012 s. 3)*

capital requirement rule (資本規定規則) means a rule made under section 97C(1)(a); *(Added 3 of 2012 s. 3)*

certificate of approval (核准證明書) means a certificate of approval attached to a notice under section 118C(1)(a) served on a company; *(Added 4 of 1997 s. 3)*

certificate of registration (註冊證明書) means a certificate of registration—

(a) granted under section 119 of the Securities and Futures Ordinance (Cap. 571); and

(b) which is in force; *(Added 6 of 2002 s. 2)*

chief executive (行政總裁), in relation to an authorized institution, means the chief executive appointed under section 74 in respect of the institution, and includes an alternate chief executive so appointed; *(Amended 95 of 1991 s. 2)*

company (公司) means a body corporate—

(a) incorporated under the Companies Ordinance (Cap. 622); *(Amended 28 of 2012 ss. 912 & 920)*

(ab) incorporated under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622); *(Added 28 of 2012 ss. 912 & 920)*

(b) incorporated by any other Ordinance; or

(c) incorporated outside Hong Kong; *(Amended 94 of 1993 s. 2)*

controller (控權人), in relation to a company—

(a) means, in respect of all the provisions of this Ordinance, any person who is—

(i) an indirect controller; or

(ii) a majority shareholder controller; and

(b) includes, in respect of the provisions of Part XIII, any person who is a minority shareholder controller,

of that company, and references in this Ordinance to control (控制) shall be construed accordingly; *(Replaced 95 of 1991 s. 2)*

currency (貨幣) includes—

(a) the European Currency Unit; and

(b) any medium of exchange the subject of a declaration under subsection (5)(a) which is in force; *(Added 94 of 1993 s. 2)*

dealing service (交易服務) means a service, whether or not offered in person or by electronic means or otherwise, whereby the persons to whom the service is provided are given the ability to quote bid or offer prices or rates—

(a) for the purpose of effecting an agreement of any type referred to in paragraph (a) of the definition of ***money***

broker (and whether or not any such agreement is effected); and

(b) which may be—

(i) accepted by any of those other persons to whom they are quoted; or

(ii) matched pursuant to the service; *(Added 4 of 1997 s. 3)*

deposit (存款)—

(a) means a loan of money—

(i) at interest, at no interest or at negative interest; or

(ii) repayable at a premium or repayable with any consideration in money or money's worth; but

(b) does not include—

(i) a loan of money on terms involving the issue, by a company, of debentures or other securities in respect of which a prospectus has been registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(ii) a loan of money on terms referable to the provision of property or services;

(iii) a loan of money by one company to another (neither company being an authorized institution) at a time when one is a subsidiary of the other or both are subsidiaries of another company; or

(iv) any float or SVF deposit, as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584), *(Replaced 18 of 2015 s. 56)*

and references in this Ordinance to the taking or the making of a deposit shall be construed accordingly;

depositor (存款人) means a person entitled to repayment of a deposit, whether made by him or not;

Deposit-taking Companies Advisory Committee (接受存款公司諮詢委員會) means the Deposit-taking Companies Advisory Committee established by section 5;

deposit-taking company (接受存款公司) means a company which is currently registered; *(Replaced 3 of 1990 s. 2. Amended 49 of 1995 s. 2)*

director (董事) includes any person who occupies the position of director, whatever the title of his office;

document (文件) includes any publication (including a newspaper, magazine, journal or other periodical publication, a poster or notice, a circular, brochure, pamphlet or handbill, or a prospectus)—

(a) directed at, or likely to be accessed or read (whether concurrently or otherwise) by, members of the public; and

(b) whether produced mechanically, electronically, magnetically, optically, manually or by any other means; *(Replaced 32 of 2001 s. 2)*

Exchange Fund (外匯基金) means the Exchange Fund established under the Exchange Fund Ordinance (Cap. 66); *(Added 82 of 1992 s. 11)*

executive officer (主管人員), in relation to a registered institution, means an executive officer appointed under section 71D in respect of the institution; *(Added 6 of 2002 s. 2)*

exercise (行使), in relation to a function, includes perform and discharge; *(Added 95 of 1991 s. 2)*

former auditor (前核數師) means a person who was formerly the auditor of an authorized institution or a former authorized institution; *(Added 43 of 1990 s. 2)*

former authorized institution (前認可機構) means an institution which was formerly a bank, a restricted licence bank or a deposit-taking company; *(Added 43 of 1990 s. 2)*

functions (職能) includes powers and duties;

holding company (控權公司) and ***subsidiary*** (附屬公司) have the same meaning as in the Companies Ordinance (Cap. 622); *(Replaced 28 of 2012 ss. 912 & 920)*

incorporated outside Hong Kong (在香港以外成立為法團) includes established, by whatever means, outside Hong Kong; *(Added 94 of 1993 s. 2)*

indirect controller (間接控權人), in relation to a company, means any person in accordance with whose directions or instructions the directors of the company or of another company of which it is a subsidiary are accustomed to act, but does not include a Manager or Advisor, or any person in accordance with whose directions or instructions those directors are accustomed to act by reason only that they act on advice given by him in his professional capacity; *(Added 95 of 1991 s. 2. Amended 49 of 1995 s. 2)*

invitation (邀請) includes an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means; *(Added 32 of 2001 s. 2)*

issue (發出), in relation to any advertisement, invitation or document, includes publishing, circulating, distributing or otherwise disseminating the advertisement, invitation or document, whether—

(a) by any visit in person;

(b) in a newspaper, magazine, journal or other periodical publication;

(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;

(e) by an exhibition of photographs or cinematography films;

(f) by way of sound broadcasting or television;

(g) by computer or other electronic device; or

(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,

and also includes causing or authorizing the advertisement, invitation or document to be issued; *(Replaced 32 of 2001 s. 2)*

liquidity requirement rule (流動性規定規則) means a rule made under section 97H(1)(a); *(Added 3 of 2012 s. 3)*

local branch (本地分行), in relation to—

(a) an authorized institution which is a bank, means—

(i) in the case of a bank incorporated in Hong Kong, a place of business thereof in Hong Kong, other than its principal place of business in Hong Kong or any automated teller machine, at which it carries on—

(A) banking business; or

(B) any other business whereby it may incur financial exposure mentioned in section 81(2),

and to which members of the public ordinarily have physical access for the purposes of that business;

(ii) in the case of a bank incorporated outside Hong Kong, a place of business thereof in Hong Kong, other than its principal place of business in Hong

Kong or any automated teller machine, at which it carries on—

(A) banking business; or

(B) any other business whereby it may incur financial exposure mentioned in section 81(2),

and to which members of the public ordinarily have physical access for the purposes of that business; and

(b) an authorized institution which is a deposit-taking company or a restricted licence bank, means a place of business in Hong Kong of the deposit-taking company or the restricted licence bank, other than its principal place of business in Hong Kong or any automated teller machine, at which it carries on—

(i) the business of taking deposits; or

(ii) any other business whereby it may incur financial exposure mentioned in section 81(2),

and to which members of the public ordinarily have physical access for the purposes of that business; *(Replaced 32 of 2001 s. 2)*

local office (本地辦事處), in relation to an authorized institution—

(a) subject to paragraph (b), means a place of business of the institution in Hong Kong from which any business of the institution is promoted or assisted and to which members of the public ordinarily have physical access for the purposes of that business;

(b) does not include—

(i) the institution's principal place of business in Hong Kong;

(ii) a local branch established or maintained by the institution;

(iii) an automated teller machine;

(iv) a place of business of the institution used solely for the purposes of the administration of the affairs or business of the institution or the processing of transactions; or

(v) a place of business of the institution, or a place of business of the institution belonging to a class of places of business, declared in a notice under subsection (14)(ca) not to be a place of business, or a class of places of business, as the case may be, for the purposes of this definition; *(Added 32 of 2001 s. 2)*

local representative office (本地代表辦事處) means an office in Hong Kong of a bank within the meaning of section 46(9); *(Replaced 94 of 1993 s. 2)*

majority shareholder controller (大股東控權人), in relation to a company, means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of the company or of another company of which it is a subsidiary; *(Added 95 of 1991 s. 2)*

Manager (經理人), in relation to an authorized institution, means the person appointed, pursuant to section 52(1)(C), to be the Manager of the institution; *(Added 49 of 1995 s. 2)*

manager (經理)—

(a) subject to paragraph (c), in relation to an authorized institution incorporated in Hong Kong, means any individual, other than a director or chief executive of the institution, appointed by the institution, or by a person acting for or on behalf of or by an arrangement with the

institution, to be principally responsible, either alone or with others, for the conduct of any one or more of the affairs or business of the institution specified in the Fourteenth Schedule;

(b) subject to paragraph (c), in relation to an authorized institution incorporated outside Hong Kong, means any individual, other than a chief executive of the institution, appointed by the institution, or by a person acting for or on behalf of or by an arrangement with the institution, to be principally responsible, either alone or with others, for the conduct of any one or more of the affairs or business in Hong Kong of the institution specified in the Fourteenth Schedule;

(c) does not include a person, or a person belonging to a class of persons, declared in a notice under subsection (14)(cb) not to be a manager, or a class of managers, as the case may be, for the purposes of this definition; *(Replaced 32 of 2001 s. 2)*

minority shareholder controller (小股東控權人), in relation to a company, means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 10% or more, but not more than 50%, of the voting power at any general meeting of the company or of another company of which it is a subsidiary; *(Added 95 of 1991 s. 2)*

Monetary Authority (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66); *(Added 82 of 1992 s. 11)*

money at call (短期通知款項) means money payable within not more than 24 hours of a demand therefor, but does not include money payable on demand;

money broker (貨幣經紀)—

(a) subject to paragraph (b), means a person who, for reward (whether by way of commission, fees or otherwise), carries on the business in or from Hong Kong, or provides to persons in Hong Kong the service, of negotiating, arranging or facilitating, whether by electronic means or otherwise, agreements between other persons—

(i) in respect of—

(A) the making of a deposit of any currency;

(B) the purchase or sale of any currency, and whether or not the currency the subject of the purchase or sale is to be received or delivered immediately or at any future time or upon the happening of any future occurrence; or

(C) the purchase or sale of an instrument, or an instrument belonging to a class of instruments, declared in a notice under subsection (14)(a) to be an instrument, or a class of instruments, as the case may be, for the purposes of this definition;

(ii) one of which is an authorized institution; and

(iii) as agent for, or as the provider of a dealing service to, not less than one of those persons;

(b) does not include an authorized institution or—

(i) subject to paragraph (c), a person acting as a money broker where the person is so acting wholly ancillary or incidentally to a business carried on by the person which, if the business is, or were to be, carried on in or from Hong Kong , is not, or would not be, as the case may be, the business of acting as a money broker; or

(ii) a person, or a person belonging to a class of persons, declared in a notice under subsection (14)(b) not to be a person, or a class of persons, as the case may be, for the purposes of this definition;

(c) includes a person, or a person belonging to a class of persons, declared in a notice under subsection (14)(c) to be a person, or a class of persons, as the case may be, to whom paragraph (b)(i) shall not apply; *(Added 4 of 1997 s. 3)*

multilateral development bank (多邊發展銀行) means any bank or lending or development body specified by the Monetary Authority under subsection (19); *(Added 19 of 2005 s. 7)*

opportunity of being heard (陳詞機會) means a reasonable opportunity of being heard; *(Added 6 of 2002 s. 2)*

overseas branch (海外分行) means a branch outside Hong Kong of an authorized institution incorporated in Hong Kong, at which it carries on banking business or a business of taking deposits, as the case may be, whether or not the business of the branch is limited by the laws or regulations of the place in which the branch is situated and whether or not the branch is referred to as an agency in such place;

overseas representative office (海外代表辦事處) means an office outside Hong Kong, other than an overseas branch, of an authorized institution incorporated in Hong Kong;

public (公眾人士) means the public of Hong Kong, and includes any class of that public; *(Added 32 of 2001 s. 2)*

recognized stock market (認可證券市場) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); *(Added 5 of 2002 s. 407)*

register (紀錄冊) means the register maintained under section 20; *(Replaced 49 of 1995 s. 2)*

registered (註冊) means registered under section 16; *(Replaced 49 of 1995 s. 2)*

registered institution (註冊機構) means an authorized institution—

(a) to which section 25(a) or 32 of Schedule 10 to the Securities and Futures Ordinance (Cap. 571) applies; or

(b) granted a certificate of registration; *(Added 6 of 2002 s. 2)*

regulated activity (受規管活動), in relation to a registered institution, means a regulated activity—

(a) within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); and

(b) in respect of which the institution is registered—

(i) to carry on the activity; and

(ii) by virtue of—

(A) in the case of an institution falling within paragraph (a) of the definition of registered institution, section 25(a) or 32 of Schedule 10 to the Securities and Futures Ordinance (Cap. 571);

(B) in any other case, the certificate of registration granted to it; *(Added 6 of 2002 s. 2)*

require (要求) means reasonably require; *(Added 32 of 2001 s. 2)*

reserves (儲備), in relation to an authorized institution, means reserves which appear in the accounts of the institution, but does not include any reserves which are represented by the writing down of the value of assets or by provision for the depreciation of fixed assets; *(Added 95 of 1991 s. 2)*

restricted banking licence (有限制銀行牌照) means a restricted banking licence granted under section 16; *(Added 3 of 1990 s. 2. Amended 49 of 1995 s. 2)*

restricted licence bank (有限制牌照銀行) means a company which holds a valid restricted banking licence. *(Added 3 of 1990 s. 2)*

Review Tribunal (覆核審裁處) means the Banking Review Tribunal established by section 101A; *(Replaced 3 of 2012 s. 3)*

Securities and Futures Commission (證監會) means the Securities and Futures Commission referred to in the Securities and Futures Ordinance (Cap. 571); *(Added 6 of 2002 s. 2)*

share (股份) means share in the share capital of a company, and includes stock except where a distinction between stock or shares is expressed or implied; and the expression ***shareholder*** (股東) includes a stockholder;

share premium account (股份溢價帳) means the account to which the aggregate amount or value of the premiums on shares issued (whether for cash or otherwise) is transferred; *(Added 19 of 2005 s. 7. Amended 28 of 2012 ss. 912 & 920)*

short-term deposit (短期存款) means a deposit with an original term to maturity of less than the period specified in item 1 of the First Schedule or with a period of call or notice of less than such specified period; *(Amended 3 of 1990 s. 2)*

specified sum (指明款項), in relation to—

(a) a deposit-taking company, means the sum referred to in section 14(1)(a); and

(b) a restricted licence bank, means the sum referred to in section 14(1)(b); *(Amended 3 of 1990 s. 2)*

SVF licence (工具牌照), in relation to a bank, means a licence regarded as being granted to the bank under section 8G of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584); *(Added 18 of 2015 s. 56)*

The DTC Association (DTC 公會) means The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies incorporated under the Companies Ordinance (Cap. 32) as in force at the time of the incorporation; *(Added 19 of 2005 s. 7. Amended 28 of 2012 ss. 912 & 920)*

The Hong Kong Association of Banks (香港銀行公會) means the body corporate of that name incorporated by section 3 of The Hong Kong Association of Banks Ordinance (Cap. 364); *(Added 19 of 2005 s. 7)*

Tier 1 country (第1級國家) means Hong Kong and any country or place other than Hong Kong which—

(a) is a member of the Organization for Economic Co-operation and Development; or

(b) has concluded a special lending arrangement with the International Monetary Fund associated with the International Monetary Fund's General Arrangements to Borrow,

but excludes any such country or place which—

(c) has rescheduled its external sovereign debt, whether to central government or non-central government creditors, within the previous 5 years; or

(d) is specified by the Monetary Authority by notice published in the Gazette as being a country or place that is not to be regarded as a Tier 1 country for the purposes of this definition; *(Added 19 of 2005 s. 7)*

unsuccessful (不成功), in relation to an appeal, includes any case where the appeal is abandoned or withdrawn; *(Added 49 of 1995 s. 2)*

working day (工作日) means a day other than a public holiday or a gale warning day within the meaning of section 2 of the

Judicial Proceedings (Adjournment During Gale Warning Days) Ordinance (Cap. 62). *(Added 95 of 1991 s. 2)*

(Amended 3 of 1990 s. 2; 82 of 1992 s. 11; 94 of 1993 s. 2; 49 of 1995 s. 2; 5 of 2002 s. 407; 3 of 2012 s. 3; 18 of 2015 s. 56)

(2) For the purposes of this Ordinance—

(a) the taking of deposits includes holding out as being prepared to take deposits;

(b) an advertisement, invitation or document issued by any person by way of display or exhibition in a public place shall be treated as being issued by him on every day on which he causes or authorizes it to be displayed or exhibited;

(c) an advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, members of the public to—

(i) make deposits; or

(ii) enter into, or offer to enter into, agreements to make deposits,

shall be treated as being an advertisement, invitation or document which is or contains an advertisement, invitation or document to members of the public so to do; and

(d) an advertisement, invitation or document issued by one person on behalf of or to the order of another shall be treated as an advertisement, invitation or document, as the case may be, issued by that other person. *(Amended 32 of 2001 s. 2)*

(3) Without limiting the generality of any other meaning which ***insolvent*** (無力償債) may have, an authorized institution shall, for the purposes of this Ordinance, be deemed to be

insolvent if it has ceased to pay its debts in the ordinary course of business or it cannot pay its debts as they become due.

(4) Where, under this Ordinance, an authorized institution is required to provide facilities to any person for the purpose of any investigation or examination of the institution, such facilities shall include photocopying facilities.

(5) Where there is any doubt or dispute as to whether a medium of exchange is a currency for the purposes of this Ordinance, the Monetary Authority may, by notice in the Gazette—

(a) declare that medium of exchange to be a currency for the purposes of this Ordinance;

(b) declare that medium of exchange not to be a currency for the purposes of this Ordinance. *(Added 94 of 1993 s. 2)*

(6) Any reference in this Ordinance to any person who signs any document includes a reference to any person who authorizes the signing of the document. *(Added 49 of 1995 s. 2)*

(7) Any reference in any provision of this Ordinance to a specified form means the form specified under section 133 for the purposes of that provision. *(Added 49 of 1995 s. 2)*

(8) For the avoidance of doubt, it is hereby declared that any reference in this Ordinance, other than section 14, to taking a deposit (or words to the like effect) includes holding a deposit. *(Added 49 of 1995 s. 2. Amended 19 of 2005 s. 8)*

(9) Any reference in this Ordinance to the relevant banking supervisory authority, in relation to a company incorporated outside Hong Kong, means the banking supervisory authority outside Hong Kong which, in the opinion of the Monetary Authority, has a supervisory responsibility for that company (and whether or not that authority is located in the place

where that company is incorporated). *(Added 49 of 1995 s. 2. Amended 42 of 1999 s. 2)*

(10) In sections 18(4), 22(4), 24(5) and 25(3), the term ***continuing to hold a deposit*** (繼續持有存款) includes renewing a deposit. *(Added 49 of 1995 s. 2)*

(11) *(Repealed 18 of 2015 s. 56)*

(12) References in this Ordinance to the affairs, business and property of an authorized institution (including a former authorized institution) include, in the case of a bank, any affairs, business and property of the bank arising from, or attributable to, whether directly or indirectly, the issue, or the facilitation of the issue, of stored value facilities under its SVF licence. *(Added 4 of 1997 s. 3. Amended 18 of 2015 s. 56)*

(13) *(Repealed 18 of 2015 s. 56)*

(14) The Monetary Authority may, by notice in the Gazette, and subject to such conditions, if any, as are specified in the notice—

(a) declare an instrument, or a class of instruments, to be an instrument, or a class of instruments, as the case may be, for the purposes of the definition of ***money broker***;

(b) declare a person, or a class of persons, not to be a money broker, or a class of money brokers, as the case may be, for the purposes of the definition of ***money broker***;

(c) declare a person, or a class of persons, to be a person, or a class of persons, as the case may be, to whom paragraph (b)(i) of the definition of ***money broker*** shall not apply;

(ca) declare a place of business, or a class of places of business, not to be a place of business, or a class of

places of business, as the case may be, for the purposes of the definition of ***local office***; *(Added 32 of 2001 s. 2)*

(cb) declare a person, or a class of persons, not to be a manager, or a class of managers, as the case may be, for the purposes of the definition of ***manager***. *(Added 32 of 2001 s. 2. Amended 18 of 2015 s. 56)*

(d) *(Repealed 18 of 2015 s. 56)*

(15) It is hereby declared that—

(a)-(b) *(Repealed 18 of 2015 s. 56)*

(c) any reference in this Ordinance to a person acting as a money broker (or words to the like effect) includes a person holding himself out to be a money broker;

(d) a notice under subsection (14) is subsidiary legislation. *(Added 4 of 1997 s. 3)*

(16) Any reference in this Ordinance to a continuing offence means an offence consisting of a person's continued default, refusal or other contravention of a requirement (howsoever described) of this Ordinance, and notwithstanding that the period specified by or under this Ordinance for complying with that requirement has expired. *(Added 4 of 1997 s. 3)*

(17) For the avoidance of doubt, it is hereby declared that any reference in this Ordinance to the commission of an offence by every director, every chief executive and every manager of an authorized institution or other company (including any grammatical variations or cognate expressions of such reference) means that one or more than one of any such director, chief executive and manager may be prosecuted for the offence. *(Added 32 of 2001 s. 2)*

(18) Any provision of this Ordinance that purports to impose criminal liability on every manager of an authorized institution or other company in the event of a contravention

of this Ordinance shall be construed as imposing criminal liability on a manager of an authorized institution or other company only to the extent that the contravention was caused or contributed to by an act or omission on the part of the manager himself or a person under his control. *(Added 19 of 2005 s. 8)*

(19) The Monetary Authority may by notice published in the Gazette specify to be a multilateral development bank for the purposes of this Ordinance any bank or lending or development body established by agreement between, or guaranteed by, 2 or more countries, territories or international organizations other than for purely commercial purposes. *(Added 19 of 2005 s. 7)*

(20) A reference in this Ordinance to the issue, or the facilitation of the issue, of a stored value facility is a reference to the issue, or facilitation of the issue, of a stored value facility within the meaning of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584). *(Added 18 of 2015 s. 56)*

(Amended E.R. 1 of 2013)

3. Application

(1) Part III of this Ordinance shall not apply to the taking of any deposit by—

(a) a trust company registered under Part 8 of the Trustee Ordinance (Cap. 29);

(b) a credit union registered under the Credit Unions Ordinance (Cap. 119);

(c) a company, where such deposit is secured by a mortgage, or charge— *(Amended 28 of 2012 ss. 912 & 920)*

(i) registered, or to be registered, under the Companies Ordinance (Cap. 622);

(ii) registered, or to be registered, under a provision of the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date* of section 2 of Schedule 9 to the Companies Ordinance (Cap. 622), having a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622); or

(iii) registered under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622); *(Amended 28 of 2012 ss. 912 & 920)*

(d) a person bona fide carrying on insurance business where such deposit is taken in the ordinary course of such business;

(e) a person bona fide operating a superannuation or provident fund where such deposit is taken for the purposes of such fund;

(f) a public utility company specified in Schedule 3 to the Inland Revenue Ordinance (Cap. 112) where such deposit is taken from a consumer; *(Amended 95 of 1991 s. 2)*

(g) an employer where such deposit is taken from a bona fide employee;

(h) a solicitor, where such deposit is taken from a client, or as a stakeholder, in the ordinary course of his practice; *(Amended 64 of 1987 s. 3)*

(i) *(Repealed 78 of 1999 s. 7)*

(j) a corporation who is licensed to carry on a business in dealing in securities, dealing in futures contracts, leveraged foreign exchange trading or securities margin financing under Part V of the Securities and Futures Ordinance (Cap. 571) where rules made under section

149 of that Ordinance apply to such deposit; *(Replaced 5 of 2002 s. 407)*

(ja) a mutual fund or unit trust authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (Cap. 571); *(Replaced 5 of 2002 s. 407)*

(k) a person authorized under Part III of the Securities and Futures Ordinance (Cap. 571) to provide automated trading services as defined in Part 2 of Schedule 5 to that Ordinance, where such deposit is provided as security in relation to a transaction referred to in paragraph (c) of that definition; *(Replaced 5 of 2002 s. 407)*

(ka) *(Repealed 5 of 2002 s. 407)*

(l) a recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), where such deposit is provided as security in relation to a market contract within the meaning of that section; or *(Added 68 of 1992 s. 20. Amended 62 of 1995 s. 12; 5 of 2002 s. 407)*

(m) the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66). *(Replaced 64 of 1987 s. 3)*

(2) Part III of this Ordinance shall not apply to the taking of any deposit from—

(a) an authorized institution;

(b) a bank incorporated outside Hong Kong that is not an authorized institution; *(Amended 94 of 1993 s. 3; 49 of 1995 s. 3)*

(c) a money lender licensed under the Money Lenders Ordinance (Cap. 163) in the ordinary course of his business as a money lender; or

(d) a pawnbroker licensed under the Pawnbrokers Ordinance (Cap. 166) in the ordinary course of his business as a pawnbroker.

(3) Notwithstanding anything in The Hongkong and Shanghai Banking Corporation Limited Ordinance (Cap. 70), this Ordinance shall apply to The Hongkong and Shanghai Banking Corporation Limited. *(Amended L.N. 333 of 1989; 95 of 1991 s. 3)*

(4) Where there is any conflict or inconsistency between this Ordinance and The Hongkong and Shanghai Banking Corporation Limited Ordinance (Cap. 70) the provisions of this Ordinance shall prevail. *(Amended L.N. 333 of 1989; 95 of 1991 s. 3)*

(5) An authorized institution which is incorporated or registered by or under— *(Amended 28 of 2012 ss. 912 & 920)*

(a) the Companies Ordinance (Cap. 622); or

(b) the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date* of section 2 of Schedule 9 to the Companies Ordinance (Cap. 622),

is subject to the Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), as well as to this Ordinance, except that, where there is any conflict between this Ordinance on the one hand and the Companies Ordinance (Cap. 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) on the other, this Ordinance prevails. *(Amended 28 of 2012 ss. 912 & 920)*

(Amended E.R. 2 of 2014)

Editorial Note:

* Commencement date : 3 March 2014.

Part II

Appointments, Functions of Monetary Authority, Reports by Monetary Authority and Power of Chief Executive to Give Directions#

*(*Format changes—E.R. 1 of 2013)*

Editorial Note:
 # (Amended 82 of 1992 s. 25; 68 of 1999 s. 3)
* The format of Part II has been updated to the current legislative styles.

4. Banking Advisory Committee

(1) There is hereby established a Banking Advisory Committee for the purpose of advising the Chief Executive upon any matter connected with this Ordinance, in particular in relation to banks and the carrying on of banking business, and of advising the Chief Executive in Council and in any case where the advice of the Committee is sought under section 53(2). *(Amended 94 of 1993 s. 4)*

(2) The Banking Advisory Committee shall consist of the Financial Secretary, who shall be the chairman, the Monetary Authority, and such other persons, not being less than 4 nor more than 12, as the Chief Executive may from time to time appoint.

(3) The members of the Banking Advisory Committee appointed by the Chief Executive shall hold office for such period and upon such terms as the Chief Executive may specify in their appointments.

(4) In the absence of the chairman at any meeting of the Banking Advisory Committee, the Financial Secretary may appoint the chairman.

(Amended 82 of 1992 s. 12; 68 of 1999 s. 3)

5. Deposit-taking Companies Advisory Committee

(1) There is hereby established a Deposit-taking Companies Advisory Committee for the purpose of advising the Chief Executive upon any matter connected with this Ordinance, in particular in relation to deposit-taking companies and restricted licence banks and the carrying on of a business of taking deposits by them, and of advising the Chief Executive in Council and in any case where the advice of the Committee is sought under section 53(2). *(Amended 3 of 1990 s. 2; 94 of 1993 s. 5)*

(2) The Deposit-taking Companies Advisory Committee shall consist of the Financial Secretary, who shall be the chairman, the Monetary Authority, and such other persons, not being less than 4 nor more than 12, as the Chief Executive may from time to time appoint.

(3) The members of the Deposit-taking Companies Advisory Committee appointed by the Chief Executive shall hold office for such period and upon such terms as the Chief Executive may specify in their appointments.

(4) In the absence of the chairman at any meeting of the Deposit-taking Companies Advisory Committee, the Financial Secretary may appoint the chairman.

(Amended 82 of 1992 s. 13; 68 of 1999 s. 3)

6. *(Repealed 82 of 1992 s. 14)*

7. Functions of the Monetary Authority

(1) The principal function of the Monetary Authority under this Ordinance shall be to promote the general stability and

effective working of the banking system. *(Amended 82 of 1992 s. 15)*

(2) Without limiting the generality of subsection (1), the Monetary Authority shall— *(Amended 82 of 1992 s. 25)*

(a) be responsible for supervising compliance with the provisions of this Ordinance;

(b) take all reasonable steps to ensure that the principal places of business, local branches, local offices, overseas branches and overseas representative offices of all authorized institutions and local representative offices are operated in a responsible, honest and business-like manner; *(Amended 32 of 2001 s. 3)*

(c) promote and encourage proper standards of conduct and sound and prudent business practices amongst authorized institutions and money brokers; *(Amended 4 of 1997 s. 4)*

(d) suppress or aid in suppressing illegal, dishonourable or improper practices in relation to the business practices of authorized institutions;

(e) co-operate with and assist recognized financial services supervisory authorities of Hong Kong or of any place outside Hong Kong, whenever appropriate, to the extent permitted by this or any other Ordinance; *(Amended 95 of 1991 s. 4; 6 of 2002 s. 3)*

(f) consider and propose reforms of the law relating to banking business and the business of taking deposits; and *(Amended 6 of 2002 s. 3)*

(g) take all reasonable steps to ensure that any banking business, any business of taking deposits, or any other business, carried on by an authorized institution is carried on—

(i) with integrity, prudence and the appropriate degree of professional competence; and

(ii) in a manner which is not detrimental, or likely to be detrimental, to the interests of depositors or potential depositors. *(Added 6 of 2002 s. 3)*

(3) The Monetary Authority may from time to time cause to be prepared and published by notice in the Gazette guidelines indicating the manner in which he proposes to exercise functions conferred or imposed by or under this Ordinance upon him. *(Amended 82 of 1992 s. 25; 19 of 2005 s. 7)*

8. *(Repealed 82 of 1992 s. 16)*

9. Reports by Monetary Authority

(1) The Monetary authority shall, as soon as practicable after each 31 December, prepare and furnish to the Financial Secretary a report on the working of this Ordinance and on the activities of his office during the preceding year and, in that report, may set out any measures that he considers necessary for improving the working of this Ordinance and of the activities of his office. *(Amended 94 of 1993 s. 6)*

(2) In the report under subsection (1), the Monetary Authority shall draw attention to any breach or avoidance of this Ordinance that has come to his notice during the preceding year or any irregularity discovered by him in the accounts and records of the financial transactions of any authorized institution for that period which is, in his opinion, of sufficient importance to justify him so doing.

(3) The Monetary Authority shall, at such times as he considers necessary, report to the Financial Secretary on improvements that he considers to be desirable in the operation and management of his office.

(4) The Chief Executive may, at any time, request the Monetary Authority to report to him on any matter relating to the working of this Ordinance or the activities of the office of the Monetary Authority, and the Monetary Authority shall, forthwith, prepare and furnish a report to the Chief Executive accordingly. *(Amended 68 of 1999 s. 3)*

(5) Where the Financial Secretary is furnished with a report under subsection (1), he may, as he thinks fit, publish the report, in whole or in part, in such manner as he thinks fit or decline to publish any part of the report. *(Replaced 94 of 1993 s. 6)*

(6) *(Repealed 94 of 1993 s. 6)*

(Amended 82 of 1992 s. 25)

10. Power of Chief Executive to give directions

(1) The Chief Executive may give to the Financial Secretary and the Monetary Authority such directions as he thinks fit with respect to the exercise of their respective functions under this Ordinance, either generally or in any particular case.

(2) The Financial Secretary and the Monetary Authority shall, in the exercise of their respective functions under this Ordinance, comply with any directions given by the Chief Executive under this section.

(Amended 82 of 1992 s. 25; 68 of 1999 s. 3)

PART III

BANKING BUSINESS AND BUSINESS OF TAKING DEPOSITS TO BE CARRIED ON BY AUTHORIZED INSTITUTIONS ONLY

11. Banking business restricted to licensed banks

(1) No banking business shall be carried on in Hong Kong except by a bank (other than a bank the banking licence of which is for the time being suspended under section 24 or 25). *(Amended 49 of 1995 s. 4)*

(2) Any person who and every director and every manager of a company which contravenes this section commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

12. Restriction on business of taking deposits

(1) No business of taking deposits shall be carried on in Hong Kong except by an authorized institution (other than an authorized institution the authorization of which is for the time being suspended under section 24 or 25). *(Amended 49 of 1995 s. 5)*

(2) A deposit-taking company shall not take any short-term deposit in Hong Kong.

(3) A deposit-taking company shall not, without the written permission of the Monetary Authority, repay any deposit within a period of less than the period specified in item 1 of

the First Schedule from the date on which the deposit was taken by the company. *(Amended 82 of 1992 s. 25)*

(4) No deposit-taking company or restricted licence bank shall receive money on savings account.

(5) Subject to section 14, a restricted licence bank may take short-term deposits. *(Amended 49 of 1995 s. 5)*

(6) Any person who contravenes subsection (1), every director, every chief executive and every manager of a deposit-taking company which contravenes subsection (2), (3) or (4), and every director, every chief executive and every manager of a restricted licence bank which contravenes subsection (4), commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

(7) Any person who enters into a contract or arrangement, or uses any device or scheme, which has the effect of, or is designed to have the effect of, avoiding subsection (1), (2), (3) or (4) commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

(8) For the purposes of any proceedings for an offence under subsection (6), if it is proved that a person took deposits on at least 5 separate occasions within any period of 30 days, that person shall, in the absence of evidence to the contrary, be deemed to have been carrying on a business of taking deposits. *(Amended 49 of 1995 s. 5)*

(Amended 3 of 1990 s. 4)

13. Power to grant exemptions

(1) The Financial Secretary may, by notice in the Gazette, exempt any person or class of persons from section 12(1) and, if the Financial Secretary thinks fit, in that notice also exempt that person or class of persons from section 92(1) in respect of the business of taking deposits to which the exemption from section 12(1) relates. *(Replaced 64 of 1987 s. 4)*

(2) An exemption under subsection (1) shall be subject to such conditions as are specified in the notice.

(3) The Financial Secretary may at any time by notice in the Gazette—

(a) revoke an exemption under subsection (1); or

(b) revoke, vary, or add to, any condition subject to which such exemption is granted.

14. Deposit-taking company not to take deposits less than specified sum

(1) Subject to subsection (2)—

(a) a deposit-taking company shall not take in Hong Kong any deposit from a depositor of a sum less than the amount specified in item 2 of the First Schedule; and

(b) a restricted licence bank shall not take in Hong Kong any deposit from a depositor of a sum less than the amount specified in item 3 of the First Schedule. *(Amended 95 of 1991 s. 5)*

(2) A deposit-taking company or restricted licence bank may take a deposit from a depositor of a sum less than the specified sum applying at the date of that deposit if the amount standing to the credit of the depositor with the deposit-taking

company or restricted licence bank, as the case may be, at the time any such deposit is taken is not less than the specified sum applying at the date of that deposit.

(3) Except where a depositor withdraws the whole amount standing to his credit with a deposit-taking company or a restricted licence bank, the deposit-taking company or restricted licence bank, as the case may be, shall not at the time of the withdrawal of any sum permit the amount of the balance standing to the credit of the depositor to be less than the specified sum.

(4) Notwithstanding subsection (3), where a depositor has an amount standing to his credit with a deposit-taking company or a restricted licence bank at a time when the specified sum is amended by being increased, the deposit-taking company or restricted licence bank, as the case may be, may permit the amount of the balance to be reduced by withdrawals to any amount that is not less than the specified sum as it was before being so amended.

(5) Every director, every chief executive and every manager of a deposit-taking company or a restricted licence bank which contravenes subsection (1) or (3) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(6) Any person who holds himself out, whether as a broker or agent of a deposit-taking company or a restricted licence bank or otherwise, as being prepared to take from any person, any sum less than the specified sum for the purpose of making a deposit of that sum, or of that sum and other sums, with the

deposit-taking company or restricted licence bank, as the case may be, 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)*

(7) Any person who enters into a contract or arrangement, or uses any device or scheme, which has the effect of, or is designed to have the effect of, avoiding subsection (1) or (3) commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

(Amended 3 of 1990 s. 5)

14A. *(Repealed 18 of 2015 s. 57)*

PART IV

AUTHORIZATION

(Part IV replaced 49 of 1995 s. 6)

15. Application for authorization, etc.

(1) A company which proposes to carry on—

(a) banking business;

(b) a business of taking deposits as a deposit-taking company; or

(c) a business of taking deposits as a restricted licence bank,

shall apply to the Monetary Authority for authorization to carry on that business.

(2) There shall be lodged with the Monetary Authority in respect of an application for authorization from a company—

(a) a copy of the memorandum and articles of association or other document constituting the company, which shall be verified in such manner as the Monetary Authority may require; and

(b) such other documents and information as may be required by the Monetary Authority.

(3) *(Repealed 18 of 2015 s. 58)*

16. Grant or refusal of authorization, etc.

(1) Subject to subsections (2) and (6), the Monetary Authority may, on receipt of an application in accordance with section 15 from a company—

(a) authorize the company to carry on the business the subject of the application subject to such conditions, if

any, as he may think proper to attach to the company's authorization in any particular case; or

(b) refuse to so authorize the company.

(2) Without limiting the generality of subsection (1)(b), the Monetary Authority shall refuse to authorize a company under that subsection if any one or more of the criteria specified in the Seventh Schedule applicable to or in relation to the company are not fulfilled with respect to the company.

(3) The authorization of a company under subsection (1)(a) shall be effected by—

(a) the grant of a banking licence where the carrying on of banking business is the subject of the company's application for authorization;

(b) registering the company where the carrying on of a business of taking deposits as a deposit-taking company is the subject of the company's application for authorization, for which purpose the Monetary Authority shall—

(i) enter in the register the relevant particulars specified in section 20; and

(ii) notify the company in writing of the registration and date of registration;

(c) the grant of a restricted banking licence where the carrying on of a business of taking deposits as a restricted licence bank is the subject of the company's application for authorization.

(3A)-(3B) *(Repealed 18 of 2015 s. 59)*

(4) Where the Monetary Authority refuses to authorize a company under subsection (1)(b), he shall notify the company in writing of— *(Amended 18 of 2015 s. 59)*

(a) the refusal; and

(b) the reasons for the refusal.

(5) Without limiting the generality of subsection (1)(a) but subject to section 134A, the Monetary Authority may at any time, by notice in writing served on an authorized institution, attach to its authorization such conditions (including attach by way of amending conditions already attached to its authorization), or cancel any conditions attached to its authorization, as he may think proper. *(Amended 18 of 2015 s. 59)*

(6) Before exercising his power under subsection (1)(b) to refuse to authorize a company, the Monetary Authority shall give the company an opportunity, within such period as the Monetary Authority may specify in writing, being a period reasonable in all the circumstances, of being heard. *(Amended 18 of 2015 s. 59)*

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

(8) Every director, every chief executive and every manager of an authorized institution which contravenes any condition attached under subsection (1)(a) or (5) to its authorization commits an offence and is liable— *(Amended 32 of 2001 s. 24; 18 of 2015 s. 59)*

(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)*

(9) It is hereby declared that, without limiting the generality of subsection (1)(a) or (5), conditions attached under that subsection to an authorization may— *(Amended 18 of 2015 s. 59)*

(a) impose restrictions, either generally or in any particular case, on the banking business, business of taking

deposits as a deposit-taking company or business of taking deposits as a restricted licence bank, as the case may be, which may be carried on by the authorized institution to which the authorization relates; *(Amended 18 of 2015 s. 59)*

(aa)-(ac) *(Repealed 18 of 2015 s. 59)*

(b) notwithstanding any other provisions of this Ordinance or the provisions of any other enactment (including the Companies Ordinance (Cap. 622)), impose requirements in relation to the accounts of the authorized institution to which the authorization relates, including— *(Amended 28 of 2012 ss. 912 & 920)*

(i) the institution's audited annual accounts within the meaning of section 60(11);

(ii) any supplementary information to those audited annual accounts;

(iii) the report of the directors under section 388 of the Companies Ordinance (Cap. 622); *(Amended 28 of 2012 ss. 912 & 920)*

(iv) the institution's cash flow statement, together with any notes thereon, where the statement does not already form part of those audited annual accounts;

(v) the disclosure (whether to the public or otherwise) of those audited annual accounts, that supplementary information, that report, that cash flow statement or those notes.

(10) The Monetary Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of companies seeking to be authorized, guidelines not inconsistent with this Ordinance, indicating the manner in which he proposes to exercise functions conferred or imposed by this section and the Seventh Schedule upon him.

(Amended 4 of 1997 s. 7)

17. Application for authorization in the case of proposed company

Where a body of persons proposes to form a company for the purpose of carrying on a business referred to in section 15(1), it may apply to the Monetary Authority for an intimation as to whether or not the company will be authorized to carry on that business upon its incorporation and, in the case of any such application, the provisions of sections 15(2) and 16 and the Seventh Schedule shall be read and have effect with such modifications as may be necessary to take account of such application.

18. Variation of authorization

(1) Where a deposit-taking company is authorized to carry on banking business or a business of taking deposits as a restricted licence bank, it shall thereupon cease to be a deposit-taking company.

(2) Where a restricted licence bank is authorized to carry on banking business or a business of taking deposits as a deposit-taking company, it shall thereupon cease to be a restricted licence bank.

(3) Where a bank is authorized to carry on a business of taking deposits as a deposit-taking company or as a restricted licence bank, it shall thereupon cease to be a bank.

(4) The Monetary Authority may, by notice in writing served on an authorized institution, consent to the institution continuing to hold a deposit—

(a) lawfully taken by the institution before the date on which subsection (1), (2) or (3) applied to the institution;

(b) the holding of which on or after that date would, but for this subsection, contravene any of the provisions of section 11, 12 or 14; and

(c) subject to such conditions, if any, as he may think proper to attach to the consent in any particular case,

and, accordingly, if the institution continues to hold that deposit on or after that date pursuant to that consent and in accordance with those conditions, if any, then it shall be deemed not to have thereby contravened any of those provisions.

(5) Without limiting the generality of subsection (4)(c), the Monetary Authority may, by notice in writing served on an authorized institution, attach to a consent given to the institution pursuant to subsection (4) such conditions (including attach by way of amending conditions already attached to such consent), or cancel any conditions attached to such consent, as he may think proper.

(6) Without limiting the generality of subsection (4)(c) or (5), conditions referred to in that subsection may specify—

(a) the period for which a deposit referred to in subsection (4) may be held by the authorized institution concerned;

(b) the manner in which such deposit may be held or used by the institution.

(7) The Monetary Authority may, by notice in writing served on an authorized institution, require the institution to submit, within such period and in such manner as are specified in the notice, such information as he may reasonably require to ascertain whether the institution is complying with any conditions referred to in subsection (4)(c) or (5) attached to a consent given to the institution pursuant to subsection (4).

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

(9) Every director, every chief executive and every manager of an authorized institution which contravenes any condition referred to in subsection (4)(c) or (5) attached to a consent

given to the institution pursuant to subsection (4) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(10) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (7) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(11) Any person who signs any document for the purposes of any requirement under subsection (7) 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)*

19. Fees payable by authorized institutions

(1) An authorized institution shall, within 14 days after the date

on which it was authorized, pay to the Director of Accounting Services—

(a) in the case of a bank, the banking licence fee;

(b) in the case of a deposit-taking company, the registration fee;

(c) in the case of a restricted licence bank, the restricted banking licence fee,

specified in the Second Schedule.

(2) Every authorized institution shall pay to the Director of Accounting Services annually—

(a) in the case of a bank, the renewal of banking licence fee specified in the Second Schedule upon the anniversary of the date on which it was authorized;

(b) in the case of a deposit-taking company, the renewal of registration fee specified in the Second Schedule—

(i) where the company was carrying on a business of taking deposits on 1 April 1976, on 1 April in each year;

(ii) where subparagraph (i) does not apply, upon the anniversary of the date on which it was authorized;

(c) in the case of a restricted licence bank, the renewal of restricted banking licence fee specified in the Second Schedule upon the anniversary of the date on which it was authorized.

20. Register of authorized institutions, etc.

(1) The Monetary Authority shall maintain a register, in such form as he thinks fit, which shall contain—

(a) the name and the address of the principal place of business in Hong Kong of every bank;

(b) the name of every bank which has a local representative office and the address of the place of business in Hong Kong of every local representative office;

(c) the name and the address of the principal place of business in Hong Kong of every deposit-taking company;

(d) the name and the address of the principal place of business in Hong Kong of every restricted licence bank;

(e) in the case of a bank (including a bank referred to in paragraph (b)), deposit-taking company or restricted licence bank, incorporated outside Hong Kong, the address of its principal place of business outside Hong Kong; *(Amended 6 of 2002 s. 4)*

(ea) in the case of a registered institution, and not later than 12 months after the commencement of this paragraph—

(i) the name and business address of every relevant individual;

(ii) the capacity in which every relevant individual is engaged in relation to a regulated function in a regulated activity;

(iii) the date on which every relevant individual was first so engaged; and

(iv) such other particulars as the Monetary Authority thinks fit having regard to rules made under section 397 of the Securities and Futures Ordinance (Cap. 571) for the purposes of section 136(2) of that Ordinance; and *(Added 6 of 2002 s. 4)*

(f) such other particulars of banks, local representative offices, deposit-taking companies or restricted licence banks as the Monetary Authority thinks fit (including

particulars of any order of the Court of First Instance under section 53E(1)). *(Amended 25 of 1998 s. 2)*

(2) The register shall be kept at the office of the Monetary Authority or at such other place as may be notified by the Monetary Authority in the Gazette.

(3) The Monetary Authority may require an authorized institution (including an authorized institution seeking to be a registered institution) or local representative office to submit such information for the purposes of subsection (1) as he may reasonably require in order to maintain the register in so far as it relates to that authorized institution or local representative office, as the case may be, and such information shall be submitted within such period and in such manner as the Monetary Authority may require. *(Replaced 6 of 2002 s. 4)*

(4) Where any information submitted to the Monetary Authority under subsection (3) changes subsequent to the submission, the authorized institution or local representative office which submitted the information shall give notice in writing to the Monetary Authority of such change—

(a) subject to paragraph (b), not later than 21 days after such change takes place;

(b) where subsection (1)(ea) is applicable, within 7 business days after such change takes place. *(Replaced 6 of 2002 s. 4)*

(4A) For the purposes of enabling any member of the public to ascertain whether a person he is dealing with is a relevant individual in relation to a registered institution and, if so, the capacity in which the relevant individual is engaged in relation to a regulated function in a regulated activity and the date on which the relevant individual was first so engaged, the information contained in the register under subsection

(1)(ea) shall be made available to public inspection under subsection (5). *(Added 6 of 2002 s. 4)*

(4B) Without prejudice to the generality of any other provisions of this section, the Monetary Authority shall cause the register, to the extent to which it relates to subsection (1)(ea), to be made available to public inspection in the form of an on-line record. *(Added 6 of 2002 s. 4)*

(5) Subject to subsection (5A), any member of the public may, with effect from such date and during such hours as shall be notified by the Monetary Authority in the Gazette, on payment of the fee specified in the Second Schedule— *(Amended 6 of 2002 s. 4)*

(a) inspect the register or obtain a copy of an entry in the register or an extract from the register; or

(b) inspect or obtain a copy of or an extract from any document lodged with the Monetary Authority under section 15(2)(a).

(5A) The fee mentioned in subsection (5) shall not be payable in the case of an inspection, or the obtaining of a copy or an extract, mentioned in that subsection where the register or document concerned is available to public inspection in the form of an on-line record. *(Added 6 of 2002 s. 4)*

(6) A document purporting to be—

(a) a copy of any entry in or extract from the register, or of any document lodged with the Monetary Authority by a company under this Ordinance; and

(b) signed and certified by the Monetary Authority as a true copy of the entry, extract or document referred to in paragraph (a),

shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and—

(i) in the absence of evidence to the contrary, the court shall presume that—

(A) the signature and certification is that of the Monetary Authority; and

(B) the document is a true and correct copy of the entry, extract or document referred to in paragraph (a); and

(ii) such document shall be prima facie evidence of all matters contained therein.

(7) Every director, every chief executive and every manager of an authorized institution, and any person in charge, or who appears to be in charge, of a local representative office, which fails, without reasonable excuse, to comply with a requirement under subsection (3), or to comply with subsection (4), commits an offence and is liable— *(Amended 32 of 2001 s. 24; 6 of 2002 s. 4)*

(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)*

(8) If any authorized institution or local representative office submits any information under subsection (3) or (4) which is false in a material particular, every director, every chief executive and every manager of the authorized institution, or

any person in charge, or who appears to be in charge, of the local representative office, as the case may be, commits an offence and is liable— *(Amended 32 of 2001 s. 24; 6 of 2002 s. 4)*

(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)*

(9) It is hereby declared that—

(a) the fact that an authorized institution falls within section 25(a) or 32 of Schedule 10 to the Securities and Futures Ordinance (Cap. 571) is not a ground for the institution to fail to comply with a requirement under subsection (3) seeking the submission of information for the purposes of subsection (1)(ea), and subsections (4), (7) and (8) shall be construed accordingly;

(b) the fact that a relevant individual falls within section 26(a) or 33 of Schedule 10 to the Securities and Futures Ordinance (Cap. 571) shall not prohibit the inclusion in the register of any information referred to in subsection (1)(ea) relating to the individual. *(Added 6 of 2002 s. 4)*

(10) In this section—

"business day" (營業日) means any day other than—

(a) a public holiday; or

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

"regulated function" (受規管職能), in relation to a regulated activity carried on as a business by a registered institution, means any function performed for or on behalf of or by an arrangement with the institution relating to the regulated

activity, other than work ordinarily performed by an accountant, clerk or cashier;

"relevant individual" (有關人士), in relation to a registered institution, means an individual who performs for or on behalf of or by an arrangement with the institution any regulated function in a regulated activity. *(Added 6 of 2002 s. 4)*

21. Publication of names entered in or removed from register and suspensions

(1) Where the name of a bank (including a bank referred to in section 20(1)(b)), deposit-taking company or restricted licence bank is entered in the register, the Monetary Authority shall, as soon as reasonably practicable thereafter, publish in the Gazette notice of such entry.

(2) Where a company ceases to be a deposit-taking company, restricted licence bank or bank by virtue of section 18(1), (2) or (3) respectively, the Monetary Authority shall, as soon as reasonably practicable thereafter—

(a) remove from the register the name of the former deposit-taking company, restricted licence bank or bank, as the case may be; and

(b) publish in the Gazette notice of such removal.

(3) Where the authorization of an authorized institution is revoked under this Ordinance, the Monetary Authority shall, as soon as reasonably practicable after the revocation takes effect—

(a) remove from the register the name of the former authorized institution concerned; and

(b) publish in the Gazette notice of such removal.

(4) Where the authorization of an authorized institution is suspended under section 24 or 25, the Monetary Authority shall, as soon as reasonably practicable thereafter—

(a) make a notation in the register against the name of the authorized institution concerned that its authorization has been so suspended and, if such suspension is for a specified period, shall, in that notation, give particulars of such period; and

(b) publish in the Gazette notice of such notation.

(5) Where approval for the establishment of a local representative office is revoked under this Ordinance, the Monetary Authority shall, as soon as reasonably practicable thereafter—

(a) remove from the register the name of the bank which maintained the local representative office; and

(b) publish in the Gazette notice of such removal.

PART V

REVOCATION OF AUTHORIZATION

(Part V replaced 49 of 1995 s. 6)

22. Revocation of authorization

(1) Subject to subsections (1A) and (3) and section 23(1), the Monetary Authority may, after consultation with the Financial Secretary, propose to revoke the authorization of an authorized institution— *(Amended 19 of 2005 s. 9)*

(a) on any one or more of the grounds specified in the Eighth Schedule applicable to or in relation to the institution; and

(b) by notice in writing served on the institution.

(1A) The requirement in subsection (1) to consult the Financial Secretary before proposing to revoke the authorization of an authorized institution shall not apply where the ground for the revocation of the authorization of the authorized institution is a request in writing by the institution to the Monetary Authority to revoke its authorization. *(Added 19 of 2005 s. 9)*

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

(3) Where—

(a) an authorized institution serves a notice in writing on the Monetary Authority stating that it does not propose to appeal under section 132A(2) against the proposed revocation of its authorization under subsection (1);

(b) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg. A) within which an authorized institution may appeal under section 132A(2) against the proposed revocation of its authorization under

subsection (1) expires without any such appeal having been made; or

(c) an appeal under section 132A(2) by an authorized institution against the proposed revocation of its authorization under subsection (1) is unsuccessful, *(Amended 4 of 1997 s. 27)*

the Monetary Authority shall, as soon as reasonably practicable thereafter, by notice in writing served on the institution, specify the date on and from which that revocation shall take effect (and, accordingly, that authorization shall be revoked on and from that date).

(4) The Monetary Authority may, by notice in writing served on an authorized institution (including a former authorized institution), consent to the institution continuing to hold a deposit—

(a) lawfully taken by the institution before the date on which the proposed revocation under subsection (1) of its authorization takes effect as specified in a notice under subsection (3) served on it;

(b) the holding of which on or after that date would, but for this subsection, contravene any of the provisions of section 11, 12 or 23(2); and

(c) subject to such conditions, if any, as he may think proper to attach to the consent in any particular case,

and, accordingly, if that institution continues to hold that deposit on or after that date pursuant to that consent and in accordance with those conditions, if any, then it shall be deemed not to have thereby contravened any of those provisions.

(5) Without limiting the generality of subsection (4)(c), the Monetary Authority may, by notice in writing served on an authorized institution (or former authorized institution), attach

to a consent given to the institution pursuant to subsection (4) such conditions (including attach by way of amending conditions already attached to such consent), or cancel any conditions attached to such consent, as he may think proper.

(6) Without limiting the generality of subsection (4)(c) or (5), conditions referred to in that subsection may specify—

(a) the period for which a deposit referred to in subsection (4) may be held by the authorized institution (or former authorized institution) concerned;

(b) the manner in which such deposit may be held or used by the institution.

(7) The Monetary Authority may, by notice in writing served on an authorized institution (or former authorized institution), require the institution to submit, within such period and in such manner as are specified in the notice, such information as he may reasonably require in order to ascertain whether the institution will comply or is complying, as the case may be, with the conditions referred to in subsection (4)(c) or (5) attached to a consent given to the institution pursuant to subsection (4).

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

(9) Where the Monetary Authority serves a notice under subsection (3) on an authorized institution, he shall, as soon as reasonably practicable thereafter, publish in one English language newspaper (and in the English language) and one Chinese language newspaper (and in the Chinese language), each of which shall be a newspaper circulating in Hong Kong, a notice stating—

(a) the name of the institution;

(b) that the authorization of the institution has been revoked under this Ordinance; and

(c) the date on and from which such revocation takes effect.

(10) Every director, every chief executive and every manager of an authorized institution (or former authorized institution) which contravenes any condition referred to in subsection (4)(c) or (5) attached to a consent given to the institution pursuant to subsection (4) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(11) Every director, every chief executive and every manager of an authorized institution (or former authorized institution) which fails without reasonable excuse to comply with any requirement under subsection (7) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(12) Any person who signs any document for the purposes of any requirement under subsection (7) 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)*

23. Procedure on and effect of revocation of authorization

(1) The Monetary Authority shall, before exercising his power under section 22(1) to propose to revoke the authorization of an authorized institution, inform the institution of the ground or grounds for the proposed revocation and give it an opportunity, within such period as the Monetary Authority may specify in writing, being a period reasonable in all the circumstances, of being heard.

(2) Subject to section 22(4), immediately upon the proposed revocation of the authorization of an authorized institution taking effect in accordance with section 22(3), that institution shall cease to carry on the business the subject of its revoked authorization. *(Amended 4 of 1997 s. 8; 18 of 2015 s. 60)*

(3) Neither section 22(4) nor subsection (2) shall operate to prejudice the enforcement or other maintenance by any person of any right or interest against an authorized institution (or former authorized institution) referred to in that section or subsection, as the case may be, or by the institution of any right or interest against any person.

(4) Subsection (1) shall not apply where the ground for the revocation of the authorization of the authorized institution concerned is a request in writing by the institution to the Monetary Authority to revoke its authorization. *(Added 4 of 1997 s. 8)*

PART VI

SUSPENSION OF AUTHORIZATION

(Part VI replaced 49 of 1995 s. 6)

24. Temporary suspensions

(1) In any case where—

(a) the powers of the Monetary Authority become exercisable under section 22(1) with respect to an authorized institution (and whether or not the Monetary Authority has complied with section 23(1) in respect of the institution); and

(b) the Monetary Authority—

(i) considers that it is necessary in the interests of depositors or potential depositors of the institution; or

(ii) is advised by the Financial Secretary that he considers that it is in the public interest,

that urgent action be taken,
he may, after consultation with the Financial Secretary—

(i) by notice in writing served on the institution suspend its authorization for a period not exceeding 14 days;

(ii) if he thinks fit, by reason of the urgency of the matter or otherwise, so suspend such authorization without giving the institution an opportunity of being heard.

(2) Any notice under subsection (1) may be accompanied by a notice stating that the Monetary Authority is considering whether to exercise his powers under section 22(1) or 25.

(3) Any accompanying notice referred to in subsection (2) shall inform the authorized institution concerned of its rights under sections 23(1) and 26 and the manner in which it may exercise such rights.

(4) Any suspension under this section or section 25 shall cease on such date prior to the expiration of the period thereof as the Monetary Authority may, by notice in writing served on the authorized institution the subject of the suspension, determine.

(5) The Monetary Authority may, by notice in writing served on an authorized institution, consent to the institution continuing to hold a deposit—

(a) lawfully taken by the institution before the date on which the suspension under subsection (1) of its authorization takes effect as specified in a notice under subsection (1) served on it;

(b) the holding of which on or after that date would, but for this subsection, contravene section 11, 12 or 27(1); and

(c) subject to such conditions, if any, as he may think proper to attach to the consent in any particular case,

and, accordingly, if that institution continues to hold that deposit on or after that date pursuant to that consent and in accordance with those conditions, if any, then it shall be deemed not to have thereby contravened that section.

(6) Without limiting the generality of subsection (5)(c), the Monetary Authority may, by notice in writing served on an authorized institution, attach to a consent given to the institution pursuant to subsection (5) such conditions (including attach by way of amending conditions already attached to such consent), or cancel any conditions attached to such consent, as he may think proper.

(7) Without limiting the generality of subsection (5)(c) or (6), conditions referred to in that subsection may specify—

(a) the period for which a deposit referred to in subsection (5) may be held by the authorized institution concerned;

(b) the manner in which such deposit may be held or used by the institution.

(8) The Monetary Authority may, by notice in writing served on an authorized institution, require the institution to submit, within such period and in such manner as are specified in the notice, such information as he may reasonably require in order to ascertain whether the institution is complying with the conditions referred to in subsection (5)(c) or (6) attached to a consent given to the institution pursuant to subsection (5).

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

(10) Every director, every chief executive and every manager of an authorized institution which contravenes any condition referred to in subsection (5)(c) or (6) attached to a consent given to the institution pursuant to subsection (5) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(11) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (8) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(12) Any person who signs any document for the purposes of any requirement under subsection (8) 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)*

25. Suspensions

(1) Subject to section 26, in any case where the powers of the Monetary Authority become exercisable under section 22(1) with respect to an authorized institution (and whether or not the Monetary Authority has complied with section 23(1) in respect of the institution), the Monetary Authority may, after consultation with the Financial Secretary, by notice in writing served on the institution, suspend its authorization for a period not exceeding 6 months.

(2) A suspension under this section may, before the expiration of the period thereof, be renewed by the Monetary Authority, after consultation with the Financial Secretary—

(a) by notice in writing served on the authorized institution the subject of the suspension; and

(b) for a period not exceeding 6 months commencing immediately upon the expiration of the suspension.

(3) The Monetary Authority may, by notice in writing served on an authorized institution, consent to the institution continuing to hold a deposit—

(a) lawfully taken by the institution before the date on which the suspension under subsection (1) of its authorization takes effect as specified in a notice under that subsection served on it;

(b) the holding of which on or after that date would, but for this subsection, contravene section 11, 12 or 27(1); and

(c) subject to such conditions, if any, as he may think proper to attach to the consent in any particular case,

and, accordingly, if that institution continues to hold that deposit on or after that date pursuant to that consent and in accordance with those conditions, if any, then it shall be deemed not to have thereby contravened that section.

(4) Without limiting the generality of subsection (3)(c), the Monetary Authority may, by notice in writing served on an authorized institution, attach to a consent given to the institution pursuant to subsection (3) such conditions (including attach by way of amending conditions already attached to such consent), or cancel any conditions attached to such consent, as he may think proper.

(5) Without limiting the generality of subsection (3)(c) or (4), conditions referred to in that subsection may specify—

(a) the period for which a deposit referred to in subsection (3) may be held by the authorized institution concerned;

(b) the manner in which such deposit may be held or used by the institution.

(6) The Monetary Authority may, by notice in writing served on an authorized institution, require the institution to submit, within such period and in such manner as are specified in

the notice, such information as he may reasonably require in order to ascertain whether the institution is complying with the conditions referred to in subsection (3)(c) or (4) attached to a consent given to the institution pursuant to subsection (3).

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

(8) Every director, every chief executive and every manager of an authorized institution which contravenes any condition referred to in subsection (3)(c) or (4) attached to a consent given to the institution pursuant to subsection (3) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(9) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (6) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(10) Any person who signs any document for the purposes of any requirement under subsection (6) 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)*

26. Opportunity of being heard

The Monetary Authority shall, before exercising his powers under section 25, inform the authorized institution concerned of the ground or grounds therefor and give it an opportunity, within such period as the Monetary Authority may specify in writing, being a period reasonable in all the circumstances, of being heard.

27. Effect of suspension

(1) Without prejudice to any other provision of this Ordinance, where the authorization of an authorized institution is suspended under section 24 or 25, the institution shall, on and from the date specified in the notification to it by the Monetary Authority of such suspension, cease to carry on the business the subject of its authorization unless and until the period of suspension is terminated without revocation of that authorization and without a further period of suspension under this Part. *(Amended 4 of 1997 s. 9; 18 of 2015 s. 61)*

(2) Notwithstanding the suspension under section 24 or 25 of the authorization of an authorized institution, the institution shall, unless otherwise specified in the notice concerned under that section served on the institution, during the period of its suspension, continue to be an authorized institution for the purposes of—

(a) section 19;

(b) Parts VIII, IX and X;

(c) all the duties imposed on a bank, deposit-taking company or restricted licence bank, as the case may be, under this Ordinance.

(3) Sections 24(5) and 25(3) and this section shall not operate to prejudice the enforcement or other maintenance by any person of any right or interest against an authorized institution referred to in subsection (1) or by the institution of any right or interest against any person.

PART VII

TRANSFER OF AUTHORIZATION

(Part VII replaced 49 of 1995 s. 6)

28. Transfer of authorization

(1) Subject to this Ordinance, the authorization of an authorized institution may be transferred from that institution to another person.

(2) A transfer of the authorization of an authorized institution shall not take effect until the Monetary Authority grants the transfer or until such later date as the Monetary Authority specifies.

29. Application for transfer

(1) The person to whom it is proposed to transfer the authorization of an authorized institution shall lodge an application for the transfer of the authorization with the Monetary Authority.

(2) Subject to such modifications as may be necessary, sections 15, 16, 17 and 19 and the Seventh Schedule shall apply to an application for the transfer of the authorization of an authorized institution as if that application were an application for authorization under section 15(1).

30. Certificate of transfer, etc.

Where the Monetary Authority grants the transfer of the authorization of an authorized institution, he shall—

(a) issue a certificate of transfer to the applicant; and

(b) comply with such provisions of section 21 in respect of the transfer of the authorization as he may think appropriate.

31. Liabilities and privileges of transferer and transferee

Upon the issue of a certificate of transfer under section 30—

(a) the applicant shall have and may exercise the same privileges, and be subject to the same liabilities and penalties, under this Ordinance as if the authorization transferred had been originally granted to the applicant; and

(b) the person whose authorization is transferred shall cease to be authorized, but the transfer shall not affect the liability of that or any other person for any act or omission done, caused, permitted or made prior to the transfer.

32-43. *(Repealed 49 of 1995 s. 6)*

PART VIII

LOCAL BRANCHES, LOCAL OFFICES, LOCAL REPRESENTATIVE OFFICES AND FEES*

Note:
*** (Amended 32 of 2001 s. 4)**

44. Control of establishment, etc. of local branches

(1) An authorized institution shall not establish or maintain any local branch thereof without the approval of the Monetary Authority.

(2) Subsection (1) applies to every authorized institution whether the institution was authorized before, on or after the commencement of this Ordinance, and subsections (4) and (5) apply to an approval granted under subsection (1) whether the approval was granted before, on or after such commencement. *(Amended 49 of 1995 s. 7)*

(3) Approval under subsection (1) shall be deemed to have been granted in respect of any local branch lawfully established prior to the commencement of this Ordinance.

(3A) Approval under subsection (1) shall be deemed to have been granted in respect of any local branch falling within paragraph (a)(i)(B) or (ii)(B) or (b)(ii) of the definition of "local branch" lawfully established prior to the commencement* of section 2(a)(v) of the Banking (Amendment) Ordinance 2001 (32 of 2001). *(Added 32 of 2001 s. 5)*

(4) The Monetary Authority may at any time, by notice in writing served upon an authorized institution, attach to an approval granted under subsection (1), or deemed to have been granted under subsection (3) or (3A), in respect of any local branch

thereof such conditions, or amend or cancel any conditions so attached, as he may think proper. *(Amended 32 of 2001 s. 5)*

(5) The Monetary Authority may at any time revoke, in such case as he thinks fit, an approval granted under subsection (1), or deemed to have been granted under subsection (3) or (3A), in respect of any local branch. *(Amended 32 of 2001 s. 5)*

(6) Where the Monetary Authority refuses to grant approval under subsection (1) or revokes an approval under subsection (5), he shall notify the authorized institution concerned in writing of the refusal or revocation.

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

(8) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) or any condition attached under subsection (4) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(Amended 82 of 1992 s. 25)

Editorial Note:

* Commencement date: 24 May 2002.

45. Fees in respect of local branches

(1) Where the establishment by an authorized institution of a local branch is approved under section 44, the institution shall pay to the Director of Accounting Services the fee specified in the Second Schedule in relation to that branch and thereafter, so long as the branch continues to be maintained by the

institution, it shall pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date on which the institution was authorized.

(2) An authorized institution that is maintaining, at the commencement of this Ordinance, a local branch to which section 44(3) applies shall, so long as the branch continues to be maintained by the institution, pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date on which the institution was authorized.

(3) An authorized institution that is maintaining, at the commencement+ of section 2(a)(v) of the Banking (Amendment) Ordinance 2001 (32 of 2001), a local branch to which section 44(3A) applies shall, so long as the branch continues to be maintained by the institution, pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date on which the institution was authorized. *(Added 32 of 2001 s. 6)*

(Amended 49 of 1995 s. 8)

Editorial Note:

+ Commencement date: 24 May 2002.

45A. Notification of commencement of business at local offices

(1) An authorized institution shall, not less than 7 days before commencing business at a local office established or maintained by it, give notice in writing to the Monetary Authority of—

(a) the address of the local office;

(b) the nature of the business of the institution to be promoted or assisted from the local office; and

(c) the proposed date of commencement of business at the local office.

(2) Where on the commencement+ of this section an authorized institution has established or is maintaining a local office at which business has commenced, then the institution shall, not later than 3 months after that commencement, give notice in writing to the Monetary Authority of—

(a) the address of the local office; and

(b) the nature of the business of the institution to be promoted or assisted from the local office.

(3) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) or (2) 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.

(Added 32 of 2001 s. 7)

Editorial Note:

+ Commencement date: 24 May 2002.

46. Control of establishment, etc. of local representative offices

(1) A bank shall not establish or maintain any local representative office thereof without the approval of the Monetary Authority. *(Replaced 94 of 1993 s. 11)*

(2) Approval under subsection (1) shall be deemed to have been granted in respect of any local representative office lawfully established prior to the *commencement of the Banking (Amendment) Ordinance 1993 (94 of 1993). *(Amended 94 of 1993 s. 11)*

(2A) Approval under subsection (1) shall be deemed to have been granted in respect of any local representative office—

(a) which falls within that subsection by virtue of paragraphs (a) and (b)(i) of the definition of "bank" in subsection (9); and

(b) lawfully established prior to the commencement+ of section 8(c) of the Banking (Amendment) Ordinance 2001 (32 of 2001). *(Added 32 of 2001 s. 8)*

(3) Approval under subsection (1) shall not be granted unless the Monetary Authority is satisfied that the bank is adequately supervised by the relevant banking supervisory authority. *(Amended 94 of 1993 s. 11; 49 of 1995 s. 9)*

(4) The Monetary Authority may at any time, by notice in writing served upon a bank, attach to an approval granted under subsection (1), or deemed to have been granted under subsection (2) or (2A), in respect of any local representative office thereof such conditions, or amend or cancel any conditions so attached, as he may think proper. *(Amended 32 of 2001 s. 8)*

(5) The Monetary Authority may at any time revoke, in such case as he thinks fit, an approval granted under subsection (1), or deemed to have been granted under subsection (2) or (2A), in respect of any local representative office. *(Amended 32 of 2001 s. 8)*

(6) Where the Monetary Authority refuses to grant approval under subsection (1) or revokes an approval under subsection (5), he shall notify the bank concerned in writing of the refusal or revocation.

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

(8) Any person in charge, or who appears to be in charge, of a local representative office established or maintained in contravention of subsection (1) or in respect of which any

condition attached under subsection (4) is contravened, 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)*

(9) In this section, "bank" (銀行) means a company incorporated outside Hong Kong which—

(a) is neither an authorized institution nor recognized as the central bank of the place in which it is incorporated; and

(b) either—

(i) is authorized or recognized as a bank in the place where it is incorporated; or

(ii) may, whether or not in or outside the place where it is incorporated, lawfully take deposits from the general public, whether or not on current account. *(Replaced 32 of 2001 s. 8)*

(Amended 82 of 1992 s. 25)

Editorial Note:

+ Commencement date: 24 May 2002.

* Commencement date: 31 December 1993.

47. Supply of information and examination of local representative offices

(1) A bank which maintains a local representative office thereof pursuant to section 46 shall- *(Amended 94 of 1993 s. 12)*

(a) submit to the Monetary Authority such information as he may require regarding the functions and activities of the representative office; *(Amended 82 of 1992 s. 25)*

(b) if the Monetary Authority wishes to examine the functions and activities of the representative office, for that purpose afford to the person carrying out the examination access to the documents maintained by the representative office and to such information and facilities as may be required to conduct the examination, and shall produce to the person carrying out the examination such documents or other information as he may require. *(Amended 82 of 1992 s. 25)*

(2) Any person who fails to comply with any requirement of the Monetary Authority under this section commits an offence and is liable- *(Amended 82 of 1992 s. 25)*

(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.

(3) Any person who signs any document for the purposes of this section 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.

(4) If a bank produces any book, account, document, security or information whatsoever under this section which is false in a material particular, every director, every chief executive

and every manager of the bank commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)

48. Fees in respect of local representative offices

(1) Where the establishment by a bank of a local representative office is approved under section 46(1), the bank shall pay to the Director of Accounting Services the fee specified in the Second Schedule in relation to that representative office and thereafter, so long as the representative office continues to be maintained by the bank, the bank shall pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date of the grant of the approval under that section.

(2) A bank that is maintaining, at the *commencement of the Banking (Amendment) Ordinance 1993 (94 of 1993), a local representative office to which section 46(2) applies and which representative office was established prior to 1 April 1982 shall, so long as the representative office continues to be maintained by the bank, pay to the Director of Accounting Services the fee specified in the Second Schedule on 1 April of each year.

(3) A bank that is maintaining, at the *commencement of the Banking (Amendment) Ordinance 1993 (94 of 1993), a local representative office to which section 46(2) applies and which representative office was established on or after 1 April 1982 shall, so long as the representative office continues to be maintained by the bank, pay to the Director of

Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date of the grant of approval, under section 12C(1) of the Banking Ordinance 1964 (Cap. 155 1983 Ed.) repealed by this Ordinance, of the establishment of that local representative office.

(4) A bank that is maintaining, at the commencement# of section 8(c) of the Banking (Amendment) Ordinance 2001 (32 of 2001), a local representative office to which section 46(2A) applies shall, so long as the representative office continues to be maintained by the bank, pay to the Director of Accounting Services the fee specified in the Second Schedule on 1 April of each year. *(Added 32 of 2001 s. 9)*

(Amended 94 of 1993 s. 13)

Editorial Note:

* Commencement date: 31 December 1993.

Commencement date: 24 May 2002.

PART IX

OVERSEAS BRANCHES, OVERSEAS REPRESENTATIVE OFFICES, FEES AND OVERSEAS BANKING CORPORATIONS*

Editorial Note:
* *(Amended 94 of 1993 s. 14)*

49. Control of establishment, etc. of overseas branches and overseas representative offices

(1) Without prejudice to section 44, an authorized institution which is incorporated in Hong Kong shall be subject to a condition that the institution shall not establish or maintain any overseas branch or overseas representative office thereof without the approval of the Monetary Authority.

(2) Subsection (1) applies to every authorized institution incorporated in Hong Kong whether the institution was authorized before, on or after the commencement of this Ordinance, and subsections (4) and (5) apply to an approval granted under subsection (1) whether the approval was granted before, on or after such commencement. *(Amended 49 of 1995 s. 10)*

(3) Approval under subsection (1) shall be deemed to have been granted in respect of any overseas branch or overseas representative office lawfully established prior to the commencement of this Ordinance.

(4) The Monetary Authority may at any time, by notice in writing served upon an authorized institution, attach to an approval granted under subsection (1), or deemed to have been granted under subsection (3), in respect of any overseas branch or

overseas representative office thereof such conditions, or amend or cancel any conditions so attached, as he may think proper.

(5) The Monetary Authority may at any time revoke, in such case as he thinks fit, an approval granted under subsection (1), or deemed to have been granted under subsection (3), in respect of any overseas branch or overseas representative office.

(6) Where the Monetary Authority refuses to grant approval under subsection (1) or revokes an approval under subsection (5), he shall notify the authorized institution concerned in writing of the refusal or revocation.

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

(8) Every director, every chief executive and every manager of an authorized institution which contravenes the condition in subsection (1) or any condition attached under subsection (4) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(Amended 82 of 1992 s. 25)

50. Conditions regarding overseas branches and overseas representative offices

(1) Every authorized institution incorporated in Hong Kong which maintains an overseas branch thereof shall be subject to a condition that—

(a) the institution shall submit to the Monetary Authority a return in such form, and at such intervals, as he may

specify showing the assets and liabilities of the overseas branch;

(b) the institution shall submit to the Monetary Authority such further information as he may consider necessary for the proper understanding of the functions and activities of the overseas branch, and that such information shall be submitted within such period and in such manner as the Monetary Authority may require;

(c) if the Monetary Authority requires any return submitted to him pursuant to paragraph (a), or any information submitted to him pursuant to a requirement under paragraph (b), to be accompanied by a report prepared by, subject to subsection (2A), an auditor or auditors appointed by the institution, the institution shall submit a report as to whether or not, in the opinion of the auditor or auditors, the return or information is correctly compiled, in all material respects, from the books and records of the overseas branch; *(Amended 67 of 1992 s. 2;)*

(d) if the Monetary Authority wishes to examine the books, accounts and transactions of the overseas branch, the institution shall for that purpose afford the person carrying out the examination at the place where the branch is maintained access to the books and accounts of the branch, to documents of title to the assets and other documents and to all securities held by the branch in respect of its customers' transactions and its cash and to such information and facilities as may be required to conduct the examination, and that the institution shall produce to the person carrying out the examination 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, 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 overseas branch. *(Amended 82 of 1992 s. 25)*

(2) Every authorized institution incorporated in Hong Kong which maintains an overseas representative office thereof shall be subject to a condition that—

(a) the institution shall submit to the Monetary Authority such information as he may require regarding the functions and activities of the overseas representative office;

(b) if the Monetary Authority wishes to examine the functions and activities of the overseas representative office, the institution shall for that purpose afford the person carrying out the examination at the place where the representative office is maintained access to the documents maintained by the representative office and to such information and facilities as may be required to conduct the examination, and that the institution shall produce to the person carrying out the examination such documents or other information as he may require. *(Amended 82 of 1992 s. 25)*

(2A) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (1)(c) shall be—

(a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Monetary Authority for the purpose of preparing the report;

(b) an auditor approved, or an auditor from amongst auditors nominated, by the Monetary Authority for the

purpose of preparing the report after consultation with the institution; or

(c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b),

as may be required by the Monetary Authority. *(Added 67 of 1992 s. 2. Amended 82 of 1992 s. 25)*

(3) This section applies to every authorized institution incorporated in Hong Kong whether the institution was authorized before, on or after the commencement of this Ordinance. *(Amended 49 of 1995 s. 11)*

(4) Every director, every chief executive and every manager of an authorized institution which contravenes any condition in subsection (1) or (2), or fails to comply with any requirement under those subsections, commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

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

(5) If an authorized institution produces any book, account, document, security or information whatsoever under this section which is false in a material particular, every director, every chief executive and every manager of the institution commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(6) Any person who signs any document for the purposes of this section 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)*

51. Fees in respect of overseas branches and overseas representative offices

(1) Whenever the establishment by an authorized institution incorporated in Hong Kong of an overseas branch or overseas representative office is approved under section 49(1), the institution shall pay to the Director of Accounting Services the fee specified in the Second Schedule in relation to that branch or representative office and thereafter, so long as the branch or representative office continues to be maintained by the institution, it shall pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date on which the institution was authorized.

(2) An authorized institution incorporated in Hong Kong that is maintaining, at the commencement of this Ordinance, an overseas branch or overseas representative office to which section 49(3) applies shall, so long as the branch or representative office continues to be maintained by the institution, pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date on which the institution was authorized.

(Amended 49 of 1995 s. 12)

51A. Control of establishment, etc. of overseas banking corporations

(1) In this section—

"overseas banking corporation" (海外銀行法團) means a company which—

(a) is incorporated outside Hong Kong (and whether or not it is an authorized institution); and

(b) may, whether or not in or outside Hong Kong, lawfully take deposits from the general public, whether or not on current account;

"relevant day" (有關日期) means the day of *commencement of the Banking (Amendment) Ordinance 1993 (94 of 1993).

(2) An authorized institution incorporated in Hong Kong, and any holding company incorporated in Hong Kong of such an institution, shall each be subject to a condition that it shall not—

(a) establish or acquire, by whatever means, an overseas banking corporation such that that corporation becomes the subsidiary of the institution or of the holding company, as the case may be, without the approval of the Monetary Authority;

(b) if any such approval granted in respect of that corporation is revoked under subsection (5), maintain that corporation as a subsidiary on or after the time such revocation comes into effect.

(3) Approval under subsection (2) shall be deemed to have been granted in respect of any overseas banking corporation—

(a) which was, immediately before the relevant day, the subsidiary of an authorized institution or of any holding company of the institution; or

(b) which becomes, not later than 3 months after the relevant day, the subsidiary of an authorized institution or of any holding company of the institution where the acts or circumstances by virtue of which such corporation became such a subsidiary substantially occurred before the relevant day.

(4) The Monetary Authority may at any time, by notice in writing served upon an authorized institution or its holding company, attach, with effect from such time as is specified in the notice (being a time reasonable in all the circumstances of the case), to an approval granted under subsection (2), or deemed to have been granted under subsection (3), in respect of any overseas banking corporation which is to become or is a subsidiary of the institution or of the holding company, as the case may be, such conditions, or amend or cancel, with effect from such time as is specified in the notice (being a time reasonable in all the circumstances of the case), any conditions so attached, as he may think proper. *(Amended 42 of 1999 s. 3)*

(5) The Monetary Authority may revoke—

(a) in such case as he thinks fit; and

(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, every chief executive 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— *(Amended 32 of 2001 s. 24)*

(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)

Editorial Note:

* Commencement date: 31 December 1993.

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) for a bank, the user or potential user of any stored value facility issued, or the issue of which is facilitated, by the bank under its SVF licence; *(Replaced 18 of 2015 s. 62)*

(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;

(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 stored value facilities under an SVF licence 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; 18 of 2015 s. 62)*

(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 Chief Executive in Council. *(Amended 68 of 1999 s. 3)*

(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 Chief Executive in Council); *(Replaced 49 of 1995 s. 13. Amended 68 of 1999 s. 3)*

(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 Chief Executive in Council); *(Replaced 49 of 1995 s. 13. Amended 68 of 1999 s. 3)*

(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 Chief Executive in Council). *(Added 49 of 1995 s. 13. Amended 68 of 1999 s. 3)*

(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)*

(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 or local office. *(Added 49 of 1995 s. 13. Amended 32 of 2001 s. 10)*

(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, every chief executive 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— *(Amended 32 of 2001 s. 24)*

(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)*

(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 Chief Executive in Council

(Adaptation amendments retroactively made - see 25 of 1998 s. 2; 68 of 1999 s. 3)

(1) Where—

(a) the Monetary Authority makes a report to the Chief Executive in Council under section 52(1)(D);

(b) any person appeals to the Chief Executive 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 Chief Executive in Council under section 117(5)(c),

the Chief Executive 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 Chief Executive 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)*

(Amended 68 of 1999 s. 3)

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)

53C. Powers of Manager

(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, the Companies Ordinance (Cap. 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

(ii) the 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 articles of association); or

(iii) any other instrument under which it is incorporate; *(Amended 28 of 2012 ss. 912 & 920)*

(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.

(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 *(Amended 4 of 1997 s. 27)*

(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 *(Amended 4 of 1997 s. 27)*

(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 is liable—

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

(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

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

(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

(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

(Adaptation amendments retroactively made - see 25 of 1998 s. 2)

(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)

(Adaptation amendments retroactively made - see 68 of 1999 s. 3)

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

(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 Chief Executive in Council under section 53(1)(i); or

(ii) an order of the Chief Executive in Council under subsection (2). *(Amended 68 of 1999 s. 3)*

(2) The Chief Executive in Council, upon the application of- *(Amended 68 of 1999 s. 3)*

(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;

(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, local office, overseas branch, overseas representative office or subsidiary, whether in or outside Hong Kong, of such institution. *(Amended 23 of 1998 s. 2; 32 of 2001 s. 11)*

(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

(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, local offices, 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, local offices, overseas branch, overseas representative office or subsidiary, as the case may be. *(Amended 64 of 1987 s. 12; 23 of 1998 s. 2; 32 of 2001 s. 12)*

(2) Every director, every chief executive 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, local offices, overseas branches, overseas representative offices or subsidiaries) commits an offence and is liable- *(Amended 64 of 1987 s. 12; 32 of 2001 ss. 12 and 24)*

(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, local office, 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, every chief executive and every manager of the institution commits an offence and is liable- *(Amended 64 of 1987 s. 12; 32 of 2001 ss. 12 and 24)*

(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)*

58A. Disciplinary action in respect of relevant individuals

(1) Where—

(a) a relevant individual is, or was at any time, guilty of misconduct; or

(b) the Monetary Authority is of the opinion that a relevant individual is not, or has ceased to be, a fit and proper person in his capacity as that type of relevant individual,

then the Monetary Authority may, after consultation with the Securities and Futures Commission—

(c) remove all or part of the individual's relevant particulars from the register; or

(d) suspend all or part of the individual's relevant particulars from the register for such period or until the occurrence of such event as the Monetary Authority specifies.

(2) Without limiting the generality of subsection (1) or the operation of any other provisions of this Ordinance, for the avoidance of doubt, it is hereby declared that the Monetary Authority may exercise his power under that subsection wholly or partly on the basis of information disclosed

to the Monetary Authority by the Securities and Futures Commission, and whether or not the information arises from an investigation under section 182 of the Securities and Futures Ordinance (Cap. 571).

(3) The Monetary Authority shall not exercise his power under subsection (1) against a relevant individual without first giving the individual an opportunity of being heard.

(4) Where the Monetary Authority decides to exercise his power under subsection (1) against a relevant individual, the Monetary Authority shall inform the individual of his decision to do so by notice in writing served on him, and the notice shall include—

(a) a statement of the reasons for which the decision is made;

(b) the time at which the decision is to take effect; and

(c) in so far as applicable, the duration and terms of the removal or suspension of particulars from the register to be imposed under the decision.

(4A) Where the Monetary Authority has exercised his power under subsection (1) against a relevant individual, the Monetary Authority may disclose to the public details of the decision he has made under that subsection, the reasons for which the decision was made, and any material facts relating to the case. *(Added 19 of 2005 s. 10)*

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

(6) In this section—

"misconduct" (失當行為), in relation to a relevant individual, means—

(a) a contravention of any of the relevant provisions, within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), which are applicable to the individual; or

(b) an act or omission of the individual relating to the carrying on of any regulated activity—

(i) by the registered institution in relation to which the individual is a relevant individual; and

(ii) which, in the opinion of the Monetary Authority, is or is likely to be prejudicial to the interest of the investing public or to the public interest,

and "guilty of misconduct" (犯失當行為) shall be construed accordingly;

"relevant individual" (有關人士) means relevant individual within the meaning of section 20(10);

"relevant particulars" (有關資料), in relation to a relevant individual, means the information contained in the register maintained under section 20(1)(ea) in relation to the individual.

(7) For the purposes of paragraph (b) of the definition of "misconduct" in subsection (6), the Monetary Authority shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless he has had regard to such of the provisions set out in any code of conduct published under section 169 of the Securities and Futures Ordinance (Cap. 571) or any code or guideline published under section 399 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission.

(Added 6 of 2002 s. 5)

Part XI

Audits and Meetings

*(*Format changes—E.R. 1 of 2013)*

Editorial Note:
* The format of Part XI has been updated to the current legislative styles.

59. Audit

(1) Every authorized institution, and its auditors, shall comply with the Companies Ordinance (Cap. 622) with respect to the audit of a company's accounts, whether or not the institution is incorporated under that Ordinance. *(Amended 28 of 2012 ss. 912 & 920)*

(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—

(i) on the state of affairs or profit and loss, or both, of the institution based on an audit of the institution's accounts carried out in respect of the period specified in the notice requiring such a report; or

(ii) on whether or not the institution has in place systems of control which are adequate to enable, as much as is practicable, the affairs, business and property of the institution to be prudently managed

and the institution to comply with its duties under this Ordinance; and *(Amended 49 of 1995 s. 17)*

(c) within such period and prepared in such manner as the Monetary Authority may reasonably require. *(Replaced 67 of 1992 s. 4. Amended 82 of 1992 s. 25)*

(3) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (2) shall be—

(a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Monetary Authority for the purpose of preparing the report;

(b) an auditor approved, or an auditor from amongst auditors nominated, by the Monetary Authority for the purpose of preparing the report after consultation with the institution; or

(c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b),

as may be required by the Monetary Authority. *(Replaced 67 of 1992 s. 4. Amended 82 of 1992 s. 25)*

(4) *(Repealed 42 of 1999 s. 4)*

(5) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1), and every director, every chief executive and every manager of an authorized institution which, without reasonable excuse, contravenes subsection (2) commits an offence and is liable— *(Amended 32 of 2001 s. 24; 19 of 2005 s. 11)*

(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 under subsection (2), 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 under subsection (2), to a further fine at tier 2 for every day during which the offence continues. *(Amended 67 of 1992 s. 4; 4 of 1997 s. 27)*

(6) In this section—

adequate (足夠), in relation to systems of control, includes operating effectively;

systems of control (管控制度) includes procedures. *(Added 67 of 1992 s. 4)*

(Amended 43 of 1990 s. 3)

59A. Notification in respect of auditors

(1) An authorized institution incorporated in Hong Kong shall immediately give written notice to the Monetary Authority if—

(a) the institution—

(i) proposes to give notice to its members of an ordinary resolution removing an auditor before the expiration of his term of office; or

(ii) gives notice to its members of an ordinary resolution replacing an auditor at the expiration of his term of office; or *(Amended 49 of 1995 s. 18)*

(b) a person ceases to be an auditor of the institution otherwise than in consequence of such a resolution.

(2) An auditor of an authorized institution appointed under section 395, 396, 397 or 398 of the Companies Ordinance (Cap. 622) shall immediately give written notice to the Monetary Authority if he— *(Amended 28 of 2012 ss. 912 & 920)*

(a) resigns before the expiration of his term of office;

(b) does not seek to be re-appointed; or

(c) decides to include in his report on the institution's accounts any qualification or adverse statement as to a matter mentioned in section 406 or 407 of the Companies Ordinance (Cap. 622). *(Amended 28 of 2012 ss. 912 & 920)*

(3) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and to a further fine at tier 3 for every day for which the institution fails to give the notice required under that subsection to the Monetary Authority; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and to a further fine at tier 2 for every day for which the institution fails to give the notice required under that subsection to the Monetary Authority. *(Amended 4 of 1997 s. 27)*

(Added 43 of 1990 s. 4. Amended 82 of 1992 s. 25)

59B. Notification by authorized institution of end of financial year, etc.

(1) An authorized institution shall—

(a) in the case of an institution which was authorized before the commencement of this section, not later than 1 month after that commencement;

(b) in any other case, not later than 1 month after the date on which it was authorized,

give notice in writing to the Monetary Authority of the date on which its financial year ends.

(2) An authorized institution shall not—

(a) alter the date on which its financial year ends as specified in its notice under subsection (1) except with the approval under subsection (3)(a) of the Monetary Authority;

(b) have its financial year exceed 12 months except with the approval under subsection (3)(b) of the Monetary Authority.

(3) The Monetary Authority may, on the application of an authorized institution, by notice in writing served on the institution—

(a) approve an alteration of the date on which its financial year ends subject to such conditions as the Monetary Authority thinks fit specified in the notice;

(b) approve a financial year of more than 12 months for the institution subject to such conditions as the Monetary Authority thinks fit specified in the notice.

(4) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) or (2), or any condition specified in a notice under subsection (3), commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 7 and, in the case of a contravention of subsection (1), to a further fine at tier 3 for every day for which the institution fails to give the notice required under that subsection to the Monetary Authority; or

(b) on summary conviction to a fine at tier 5 and, in the case of a contravention of subsection (1), to a further fine at tier 2 for every day for which the institution fails

to give the notice required under that subsection to the Monetary Authority.

(Added 6 of 2002 s. 6)

60. Publication of audited balance sheet, etc.

(1)-(2) *(Repealed 42 of 1999 s. 5)*

(3) Every authorized institution incorporated in Hong Kong shall, not later than 4 months after the close of each financial year, or within such further period as the Monetary Authority approves in writing, exhibit— *(Amended 42 of 1999 s. 5)*

(a) a copy of its audited annual accounts for that year;

(b) a copy of the report of the auditors made pursuant to section 405 of the Companies Ordinance (Cap. 622);

(c) a copy of the report of the directors laid or to be laid before the company in general meeting under Division 6 of Part 9 of that Ordinance; *(Amended 28 of 2012 ss. 912 & 920)*

(d)-(e) *(Repealed 42 of 1999 s. 5)*

in a conspicuous position in the principal place of business of the institution in Hong Kong and in each local branch and, in the case of each of the documents, until the next time a document of the same kind is so exhibited in compliance with this subsection.

(4) A copy of each of the documents referred to in subsection (3) shall be lodged with the Monetary Authority by an authorized institution, prior to first exhibition thereof under that subsection, with a list of the names of all companies of which, for the time being, its directors are also directors.

(5) Subject to subsection (5A), every authorized institution incorporated outside Hong Kong shall, not later than 6 months after the close of each financial year, or within such

further period as the Monetary Authority approves in writing, lodge with the Monetary Authority— *(Amended 42 of 1999 s. 5)*

(a) a copy of its audited annual balance sheet (including any notes thereon), and a copy of the profit and loss account for that year;

(b) a copy of the report of the auditor, or any person exercising a similar function in accordance with the law of the place in which the institution is incorporated, upon that annual balance sheet (including any notes thereon) and profit and loss account; and

(c) a copy of the report of the directors with respect to the profit or loss of the institution for that year and the state of the institution's affairs as at the end thereof where the law of the place in which the institution is incorporated requires such a report.

(5A) With the approval in writing of the Monetary Authority, an authorized institution may, instead of complying with subsection (5) by lodging with the Monetary Authority the documents required under that subsection, comply with that subsection by lodging with the Monetary Authority the like documents of its holding company on a consolidated basis. *(Added 42 of 1999 s. 5)*

(6) The Monetary Authority may by notice in writing exempt an authorized institution which has complied with subsection (5) from section 59(1) subject to such conditions as he may think proper to attach thereto.

(7) Where an authorized institution has complied with subsection (5) in respect of a financial year, it shall, unless otherwise permitted by the Monetary Authority, as soon as practicable thereafter exhibit a copy of each document lodged with the Monetary Authority under that subsection—

(a) in a conspicuous position in the principal place of business of the institution in Hong Kong and in each local branch; and

(b) in the case of any such document, until the next time a document of the same kind is so exhibited in compliance with this subsection.

(8) The Monetary Authority may require any authorized institution to submit such further information as he may think necessary for the proper understanding of any document it has under subsection (4) or (5) lodged with the Monetary Authority; and such information shall be submitted within such period and in such manner as the Monetary Authority may require. *(Amended 42 of 1999 s. 5)*

(9) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (3), (4), (5) or (7) commits an offence and is liable— *(Amended 42 of 1999 s. 5; 32 of 2001 s. 24)*

(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)*

(10) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (8) commits an offence and is liable on conviction upon indictment or 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; 32 of 2001 s. 24)*

(11) In this section, ***audited annual accounts*** (經審計的周年帳目), in relation to an authorized institution— *(Amended 42 of 1999 s. 5)*

(a) means the institution's balance sheet and profit and loss account, together with any notes thereon, which are subject to a report by the institution's auditor pursuant to section 405 of the Companies Ordinance (Cap. 622); and *(Amended 28 of 2012 ss. 912 & 920)*

(b) includes the institution's cash flow statement, together with any notes thereon, if that auditor expresses an opinion on the institution's cash flow in that report.

(Replaced 49 of 1995 s. 19)

60A. Disclosure to the general public of information relating to financial affairs

(1) The Monetary Authority may, after consultation with the Financial Secretary and the persons specified in subsection (2), make rules prescribing the information to be disclosed to the general public by authorized institutions relating to their state of affairs, including their profit and loss and their financial resources (including capital resources and liquidity resources), and prescribing the manner in which, times at which and periods during which such information shall be so disclosed. *(Amended 3 of 2012 s. 4)*

(2) The persons specified for the purposes of subsection (1) are—

(a) the Banking Advisory Committee;

(b) the Deposit-taking Companies Advisory Committee;

(c) The Hong Kong Association of Banks; and

(d) The DTC Association.

(3) Without limiting subsection (1), rules made under that subsection—

(a) may make different provisions for different classes of authorized institutions;

(b) may give effect to banking supervisory standards relating to disclosure issued by the Basel Committee, whether in whole or in part and subject to any modifications the Monetary Authority thinks fit, having regard to the prevailing circumstances in Hong Kong;

(c) may apply, adopt or incorporate by reference, with or without modifications, any document relating to disclosure issued by the Basel Committee, whether in whole or in part and whether in force at the time of issue or as in force from time to time;

(d) may provide for the Monetary Authority, on application made by an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under the rules, to review the decision; and

(e) may contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules. *(Replaced 3 of 2012 s. 4)*

(3A) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under the rules is a decision to which section 101B(1) applies. *(Added 3 of 2012 s. 4)*

(4) Where an authorized institution fails to comply with any requirement applicable to it contained in rules made under subsection (1), every director, every chief executive and every manager of the authorized institution 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.

(5) For the avoidance of doubt, it is hereby declared that any requirement under subsection (1) for the Monetary Authority to consult with any person shall not operate to prevent the Monetary Authority from consulting with such other person as the Monetary Authority thinks fit.

(Replaced 19 of 2005 s. 2)

61. Communication by auditor with Monetary Authority

(1) No duty which an auditor of an authorized institution may be subject to shall be regarded as contravened by reason of his communicating in good faith to the Monetary Authority, whether or not in response to a request made by the Monetary Authority, any information or opinion on a matter of which he becomes aware in his capacity as auditor and which is relevant to any function of the Monetary Authority under this Ordinance. *(Amended 82 of 1992 s. 25)*

(2) Subsection (1) applies to an auditor of a former authorized institution and a former auditor as it applies to an auditor of an authorized institution.

(3) This section shall, subject to such modifications as may be necessary, apply to and in relation to an auditor of an approved money broker, an auditor of a former approved money broker and a former money broker auditor as it applies, respectively, to an auditor of an authorized institution, an auditor of a former authorized institution and a former auditor, and the other provisions of this Ordinance shall be construed accordingly. *(Added 4 of 1997 s. 13)*

(4) In subsection (3)—

former approved money broker (前核准貨幣經紀) means a person who was formerly an approved money broker;

former money broker auditor (前貨幣經紀核數師) means a person who was formerly the auditor of an approved money broker or former approved money broker. *(Added 4 of 1997 s. 13)*

(Replaced 43 of 1990 s. 5)

62. *(Repealed 43 of 1990 s. 6)*

Part XII

Disclosure of Information by Authorized Institutions

*(*Format changes—E.R. 1 of 2013)*

Editorial Note:
* The format of Part XII has been updated to the current legislative styles.

63. Returns and information to be submitted to the Monetary Authority

(1) Every authorized institution shall submit to the Monetary Authority—

(a) not later than 14 days after the last day of each calendar month a return showing the assets and liabilities of its principal place of business in Hong Kong and all local branches thereof at the close of business on the last business day or last day of that month; and

(b) not later than 14 days after the last day of each quarter ending on 31 March, 30 June, 30 September and 31 December respectively, or upon any other day which may be approved by the Monetary Authority, a return relating to its principal place of business in Hong Kong and all local branches thereof as at the close of business on the last business day or last day of the preceding quarter:

Provided that the Monetary Authority may by permission in writing allow the returns referred to in paragraphs (a) and (b) to be submitted at less frequent intervals. *(Amended 95 of 1991 s. 16)*

(2) The Monetary Authority may require an authorized institution to submit (including periodically submit) such further

information, or require an approved money broker to submit (including Periodically submit) such information, as he may reasonably require for the exercise of his functions under this Ordinance and such information shall be submitted within such period (or, where such information is required periodically, within such periods) and in such manner as the Monetary Authority may require. *(Amended 3 of 1990 s. 26; 49 of 1995 s. 20; 4 of 1997 s. 14)*

(2A) The Monetary Authority may require—

(a) any holding company of an authorized institution;

(b) any subsidiary of any such holding company; or

(c) any subsidiary of an authorized institution,

to submit such information—

(i) in any case, as he may reasonably require for the exercise of his functions under this Ordinance;

(ii) in the case of paragraph (a) or (b), that the Monetary Authority considers is necessary to be submitted in the interests of the depositors or potential depositors of the authorized institution concerned; and

(iii) within such period and in such manner as the Monetary Authority may require. *(Replaced 49 of 1995 s. 20)*

(3) The Monetary Authority may require an authorized institution to submit to him, on or before such date as he may reasonably specify in the requirement, a report prepared by, subject to subsection (3B), an auditor or auditors appointed by the institution as to whether or not, in the opinion of the auditor or auditors, a return submitted to him pursuant to subsection (1), or information submitted to him pursuant to subsection (2), by the institution is correctly compiled, in all material respects, from the books and records of the institution and,

if not so correctly compiled, the nature and extent of the incorrectness. *(Replaced 67 of 1992 s. 5)*

(3A) The Monetary Authority may require an authorized institution to submit to him, on or before such date as he may reasonably specify in the requirement and, subject to subsection (3C), in respect of the period specified in the requirement, a report prepared by, subject to subsection (3B), an auditor or auditors appointed by the institution as to all or any of the following—

(a) whether or not, during that period, in the opinion of the auditor or auditors, the institution had in place systems of control which were adequate to enable, as much as is practicable—

(i) the institution's returns or information to be correctly compiled, in all material respects, from the books and records of the institution;

(ii) the institution to comply with its duties under Parts XII, XV, XVIA and XVIB; *(Amended 3 of 2012 s. 5)*

(iii) if the institution is incorporated in Hong Kong, the institution to maintain adequate provision for depreciation or diminution in the value of its assets (including provision for bad and doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which will or may occur,

and, if the opinion is that those systems were not adequate, the nature and extent of any inadequacies;

(b) subject to subsection (3D), whether or not, during that period—

(i) there appears to the auditor or auditors to be any material contravention by the institution of any of the duties referred to in paragraph (a)(ii), and, if it

so appears, the nature of the contravention and the evidence therefor;

(ii) if the institution is incorporated in Hong Kong, it appears to the auditor or auditors that the institution has failed to maintain the adequate provision referred to in paragraph (a)(iii), and, if it so appears, the reasons or evidence therefor;

(iii) *(Repealed 6 of 2002 s. 7)*

(Added 67 of 1992 s. 5)

(3B) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (3) or (3A) shall be—

(a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Monetary Authority for the purpose of preparing the report;

(b) an auditor approved, or an auditor from amongst auditors nominated, by the Monetary Authority for the purpose of preparing the report after consultation with the institution; or

(c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b),

as may be required by the Monetary Authority. *(Added 67 of 1992 s. 5)*

(3C) No period specified in a requirement under subsection (3A) shall exceed 12 months unless the Monetary Authority is satisfied that a longer period is required in the interests of depositors of the authorized institution concerned or the public interest. *(Added 67 of 1992 s. 5)*

(3D) No report shall be required under subsection (3A) as to a matter referred to in paragraph (b) of that subsection unless

the report is also required as to a matter referred to in paragraph (a) of that subsection. *(Added 67 of 1992 s. 5)*

(3E) *(Repealed 6 of 2002 s. 7)*

(3F) In this section—

adequate (足夠), in relation to systems of control, includes operating effectively;

systems of control (管控制度) includes procedures. *(Added 67 of 1992 s. 5)*

(4) Notwithstanding section 120, the Monetary Authority may prepare and publish consolidated statements aggregating the figures in the returns furnished under subsection (1).

(5) Every director, every chief executive and every manager of an authorized institution which, without reasonable excuse, contravenes subsection (1) or fails to comply with any requirement under subsection (3) or (3A) commits an offence and is liable on conviction upon indictment or 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 67 of 1992 s. 5; 4 of 1997 s. 27; 32 of 2001 s. 24; 19 of 2005 s. 12)*

(6) Every director, every chief executive and every manager of an authorized institution or approved money broker which fails without reasonable excuse to comply with any requirement under subsection (2), and every director, every chief executive and every manager of a holding company of an authorized institution, subsidiary of such holding company or subsidiary of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (2A), commits an offence and is liable- *(Amended 3 of 1990 s. 26; 49 of 1995 s. 20; 4 of 1997 s. 14; 32 of 2001 s. 24)*

(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)*

(7) Any person who signs any document for the purposes of this section 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)*

(Amended 82 of 1992 s. 25)

63A. Auditor to report to Monetary Authority any matter which adversely affects financial position of authorized institution to material extent

(1) Where a person in the course of performing his duties as an auditor appointed under—

(a) section 59(2) or 63(3) or (3A); or

(b) section 395, 396, 397 or 398 of the Companies Ordinance (Cap. 622), *(Amended 28 of 2012 ss. 912 & 920)*

becomes aware of a matter which, in his opinion, adversely affects the financial position of an authorized institution to a material extent, he shall, as soon as is reasonably practicable after he becomes aware of the matter, submit to the Monetary

Authority a report in writing on the nature of the matter and the reason why he is of that opinion.

(2) In relation to any authorized institution incorporated outside Hong Kong, subsection (1) shall only apply to its principal place of business in Hong Kong and its local branches, and shall do so as if that principal place of business and those branches were collectively a separate authorized institution.

(Added 6 of 2002 s. 8)

63B. Auditors of registered institutions to submit report to Monetary Authority in certain cases

Where a person in the course of performing his functions as an auditor—

(a) appointed under—

(i) section 59(2) or 63(3) or (3A); or

(ii) section 395, 396, 397 or 398 of the Companies Ordinance (Cap. 622); and *(Amended 28 of 2012 ss. 912 & 920)*

(b) in relation to a registered institution,

becomes aware of a matter that, in the opinion of the person, is a matter that constitutes on the part of the institution a failure to comply with any prescribed requirements within the meaning of section 157 of the Securities and Futures Ordinance (Cap. 571) (but excluding any requirements under section 149 of that Ordinance or of rules made under that section), then he shall, as soon as reasonably practicable after he becomes aware of the matter, submit to the Monetary Authority a report in writing on the matter.

(Added 6 of 2002 s. 9)

64. Information on shareholding, etc.

(1) Every authorized institution shall, if so required by the

Monetary Authority, inform him of the name and address of, and the nature of the business carried on by, every company- *(Amended 3 of 1990 s. 27; 82 of 1992 s. 25)*

(a) in which the institution holds the beneficial ownership, directly or indirectly, of an aggregate of 20 per cent or more of the issued shares; *(Amended 28 of 2012 ss. 912 & 920)*

(b) where any director or manager of that company is also a director, chief executive or manager of the institution; *(Amended 32 of 2001 s. 24)*

(c) where the name of that company has common features with the name of the institution;

(d) which, by whatever means, acts in concert with the institution to promote the institution's business; or

(e) the controller of which is also the controller of the institution.

(2) The Monetary Authority may require any authorized institution which has submitted to him information pursuant to subsection (1) to submit to him such further information as he may reasonably require for the exercise of his functions under this Ordinance. *(Amended 3 of 1990 s. 27; 82 of 1992 s. 25)*

(3) Information that is required to be submitted under this section shall be submitted within such period and in such manner as the Monetary Authority may require. *(Amended 82 of 1992 s. 25)*

(4) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement under this section commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(5) Any person who signs any document for the purposes of this section 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)*

(6) If an authorized institution produces any book, account, document, security or information under this section which is false in a material particular, every director, every chief executive and every manager of the institution commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

65. Alteration in constitution

(1) An authorized institution, within 30 days after the making of any alteration to the memorandum of association, articles of association or other instrument under which it is incorporated, shall furnish to the Monetary Authority particulars of such

alteration in writing, verified by a director of the institution. *(Amended 82 of 1992 s. 25)*

(2) Every director, every chief executive and every manager of an authorized institution which contravenes this section commits an offence and is liable on conviction upon indictment or 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; 32 of 2001 s. 24)*

66. Authorized institution to notify Monetary Authority when it ceases to take deposits

(1) An authorized institution which ceases to carry on the business of taking deposits or, as the case may be, banking business, shall forthwith notify the Monetary Authority in writing of that fact. *(Amended 82 of 1992 s. 25)*

(2) Every director, every chief executive and every manager of an authorized institution which fails to comply with this section commits an offence and is liable on conviction upon indictment or on summary conviction to a fine at tier 3. *(Amended 4 of 1997 s. 27; 32 of 2001 s. 24)*

67. Duty to report inability to meet obligations

(1) If any authorized institution is likely to become unable to meet its obligations or if it is about to suspend payment it shall forthwith report all relevant facts, circumstances and information to the Monetary Authority. *(Amended 82 of 1992 s. 25)*

(2) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with subsection (1) commits an offence and is liable- *(Amended 32 of 2001 s. 24)*

(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)*

68. Examination by authorities outside Hong Kong

The appropriate recognized banking supervisory authority of a place outside Hong Kong may, with the approval of the Monetary Authority, examine—

(a) the books, accounts and transactions of the principal place of business in Hong Kong, or any local branch or local office, of an authorized institution which- *(Amended 32 of 2001 s. 13)*

(i) is incorporated in that place or in respect of which the Monetary Authority is of the opinion that the authority has primary supervisory responsibility; or

(ii) is incorporated in or outside Hong Kong and is a subsidiary of a company which is incorporated in that place or in respect of which the Monetary Authority is of the opinion that the authority has primary supervisory responsibility;

(b) the documents of any local representative office of a bank which—

(i) is incorporated in that place or in respect of which the Monetary Authority is of the opinion that the authority has primary supervisory responsibility; or

(ii) is incorporated outside Hong Kong and is a subsidiary of a company which is incorporated in that place or in respect of which the Monetary Authority is of the opinion that the authority has primary supervisory responsibility.

(Replaced 94 of 1993 s. 20. Amended 49 of 1995 s. 21)

PART XIII

OWNERSHIP AND MANAGEMENT OF AUTHORIZED INSTITUTIONS

69. Amalgamation, etc. requires approval

(1) An authorized institution incorporated in Hong Kong shall not, without the prior approval in writing of the Monetary Authority- *(Amended 3 of 1990 s. 28; 82 of 1992 s. 25; 49 of 1995 s. 22)*

(a) make any arrangement or enter into any agreement for the sale or disposal of all or any part of—

(i) in the case of a bank, its banking business; and

(ii) in the case of a restricted licence bank or a deposit-taking company, its business of taking deposits; or *(Amended 3 of 1990 s. 28)*

(b) *(Repealed 95 of 1991 s. 17)*

(2) An authorized institution incorporated in Hong Kong which—

(a) makes any arrangement or enters into any agreement for the sale or disposal of all or any part of its business, irrespective of whether the arrangement or agreement is pursuant to an approval under subsection (1)(a); or

(b) makes any reconstruction of its capital, *(Amended 95 of 1991 s. 17)*

shall give notice in writing of the arrangement, agreement or reconstruction, as the case may be, to the Monetary Authority as soon as practicable after making that arrangement, entering into that agreement or making that reconstruction, and—

(i) the notice shall be signed by a director of the institution; and

(ii) the institution shall provide the Monetary Authority with such information in respect of that arrangement, agreement or reconstruction as he may require. *(Amended 82 of 1992 s. 25)*

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

(4) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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. *(Amended 4 of 1997 s. 27)*

(5) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (2) commits an offence and is liable on conviction upon indictment or 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; 32 of 2001 s. 24)*

(6) If an authorized institution produces any information whatsoever under this section which is false in a material particular, every director, every chief executive and every manager of the institution commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(Replaced 64 of 1987 s. 14)

70. Provisions applicable to persons proposing to become controllers, and to certain existing controllers, of authorized institutions incorporated in Hong Kong

(1) This section shall apply to a person becoming or being—

(a) a majority shareholder controller; or

(b) an indirect controller,

of an authorized institution incorporated in Hong Kong as it applies to a person becoming or being, as the case may be, a minority shareholder controller of an authorized institution incorporated in Hong Kong.

(2) In this section—

"conditional notice of consent" (有條件同意通知書) means a notice of consent referred to in paragraph (b) of the definition of "notice of consent";

"notice of consent" (同意通知書) means a notice in writing specifying that—

(a) there is no objection to the person specified in that notice becoming or being, as the case may be, a minority shareholder controller of the authorized institution specified in that notice; or

(b) the conditions subject to which there is no objection to the person specified in that notice becoming or being, as the case may be, a minority shareholder controller of the authorized institution specified in that notice;

"notice of objection" (反對通知書) means a notice in writing objecting to the person specified in that notice becoming or being, as the case may be, a minority shareholder controller of the authorized institution specified in that notice.

(3) Subject to subsection (4), no person shall become a minority shareholder controller of an authorized institution incorporated in Hong Kong unless—

(a) he has served on the Monetary Authority a notice in writing stating that he proposes to become such a controller; and

(b) either—

(i) subject to subsection (17), the Monetary Authority has, before the expiration of 3 months from the date of service of that notice, served on him a notice of consent; or

(ii) that period has expired without the Monetary Authority having served on him a notice of objection.

(4) A notice referred to in subsection (3)(a) served on the Monetary Authority by a person shall not be regarded as compliance with that subsection except as respects that person becoming a minority shareholder controller of the authorized institution to which the notice relates before the expiration of 12 months from—

(a) where that person has been served with a notice of consent, on the date on which he was so served;

(b) where the period referred to in subsection (3)(b) has expired and neither of the events specified in that section has occurred, on the expiration of that period;

(c) where that person has been served with a notice of objection in respect of which an appeal under section 132A(3) has been successful, on the date on which the appeal was successful. *(Amended 4 of 1997 s. 27)*

(5) Where a person—

(a) becomes a minority shareholder controller of an authorized institution in contravention of subsection (3);

(b) did not know that the acts or circumstances by virtue of which he became such a controller were such as to have that effect; and

(c) subsequently becomes aware of the fact that he has become such a controller,

he shall serve on the Monetary Authority, not later than 14 days after becoming aware of that fact, a notice in writing stating that he has become such a controller.

(6) Subject to subsections (7), (8), (9) and (10), the Monetary Authority may serve—

(a) a notice of consent; or

(b) a notice of objection,

on a person.

(6A) For the avoidance of doubt, it is hereby declared that a conditional notice of consent served on a person who has become the minority shareholder controller of an authorized institution may revoke a prior notice of consent, if any, served on the person in relation to the person becoming or being, as the case may be, such a controller. *(Added 42 of 1999 s. 7)*

(7) Without limiting the generality of conditions which the Monetary Authority may specify in a conditional notice of consent, he may specify in the notice such conditions as he may think proper to safeguard the interests of depositors and potential depositors of the authorized institution specified in the notice.

(8) The Monetary Authority shall not serve a notice of objection on a person where the Monetary Authority is satisfied—

(a) that the person is a fit and proper person to become or to be, as the case may be, a minority shareholder controller of the authorized institution specified in the notice;

(b) that the interests of depositors and potential depositors of that institution would not be or are not, as the case may be, in some other manner threatened by that person becoming or being, as the case may be, such a controller; and

(c) where that person—

(i) is not presently such a controller, that, having regard to that person's likely influence on that institution if he was to become such a controller—

(A) if the Monetary Authority is of the opinion that that institution is presently conducting its business prudently, the institution is likely to continue so conducting its business;

(B) if the Monetary Authority is of any other opinion, that person is likely to undertake adequate remedial action;

(ii) is presently such a controller, that, having regard to that person's influence on that institution as such a controller—

(A) if the Monetary Authority is of the opinion that that institution was conducting its business prudently before that person became such a controller, the institution is presently, and is likely to continue, so conducting its business;

(B) if the Monetary Authority is of any other opinion, that person is presently undertaking, or is likely to undertake, adequate remedial action.

(9) The Monetary Authority shall not serve a notice of objection on a person who has become a minority shareholder controller of an authorized institution— *(Amended 42 of 1999 s. 7)*

(a) unless he has become such a controller in contravention of subsection (3);

(b) subject to subsection (17), after the expiration of 3 months immediately following the Monetary Authority becoming aware of such contravention.

(10) The Monetary Authority shall, before serving a conditional notice of consent or notice of objection on a person, serve on that person a preliminary notice in writing—

(a) stating that the Monetary Authority is considering the service on him of a conditional notice of consent or notice of objection, as the case may be;

(b) where the Monetary Authority is considering the service on him of—

(i) a conditional notice of consent, specifying the conditions which the Monetary Authority proposes to specify in the notice;

(ii) a notice of objection, specifying which of the matters referred to in subsection (8) in respect of which the Monetary Authority is not satisfied; and

(c) stating that he may, within 1 month from the date of service of the preliminary notice, make written representations to the Monetary Authority.

(11) Where representations are made in accordance with subsection (10)(c), the Monetary Authority shall take them into account in deciding whether to serve the conditional notice of consent or notice of objection, as the case may be, concerned.

(12) A conditional notice of consent served on a person—

(a) may specify conditions which were not specified in the preliminary notice served under subsection (10) on that person where—

(i) that person consents to those conditions; or

(ii) a subsequent preliminary notice specifying those conditions has been served under that subsection on that person; and

(b) shall give particulars of the right conferred by subsection (15).

(13) A notice of objection served on a person—

(a) shall, subject to paragraph (b), specify which of the matters referred to in subsection (8) in respect of which the Monetary Authority is not satisfied;

(b) shall not specify any such matters which were not specified in the preliminary notice served under subsection (10) on that person; and

(c) shall give particulars of the right conferred by subsection (15).

(14) The Monetary Authority shall not be obliged to disclose to a person any particulars of the matters referred to in subsection (8) on which he is considering the service on him or has served on him, as the case may be, a notice of objection.

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

(16) Where the Monetary Authority pursuant to section 72A requires a person who has given a notice in writing under subsection (3)(a) or (5) to submit information, the time between imposing that requirement and the receipt of the information shall be added to the period referred to in subsection (3)(b) or (9)(b), as the case may be.

(17) The period referred to in subsection (3)(b) or (9)(b) (together with any extension under subsection (16)) shall not expire,

if it would otherwise do so, until 14 days after the expiration of the period within which representations can be made in accordance with subsection (10)(c).

(18) Subject to subsection (19), any person who contravenes subsection (3) commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

(19) Where a person is charged with an offence under subsection (18), it shall be a defence to prove that he did not know that the acts or circumstances by virtue of which he became a minority shareholder controller of the authorized institution concerned were such as to have that effect.

(20) Any person who contravenes subsection (5) 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)*

(21) Any person who contravenes any condition specified in a conditional notice of consent served on him 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)*

(Replaced 95 of 1991 s. 18. Amended 82 of 1992 s. 25)

70A. Objection to existing controllers

(1) This section shall apply to a person being—

(a) a majority shareholder controller; or

(b) an indirect controller,

of an authorized institution incorporated in Hong Kong as it applies to a person being a minority shareholder controller of an authorized institution incorporated in Hong Kong.

(2) In this section, unless the context otherwise requires, "notice of objection" (反對通知書) means a notice in writing objecting to the person specified in that notice being a minority shareholder controller of the authorized institution specified in that notice.

(3) Subject to subsection (4), the Monetary Authority may serve a notice of objection on a person—

(a) who is a minority shareholder controller of an authorized institution incorporated in Hong Kong where—

(i) his being such a controller is not in contravention of section 70(3); or

(ii) his being such a controller is in contravention of that section but the Monetary Authority is prohibited by virtue of section 70(9)(b) from serving a notice of objection under section 70(6) on him; and

(b) where it appears to the Monetary Authority that—

(i) that person is not or is no longer a fit and proper person to be such a controller;

(ii) the interests of depositors or potential depositors of that institution may be in some other manner threatened by that person being such a controller; or

(iii) that person has contravened any condition specified in a conditional notice of consent served under section 70(6) on him.

(4) The Monetary Authority shall, before serving a notice of objection on a person, serve on that person a preliminary notice in writing—

(a) stating that the Monetary Authority is considering the service on him of a notice of objection;

(b) specifying which of the matters referred to in subsection (3)(b) in respect of which the Monetary Authority is considering the service on him of the notice of objection; and

(c) stating that he may, within 1 month from the date of service of the preliminary notice, make written representations to the Monetary Authority.

(5) Where representations are made in accordance with subsection (4)(c), the Monetary Authority shall take them into account in deciding whether to serve the notice of objection concerned.

(6) A notice of objection—

(a) shall, subject to paragraph (b), specify which of the matters referred to in subsection (3)(b) on which the notice is served;

(b) shall not specify any such matters which were not specified in the preliminary notice served under subsection (4) on him; and

(c) shall give particulars of the right conferred by subsection (8).

(7) The Monetary Authority shall not be obliged to disclose to a person any particulars of the matters referred to in subsection (3)(b) on which he is considering the service on him or has served on him, as the case may be, a notice of objection.

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

(Added 95 of 1991 s. 18. Amended 82 of 1992 s. 25)

70B. Restrictions on and sale of shares

(1) This section shall apply to a person being a majority shareholder controller of an authorized institution incorporated in Hong Kong as it applies to a person being a minority shareholder controller of an authorized institution incorporated in Hong Kong.

(2) The powers conferred by this section shall be exercisable where a person—

(a) has become a minority shareholder controller of an authorized institution in contravention of section 70(3) in that—

(i) a notice in writing has been served under section 70(3)(a) on the Monetary Authority by that person in respect of that institution but neither of the events specified in section 70(3)(b) has occurred;

(ii) no notice in writing has been served under section 70(5) in respect of that contravention;

(iii) a notice in writing has been served under section 70(5) on the Monetary Authority by that person

in respect of that contravention, the Monetary Authority has served a notice of objection under section 70(6) on that person in respect of that contravention, and either—

(A) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg. A) within which that person may appeal under section 132A(3) against the decision of the Monetary Authority to serve such notice of objection has expired without any such appeal having been made; or

(B) an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is unsuccessful; or

(iv) that person has been convicted of an offence under section 70(18) in respect of that contravention; or

(b) continues to be a minority shareholder controller of an authorized institution after having been served with a notice of objection under section 70A(3) in respect of his being such a controller and either—

(i) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg. A) within which that person may appeal under section 132A(3) against the decision of the Monetary Authority to so serve such notice of objection has expired without any such appeal having been made; or

(ii) an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is unsuccessful. *(Amended 4 of 1997 s. 27)*

(3) Subject to subsection (8), the Monetary Authority may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

(a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of such shares, shall be void;

(b) no voting rights shall be exercisable in respect of the shares;

(c) no further shares shall be issued in right of them or pursuant to any offer made to their holder;

(d) except in a liquidation, no payment shall be made of any sums due from the authorized institution, or other company, concerned on the shares, whether in respect of capital or otherwise.

(4) Where shares are subject to the restrictions under subsection (3)(a), any agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them, shall be void.

(5) Where shares are subject to the restrictions under subsection (3)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), shall be void.

(6) Where shares are subject to any restrictions under subsection (3), any person affected by any of those restrictions may request the Monetary Authority to make an application referred to in subsection (7)(a) in respect of those shares and, where such a request is made, the Monetary Authority shall, not later than 1 month after that request has been made—

(a) if, by virtue of subsection (9), the Monetary Authority is prohibited from making such an application, serve a notice in writing on that person stating that he is so prohibited;

(b) in any other case—

(i) comply with that request; or

(ii) serve a notice in writing on that person stating that he does not propose to comply with that request.

(7) Subject to subsection (9), the Court of First Instance may— *(Amended 25 of 1998 s. 2)*

(a) on the application of the Monetary Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (3), that they shall cease to be subject to those restrictions;

(b) on the application of a person who has made a request under subsection (6) where—

(i) paragraph (b) of that subsection applies in respect of that request; and

(ii) he has been served with a notice in writing under paragraph (b)(ii) of that subsection in respect of that request; or

(iii) the period specified in that subsection has expired and neither of the events referred to in paragraph (b) of that subsection has occurred in respect of that request,

order the sale of any shares to which that request relates and that they shall cease to be subject to any restrictions under subsection (3).

(8) Where the Monetary Authority has, by virtue of subsection (2)(a)(ii), served a notice in writing under subsection (3) on the person concerned and—

(a) that person has, not later than 14 days after the service of that notice, served a notice in writing under section 70(5) on the Monetary Authority in respect of the contravention of section 70(3) to which that first-mentioned notice relates; and

(b) either—

(i) no notice of objection under section 70(6) has been served by the Monetary Authority on that person in respect of that contravention within the period in respect of which section 70(9)(b) permits such a notice of objection to be so served; or

(ii) such a notice of objection has been so served within that period but an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is successful, *(Amended 4 of 1997 s. 27)*

whichever first occurs,

the Monetary Authority shall forthwith serve a notice in writing on that person to the effect that the first-mentioned notice is revoked.

(9) The Monetary Authority shall not, by virtue of subsection (2)(a)(ii), make an application referred to in subsection (7)(a) unless—

(a) the application relates to shares which are the subject of a notice in writing under subsection (3); and

(b) the person upon whom that notice has been served has not, within 14 days after the service of that notice, served a notice in writing under section 70(5) in respect

of the contravention of section 70(3) to which that first-mentioned notice relates:

Provided that this subsection shall be without prejudice to the Monetary Authority's power, by virtue of subsection (2)(a)(iii), to subsequently make such an application in respect of those shares. *(Amended 82 of 1992 s. 19)*

(10) Where an order has been made under subsection (7), the Court of First Instance may, on the application of the Monetary Authority, make such further order relating to the sale or transfer of the shares as it thinks fit (including an order that the holder of the shares shall cause the shares to be transferred to a nominee of the Monetary Authority specified in the order and within the period specified in the order). *(Amended 25 of 1998 s. 2; 32 of 2001 s. 14)*

(11) Where shares are sold pursuant to an order under this section, the proceeds of the sale, less the costs of the sale, shall, unless otherwise specified by the Court of First Instance, be paid into court for the benefit of the persons beneficially interested in them, and any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds be paid to him. *(Amended 25 of 1998 s. 2; 32 of 2001 s. 14)*

(12) This section shall apply—

(a) to all the shares in the authorized institution concerned by virtue of which the person concerned is a minority shareholder controller of the institution which are held by him or any associate of his and were not so

held immediately before he became such a controller; and

(b) where the person concerned became a minority shareholder controller of the authorized institution concerned by virtue of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held immediately before he became such a controller.

(13) A copy of a notice in writing served under subsection (3) or (8) on the person concerned shall be served on the authorized institution or other company to whose shares it relates and, if it relates to shares held by any associate of that person, on that associate.

(14) The Chief Justice may make rules regulating the practice and procedure in connection with applications (including any class of applications) made under subsection (7).

(15) It is hereby declared that—

(a) the operation of subsection (3)(b) shall not of itself cause any person to contravene section 70;

(b) an order under subsection (10) in relation to the shares may be made at the same time as an order under subsection (7) in relation to the shares. *(Added 32 of 2001 s. 14)*

(Added 95 of 1991 s. 18. Amended 82 of 1992 s. 25)

70C. Prohibition on certain persons acting as indirect controllers

(1) In this section, "prohibited person" (受禁制的人), in relation to an authorized institution, means any person—

(a) who has been served with a notice of objection under section 70(6) in respect of his becoming or being, as the case may be, an indirect controller of the institution and either—

(i) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg. A) within which that person may appeal under section 132A(3) against the decision of the Monetary Authority to so serve such notice of objection has expired without any such appeal having been made; or

(ii) an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is unsuccessful; or

(b) who has been served with a notice of objection under section 70A(3) in respect of his being an indirect controller of the institution and either—

(i) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg. A) within which that person may appeal under section 132A(3) against the decision of the Monetary Authority to so serve such notice of objection has expired without any such appeal having been made; or

(ii) an appeal under section 132A(3) by that person against the decision of the Monetary Authority to so serve such notice of objection is unsuccessful. *(Amended 82 of 1992 s. 25)*

(2) No person who is a prohibited person in respect of an authorized institution shall act or continue to act, as the case may be, as an indirect controller of the institution and,

accordingly, as such a controller shall not give or shall cease to give, as the case may be, any directions or instructions to the directors of the institution or of another company of which it is a subsidiary.

(3) Where any director of an authorized institution or of another company of which it is a subsidiary is given (whether directly or indirectly) any directions or instructions—

(a) by a person whom the director knows, or ought reasonably to know, is a prohibited person in respect of the institution; and

(b) which are, or might reasonably be construed as being, prohibited from being so given by virtue of subsection (2),

the director shall forthwith notify the Monetary Authority of those directions or instructions and the circumstances in which they were so given. *(Amended 82 of 1992 s. 25)*

(4) Any prohibited person who contravenes subsection (2) commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 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.

(5) Any director who without reasonable excuse contravenes subsection (3) 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.

(Added 95 of 1991 s. 18. Amended 4 of 1997 s. 27)

70D. Punishment for attempted evasion of restrictions

(1) Any person who—

(a) exercises or purports to exercise any right to dispose of any shares, or of any right to be issued with any such shares, knowing that to do so contravenes any restrictions under section 70B(3) to which the shares are subject; *(Replaced 32 of 2001 s. 15)*

(b) votes in respect of any such shares as holder or proxy knowing that to do so contravenes any such restrictions; *(Replaced 32 of 2001 s. 15)*

(c) appoints a proxy in respect of any such shares knowing that to vote in respect of any such shares would contravene any such restrictions; *(Replaced 32 of 2001 s. 15)*

(d) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy; or *(Replaced 32 of 2001 s. 15)*

(e) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 70B(4) or (5), *(Added 32 of 2001 s. 15)*

commits an offence and is liable—

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

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

(2) Where shares in an authorized institution or another company are issued in contravention of restrictions under section 70B(3), or payments are made by an authorized institution or another company in contravention of such restrictions, any director, chief executive or manager of the authorized institution or other company, as the case may be, who knowingly and wilfully permits such an issue of shares or the making of such a payment, as the case may be, commits an offence and is liable— *(Amended 32 of 2001 s. 24; 19 of 2005 s. 13)*

(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.

(Added 95 of 1991 s. 18. Amended 4 of 1997 s. 27)

71. Chief executives and directors require Monetary Authority's consent

(1) Subject to section 53C(5), no person shall—

(a) become—

(i) the chief executive of an authorized institution; or

(ii) a director of an authorized institution incorporated in Hong Kong,

without the consent in writing of the Monetary Authority;

(b) if he becomes such chief executive or director without such consent, act or continue to act as such chief

executive or director, as the case may be, without such consent;

(c) fail to comply with a condition attached under subsection (2)(b) or (5) as such condition is in force from time to time; or

(d) act or continue to act as such chief executive or director after such consent has been withdrawn under subsection (4).

(2) The Monetary Authority—

(a) shall refuse to give consent under subsection (1) unless the Monetary Authority is satisfied that the person concerned is a fit and proper person to be the chief executive or a director of the authorized institution concerned;

(b) may give consent under subsection (1) subject to such conditions as the Monetary Authority thinks proper to attach thereto for the purpose of securing, or further securing, that the person concerned will continue to be a fit and proper person to be the chief executive or a director of the authorized institution concerned.

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

(a) in the case of the consent, to the person concerned and the authorized institution concerned and specifying any conditions attached to the consent;

(b) in the case of the refusal, to the person concerned and the authorized institution concerned and specifying his reasons.

(4) Where the Monetary Authority—

(a) has decided that he has ceased to be satisfied that the chief executive or a director of an authorized institution is a fit and proper person to be such chief executive or director;

(b) has given to the chief executive or director not less than 7 days' advance notice of his decision, specifying his reasons, and accompanied by a copy of this section; and

(c) has taken into account any written representation received by him from the chief executive or director,

the Monetary Authority may, by notice in writing served on the chief executive or director and the institution, withdraw the consent.

(5) Where the Monetary Authority—

(a) has decided that he is satisfied that conditions need to be attached to a consent given under subsection (1), or that conditions attached to any such consent need to be amended, for the purpose of securing, or further securing, that the chief executive or director of the authorized institution to whom the consent relates will continue to be a fit and proper person to be such chief executive or director;

(b) has given to the chief executive or director not less than 7 days' advance notice of his decision, specifying his reasons, and accompanied by a copy of this section; and

(c) has taken into account any written representation received by him from the chief executive or director,

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

(6) Any person who contravenes subsection (1) commits an offence and is liable—

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

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

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

(7) A person shall not be regarded for the purposes of subsection (1) as becoming the chief executive or a director of an authorized institution if he is appointed to serve as such chief executive or director immediately on the expiration of a previous term by him as such chief executive or director.

(8) For the purposes of this section, where a person has the consent of the Monetary Authority under subsection (1) to be the chief executive of an authorized institution, and is such chief executive, he is not required to have the consent of the Monetary Authority under subsection (1) to be a director of the institution.

(9) Where immediately before the commencement* of section 16 of the Banking (Amendment) Ordinance 2001 (32 of 2001) a person had, or was regarded as having, the Monetary Authority's consent ("former consent") under this section as then in force ("former section") to be the chief executive or a director of an authorized institution, then, on and after that commencement*—

(a) the former consent shall be deemed to be the Monetary Authority's consent ("deemed consent") under subsection (1) for the person to be that chief executive or director, as the case may be; and

(b) any conditions attached under the former section to the former consent shall be deemed to be conditions attached under subsection (2)(b) to the deemed consent,

and subsections (4), (5) and (8) shall apply accordingly.

(Replaced 32 of 2001 s. 16)

Editorial Note:

* Commencement date: 24 May 2002.

71C. Executive officers of registered institutions require Monetary Authority's consent

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

(a) become an executive officer of a registered institution without the consent in writing of the Monetary Authority;

(b) if he becomes such executive officer without such consent, act or continue to act as such executive officer without such consent;

(c) fail to comply with a condition attached under subsection (2)(b) or (9) as such condition is in force from time to time; or

(d) act or continue to act as such executive officer after such consent has been withdrawn under subsection (4).

(2) The Monetary Authority—

(a) shall refuse to give consent under subsection (1) unless the Monetary Authority is satisfied that the person concerned—

(i) is a fit and proper person to be an executive officer of the registered institution concerned; and

(ii) has sufficient authority within the institution to be such executive officer;

(b) may give consent under subsection (1) subject to such conditions as the Monetary Authority thinks proper to attach thereto.

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

(a) in the case of the consent, to the person concerned and the registered institution concerned and specifying any conditions attached to the consent;

(b) in the case of the refusal, to the person concerned and the registered institution concerned and specifying his reasons.

(4) Where—

(a) an executive officer is, or was at any time, guilty of misconduct; or

(b) the Monetary Authority has ceased to be satisfied that an executive officer of a registered institution—

(i) is a fit and proper person to be such type of officer; or

(ii) has sufficient authority within the institution to be such officer,

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

(c) withdraw the consent; or

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

(5) Without limiting the generality of subsection (4) or the operation of any other provisions of this Ordinance, for the

avoidance of doubt, it is hereby declared that the Monetary Authority may exercise his power under that subsection wholly or partly on the basis of information disclosed to the Monetary Authority by the Securities and Futures Commission, and whether or not the information arises from an investigation under section 182 of the Securities and Futures Ordinance (Cap. 571).

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

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

(a) a statement of the reasons for which the decision is made;

(b) the time at which the decision is to take effect; and

(c) in so far as applicable, the duration and terms of the withdrawal or suspension of the consent to be imposed under the decision.

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

(8) Without prejudice to the exercise of any powers by the Securities and Futures Commission under the Securities and Futures Ordinance (Cap. 571), the Monetary Authority may make such recommendations to the Securities and Futures Commission concerning any executive officer in respect of

the exercise of the power under section 196 or 197 of that Ordinance as he considers appropriate.

(9) Where the Monetary Authority—

(a) has decided that he is satisfied that conditions need to be attached to a consent given under subsection (1), or that conditions attached to any such consent need to be amended;

(b) has given to the executive officer not less than 7 days' advance notice of his decision, specifying his reasons, and accompanied by a copy of this section; and

(c) has taken into account any written representation received by him from the executive officer,

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

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

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

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

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

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

(a) immediately on the expiration of a previous term by him as an executive officer; and

(b) in relation to the same regulated activity as he was such executive officer in that previous term.

(12) In this section—

"misconduct" (失當行為), in relation to an executive officer, means—

(a) a contravention of any of the relevant provisions, within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), which are applicable to the officer;

(b) a contravention of—

(i) any conditions attached under subsection (2)(b), or attached or amended under subsection (9), to the consent under subsection (1) which relates to the officer; or

(ii) any conditions attached or amended under section 71E(3) to the provisional consent under section 71E(1) which relates to the officer; or

(c) an act or omission of the officer relating to the carrying on of any regulated activity—

(i) by the registered institution in relation to which the officer is an executive officer; and

(ii) which, in the opinion of the Monetary Authority, is or is likely to be prejudicial to the interest of the investing public or to the public interest,

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

(13) Where any registered institution is, or was at any time, guilty of misconduct within the meaning of paragraph (a), (b), (c) or (d) of the definition of "misconduct" in section 193(1) of the Securities and Futures Ordinance (Cap. 571) as a result of the commission of any conduct occurring with the consent or

connivance of, or attributable to any neglect on the part of, an executive officer of the institution, the conduct shall also be regarded as misconduct on the part of the officer, and "guilty of misconduct" shall also be construed accordingly.

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

(Added 6 of 2002 s. 10)

71D. Appointment of executive officers

Subject to section 71F, every registered institution shall appoint not less than 2 executive officers—

(a) in the case of an institution—

(i) incorporated in Hong Kong, to be responsible for directly supervising the conduct of each business conducted by the institution that constitutes a regulated activity;

(ii) incorporated outside Hong Kong, to be responsible for directly supervising the conduct of each business in Hong Kong conducted by the institution that constitutes a regulated activity; and

(b) each of whom shall be an individual.

(Added 6 of 2002 s. 10)

71E. Grant of provisional consent in relation to persons seeking

Monetary Authority's consent under section 71C(1) to be executive officers

(1) Where a person seeks the consent under section 71C(1) of the Monetary Authority to be an executive officer of an authorized institution, then the Monetary Authority may, upon the request of the person, and in his absolute discretion but subject to subsection (2), give provisional consent to the person to be such executive officer.

(2) The Monetary Authority shall refuse to give provisional consent under subsection (1) to a person unless the person satisfies the Monetary Authority that the giving of the consent will not prejudice the interests of—

(a) depositors or potential depositors of the registered institution concerned; and

(b) the investing public.

(3) The Monetary Authority may give provisional consent under subsection (1) to a person subject to such conditions as the Monetary Authority thinks proper to attach thereto, and the Monetary Authority may at any time, by notice in writing served on the person and the registered institution concerned, attach conditions to the consent or amend conditions attached to the consent, as the case may be.

(4) The attachment or amendment under subsection (3) of conditions shall take effect at the time of—

(a) giving the provisional consent; or

(b) service of the notice concerned under that subsection or at the time specified in the notice, whichever is the later,

as the case may be.

(5) A provisional consent given under subsection (1) to a person shall be deemed to be revoked when the person and the registered institution concerned are given notice under section

71C(3) of the Monetary Authority's decision to give, or refuse to give, consent under section 71C(1) for the person to be an executive officer of the institution.

(6) The Monetary Authority may, having regard to the interests of the depositors or potential depositors of the registered institution concerned or of the investing public, and in his absolute discretion, withdraw provisional consent given under subsection (1) to a person—

(a) by giving notice in writing to the person and the institution withdrawing the consent;

(b) with effect on such date as is specified in the notice, being a date not earlier than 7 days after the notice is so given.

(Added 6 of 2002 s. 10)

71F. Transitional provisions in relation to sections 71C and 71D in the case of certain registered institutions

Neither section 71C nor section 71D shall apply to or in relation to a registered institution during the period within which the institution falls within paragraph (a) of the definition of "registered institution".

(Added 6 of 2002 s. 10)

72. *(Repealed 95 of 1991 s. 20)*

72A. Monetary Authority may require specified persons to submit information

(1) For the purposes of this section, "specified person" (指明的人) means—

(a) any person who proposes to become a controller of an authorized institution incorporated in Hong Kong; *(Replaced 95 of 1991 s. 21)*

(aa) any person who is a relevant individual within the meaning of section 20(10); *(Added 6 of 2002 s. 11)*

(b) any person who is the chief executive of an authorized institution or an executive officer of a registered institution; *(Amended 6 of 2002 s. 11)*

(c) any person who is a director or controller of an authorized institution incorporated in Hong Kong; or *(Amended 95 of 1991 s. 21)*

(d) any person who is seeking the consent of the Monetary Authority under section 71(1) or 71C(1). *(Amended 82 of 1992 s. 25; 6 of 2002 s. 11)*

(2) The Monetary Authority may require a specified person to submit such information as he may reasonably require for the exercise of his functions under this Ordinance and such information shall be submitted within such period and in such manner as the Monetary Authority may require. *(Amended 82 of 1992 s. 25; 94 of 1993 s. 21)*

(2A) Subject to section 53B(3), where an authorized institution becomes aware of the fact that any person has become or has ceased to be a specified person in respect of the institution, the institution shall, not later than 14 days after becoming aware of that fact, give notice in writing to the Monetary Authority of that fact. *(Added 95 of 1991 s. 21. Amended 82 of 1992 s. 25; 49 of 1995 s. 24)*

(3) Any specified person (other than a person referred to in subsection (1)(a) or (d)) who fails without reasonable excuse to comply with any requirement under subsection (2) commits an offence and is liable- *(Amended 95 of 1991 s. 21)*

(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.

(4) Any specified 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.

(5) Any specified 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.

(6) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (2A) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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. *(Added 95 of 1991 s. 21)*

(Added 3 of 1990 s. 29. Amended 4 of 1997 s. 27)

72B. Notification of appointment of manager, etc.

(1) Subject to subsections (2) and (3), an authorized institution shall, not later than 14 days after the date on which a person—

(a) became a manager of the institution;

(b) ceased to be a manager of the institution; or

(c) in his capacity as a manager of the institution, became principally responsible, either alone or with others, for any of the affairs or business of the institution specified in the Fourteenth Schedule in addition to, or in place of, any other such responsibility he has or had in that capacity,

give notice in writing to the Monetary Authority and the person of—

(i) that date;

(ii) particulars of the affairs or business of the institution in relation to which the person became or has ceased to be such manager (including any case which falls within paragraph (c)); and

(iii) in the case of the notice to the Monetary Authority, such other particulars of the person as the Monetary Authority may require for the exercise of his functions under this Ordinance.

(2) Subject to subsection (3), an authorized institution is not required to comply with subsection (1) in respect of a manager appointed bona fide on a temporary basis.

(3) Where in respect of the appointment of a manager—

(a) an authorized institution has not complied with subsection (1) by virtue of subsection (2); and

(b) the appointment subsequently ceases to be on a temporary basis,

then—

(i) subsection (1) shall, on the date on which that cesser occurs, apply in respect of the manager; and

(ii) that date shall be the date mentioned in subsection (1) from which the period mentioned in that subsection shall be calculated within which the institution shall comply with that subsection in respect of the manager.

(4) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) commits an offence and is liable—

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

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

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

(Added 32 of 2001 s. 17)

73. Certain persons prohibited from acting as employees of authorized institutions except with consent of Monetary Authority

(1) No person who—

(a) is bankrupt or has entered into a composition with his creditors;

(b) has been convicted in any place of an offence involving fraud or dishonesty; or

(c) knows, or ought reasonably to know, that, in respect of an authorized institution of which he is or was a director or is or was a chief executive or manager thereof— *(Amended 32 of 2001 s. 18)*

(i) the institution is being, or has been, wound up or otherwise dissolved; or

(ii) its licence or registration, as the case may be, has been revoked, *(Replaced 94 of 1993 s. 22)*

shall, without the consent in writing of the Monetary Authority, become an employee of an authorized institution (or, where paragraph (c) is applicable, of another authorized institution) or, if becoming such an employee without such consent, act, or continue to act, as such employee. *(Amended 82 of 1992 s. 25; 94 of 1993 s. 22)*

(1A) No person who on or after becoming an employee of an authorized institution (and whether or not he became such an employee before, on or after the relevant day)—

(a) becomes bankrupt, or enters into a composition with his creditors, on or after the relevant day;

(b) is convicted, on or after the relevant day, in any place of an offence involving fraud or dishonesty; or

(c) knows, or ought reasonably to know, that, in respect of another authorized institution of which he is or was a director or is or was a chief executive or manager thereof— *(Amended 32 of 2001 s. 18)*

(i) the institution is being, or has been, wound up or otherwise dissolved on or after the relevant day; or

(ii) its licence or registration, as the case may be, has been revoked on or after the relevant day,

shall—

(i) in the case of paragraph (a) or (b), continue to act as such employee without the consent in writing of the Monetary Authority;

(ii) in the case of paragraph (c), continue to act as such employee either—

(A) unless he has notified the Monetary Authority of that prior employment together with a request that the Monetary Authority grant consent to him to continue to act as such employee; or

(B) if the Monetary Authority refuses to grant such consent. *(Added 94 of 1993 s. 22)*

(1B) Where the Monetary Authority refuses to grant consent under subsection (1) or (1A) he shall notify the person concerned in writing of his refusal as soon as practicable. *(Added 94 of 1993 s. 22)*

(1C) *(Repealed 4 of 1997 s. 27)*

(1D) Where the Monetary Authority has granted consent under subsection (1) or (1A) to a person where paragraph (c) of that subsection is applicable to the person, then that paragraph shall not again be applicable to the person in the case, but only in the case, of the authorized institution referred to in that paragraph which gave rise to that paragraph being applicable to the person. *(Added 42 of 1999 s. 8)*

(2) Any person who contravenes subsection (1) or (1A) commits an offence and is liable- *(Amended 94 of 1993 s. 22)*

(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. *(Amended 4 of 1997 s. 27)*

(3) In this section, "relevant day" (有關日期) means the day of *commencement of the Banking (Amendment) Ordinance 1993 (94 of 1993). *(Added 94 of 1993 s. 22)*

Editorial Note:

* Commencement date: 31 December 1993.

74. Appointment of chief executive

(1) Subject to sections 53B(1) and 53C(3), every authorized institution shall appoint a chief executive, and not less than one alternate chief executive, of the institution, each of whom shall be- *(Amended 49 of 1995 s. 25)*

(a) an individual; and

(b) ordinarily resident in Hong Kong,

except that, in the case of an authorized institution incorporated outside Hong Kong, such chief executive and alternate chief executive are only required to be the chief executive or alternate chief executive, as the case may be, in respect of the business in Hong Kong of the institution. *(Amended 95 of 1991 s. 22)*

(1A) Where the chief executive of an authorized institution is precluded by illness, absence from Hong Kong or any other cause from carrying out his functions as the chief executive, an alternate chief executive of the institution shall act as such chief executive. *(Added 95 of 1991 s. 22)*

(2) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) commits an offence and is liable on conviction upon indictment or 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 95 of 1991 s. 22; 4 of 1997 s. 27; 32 of 2001 s. 24)*

Part XIV

(Repealed 95 of 1991 s. 23)

75-78. *(Repealed 95 of 1991 s. 23)*

Part XV

Limitations on Loans by and Interests of Authorized Institutions

*(*Format changes—E.R. 1 of 2013)*

Editorial Note:
* The format of Part XV has been updated to the current legislative styles.

79. Interpretation and application

(1) In this Part—

non-listed company (非上市公司) means a company not listed on a recognized stock market: *(Amended 5 of 2002 s. 407)*

Provided that any public statutory corporation designated for the purposes of this definition by the Financial Secretary by notice in the Gazette shall be deemed not to be a non-listed company;

relative (親屬) means—

(a) any immediate ascendant, any spouse or former spouse of any such ascendant, and any brother or sister of any such spouse or former spouse; *(Replaced 49 of 1995 s. 26)*

(b) any immediate descendant, and any spouse or former spouse of any such descendant; *(Replaced 49 of 1995 s. 26)*

(c) any brother or sister, aunt or uncle and any nephew or niece and any first cousin; *(Replaced 49 of 1995 s. 26)*

(d) any spouse or former spouse, any immediate ascendant of any such spouse or former spouse, and any brother or

sister of any such spouse or former spouse, *(Added 49 of 1995 s. 26)*

and, for the purposes of this definition, any step-child shall be deemed to be the child of both its natural parent and of its step-parent and any adopted child to be the child of the adopting parent, and a spouse shall include anyone living as such; *(Amended 95 of 1991 s. 24)*

value (價值) means—

(a) in the case of shares in a company, the total of the current book value and the amount for the time being remaining unpaid on the shares; and *(Amended 95 of 1991 s. 24)*

(b) in any other case, the current book value.

(2) For the purposes of this Part, the capital base of an authorized institution means the capital base of the institution as determined in accordance with rules made under section 97C(1). *(Replaced 95 of 1991 s. 24. Amended 19 of 2005 s. 7; 3 of 2012 s. 6)*

(3) For the purposes of sections 83 and 85, ***unsecured*** (無保證) means granted without security, or, in respect of any advance, loan or credit facility granted or financial guarantee or other liability incurred with security, any part thereof which at any time exceeds the market value of assets constituting that security; and ***security*** (保證) means such security as would, in the opinion of the Monetary Authority, be acceptable to a prudent banker. *(Amended 95 of 1991 s. 24; 82 of 1992 s. 25)*

(4) In relation to any authorized institution incorporated outside Hong Kong, sections 80, 82, 85, 86 and, to the extent that it relates to such an institution, section 91 shall apply only to its principal place of business in Hong Kong and its local branches, and shall do so as if that principal place of business

and those branches were collectively a separate authorized institution. *(Amended 64 of 1987 s. 19; 95 of 1991 s. 24)*

(5) The Financial Secretary may, by notice in the Gazette, amend the definition of ***relative***. *(Added 49 of 1995 s. 26)*

79A. Monetary Authority may require provisions of this Part to apply to certain authorized institutions on a consolidated basis

(1) Subject to subsection (2), for the purposes of the application of any provision of this Part to an authorized institution incorporated in Hong Kong which has any subsidiary, the Monetary Authority may, by notice in writing to the institution, require the provision to apply to the institution—

(a) on a consolidated basis instead of on an unconsolidated basis; or

(b) on both a consolidated basis and an unconsolidated basis.

(2) The Monetary authority may, in a notice under subsection (1) to an authorized institution, require the provision of this Part to which the notice relates to apply to the institution on a consolidated basis only in respect of such subsidiaries of the institution as are specified in the notice.

(3) No duty which a subsidiary of an authorized institution may be subject to shall be regarded as contravened by reason of the submission of information by the subsidiary to the institution for the purpose of enabling or assisting the institution to comply with a notice under subsection (1) to the institution.

(Added 95 of 1991 s. 25. Amended 82 of 1992 s. 25)

80. Advance against security of own shares, etc.

(1) An authorized institution shall not grant any advances, loans or credit facilities (including letters of credit), or give any

financial guarantee or incur any other liability, against the security of its own shares. *(Amended 95 of 1991 s. 26)*

(2) An authorized institution shall not, except with the approval in writing of the Monetary Authority, which approval shall be subject to such conditions as the Monetary Authority may think proper to attach thereto, grant any advances, loans or credit facilities (including letters of credit), or give any financial guarantee or incur any other liability, against the security of the shares of- *(Amended 95 of 1991 s. 26; 82 of 1992 s. 25)*

(a) any holding company of the institution;

(b) any subsidiary of the institution; or

(c) any other subsidiary of any holding company of the institution.

(3) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) or (2) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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. *(Amended 4 of 1997 s. 27)*

81. Limitations on advances by authorized institutions

(1) Subject to subsections (4), (4A), (5) and (6), the financial exposure of an authorized institution incorporated in Hong Kong to- *(Amended 49 of 1995 s. 27)*

(a) any one person;

(b) two or more companies which—

(i) are subsidiaries of the same holding company; or

(ii) have the same controller (not being a company);

(c) any holding company and one or more of its subsidiaries; or

(d) any one person (not being a company) and one or more companies of which that person is a controller,

shall not exceed an amount equivalent to 25% of the capital base of the institution.

(2) The financial exposure of an authorized institution to any person, company or combination thereof referred to in subsection (1)(a), (b), (c) or (d) shall, for the purposes of this section, be taken to be the aggregate of—

(a) all advances, loans and credit facilities (including letters of credit) given to;

(b) the value of the institution's holdings of shares and debentures (within the meaning of those terms in section 2 of the Companies Ordinance (Cap. 622)) issued by; *(Amended 42 of 1999 s. 9; 28 of 2012 ss. 912 & 920)*

(ba) financial exposure, being financial exposure declared in a notice under subsection (2A) to be financial exposure falling within this paragraph, of the institution to; and *(Added 42 of 1999 s. 9)*

(c) the product of—

(i) the principal amount of any item that, in relation to the institution, is an off-balance sheet item for the purpose of rules made under section 97C(1); and *(Amended 3 of 2012 s. 7)*

(ii) the factor specified by the Monetary Authority pursuant to subsection (3) for that item,

where, in respect of that institution, the other party is, *(Replaced 19 of 2005 s. 7)*

that person, company or combination thereof, as the case may be.

(2A) The Monetary Authority may, by notice in the Gazette, and subject to such conditions, if any, as are specified in the notice, declare financial exposure specified in the notice to be financial exposure falling within subsection (2)(ba). *(Added 42 of 1999 s. 9)*

(2B) It is hereby declared that a notice under subsection (2A) is subsidiary legislation. *(Added 42 of 1999 s. 9)*

(3) The Monetary Authority may, by notice in the Gazette, specify the factor for the purposes of subsection (2)(c), and any such notice may specify different factors for different items referred to in that subsection.

(4) Where—

(a) the person referred to in subsection (1)(a) is a subsidiary or holding company of an authorized institution or a subsidiary of such holding company;

(b) the holding company referred to in subsection (1)(b)(i) is an authorized institution or a holding company of an authorized institution; or

(c) the holding company referred to in subsection (1)(c) is a holding company of an authorized institution,

the Monetary Authority may, by notice in writing to the institution, and subject to such conditions as he may think proper to attach thereto in any particular case, specify that subsection (1)(a), (b)(i) or (c), as the case may be, shall not apply for the purpose of determining the financial exposure of that institution and, accordingly, subsection (1)(a), (b)(i) or (c), as the case may be, shall not apply.

(4A) Where—

(a) the holding company referred to in subsection (1)(b)(i) is The Financial Secretary Incorporated established under the Financial Secretary Incorporation Ordinance (Cap. 1015);

(b) the controller referred to in subsection (1)(b)(ii) is the Government;

(c) the holding company referred to in subsection (1)(c) is The Financial Secretary Incorporated; or

(d) the controller referred to in subsection (1)(d) is the Government,

then subsection (1)(b)(i) or (ii), (c) or (d), as the case may be, shall not apply for the purpose of determining the financial exposure of the authorized institution concerned and, accordingly, that subsection shall not apply. *(Added 49 of 1995 s. 27)*

(5) Where—

(a) an authorized institution is financially exposed to a trustee in respect of 2 or more trusts; and

(b) any person, company or combination thereof referred to in subsection (1)(a), (b), (c) or (d) is that trustee,

the Monetary Authority may, by notice in writing to the institution, and subject to such conditions as he may think proper to attach thereto in any particular case, specify that the financial exposure of that institution to that person, company or combination thereof, as the case may be, may exceed an amount equivalent to 25% of the capital base of the institution by an amount not more than the amount specified in that notice and, accordingly, such financial exposure of that institution may exceed the first-mentioned amount by an amount not more than the amount specified in that notice.

(6) For the purposes of this section, the financial exposure of an authorized institution shall not included—

(a) any financial exposure to other authorized institutions;

(b) any financial exposure to the extent to which it is—

(i) secured by—

(A) a cash deposit;

(B) a guarantee;

(C) another undertaking which, in the opinion of the Monetary Authority, is similar to a guarantee; or

(D) securities issued, or guaranteed, by the central government or the central bank of any Tier 1 country; or *(Added 67 of 1992 s. 6. Amended 19 of 2005 s. 7)*

(ii) covered by a letter of comfort,

where such cash deposit, guarantee, other undertaking, securities or letter of comfort, as the case may be, is accepted by the Monetary Authority, and subject to such conditions as he may think proper to attach thereto, either generally or in any particular case; *(Amended 67 of 1992 s. 6)*

(c) any financial exposure acquired by the purchase of bills of exchange or documents of title to goods where the holder of such bills or documents is entitled to payment outside Hong Kong for goods exported from Hong Kong;

(d) any advances, loans and credit facilities made against any bills or documents referred to in paragraph (c);

(e) any financial exposure to the Government;

(f) any financial exposure to any other government, except a government which is, in the opinion of the Monetary Authority one that should not be accepted for the purposes of this section;

(g) any financial exposure to a bank incorporated outside Hong Kong which is not an authorized institution where any such bank is, in the opinion of the Monetary Authority, adequately supervised by the relevant banking supervisory authority; *(Replaced 49 of 1995 s. 27)*

(h) any share capital or debt securities held as security for facilities granted by the institution or, subject to subsection (7), acquired by it in the course of the satisfaction of debts due to it;

(i) any financial exposure acquired under an underwriting or subunderwriting contract—

(i) where such financial exposure would, but for this subsection, be financial exposure under subsection (2)(b);

(ii) for a period not exceeding 7 working days, or such further period as the Monetary Authority approves in writing, and subject to such conditions as he may think proper to attach thereto in any particular case;

(j) any financial exposure acquired under an underwriting or subunderwriting contract where such financial exposure would, but for this subsection, be financial exposure under subsection (2)(c);

(k) any indemnity given by the institution to a person to protect that person against any damages which may be incurred by the person as a result of the person registering a transfer of shares where—

(i) the instrument by means of which the transfer has been effected, or purports to have been effected, has been provided, or purports to have been provided, by a subsidiary of the institution;

(ii) the authenticating signature on the instrument has been imprinted on it by a machine used by the subsidiary to imprint that signature on such instruments; and

(iii) that signature was unlawfully so imprinted on that instrument,

or any financial guarantee given by the institution to that person in respect of any like indemnity given by that subsidiary to that person; *(Amended 67 of 1992 s. 6)*

(ka) any financial exposure to a multilateral development bank; *(Added 49 of 1995 s. 27)*

(kb) any financial exposure to the Housing Authority, within the meaning of the Housing Ordinance (Cap. 283), arising from guarantees the Housing Authority gives for the purposes of the Home Ownership Scheme or Private Sector Participation Scheme; *(Added 49 of 1995 s. 27. Amended 42 of 1999 s. 9)*

(kc) any financial exposure to The Hong Kong Mortgage Corporation Limited arising from the obligations placed upon it for the purposes of the Mortgage Insurance Programme; *(Added 42 of 1999 s. 9)*

(l) any financial exposure to the extent to which it has been written off, or to which specific provision has been made for it, in the books of the institution; *(Added 67 of 1992 s. 6. Amended L.N. 10 of 2004)*

(m) any financial exposure to any of the following companies arising from the obligations placed upon the company for the purposes of the Guaranteed Mortgage-

Backed Pass-Through Securitisation Programme set up by The Hong Kong Mortgage Corporation Limited—

(i) The Hong Kong Mortgage Corporation Limited; or

(ii) any company that issues mortgage-backed securities in connection with the Programme. *(Added L.N. 10 of 2004)*

(6A) The Financial Secretary may, by notice in the Gazette, amend subsection (6). *(Added 49 of 1995 s. 27)*

(7) All share capital and debt securities acquired by an authorized institution in the course of the satisfaction of debts due to it shall be disposed of at the earliest suitable opportunity, and in any event not later than 18 months after the acquisition thereof, or within such further period as the Monetary Authority approves in writing, and subject to such conditions as he may think proper to attach thereto, in any particular case.

(8) For the purposes of this section—

(a) the expression ***person*** (人) includes any partnership, any public body and any body of persons, corporate or unincorporate;

(b) the expression ***debt securities*** (債務證券) shall mean any securities other than shares, stocks or import or export trade bills; *(Replaced 19 of 2005 s. 7)*

(c) advances, loans, credit facilities, guarantees or liabilities shall be deemed to be granted to and to be outstanding in relation to any person liable or contingently liable thereon whether as principal debtor, guarantor, or otherwise:

Provided that the reference in this paragraph to a guarantor shall not include a person (not being an

authorized institution) who guarantees the obligations of another under—

(i) a hire purchase agreement, that is to say an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee; or

(ii) a conditional sale agreement, that is to say an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to payment of instalments or otherwise as may be specified in the agreement are fulfilled; and

(d) a partnership of which an authorized institution is a member shall be deemed to be a subsidiary of that institution.

(9) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(Replaced 95 of 1991 s. 27. Amended 82 of 1992 s. 25)

82. Monetary Authority may publish guidelines on business practices of authorized institutions

(1) Without prejudice to section 7(3) or to the other provisions of this Part, the Monetary Authority may, after consultation with the Financial Secretary, by notice in the Gazette from time to time publish for the guidance of authorized institutions, guidelines, not inconsistent with this Ordinance, specifying business practices which should not be engaged in by authorized institutions because, in his opinion, such business practices will or may cause the soundness of the financial position of authorized institutions to be dependent upon the soundness of the financial position of a single party. *(Amended 82 of 1992 s. 25)*

(2) For the purposes of subsection (1), guidelines given in a notice under that subsection—

(a) may be expressed to apply to all authorized institutions or to a class of authorized institutions specified in the notice; and

(b) may specify what constitutes a single party for the purposes of any such guidelines and, without prejudice to the generality of that power, any class or description of persons or business may constitute such a single party.

(3) Where an authorized institution engages in business practices specified in a notice under subsection (1), the Monetary Authority, may, where he is of the opinion that the case is of sufficient importance to justify him so doing, exercise any of his powers under Part X in respect of the institution. *(Amended 82 of 1992 s. 25; 49 of 1995 s. 28)*

83. Limitations on advances to directors, etc. of bank

(1) Subject to subsection (4A), an authorized institution incorporated in Hong Kong shall not provide any facility specified in subsection (3) to or on behalf of any person or body specified in subsection (4) if the aggregate amount of such facilities for the time being provided by the institution to or on behalf of any one or more such persons or bodies would thereby exceed 10% of the capital base of the institution. *(Replaced 95 of 1991 s. 28)*

(2) Subject to subsections (1) and (4A), an authorized institution incorporated in Hong Kong shall not provide any facility specified in subsection (3) to or on behalf of any person, being an individual, specified in subsection (4)(a), (b), (c), (d), (e) or (f) if the aggregate amount of such facilities for the time being provided by the institution to or on behalf of—

(a) one or more such persons, would thereby exceed 5% of the capital base of the institution;

(b) that person, would thereby exceed $1,000,000. *(Replaced 95 of 1991 s. 28)*

(3) Subject to subsection (3A), for the purposes of subsections (1) and (2), the following facilities are specified- *(Amended 67 of 1992 s. 7)*

(a) the granting, or permitting to be outstanding, of unsecured advances, unsecured loans or unsecured credit facilities including unsecured letters of credit; *(Amended 95 of 1991 s. 28)*

(b) the giving of unsecured financial guarantees; and

(c) the incurring of any other unsecured liability.

(3A) Subsection (3) shall not include any facility to the extent to which it has been written off, or to which specific provision has been made for it, in the books of the authorized institution concerned. *(Added 67 of 1992 s. 7)*

(4) For the purposes of subsections (1) and (2), the following persons and bodies are specified—

(a) any director of the institution;

(b) any relative of any such director;

(c) any employee of the institution who is responsible, either individually or as a member of a committee, for approving loan applications; *(Amended 49 of 1995 s. 29)*

(d) any relative of any such employee;

(e) any controller or minority shareholder controller of the institution (other than an authorized institution, or a bank incorporated outside Hong Kong which is not an authorized institution but is approved by the Monetary Authority for the purposes of this paragraph); *(Replaced 49 of 1995 s. 29)*

(f) any relative of an individual who is a controller or minority shareholder controller of the institution; *(Amended 67 of 1992 s. 7; 49 of 1995 s. 29)*

(g) any firm, partnership or non-listed company (other than a firm, partnership or non-listed company which is an authorized institution, or a bank incorporated outside Hong Kong which is not an authorized institution but is approved by the Monetary Authority for the purposes of this paragraph) in which the institution or any of its controllers, minority shareholder controllers or directors or any relative of any of its controllers, minority shareholder controllers or directors is interested as director, partner, manager or agent; and *(Amended 82 of 1992 s. 25; 49 of 1995 s. 29)*

(h) any individual, firm, partnership or non-listed company of which any controller, minority shareholder controller or director of the institution or any relative of any such controller, minority shareholder controller or director

is a guarantor. *(Amended 95 of 1991 s. 28; 49 of 1995 s. 29)*

(4A) The Monetary Authority may, by notice in writing to an authorized institution, and subject to such conditions as he may think proper to attach thereto in any particular case, permit the institution to grant, without complying with subsection (1) or (2), any facility specified in subsection (3) (or such of those facilities as he specifies in the notice) to or on behalf of any person or body specified in subsection (4) (or such of those persons or bodies as he specifies in the notice); and where the institution, in pursuance of such notice and in accordance with such conditions, grants any such facility to or on behalf of any such person or body it shall not thereby contravene subsection (1) or (2). *(Added 64 of 1987 s. 21. Amended 3 of 1990 s. 34; 95 of 1991 s. 28; 82 of 1992 s. 25)*

(5) The provisions of this section shall apply to a facility granted to or on behalf of a person or body jointly with another person or body as they apply to a facility granted to or on behalf of a person or body severally.

(6) For the purposes of subsections (2) and (4), a facility granted to or on behalf of any firm, partnership or non-listed company which a person specified in subsection (4)(a), (b), (c), (d), (e) or (f) is able to control, shall be deemed to be granted to that person or on his behalf.

(7) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) or (2) commits an offence and is liable- *(Amended 95 of 1991 s. 28; 32 of 2001 s. 24)*

(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)*

(8) Where, at any time before the commencement of the Banking (Amendment) Ordinance 1995 (49 of 1995), an authorized institution has lawfully provided a facility specified in subsection (3) to or on behalf of—

(a) a minority shareholder controller of the institution;

(b) any relative of such a controller;

(c) any firm, partnership or non-listed company in which such a controller or any relative of his is interested as director, partner, manager or agent; or

(d) any individual, firm, partnership or non-listed company of which such a controller or any relative of his is a guarantor,

then, in so far as that facility is concerned, this section shall operate as if the references to minority shareholder controller or minority shareholder controllers, as the case may be, in subsection (4)(e), (f), (g) and (h) were deleted. *(Added 49 of 1995 s. 29)*

84. *(Repealed 95 of 1991 s. 29)*

85. Limitation on advances to employees

(1) An authorized institution shall not, without the written consent of the Monetary Authority given generally or in any particular case or class of case, provide to any one of its employees any facility specified in subsection (2) to an aggregate amount of such facilities in excess of one year's salary for the employee. *(Amended 95 of 1991 s. 30; 42 of 1999 s. 10)*

(2) For the purposes of subsection (1) the following facilities are specified—

(a) the granting, or permitting to be outstanding, of unsecured advances, unsecured loans or unsecured credit facilities including unsecured letters of credit; *(Amended 95 of 1991 s. 30)*

(b) the giving of unsecured financial guarantees; and

(c) the incurring of any other unsecured liability.

(3) Every director, every chief executive and every manager of an authorized institution which contravenes this section commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

86. Powers of Monetary Authority where moneys placed with foreign bank

(1) Where the Monetary Authority—

(a) has reason to believe that an authorized institution has granted to any foreign bank any advances, loans (whether by way of deposit or otherwise) or credit facilities; and

(b) is of the opinion that the extent or manner in which such advances, loans or credit facilities have been made is not in the interests of the depositors of the authorized institution,

he may, by notice in writing to the institution, exercise his powers under this section.

(2) A notice under this section may—

(a) prohibit the authorized institution from granting, after the date of the service of the notice, any advances, loans or credit facilities to the foreign bank specified in the notice and any other foreign bank so specified which the Monetary Authority has reason to believe is associated with the first-mentioned foreign bank;

(b) where any moneys are held at call, demand or notice by the authorized institution with any bank specified by the Monetary Authority in pursuance of his powers under paragraph (a), direct the institution forthwith to demand repayment of such moneys in accordance with the terms upon which they are held;

(c) prohibit the authorized institution from permitting to be outstanding with any bank specified by the Monetary Authority in pursuance of his powers under paragraph (a)—

(i) any moneys which should have been repaid to the institution by virtue of a direction under paragraph (b);

(ii) any advances, loans or credit facilities repayable or terminable upon the elapse of any time or the occurrence of any event, after the elapse of such time or the occurrence of such event.

(3) A requirement under subsection (2)(a) shall not prohibit the grant of any advance or loan after the date of service of the notice in pursuance of any agreement entered into prior to such date unless the Monetary Authority otherwise directs; but it shall be the duty of the authorized institution to notify the Monetary Authority of any relevant agreement within 7 days of the receipt by it of a notice under this section.

(4) In this section—

foreign bank (外地銀行) means—

(a) any bank incorporated outside Hong Kong which is not an authorized institution; *(Amended 49 of 1995 s. 30)*

(b) any undertaking of an authorized institution, including that of the institution to which notice is given under this section, which is situated outside Hong Kong.

(5) Every director, every chief executive and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement of the Monetary Authority in the exercise of his powers under this section commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(Amended 82 of 1992 s. 25)

87. Limitation on shareholding by authorized institutions

(1) Subject to subsection (2), an authorized institution incorporated in Hong Kong shall not acquire or hold any part of the share capital of any other company or companies to an aggregate value in excess of 25 per cent of the capital base of the institution, except such share capital as the institution may hold as security for facilities granted by it or acquire in the course of the satisfaction of debts due to it: *(Amended 64 of 1987 s. 23; 95 of 1991 s. 31)*

Provided that all share capital acquired in the course of the satisfaction of debts due to it shall be disposed of at the earliest suitable opportunity, and in any event not later than 18 months after the acquisition thereof or within such further period as the Monetary Authority approves in writing in any particular case.

(2) Subsection (1) shall not apply—

(a) where an authorized institution acquires or holds any part of the share capital of any company or companies under an underwriting or subunderwriting contract for a period not exceeding 7 working days, or such further period as the Monetary Authority approves in writing, and subject to such conditions as he may think proper to attach thereto, in any particular case; *(Amended 95 of 1991 s. 31)*

(b) to any holding, approved in writing by the Monetary Authority, of share capital in—

(i) another authorized institution; or

(ii) a company carrying out nominee, executor or trustee functions, or other functions related to banking business, the business of taking deposits, insurance business, investments or other financial services; or *(Replaced 95 of 1991 s. 31)*

(c) to any holding, approved in writing by the Monetary Authority, of share capital which is deducted in determining the capital base of the authorized institution. *(Added 95 of 1991 s. 31)*

(3) Every director, every chief executive and every manager of an authorized institution which contravenes this section commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

(4) *(Repealed 95 of 1991 s. 31)*

(Amended 82 of 1992 s. 25)

87A. Acquisition by authorized institutions incorporated in Hong Kong of share capital in companies

(1) In this section, ***relevant day*** (有關日期) means the day of commencement of section 11 of the Banking (Amendment) Ordinance 1999 (42 of 1999).

(2) An authorized institution incorporated in Hong Kong shall be subject to a condition that it shall not—

(a) acquire (whether by one acquisition or a series of acquisitions, and by whatever means) all or part of the share capital of a company (and whether or not the company was established by the institution) to a value of 5% or more of the capital base of the institution at the time of the acquisition unless the approval of the Monetary Authority has been given to the proposed acquisition of such share capital;

(b) if any such approval granted in respect of the company is revoked under subsection (5), hold share capital in the company to a value of 5% or more of the capital base of the institution on or after the time such revocation comes into effect.

(3) Approval under subsection (2)(a) shall be deemed to have been granted in respect of any company—

(a) in relation to which an authorized institution incorporated in Hong Kong held, immediately before the relevant day, share capital to a value of 5% or more of the capital base of the institution;

(b) in relation to which an authorized institution incorporated in Hong Kong comes to hold, not later than 3 months after the relevant day, share capital to a value of 5% or more of the capital base of the institution where the acts or circumstances by virtue of which the institution comes to hold such share capital substantially occurred before the relevant day.

(4) The Monetary Authority may at any time, by notice in writing served upon an authorized institution, attach, with effect from such time as is specified in the notice (being a time reasonable in all the circumstances of the case), to an approval granted under subsection (2)(a), or deemed to have been granted under subsection (3), in respect of any company in relation to which the institution is to come to hold, or holds, share capital to a value of 5% or more of the capital base of the institution, such conditions, or amend or cancel, with effect from such time as is specified in the notice (being a time reasonable in all the circumstances of the case), any conditions so attached, as he may think proper.

(5) The Monetary Authority may revoke—

(a) in such case as he thinks fit; and

(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)(a), or deemed to have been granted under subsection (3), in respect of any company.

(6) Where the Monetary Authority refuses to grant approval under subsection (2)(a) or revokes an approval under subsection (5),

he shall notify the authorized institution concerned in writing of the refusal or revocation.

(7) Every director, every chief executive and every manager of an authorized institution who contravenes the condition in subsection (2) or any condition attached under subsection (4) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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.

(8) For the purposes of this section, share capital of a company acquired by an authorized institution shall not include share capital so acquired—

(a) in the course of the satisfaction of debts due to the institution; or

(b) under an underwriting or a subunderwriting contract for a period not exceeding 7 working days, or such further period as the Monetary Authority approves in writing, and subject to such conditions as he may think proper to attach thereto in any particular case.

(Added 42 of 1999 s. 11)

88. Limitation on holding of interest in land by authorized institutions

(1) An authorized institution incorporated in Hong Kong shall not purchase or hold any interest or interests in land situated in or outside Hong Kong of a value or to an aggregate value, as the case may be, in excess of 25 per cent of the capital base of the institution. *(Amended 95 of 1991 s. 32)*

(2) An authorized institution may, in addition to the value of any land permitted to be purchased or held under subsection (1), purchase or hold interests in land situated in or outside Hong Kong to any value, where the occupation of such land is, in the opinion of the Monetary Authority, necessary for conducting the business of the institution or providing housing or amenities for the staff of the institution. *(Amended 95 of 1991 s. 32; 82 of 1992 s. 25)*

(3) For the purposes of subsection (2), but without limiting the generality thereof, the Monetary Authority may in his discretion regard as necessary for conducting the business of an authorized institution the whole of any premises in which an office of the institution is situated. *(Amended 82 of 1992 s. 25)*

(4) *(Repealed 95 of 1991 s. 32)*

(5) There shall not be taken into account in the assessment of the value of interests in land for the purposes of this section the value of any interest in land mortgaged to the authorized institution to secure a debt due to the institution nor the value of any interest in land acquired pursuant to entry into possession of land so mortgaged, provided that the interest acquired is disposed of at the earliest suitable opportunity, and in any event not later than 18 months after its acquisition or within such further period as the Monetary Authority may, in writing, allow in any particular case. *(Amended 82 of 1992 s. 25)*

(6) Every director, every chief executive and every manager of an authorized institution which contravenes this section commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

89. *(Repealed 95 of 1991 s. 33)*

90. Limitation on aggregate holdings under sections 83, 87 and 88

(1) Notwithstanding anything contained in sections 83, 87 and 88, in respect of an authorized institution, the aggregate total of—

(a) the amount outstanding of all facilities specified in section 83(3) provided to or on behalf of persons or bodies specified in section 83(4);

(b) the value of all holdings of share capital specified in section 87; and

(c) the value of all holdings of interests in land specified in section 88(1) and (2),

shall not at any time exceed 80% of the capital base of the institution. *(Replaced 95 of 1991 s. 34)*

(2) In assessing the aggregate total which is permissible under subsection (1) there shall not be taken into account any matter which is excluded from the operation of section 83, 87 or 88 by virtue of any of the provisions thereof unless the Monetary Authority, by notice in writing to the authorized institution concerned, otherwise specifies. *(Amended 95 of 1991 s. 34; 82 of 1992 s. 25)*

(3) Every director, every chief executive and every manager of an authorized institution which contravenes this section commits an offence and is liable- *(Amended 95 of 1991 s. 34; 32 of 2001 s. 24)*

(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)*

91. Proof of compliance with section 80, 81, 83, 85, 86, 87, 88 or 90

(1) Any authorized institution, if at any time called upon in writing by the Monetary Authority so to do, shall satisfy him by the production of such evidence or information as he may require, that the institution is not in contravention of any of the provisions of section 80, 81, 83, 85, 86, 87, 88 or 90 applicable to that institution. *(Replaced 95 of 1991 s. 35. Amended 82 of 1992 s. 25)*

(2) Any authorized institution, if at any time called upon in writing by the Monetary Authority so to do, shall satisfy him by the production of such evidence or information as he may require, whether or not the institution is engaging in any business practices specified in a notice under section 82. *(Amended 82 of 1992 s. 25)*

(3) Every director, every chief executive and every manager of an authorized institution which fails or refuses without reasonable excuse to comply with subsection (1) or (2) commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

Part XVI

ADVERTISEMENTS, REPRESENTATIONS AND USE OF TITLE "BANK"

92. Offence to issue advertisements, etc. relating to deposits

(1) Subject to subsection (2), no person shall issue, or have in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to members of the public—

(a) to make any deposit; or

(b) to enter into, or offer to enter into, any agreement to make any deposit.

(2) Subsection (1) shall not apply in relation to any advertisement, invitation or document—

(a) to the extent that the advertisement, invitation or document is or contains an invitation to members of the public—

(i) to make a deposit with an authorized institution; or

(ii) to enter into, or offer to enter into, any agreement to make a deposit with an authorized institution;

(b) to the extent to which section 103(1) of the Securities and Futures Ordinance (Cap. 571) does not apply to the advertisement, invitation or document by virtue of section 103(3)(f), (g), (h) or (i) of that Ordinance or the issue of which is authorized under section 105(1) of that Ordinance; *(Amended 5 of 2002 s. 407)*

(c) to the extent that the advertisement, invitation or document is or contains any prescribed advertisement

which complies with the requirements specified in the Fifth Schedule applicable to the prescribed advertisement; or

(d) to the extent that the advertisement, invitation or document relates to the taking of a deposit which is not, by virtue of section 3(1) or (2), a taking to which Part III applies.

(3) Subject to subsection (5), a person who contravenes subsection (1) commits an offence and is liable—

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

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

(4) For the purposes of any proceedings under this section, an advertisement, invitation or document in which a person named in the advertisement, invitation or document holds himself out as being prepared to take in Hong Kong any deposit shall, subject to subsection (5), be presumed, unless such named person proves to the contrary, to have been issued by him.

(5) A person shall not be taken to contravene subsection (1) in relation to an advertisement, invitation or document to which that subsection applies—

(a) by reason only that he issues, or has in his possession for the purposes of issue, to purchasers, or to members of the public and free of charge, copies of any newspaper, magazine, journal or other periodical publication of general and regular circulation, which contains the advertisement, invitation or document;

(b) by reason only that he issues, or has in his possession for the purposes of issue, the advertisement, invitation or document in the course of providing—

(i) a service which consists of the transmission in a communication network of information provided by a customer or any other independent person; or

(ii) access to such a network;

(c) if he is a person whose business is to issue or arrange for the issue of advertisements and he proves that—

(i) he received the advertisement, invitation or document for issue in the ordinary course of his business;

(ii) the content of the advertisement, invitation or document was wholly devised by a customer of the person or by a person acting on behalf of a customer of his;

(iii) he did not select, modify or otherwise exercise control over the content of the advertisement, invitation or document prior to its receipt or issue; and

(iv) he did not know and had no reason for believing that the issue of the advertisement, invitation or document would constitute an offence; or

(d) if—

(i) he was a broadcaster;

(ii) the advertisement, invitation or document was broadcast live by him as a broadcaster;

(iii) he did not select, modify or otherwise exercise control over the content of the advertisement, invitation or document prior to its broadcast; and

(iv) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence, if any, by which he became entitled to broadcast and with any code of practice or

guidelines (howsoever described) issued under or pursuant to the Broadcasting Ordinance (Cap. 562) or the Telecommunications Ordinance (Cap. 106) and applicable to him as a broadcaster.

(6) The Monetary Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of persons who issue, or have in their possession for the purposes of issue, advertisements, invitations or documents, guidelines not inconsistent with this Ordinance, specifying the factors the Monetary Authority takes into account to determine whether or not, in his view, an advertisement, invitation or document is an advertisement, invitation or document to which subsection (1) applies.

(7) In this section and the Fifth Schedule—

"broadcast" (廣播), in relation to any material (howsoever described), includes having the information contained in the material broadcast;

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

(a) establishes and maintains a broadcasting service within the meaning of Part 3A of the Telecommunications Ordinance (Cap. 106); or

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

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

"prescribed advertisement" (訂明廣告) means any advertisement, invitation or document which is or contains an invitation—

(a) to make any deposit outside Hong Kong; or

(b) to enter into, or offer to enter into, any agreement to make any deposit outside Hong Kong.

(Replaced 32 of 2001 s. 19. Amended E.R. 2 of 2012)

93. Fraudulent inducement to make a deposit

(1) Any person who, by any fraudulent or reckless misrepresentation, induces another person—

(a) to make a deposit with him or any other person; or

(b) to enter into or to offer to enter into any agreement to make a deposit with him or any other person,

commits an offence and is liable on conviction upon indictment to a fine at tier 9 and to imprisonment for 7 years. *(Amended 4 of 1997 s. 27)*

(2) For the purposes of subsection (1), "fraudulent or reckless misrepresentation" (有欺詐成分或罔顧後果的失實陳述) means—

(a) any statement—

(i) which, to the knowledge of the maker of the statement, was false, misleading or deceptive; or

(ii) which was false, misleading or deceptive and was made recklessly;

(b) any promise—

(i) which the maker of the promise had no intention of fulfilling;

(ii) which, to the knowledge of the maker of the promise, was not capable of being fulfilled; or

(iii) which was made recklessly;

(c) any forecast—

(i) which, to the knowledge of the maker of the forecast, was not justified on the basis of facts known to him at the time when he made it; or

(ii) which was not justified on the facts known to the maker of the forecast at the time when he made it and was made recklessly; or

(d) any statement or forecast from which the maker intentionally or recklessly omitted a material fact with the result that the statement or forecast was thereby rendered false, misleading or deceptive.

94. Liability in tort for inducing persons to make a deposit in certain cases

(1) Any person who, by any fraudulent, reckless or negligent misrepresentation, induces another person to make a deposit with him or any other person shall be liable to pay compensation to the person so induced for any pecuniary loss that such person has sustained by reason of his reliance on that misrepresentation.

(2) For the purposes of subsection (1), "fraudulent, reckless or negligent misrepresentation" (有欺詐成分、罔顧後果或疏忽的失實陳述) means—

(a) any statement—

(i) which, to the knowledge of the maker of the statement, was false, misleading or deceptive;

(ii) which was false, misleading or deceptive and was made recklessly; or

(iii) which was false, misleading or deceptive and was made without reasonable care having been taken to ensure its accuracy;

(b) any promise—

(i) which the maker of the promise had no intention of fulfilling;

(ii) which, to the knowledge of the maker of the promise, was not capable of being fulfilled; or

(iii) which was made recklessly or without reasonable care having been taken to ensure that it could be fulfilled;

(c) any forecast—

(i) which, to the knowledge of the maker of the forecast, was not justified on the basis of facts known to him at the time when he made it; or

(ii) which was not justified on the facts known to the maker of the forecast at the time when he made it and was made recklessly or without reasonable care having been taken to ascertain the accuracy of those facts; or

(d) any statement or forecast from which the maker intentionally, recklessly or negligently omitted a material fact with the result that the statement or forecast was thereby rendered false, misleading or deceptive.

(3) For the purposes of this section, where any statement, promise or forecast to which this section relates was made by a company, every person who was a director or controller of the company at the time when the statement, promise or forecast was made shall, until the contrary is proved, be deemed to have caused or permitted it to be made.

(4) This section does not affect any liability of any person at common law.

(5) An action may be brought under this section notwithstanding that the evidence on which the action is or will be based, if substantiated, discloses the commission of an offence and no person has been charged with or convicted of the offence.

(6) For the purposes of this section "company" (公司) means, in addition to a company as defined in section 2, any other body of persons, corporate or unincorporate.

95. False, etc. advertisements by authorized institution

(1) Where the Monetary Authority is of the opinion that any advertisement issued in connection with the business of an authorized institution makes a statement or any representation that is false, misleading or deceptive, he may, by notice in writing served on the institution, require the institution to withdraw or, as the circumstances require, remove, and to cease issuing such advertisements and an authorized institution served with such a notice shall, accordingly, comply with that notice. *(Amended 82 of 1992 s. 25)*

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

(3) Every director, every chief executive and every manager of an authorized institution which fails or refuses to comply with any notice served under this section on it commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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)*

96. Certain representations prohibited

(1) An authorized institution shall not in any communication, whether written or oral, represent or imply, or permit to

be represented or implied, in any manner to any person that the institution has in any respect been approved by the Government, the Financial Secretary or the Monetary Authority. *(Amended 82 of 1992 s. 25)*

(2) Subsection (1) is not contravened by reason only that a statement is made to the effect that an authorized institution is authorized. *(Amended 49 of 1995 s. 31)*

(3) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) without reasonable excuse commits an offence and is liable— *(Amended 32 of 2001 s. 24)*

(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. *(Amended 4 of 1997 s. 27)*

97. Restrictions on use of name "bank"

(1) Subject to this section, any person, other than a bank, or an institution which is recognized as the central bank of the place in which it is incorporated, who, without the written consent of the Monetary Authority given generally or in any particular case or class of case- *(Amended 3 of 1990 s. 39; 95 of 1991 s. 37; 82 of 1992 s. 25; 49 of 1995 s. 32)*

(a) uses the word "bank" or any of its derivatives in English, or any translation thereof in any language or uses the Chinese expression "ngan hong" (銀行), or uses the letters "b", "a", "n", "k" in that order, in the description or name under which such person is carrying on business in Hong Kong; or *(Amended 49 of 1995 s. 32)*

(b) makes any representation in any bill head, letter paper, notice, advertisement or in any other manner whatsoever

that such person is a bank or is carrying on banking business in Hong Kong,

commits an offence and is liable—

(i) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or *(Amended 32 of 2001 s. 20)*

(ii) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

(1A) Where a bank—

(a)-(b) *(Repealed 94 of 1993 s. 23)*

(c) uses, in the name under which it carries on business as a bank in the place where it is incorporated, any of the terms to which subsection (1)(a) applies,

nothing in subsection (1)(a) shall prohibit a local representative office of the bank from using the same name, or any translation thereof in any language, in the name under which the representative office is carrying on in Hong Kong the functions and activities of a representative office provided such name—

(i) is used in immediate conjunction with the term "representative office" in the same language as such name (which term, in the case of Chinese, shall be the characters (代表辦事處); and

(ii) is not more prominent than such term. *(Added 95 of 1991 s. 37)*

(1AA) Where the Monetary Authority gives consent, or refuses to give consent, under subsection (1), he shall, as soon as is reasonably practicable, thereafter give notice in writing of the consent or the refusal to the person who sought the consent and, in the case of the refusal, shall specify his reasons in the notice for the refusal. *(Added 32 of 2001 s. 20)*

(1B) *(Repealed 49 of 1995 s. 32)*

(2) Nothing in this section shall apply to any association of banks formed for the protection or promotion of their mutual interests or to any association of employees of banks formed for the protection or promotion of the mutual interests of such employees.

(3) Nothing in subsection (1)(a) shall prohibit a restricted licence bank using a specified term in the description under which the restricted licence bank is carrying on in Hong Kong the business of taking deposits. *(Added 3 of 1990 s. 39)*

(4) Where a restricted licence bank—

(a) is incorporated outside Hong Kong;

(b) is a bank in the place where it is incorporated; and

(c) uses, in the name under which it carries on business as a bank in the place where it is incorporated, any of the terms to which subsection (1)(a) applies,

nothing in subsection (1)(a) shall prohibit the restricted licence bank from using the same name, or any translation thereof in any language, in the name under which the restricted licence bank is carrying on in Hong Kong the business of taking deposits provided such name—

(i) is used in immediate conjunction with the term "restricted licence bank" in the same language as such name (which term, in the case of Chinese, shall be the characters specified in paragraph (a) of the definition of "specified term" in subsection (6)); and

(ii) is not more prominent than such term. *(Added 3 of 1990 s. 39)*

(5) Nothing in this Ordinance shall affect the determination of any question whether a restricted licence bank or a deposit-taking company is a bank for purposes other than those of

this Ordinance, and accordingly nothing in this section shall prohibit a restricted licence bank or a deposit-taking company from using any of the terms to which subsection (1) (a) applies with reference to itself in any case where—

(a) it wishes to comply with or take advantage of any relevant provision of law or custom; and

(b) it is necessary for it to use any such term in order to be able to assert that it is complying with or entitled to take advantage of that provision. *(Added 3 of 1990 s. 39)*

(6) In this section—

"description" (稱謂) includes any statement (whether or not in writing) which uses any of the terms to which subsection (1)(a) applies where that statement may be construed to mean that a person (howsoever described) is—

(a) a subsidiary;

(b) the holding company; or

(c) a subsidiary of the holding company,

of a bank (and whether or not such bank is authorized or exists); *(Added 49 of 1995 s. 32)*

"relevant provision of law or custom" (有關法律或慣例的規定) means any enactment, any instrument made under an enactment, any international agreement, any rule of law or any commercial usage or practice which confers any benefit on, or otherwise has effect only in relation to, a person by virtue of such person being a bank;

"specified term" (指明詞語) means any of the following terms—

(a) "restricted licence bank" or "有限制牌照銀行";

(b) "merchant bank" or "商人銀行";

(c) "investment bank" or "投資銀行";

(d) "wholesale bank" or "批發銀行";

(e) a term specified by the Monetary Authority by notice in the Gazette to be a specified term for the purposes of this definition, *(Amended 82 of 1992 s. 25)*

and includes any derivatives of those terms in English or Chinese. *(Added 3 of 1990 s. 39. Amended 49 of 1995 s. 32)*

(7) Where, immediately before the commencement of the Banking (Amendment) Ordinance 1995 (49 of 1995), a company was lawfully exercising the privilege conferred upon it under subsection (1B) as in force immediately before that commencement, then the company may continue to exercise that privilege as if—

(a) that subsection had not been repealed but the word "name" had been substituted for the word "title" in paragraph (a) of that subsection; and

(b) the definition of "specified bank" in subsection (6) as in force immediately before that commencement had not been repealed but the word "authorized" had been substituted for the words "licensed under section 16" in paragraphs (a) and (b)(i) of that definition. *(Added 49 of 1995 s. 32)*

97A. False statements as to authorized status

(1) Subject to section 97, no person shall describe himself, or otherwise hold himself out, so as to indicate, or reasonably be construed to indicate, that he is- *(Amended 4 of 1997 s. 15)*

(a) an authorized institution, or carrying on in Hong Kong the business of taking deposits, unless he is an authorized institution;

(b) a bank, or carrying on in Hong Kong banking business, unless he is a bank;

(c) a restricted licence bank unless he is a restricted licence bank;

(d) a deposit-taking company unless he is a deposit-taking company; or

(e) a local representative office unless he is a local representative office.

(2) Any person who contravenes subsection (1) commits an offence and is liable—

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

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

(Added 95 of 1991 s. 38)

Part XVIA

Capital Requirements

(Part XVIA added 3 of 2012 s. 8)

97B. Purpose

The purpose of this Part is to ensure that authorized institutions incorporated in Hong Kong maintain adequate capital resources consistent with what is sound and prudent, taking into account the risks associated with the institutions.

97C. Capital requirements

(1) The Monetary Authority may, after consultation with the Financial Secretary and the persons specified in subsection (2), make rules—

(a) prescribing capital requirements for authorized institutions incorporated in Hong Kong, taking into account the risks associated with the institutions; and

(b) for connected purposes.

(2) The persons specified for the purposes of subsection (1) are—

(a) the Banking Advisory Committee;

(b) the Deposit-taking Companies Advisory Committee;

(c) The Hong Kong Association of Banks; and

(d) The DTC Association.

(3) Without limiting subsection (1), rules made under that subsection—

(a) may make different provisions for different classes of authorized institutions incorporated in Hong Kong,

taking into account the risks associated with the institutions belonging to each class;

(b) may give effect to banking supervisory standards relating to capital issued by the Basel Committee, whether in whole or in part and subject to any modifications the Monetary Authority thinks fit, having regard to the prevailing circumstances in Hong Kong;

(c) may apply, adopt or incorporate by reference, with or without modifications, any document relating to capital issued by the Basel Committee, whether in whole or in part and whether in force at the time of issue or as in force from time to time;

(d) may, in respect of an authorized institution that has one or more than one subsidiary, specify, or empower the Monetary Authority to specify, that any capital requirement rule applicable to the institution is to apply—

(i) to the institution on an unconsolidated basis;

(ii) to the institution and one or more of such subsidiaries on a consolidated basis; or

(iii) to the institution on an unconsolidated basis and to the institution and one or more of such subsidiaries on a consolidated basis;

(e) may provide that a matter prescribed in the rules (including a failure to comply with a capital requirement rule) relating to an authorized institution is a matter in respect of which the institution—

(i) must immediately notify the Monetary Authority; and

(ii) must provide particulars to the Monetary Authority on request;

(f) may provide for the Monetary Authority, on application made by an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under the rules, to review the decision;

(g) may prescribe a capital requirement in the form of a range with upper and lower limits, and the circumstances under which the Monetary Authority may determine a specific capital requirement within that range to apply to an authorized institution; and

(h) may contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules.

(4) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under the rules is a decision to which section 101B(1) applies.

(5) Subject to this Part and Part X, an authorized institution incorporated in Hong Kong must comply with the rules made under subsection (1) applicable to it.

(6) Rules made under section 98A(1) and in force immediately before the *commencement date of section 9 of the Banking (Amendment) Ordinance 2012 (3 of 2012) are, on and after that date, deemed to have been made under subsection (1) and, accordingly, may be amended by rules made under that subsection.

(7) To avoid doubt, any requirement under subsection (1) for the Monetary Authority to consult with any person does not operate to prevent the Monetary Authority from consulting with any other person that the Monetary Authority thinks fit.

Editorial Note:

* Commencement date : 1 January 2013.

97D. Prescribed notification requirement

(1) In this section—

prescribed notification requirement (訂明通知規定) means a requirement prescribed in the rules made under section 97C(1) to the effect that an authorized institution must in respect of a matter prescribed in the rules immediately notify the Monetary Authority.

(2) If, in compliance with a prescribed notification requirement, an authorized institution notifies the Monetary Authority of a failure to comply with a capital requirement rule relating to a minimum level of capital to be maintained by the institution, the Monetary Authority must immediately notify the Financial Secretary and provide the Financial Secretary with any particulars of the failure that the Financial Secretary requires.

(3) Every director, every chief executive and every manager of an authorized institution that fails to comply with a prescribed notification requirement applicable to it commits an offence and is liable on conviction on indictment to a fine at tier 8 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues.

97E. Remedial action

(1) If an authorized institution contravenes section 97C(5), the institution and the Monetary Authority must enter into discussions for the purposes of determining what remedial action should be taken by the institution to comply with that section, but the Monetary Authority is not bound by any such discussions.

(2) The Monetary Authority may, after holding any discussions under subsection (1), by notice in writing served on the

authorized institution, require the institution to take the remedial action specified in the notice.

(3) A decision of the Monetary Authority to impose a requirement on an authorized institution in a notice served under subsection (2) is a decision to which section 101B(1) applies.

(4) Every director, every chief executive and every manager of an authorized institution that fails to comply with any requirement imposed in a notice served under subsection (2) commits an offence and is liable on conviction on indictment to a fine at tier 8 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues.

(5) To avoid doubt, the imposition of a requirement on an authorized institution under this section does not affect any action taken, or prevent any action from being taken, in respect of the institution by the Monetary Authority under the rules made under section 97C(1).

97F. Monetary Authority may vary capital requirement rules for particular authorized institutions

(1) Subject to subsections (2), (3), (4) and (5), the Monetary Authority may, by notice in writing served on an authorized institution, vary any capital requirement rule applicable to the institution if the Monetary Authority is satisfied, on reasonable grounds, that it is prudent to make the variation, taking into account the risks associated with the institution.

(2) If the Monetary Authority proposes to serve a notice under subsection (1) on an authorized institution, the Monetary Authority must serve a draft of the notice (***draft notice***) on the institution.

(3) A draft notice served on an authorized institution must—

(a) specify—

(i) the capital requirement rule proposed to be varied;

(ii) the manner in which the capital requirement rule concerned is proposed to be varied; and

(iii) the grounds for the proposed variation; and

(b) include a statement that the institution may, within 14 days (or any longer period the Monetary Authority allows in any particular case) from the date of service of the draft notice, make written representations to the Monetary Authority on any or all of the matters specified in the draft notice under paragraph (a)(i), (ii) and (iii).

(4) If representations are made in accordance with subsection (3)(b) on a draft notice served on an authorized institution, the Monetary Authority may, after considering the representations—

(a) serve a notice on the institution under subsection (1) in substantially the same terms as the draft notice;

(b) serve a notice on the institution under subsection (1) in terms modified to take account of any one or more of those representations that satisfies the Monetary Authority that the modification concerned ought to be made; or

(c) elect not to serve a notice on the institution under subsection (1) because one or more of those representations satisfies the Monetary Authority that the Monetary Authority should neither take the action mentioned in paragraph (a) nor take the action mentioned in paragraph (b).

(5) If no representations are made in accordance with subsection (3)(b) on a draft notice served on an authorized institution,

the Monetary Authority may serve a notice on the institution under subsection (1) in substantially the same terms as the draft notice.

(6) If any capital requirement rule applicable to an authorized institution is varied under this section, this Part (including rules made under section 97C(1)) applies, in relation to that institution, with all necessary modifications, to take account of the capital requirement rule so varied.

(7) A decision of the Monetary Authority to vary any capital requirement rule under subsection (1) is a decision to which section 101B(1) applies.

(8) To avoid doubt—

(a) the Monetary Authority may serve a draft notice on an authorized institution in substitution for an earlier draft notice served on the institution; and

(b) the reference to "substantially the same terms as the draft notice" in subsection (4)(a) or (5) is not to be construed to include the statement mentioned in subsection (3)(b) required to be included in a draft notice.

Part XVIB

Liquidity Requirements

(Part XVIB added 3 of 2012 s. 8)

97G. Purpose

The purpose of this Part is to ensure that authorized institutions maintain adequate liquidity resources consistent with what is sound and prudent, taking into account the liquidity risks associated with the institutions.

97H. Liquidity requirements

(1) The Monetary Authority may, after consultation with the Financial Secretary and the persons specified in subsection (2), make rules—

(a) prescribing liquidity requirements for authorized institutions, taking into account the liquidity risks associated with the institutions; and

(b) for connected purposes.

(2) The persons specified for the purposes of subsection (1) are—

(a) the Banking Advisory Committee;

(b) the Deposit-taking Companies Advisory Committee;

(c) The Hong Kong Association of Banks; and

(d) The DTC Association.

(3) Without limiting subsection (1), rules made under that subsection—

(a) may make different provisions for different classes of authorized institutions, taking into account the liquidity

risks associated with the institutions belonging to each class;

(b) may give effect to banking supervisory standards relating to liquidity issued by the Basel Committee, whether in whole or in part and subject to any modifications the Monetary Authority thinks fit, having regard to the prevailing circumstances in Hong Kong;

(c) may apply, adopt or incorporate by reference, with or without modifications, any document relating to liquidity issued by the Basel Committee, whether in whole or in part and whether in force at the time of issue or as in force from time to time;

(d) may, in respect of an authorized institution incorporated in Hong Kong, specify, or empower the Monetary Authority to specify, that any liquidity requirement rule applicable to the institution is to apply on the basis that the business of the institution includes all or any part of its business in or outside Hong Kong;

(e) may, in respect of an authorized institution incorporated in Hong Kong that has one or more than one associated entity within the meaning of subsection (4), specify, or empower the Monetary Authority to specify, that any liquidity requirement rule applicable to the institution is to apply—

(i) to the institution on an unconsolidated basis;

(ii) to the institution and one or more of such entities on a consolidated basis; or

(iii) to the institution on an unconsolidated basis and to the institution and one or more of such entities on a consolidated basis;

(f) may, in respect of an authorized institution incorporated outside Hong Kong, specify, or empower the Monetary

Authority to specify, that any liquidity requirement rule applicable to the institution is to apply only to the business of the institution in Hong Kong;

(g) may provide that a matter prescribed in the rules (including a failure to comply with a liquidity requirement rule) relating to an authorized institution is a matter in respect of which the institution—

(i) must immediately notify the Monetary Authority; and

(ii) must provide particulars to the Monetary Authority on request;

(h) may provide for the Monetary Authority, on application made by an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under the rules, to review the decision;

(i) may prescribe a liquidity requirement in the form of a range with upper and lower limits, and the circumstances under which the Monetary Authority may determine a specific liquidity requirement within that range to apply to an authorized institution; and

(j) may contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules.

(4) For the purposes of subsection (3)(e)—

(a) an incorporated entity is an associated entity of an authorized institution if—

(i) the entity is a subsidiary of the institution;

(ii) the institution is entitled to exercise, or control the exercise of, 20% or more, but not more than 50%, of the voting power at any general meeting of the entity; or

(iii) the institution has significant influence over the entity's conduct of affairs (including the power to participate, whether directly or indirectly, in the entity's financial and operating policy decisions); and

(b) an unincorporated entity is an associated entity of an authorized institution if the institution has significant influence over the entity's conduct of affairs (including the power to participate, whether directly or indirectly, in the entity's financial and operating policy decisions).

(5) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under the rules is a decision to which section 101B(1) applies.

(6) Subject to this Part and Part X, an authorized institution must comply with the rules made under subsection (1) applicable to it.

(7) To avoid doubt, any requirement under subsection (1) for the Monetary Authority to consult with any person does not operate to prevent the Monetary Authority from consulting with any other person that the Monetary Authority thinks fit.

97I. Prescribed notification requirement

(1) In this section—

prescribed notification requirement (訂明通知規定) means a requirement prescribed in the rules made under section 97H(1) to the effect that an authorized institution must in respect of a matter prescribed in the rules immediately notify the Monetary Authority.

(2) If, in compliance with a prescribed notification requirement, an authorized institution notifies the Monetary Authority of a failure to comply with a liquidity requirement rule relating to a minimum level of liquidity to be maintained by the

institution, the Monetary Authority must immediately notify the Financial Secretary and provide the Financial Secretary with any particulars of the failure that the Financial Secretary requires.

(3) Every director, every chief executive and every manager of an authorized institution that fails to comply with a prescribed notification requirement applicable to it commits an offence and is liable on conviction on indictment to a fine at tier 8 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues.

97J. Remedial action

(1) If an authorized institution contravenes section 97H(6), the institution and the Monetary Authority must enter into discussions for the purposes of determining what remedial action should be taken by the institution to comply with that section, but the Monetary Authority is not bound by any such discussions.

(2) The Monetary Authority may, after holding any discussions under subsection (1), by notice in writing served on the authorized institution, require the institution to take the remedial action specified in the notice.

(3) A decision of the Monetary Authority to impose a requirement on an authorized institution in a notice served under subsection (2) is a decision to which section 101B(1) applies.

(4) Every director, every chief executive and every manager of an authorized institution that fails to comply with any requirement imposed in a notice served under subsection (2) commits an offence and is liable on conviction on indictment to a fine at tier 8 and to imprisonment for 5 years and, in the

case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues.

(5) To avoid doubt, the imposition of a requirement on an authorized institution under this section does not affect any action taken, or prevent any action from being taken, in respect of the institution by the Monetary Authority under the rules made under section 97H(1).

97K. Monetary Authority may vary liquidity requirement rules for particular authorized institutions

(1) Subject to subsections (2), (3), (4) and (5), the Monetary Authority may, by notice in writing served on an authorized institution, vary any liquidity requirement rule applicable to the institution if the Monetary Authority is satisfied, on reasonable grounds, that it is prudent to make the variation, taking into account the liquidity risks associated with the institution.

(2) If the Monetary Authority proposes to serve a notice under subsection (1) on an authorized institution, the Monetary Authority must serve a draft of the notice (***draft notice***) on the institution.

(3) A draft notice served on an authorized institution must—

(a) specify—

(i) the liquidity requirement rule proposed to be varied;

(ii) the manner in which the liquidity requirement rule concerned is proposed to be varied; and

(iii) the grounds for the proposed variation; and

(b) include a statement that the institution may, within 14 days (or any longer period the Monetary Authority allows in any particular case) from the date of service

of the draft notice, make written representations to the Monetary Authority on any or all of the matters specified in the draft notice under paragraph (a)(i), (ii) and (iii).

(4) If representations are made in accordance with subsection (3)(b) on a draft notice served on an authorized institution, the Monetary Authority may, after considering the representations—

(a) serve a notice on the institution under subsection (1) in substantially the same terms as the draft notice;

(b) serve a notice on the institution under subsection (1) in terms modified to take account of any one or more of those representations that satisfies the Monetary Authority that the modification concerned ought to be made; or

(c) elect not to serve a notice on the institution under subsection (1) because one or more of those representations satisfies the Monetary Authority that the Monetary Authority should neither take the action mentioned in paragraph (a) nor take the action mentioned in paragraph (b).

(5) If no representations are made in accordance with subsection (3)(b) on a draft notice served on an authorized institution, the Monetary Authority may serve a notice on the institution under subsection (1) in substantially the same terms as the draft notice.

(6) If any liquidity requirement rule applicable to an authorized institution is varied under this section, this Part (including rules made under section 97H(1)) applies, in relation to that institution, with all necessary modifications, to take account of the liquidity requirement rule so varied.

(7) A decision of the Monetary Authority to vary any liquidity requirement rule under subsection (1) is a decision to which section 101B(1) applies.

(8) To avoid doubt—

(a) the Monetary Authority may serve a draft notice on an authorized institution in substitution for an earlier draft notice served on the institution; and

(b) the reference to "substantially the same terms as the draft notice" in subsection (4)(a) or (5) is not to be construed to include the statement mentioned in subsection (3)(b) required to be included in a draft notice.

Part XVIC

Codes of Practice for Rules Made under Section 60A(1), 97C(1) or 97H(1)

(Part XVIC added 3 of 2012 s. 8)

97L. Interpretation of Part XVIC

(1) In this Part—

code of practice (實務守則) includes—

(a) part of a code; and

(b) technical memoranda and standards, whether or not in the form of formulae, tables or graphs;

relevant provisions (相關條文) means any of the provisions of any rules made under section 60A(1), 97C(1) or 97H(1).

(2) References in this Part to an approved code of practice include references to that code as it has effect for the time being by virtue of any amendment of the whole or any part of it approved under section 97M.

97M. Codes of practice

(1) For the purposes of providing guidance in respect of any relevant provisions, the Monetary Authority may, after consultation with the persons specified in subsection (2)—

(a) approve and issue any codes of practice (whether prepared by the Monetary Authority or not) that the Monetary Authority considers appropriate; or

(b) approve any codes of practice issued or proposed to be issued otherwise than by the Monetary Authority that the Monetary Authority considers appropriate.

(2) The persons specified for the purposes of subsection (1) are—

(a) the Banking Advisory Committee;

(b) the Deposit-taking Companies Advisory Committee;

(c) The Hong Kong Association of Banks; and

(d) The DTC Association.

(3) If a code of practice is approved under subsection (1), the Monetary Authority must, by notice published in the Gazette—

(a) identify the code concerned and specify the date on which the Monetary Authority's approval of the code is to take effect; and

(b) specify the relevant provisions for which the code is approved.

(4) The Monetary Authority may—

(a) amend an approved code of practice prepared by the Monetary Authority under this section; and

(b) approve any amendment or proposed amendment of an approved code of practice,

and, in any such case, subsections (1), (2) and (3) apply, with all necessary modifications, in relation to the approval of any amendment of the code as they apply in relation to the approval of a code of practice under subsection (1).

(5) The Monetary Authority may, after consultation with the persons specified in subsection (2), by notice published in the Gazette, withdraw the Monetary Authority's approval of any code of practice.

(6) The Monetary Authority must, in a notice under subsection (5), identify the code of practice to which the notice relates and specify the date on which the Monetary Authority's approval of the code is withdrawn.

(7) A document purporting to be a code of practice approved under this section or, if such a code has been amended under this section, purporting to be the code as so amended, certified by or under the authority of the Monetary Authority to be the code, or the code as so amended, as the case may be, as in force on the date specified in the certification is admissible in evidence in any proceedings before the Review Tribunal on its production without further proof and, until the contrary is proved, it is to be presumed, in those proceedings, that—

(a) the signature and certification is that of the Monetary Authority or a person authorized by the Monetary Authority for the purpose; and

(b) the document is the code, or the code as so amended, as the case may be, as in force on the date specified in the certification.

(8) To avoid doubt, any requirement under subsection (1) or (5) for the Monetary Authority to consult with any person does not operate to prevent the Monetary Authority from consulting with any other person that the Monetary Authority thinks fit.

97N. Use of approved codes of practice in proceedings before Review Tribunal

(1) In this section—

prescribed requirement (訂明規定) means any relevant provisions that impose a requirement on—

(a) each authorized institution; or

(b) each authorized institution that belongs to a class of authorized institution.

(2) A failure on the part of an authorized institution to observe any provision of an approved code of practice that applies to

the institution does not of itself render the institution liable to any civil or criminal proceedings but if, in any proceedings before the Review Tribunal, a contravention of a prescribed requirement is alleged to have occurred or to be occurring in respect of which requirement there was such a code of practice in force at the time of the alleged occurrence, subsection (3) has effect in respect of such code for the purpose of the proceedings.

(3) If in proceedings before the Review Tribunal it is proved that there was at any material time a failure to observe any provision of an approved code of practice that appears to the Tribunal to be relevant to any matter that it is necessary for the Monetary Authority to prove in order to establish a contravention of a prescribed requirement, that matter is to be taken as proved unless the Tribunal is satisfied that the requirement was in respect of that matter complied with otherwise than by way of observance of that provision.

Part XVII

(Repealed 3 of 2012 s. 9)

98. *(Repealed 3 of 2012 s. 9)*

98A. *(Repealed 3 of 2012 s. 9)*

99-101. *(Repealed 3 of 2012 s. 9)*

Part XVIIA

Banking Review Tribunal#

(Part XVIIA added 19 of 2005 s. 6)

*(*Format changes—E.R. 1 of 2013)*

Editorial Note:
(Amended 3 of 2012 s. 10)
* The format of Part XVIIA has been updated to the current legislative styles.

101A. Establishment of Banking Review Tribunal*

(1) There is established a tribunal to be known as the "Banking Review Tribunal" in English and "銀行業覆核審裁處" in Chinese, comprising a chairman and such number of members as may be appointed under subsection (3). *(Amended 3 of 2012 s. 11)*

(2) The Chief Executive shall, by notice published in the Gazette, appoint to be the Chairman of the Review Tribunal a person who—

(a) is qualified for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4); and

(b) is not a public officer or, if he is, is a public officer by virtue only of being the chairman of a board or tribunal established under an Ordinance.

(3) The Chief Executive shall, by notice published in the Gazette, appoint as members of the Review Tribunal persons, not being public officers, whom he considers suitable for that appointment, and the number of persons so appointed shall at any one time be not less than 2.

(4) The Chairman and members of the Review Tribunal shall be paid, as a fee for their services, such amounts as the Chief Executive considers appropriate; and of those amounts the amounts payable to the Chairman shall be a charge on the general revenue, and the amounts payable to members shall be a charge on the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).

(5) The Fifteenth Schedule has effect with respect to the Review Tribunal.

(6) Subject to this Part and the Fifteenth Schedule and to rules made under section 101I, the Chairman of the Review Tribunal may determine the procedures and practice of the Review Tribunal.

(6A) References to "Capital Adequacy Review Tribunal" or "資本充足事宜覆核審裁處" in any instrument, contract or proceedings for a review that is or are in effect or pending immediately before the **commencement date of section 11 of the Banking (Amendment) Ordinance 2012 (3 of 2012) are, on and after that date, to be construed as references to "Banking Review Tribunal" or "銀行業覆核審裁處". *(Added 3 of 2012 s. 11)*

(7) In this section, ***public officer*** (公職人員) does not include a person who is a judicial officer for the purpose of section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92) or a judicial officer appointed by the Chief Justice.

Editorial Note:

* *(Amended 3 of 2012 s. 11)*

** Commencement date : 1 January 2013.

101B. Application to Review Tribunal

(1) An authorized institution that is aggrieved by a decision

of the Monetary Authority made in relation to it, being a decision to which this section applies by virtue of section 60A(3A), 97C(4), 97E(3), 97F(7), 97H(5), 97J(3) or 97K(7), may, at any time within the period specified in subsection (3), apply to the Review Tribunal for a review of the decision. *(Amended 3 of 2012 s. 12)*

(2) An application for review shall be in writing and shall state the grounds for the application for a review.

(3) The period specified for the purposes of subsection (1) is the period ending 30 days after the receipt by the authorized institution of notice in writing given by the Monetary Authority informing it of the decision, or such later date as the Review Tribunal may, in the circumstances of the particular case, allow.

(4) The making of an application to the Review Tribunal for a review of a decision does not operate to suspend the decision.

101C. Determination of review by Review Tribunal

(1) The Review Tribunal shall deliver to the Monetary Authority a copy of any application for a review of a decision under section 101B(1) that it has received.

(2) As soon as practicable after receipt of that copy, the Monetary Authority shall forward to the Review Tribunal a copy of the decision together with all other relevant papers in his possession.

(3) In reviewing a decision of the Monetary Authority, the Review Tribunal shall afford both the applicant and the Monetary Authority a reasonable opportunity of being heard.

(4) For the purpose of proceedings before the Review Tribunal, matters of fact are established if they are established on the balance of probabilities.

(5) In determining a review of a decision, the Review Tribunal may—

(a) affirm, vary or set aside the decision; or

(b) remit the matter to the Monetary Authority with any direction that it considers appropriate.

(6) As soon as practicable after completing the review, the Review Tribunal shall deliver its determination and the reasons for that determination.

101D. Registration of determination made by Review Tribunal

(1) A determination made by the Review Tribunal shall be recorded in writing and signed by the Chairman of the Tribunal.

(2) The Court of First Instance may, on notice in writing given by the Review Tribunal in the manner prescribed by rules made by the Chief Justice under section 101I, register a determination of the Review Tribunal in the Court of First Instance; and a determination so registered shall for all purposes be regarded as an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

(3) The determination of the Review Tribunal is final and, except as provided in section 101H, is not subject to appeal.

(4) For the purposes of any proceedings in a court of law, a document purporting to be a record of a determination of the Review Tribunal signed by the Chairman of the Review Tribunal shall, in the absence of evidence to the contrary, be regarded as a determination of the Review Tribunal duly made and signed, without proof of its making, or proof of signature, or proof that the person signing the determination was in fact the Chairman of the Review Tribunal.

101E. Powers of Review Tribunal

(1) For the purposes of any review, the Review Tribunal may—

(a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;

(b) determine the manner in which any such material is received;

(c) by notice in writing signed by the Chairman of the Tribunal, require a person to attend before it and, subject to subsection (2), to give evidence and produce any article, record or document in his possession or control relating to the subject matter of the review;

(d) administer oaths;

(e) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purpose of the review;

(f) order a witness to provide evidence for the purpose of the review by affidavit;

(g) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;

(h) order that costs be paid to any party to the review or any person who is required to attend before it for the purpose of the review;

(i) hear an application for stay of proceedings for a review at any time before its determination is made; and

(j) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the performance of its functions.

(2) Nothing in subsection (1) empowers the Review Tribunal to require—

(a) the technical consultant or adviser of an applicant to disclose any information relating to the affairs of any person other than the applicant; or

(b) a solicitor or counsel to disclose any privileged communication, whether oral or written, made to or by him in that capacity.

(3) For the avoidance of doubt, the rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to proceedings of the Review Tribunal as they apply in relation to civil proceedings in a court and, accordingly, a person may not under subsection (1) be required to give, produce or provide any evidence or document if he could not be required to do so if the proceedings of the Review Tribunal were civil proceedings in a court.

(4) No person shall—

(a) fail to comply with an order, notice, prohibition or requirement of the Review Tribunal made or given under or pursuant to subsection (1) or the Fifteenth Schedule;

(b) disrupt any sitting of the Review Tribunal or otherwise misbehave during any such sitting;

(c) having been required by the Review Tribunal under subsection (1) to attend before the Tribunal, leave the place where his attendance is so required without the permission of the Tribunal;

(d) hinder or deter any person from attending before the Review Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;

(e) threaten, insult or cause any loss to be suffered by any person who has attended before the Review Tribunal, on account of such attendance; or

(f) threaten, insult or cause any loss to be suffered by the Chairman, or any member, of the Review Tribunal at any time on account of the performance of his functions in that capacity.

(5) A person who, without reasonable excuse, contravenes subsection (4) 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.

(6) A person is not excused from complying with an order, notice, prohibition or requirement of the Review Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

101F. Sittings of Review Tribunal to be held in private

(1) The sittings of the Review Tribunal shall be held in private.

(2) A participant in proceedings for a review shall not, at the time of the proceedings or at any other time, publish or otherwise disclose to any person any information about the review or any information that comes to his knowledge in the course of the review.

(3) Subsection (2) does not apply to a disclosure, by a participant in proceedings for a review—

(a) made to another participant in the same proceedings, where the disclosure is necessary for the proper carrying out of the first-mentioned participant's functions in relation to the review; or

(b) necessarily made for the purpose of an appeal to the Court of Appeal under section 101H in relation to the review.

(4) Subsection (2) does not apply to publication by the Review Tribunal under subsection (6) of the reasons for its determination in any proceedings.

(5) A person who contravenes subsection (2) 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.

(6) The Review Tribunal may, with the consent of the applicant and the Monetary Authority, for the information of authorized institutions generally, publish the reasons for its determination in any proceedings, or a summary of any part of those reasons, but without disclosing or containing information leading to the disclosure of—

(a) the identity of the applicant or any witness in the proceedings;

(b) any commercially sensitive information relating to the applicant; or

(c) any confidential information obtained from the Monetary Authority.

(7) In this section, ***participant*** (參與者), in relation to any proceedings for a review, means the Chairman and members of the Review Tribunal, the applicant in the proceedings, and any witness, solicitor, counsel or other person involved in the review but, without prejudice to section 120(1), does not include the Monetary Authority.

101G. Use of incriminating evidence given under compulsion

(1) This section applies to any evidence, answer or information given or provided by a person pursuant to a requirement or order of the Review Tribunal made under section 101E(1)(c), (e), (f) or (j).

(2) Notwithstanding any other provision of this Ordinance, neither the evidence, answer or information given or provided by the person nor the requirement or order made by the Review Tribunal shall be admissible in evidence against the person in criminal proceedings in a court of law, other than proceedings in which the person is charged with an offence under section 101E(4)(a), or with an offence under Part V of the Crimes Ordinance (Cap. 200), or with perjury, in respect of the evidence, answer or information.

101H. Appeal to Court of Appeal

(1) A party to proceedings for a review before the Review Tribunal may, if dissatisfied with a decision of the Review Tribunal in the proceedings or with the determination of the review, appeal to the Court of Appeal against the decision or determination on a point of law.

(2) Where an appeal has been lodged under subsection (1) the Court of Appeal may, on application made to it by any party to the review proceedings, order a stay of the proceedings, or of execution of the determination, of the Review Tribunal, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate; but the lodging of an appeal under subsection (1) does not of itself operate as a stay of the proceedings, or of execution of the determination, of the Tribunal.

(3) The Court of Appeal may affirm, vary or set aside the decision or determination appealed against, or may remit the

matter in question to the Review Tribunal, or to the Monetary Authority, with such directions as it considers appropriate.

(4) The Rules of the High Court (Cap. 4 sub. leg. A) apply in relation to such an appeal to the extent that those Rules are not inconsistent with this Ordinance.

(5) In an appeal under this section, the Court of Appeal may make such order for payment of costs as it considers appropriate.

101I. Power of Chief Justice to make rules

The Chief Justice may make rules—

(a) providing for matters of procedure, or other matters, relating to applications for a review, or reviews, under this Part, which are not provided for in this Part or section 5 of the Fifteenth Schedule;

(b) providing for the issue or service of any document (however described) for the purposes of this Part or section 5 of the Fifteenth Schedule;

(c) providing for matters relating to the registration in the Court of First Instance pursuant to section 101D(2) of a determination of the Review Tribunal;

(d) regulating the procedure for the hearing of appeals under section 101H; or

(e) prescribing anything required to be prescribed under this Part or section 5 of the Fifteenth Schedule.

Part XVIII

(Repealed 3 of 2012 s. 13)

102-106. *(Repealed 3 of 2012 s. 13)*

Part XIX

(Repealed 43 of 1990 s. 8)

107-116. *(Repealed 43 of 1990 s. 8)*

PART XX

INVESTIGATIONS OF AUTHORIZED INSTITUTIONS

117. Investigations on behalf of Financial Secretary

(Adaptation amendments retroactively made - see 25 of 1998 s. 2; 68 of 1999 s. 3)

(1) If it appears to the Monetary Authority that it is in the interests of depositors of an authorized institution or a former authorized institution or in the public interest that an inquiry should be made into the affairs, business or property of that institution he may make a report to that effect to the Financial Secretary. *(Amended 82 of 1992 s. 25; 49 of 1995 s. 34)*

(2) The Financial Secretary, on receipt of a report under subsection (1), may appoint a competent person to report to him and the Monetary Authority on the state and conduct of the affairs, business and property of the authorized institution or former authorized institution concerned, or any particular aspect thereof specified by the Financial Secretary. *(Replaced 49 of 1995 s. 34)*

(3) The Financial Secretary may, from time to time after making an appointment under subsection (2), and before the person so appointed reports to him, require that person to inquire into any further aspect of the authorized institution or former authorized institution concerned. *(Amended 49 of 1995 s. 34)*

(4) The person appointed under subsection (2) shall be paid such remuneration and allowances and be appointed on such terms as the Financial Secretary shall from time to time determine.

(5) On receipt of the report of the person appointed under subsection (2) the Financial Secretary may, without limiting

the generality of the exercise by him of any other powers which he may exercise under this Ordinance—

(a) if he is of the opinion that it is in the public interest to do so, cause the whole or any part of a report under this section to be published in such manner as he thinks fit:

Provided that nothing in a report published under this paragraph shall enable any particular customer of an authorized institution to be identified or reveal details of the affairs of any such customer without the consent of that customer;

(b) require the person appointed under subsection (2) to report further on any matters arising from the report;

(c) refer the report to the Chief Executive in Council with the recommendation that the Chief Executive in Council should exercise his power under section 53(1)(iii); *(Replaced 49 of 1995 s. 34. Amended 68 of 1999 s. 3)*

(d) if it appears that an offence may have been committed by any person, refer the report to the Secretary for Justice; *(Amended L.N. 362 of 1997)*

(e) *(Repealed 49 of 1995 s. 34)*

(f) apply to the Court of First Instance for a winding-up order under section 122(5). *(Amended 3 of 1990 s. 44; 25 of 1998 s. 2)*

(6) The Financial Secretary shall not exercise his powers under subsection (2) in the case of a former authorized institution which ceased to be an authorized institution 12 months or more before the date of the report under subsection (1).

(7) Any person who—

(a) with intent to defeat the purposes of this section or to delay or obstruct the carrying out of an investigation under this section—

(i) conceals, destroys, mutilates or alters a document relating to a matter which is the subject of an investigation by a person appointed under subsection (2); or

(ii) sends, or causes to be sent, or conspires with another person to send, out of Hong Kong any such document; or

(b) knowingly furnishes to a person appointed under subsection (2) any information which is false or misleading in a material particular,

commits an offence and is liable on conviction upon indictment or on summary conviction to a fine at tier 4 and to imprisonment for 2 years. *(Amended 4 of 1997 s. 27)*

(8) For the avoidance of doubt, it is hereby declared that the reference in subsection (6) to "former authorized institution" (前認可機構) shall include any person which was a deposit-taking company within the meaning of this Ordinance as in force at any time before the *commencement of the Banking (Amendment) Ordinance 1990 (3 of 1990) *(Added 3 of 1990 s. 44)*

Editorial Note:

* Commencement date: 1 February 1990.

118. Powers of the inspector and offences in connection with the investigation

(1) Subject to this section, the inspector may determine the manner in which an inquiry under section 117 is to proceed.

(2) If the inspector thinks it necessary for the purposes of his investigation, he may also investigate the affairs, business and property of any company which is or has at any relevant time been—

(a) a holding company or subsidiary of the body whose affairs, business and property is under investigation;

(b) a subsidiary of a holding company of that body; or

(c) a holding company of a subsidiary of that body.

(3) It shall be the duty of every director, manager, employee, or agent of a company whose affairs, business and property is under investigation (whether by virtue of section 117(2) or subsection (2)) and any person who has in his possession books, papers or information relevant to the investigation—

(a) to produce to the inspector all books and papers relating to the company concerned which are in his custody or power;

(b) to attend before the inspector when required to do so; and

(c) to answer truthfully and to the best of his ability any questions which may be put to him by the inspector and which are relevant to the investigation:

Provided that an inspector shall not require the disclosure by a solicitor or counsel of any privileged communication, whether oral or written, made to or by him in that capacity.

(4) Anything said by any person in answer to a question put by the inspector under subsection (3)(c) shall be inadmissible in any criminal proceedings other than criminal proceedings brought under this section.

(5) Any director, manager, employee or agent of a company and any other person who—

(a) without reasonable excuse fails to produce any books or papers which it is his duty to produce under subsection (3); or

(b) without reasonable excuse fails to attend before the inspector when required to do so under this section; or

(c) fails to answer to the best of his ability any question which is put to him by an inspector with respect to any affairs, business and property which are or is under investigation under section 117 or to the affairs, business and property of any body corporate which are or is being investigated by virtue of subsection (2),

commits an offence and is liable on conviction upon indictment or on summary conviction to a fine at tier 4 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

(6) In this section—

(a) "inspector" (審查員) means a person appointed under section 117(2);

(b) any reference to a director, manager, employee or agent of a company includes a reference to a person who has been but no longer is a director, manager, employee or agent of that company;

(c) "agent" (代理人) in relation to a company whose affairs, business and property are or is under investigation includes its bankers and solicitors and any persons, whether officers of the body or not, who are employed as its auditors.

(Amended 49 of 1995 s. 35)

PART XXA

MONEY BROKERS

(Part XXA added 4 of 1997 s. 16)

118A. Only approved money brokers may act as money brokers

(1) No person shall act as a money broker unless the person is an approved money broker.

(2) Any person who and every director and manager of a company which contravenes subsection (1) commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

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

(3) Any person who enters into a contract or arrangement, or uses any device or scheme, which has the effect of, or is designed to have the effect of, avoiding subsection (1) commits an offence and is liable—

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

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

118B. Application for approval

A company which proposes to act as a money broker shall make an application to the Monetary Authority for approval.

118C. Determination of application for approval

(1) Subject to subsections (2) and (5), the Monetary Authority may, on receipt of an application under section 118B from a company, by notice in writing served on the company—

(a) approve the company to act as a money broker—

(i) from the date, if any, specified in the certificate of approval in the specified form attached to the notice; and

(ii) subject to such conditions, if any, as he may think proper to attach to that certificate in any particular case; or

(b) refuse to so approve the company.

(2) Without limiting the generality of subsection (1)(b), the Monetary Authority shall refuse to approve a company under that subsection if any one or more of the criteria specified in the Eleventh Schedule applicable to or in relation to the company are not fulfilled with respect to the company.

(3) Where the Monetary Authority refuses to approve a company under subsection (1)(b), he shall notify the company in writing of—

(a) the refusal; and

(b) the reasons for the refusal.

(4) Without limiting the generality of subsection (1)(a), the Monetary Authority may at any time, by notice in writing served on an approved money broker, attach to its certificate of approval such conditions (including attach by way of amending conditions already attached to the certificate), or cancel any conditions attached to the certificate, as he may think proper.

(5) Before exercising his power under subsection (1)(b) to refuse to approve a company, the Monetary Authority shall give the company an opportunity, within such period as the Monetary

Authority may specify in writing, being a period reasonable in all the circumstances, of being heard.

(6) Every director and every manager of an approved money broker which contravenes any condition attached under subsection (1)(a) or (4) to its certificate of approval 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.

(7) The Monetary Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of companies seeking approval, guidelines not inconsistent with this Ordinance, indicating the manner in which he proposes to exercise functions conferred or imposed by this section and the Eleventh Schedule upon him.

(Amended E.R. 1 of 2013)

118D. Revocation of approval

(1) Subject to subsections (1A) and (2) and section 118E, the Monetary Authority may, after consultation with the Financial Secretary, propose to revoke the approval of an approved money broker— *(Amended 19 of 2005 s. 15)*

(a) on any one or more of the grounds specified in the Twelfth Schedule applicable to or in relation to the broker; and

(b) by notice in writing served on the broker.

(1A) The requirement in subsection (1) to consult the Financial Secretary before proposing to revoke the approval of an approved money broker shall not apply where the ground for the revocation of the approval of an approved money broker

is a request in writing by the money broker to the Monetary Authority to revoke its approval. *(Added 19 of 2005 s. 15)*

(2) Where—

(a) an approved money broker serves a notice in writing on the Monetary Authority stating that it does not propose to appeal under section 132A(5) against the proposed revocation of its approval under subsection (1);

(b) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg. A) within which an approved money broker may appeal under section 132A(5) against the proposed revocation of its approval under subsection (1) expires without any such appeal having been made; or

(c) an appeal under section 132A(5) by an approved money broker against the proposed revocation of its approval under subsection (1) is unsuccessful,

the Monetary Authority shall, as soon as reasonably practicable thereafter, by notice in writing served on the broker, specify the date on and from which that revocation shall take effect (and, accordingly, that approval shall be revoked on and from that date).

118E. Procedure on and effect of revocation of approval

(1) Subject to subsection (4), the Monetary Authority shall, before exercising his power under section 118D to propose to revoke the approval of an approved money broker, inform the broker of the ground or grounds for the proposed revocation and give it an opportunity, within such period as the Monetary Authority may specify in writing, being a period reasonable in all the circumstances, of being heard.

(2) Immediately upon the proposed revocation of the approval of an approved money broker taking effect in accordance with

section 118D(2), that broker shall cease to act as a money broker.

(3) Subsection (2) shall not operate to prejudice the enforcement or other maintenance by any person of any right or interest against an approved money broker (or former approved money broker) referred to in that subsection, or by the broker of any right or interest against any person.

(4) Subsection (1) shall not apply where the ground for the revocation of the approval of the approved money broker concerned is a request in writing by the broker to the Monetary Authority to revoke its approval.

118F. Fees payable by approved money brokers

(1) An approved money broker shall, within 14 days after the date on which it was approved, pay to the Director of Accounting Services the approved money broker fee specified in the Second Schedule.

(2) Every approved money broker shall pay to the Director of Accounting Services annually the renewal of approved money broker fee specified in the Second Schedule upon the anniversary of the date on which it was approved.

Part XXI

Miscellaneous

*(*Format changes—E.R. 2 of 2012)*

Editorial Note:
* The format of Part XXI has been updated to the current legislative styles.

119. Chief Executive in Council to decide whether or not banking business or business of taking deposits is being conducted

(1) In the event of any dispute as to whether a person is carrying on a banking business or a business of taking deposits, the matter, except in the case of a prosecution for any offence against this Ordinance, shall be submitted to the Chief Executive in Council for his determination; and the decision of the Chief Executive in Council shall be final and conclusive for all purposes of this Ordinance. *(Amended 68 of 1999 s. 3)*

(2) A submission under subsection (1) may be made by the Financial Secretary or by any bank, deposit-taking company or restricted licence bank or person which or who is interested in the determination of the matter. *(Amended 3 of 1990 s. 45)*

119A. Authorized institutions not to create certain charges and to notify Monetary Authority of certain civil or criminal proceedings

(1) In this section—

assets (資產) includes assets outside Hong Kong;

charge (押記) includes lien, encumbrance, equitable interest and third party right;

value (價值) has the meaning given by section 79(1).

(2) Subject to subsection (3), an authorized institution incorporated in Hong Kong must not, except with the approval of the Monetary Authority, which approval may be subject to any conditions the Monetary Authority thinks fit, by whatever means create any charge over its assets if either—

(a) the aggregate value of all charges existing over its total assets (excluding contra items) is 5% or more of the value of those total assets; or

(b) creating that charge would cause the aggregate value of all charges (including that first-mentioned charge) over its total assets (excluding contra items) to be more than 5% of the value of those total assets.

(3) The Monetary Authority may, by notice published in the Gazette, specify a charge, or a class of charge, to which subsection (2) does not apply.

(4) If any civil or criminal proceedings have been instituted against any authorized institution incorporated in Hong Kong, irrespective of whether the proceedings have been instituted before, on or after the commencement date* of this section, the institution must, if those proceedings materially affect, or could materially affect, the financial position of the institution, immediately notify the Monetary Authority of those proceedings and provide the Monetary Authority with any particulars of those proceedings the Monetary Authority requires.

(5) Every director, every chief executive and every manager of an authorized institution that contravenes subsection (2) or (4) commits an offence and is liable—

(a) on conviction on 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.

(6) A notice made under section 106(2) and in force immediately before the commencement date* of section 14 of the Banking (Amendment) Ordinance 2012 (3 of 2012) is, on and after that date*, deemed to have been made under subsection (3) and, accordingly, may be amended by a notice made under that subsection.

(Added 3 of 2012 s. 14)

Editorial Note:

* Commencement date : 1 January 2015.

120. Official secrecy

(1) Except as may be necessary for the exercise of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, every person to whom this subsection applies— *(Amended 64 of 1987 s. 26)*

(a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the exercise of any function under this Ordinance;

(b) shall not communicate any such matter to any person other than the person to whom such matter relates; and

(c) shall not suffer or permit any person to have access to any records in the possession, custody or control of any person to whom this subsection applies.

(2) Subsection (1) shall apply to any person who is or has been—

(a) a public officer;

(b) a person authorized by the Monetary Authority;

(c) the Advisor of an authorized institution; *(Replaced 49 of 1995 s. 36)*

(d) the Manager of an authorized institution; *(Replaced 49 of 1995 s. 36)*

(da) a person appointed under section 53G(5); *(Added 49 of 1995 s. 36)*

(e) a person appointed under section 117(2); and

(f) a person employed by or assisting a person to whom this subsection applies by virtue of paragraph (b), (c), (d), or (e),

who exercises or has exercised any function under this Ordinance.

(3) Subsection (1) shall not apply if the Manager of an authorized institution is required to comply with a notice to furnish returns and information under section 51 of the Inland Revenue Ordinance (Cap. 112). *(Replaced 49 of 1995 s. 36)*

(4) No person who exercises any function in the course of an examination or investigation under section 47, 50, 55 or 117 or who receives reports, returns or information submitted under section 47, 50, 55, 56, 59, 63 or 64 shall be required to produce in any court any book, account or other document whatsoever or to divulge or communicate to any court any matter or thing coming under his notice in the exercise of his functions under this Ordinance, except as may be necessary in the course of a prosecution for any offence or of a winding-up by the Court of First Instance under section 122. *(Amended 67 of 1992 s. 9; 25 of 1998 s. 2)*

(5) Subsection (1) shall not apply—

(a) to the disclosure of information in the form of a summary of similar information provided by a number

of authorized institutions if the summary is so framed as to prevent particulars relating to the business of any particular authorized institution being ascertained from it;

(b) to the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Ordinance or otherwise;

(c) in connection with any other legal proceedings arising out of this Ordinance;

(d) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice, relevant to the proper investigation of any criminal complaint; *(Amended L.N. 362 of 1997)*

(da) to the disclosure of information to the Review Tribunal; *(Added 19 of 2005 s. 7)*

(db) to the disclosure of information to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615); *(Added 15 of 2011 s. 86)*

(e) to the disclosure of information by the Monetary Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor or former auditor of an authorized institution or former authorized institution, whether or not the auditor or former auditor, as the case may be, was appointed under section 50, 59 or 63; *(Replaced 43 of 1990 s. 9. Amended 67 of 1992 s. 9)*

(f) to the disclosure of information by the Monetary Authority to the Chief Executive, the Financial Secretary, an inspector appointed by the Financial Secretary to investigate the affairs of a company, a person holding an authorized statutory office or any public officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Monetary Authority— *(Amended L.N. 96 of 1993; 68 of 1999 s. 3; L.N. 106 of 2002)*

(i) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or

(ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed; *(Replaced 95 of 1991 s. 40)*

(fa) to the disclosure of information by the Monetary Authority to the Securities and Futures Commission relating to—

(i) the carrying on of a regulated activity by a registered institution; or

(ii) the carrying on by an authorized institution of the business of receiving or holding client assets, within the meaning of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), of intermediaries, within the meaning of Schedule 1 to that Ordinance, of which the institution is an associated entity within the meaning of Schedule 1 to that Ordinance; *(Added 6 of 2002 s. 12)*

(g) to the disclosure of information by the Monetary Authority to an auditor of an authorized institution or former authorized institution, or to a former auditor, for the purpose of enabling or assisting the Monetary Authority to discharge his functions under this Ordinance; *(Replaced 43 of 1990 s. 9. Amended L.N. 276 of 1990; 95 of 1991 s. 40)*

(gaa) to the disclosure of information by the Monetary Authority to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for the purpose of enabling or assisting the Board to exercise its functions under that Ordinance; *(Added 7 of 2004 s. 55)*

(ga) to the disclosure of information—

(i) to any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66); and

(ii) where such disclosure will enable or assist such person to assist the Monetary Authority in the performance of any of the functions referred to in that section; *(Added 49 of 1995 s. 36)*

(h) subject to subsection (5D), to the disclosure of information by the Monetary Authority with the consent of—

(i) the person from whom the information was obtained or received; and

(ii) where the information does not relate to such person, the person to whom it relates; or *(Added 95 of 1991 s. 40)*

(i) to the disclosure of information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for

which, disclosure is not precluded by this section or section 121. *(Added 95 of 1991 s. 40)*

(5A) For the purposes of subsection (5)(f), ***authorized statutory office*** (認可法定職位) means—

(a) the Insurance Authority established under section 4AAA of the Insurance Ordinance (Cap. 41); *(Replaced 12 of 2015 s. 105)*

(b) the Securities and Futures Commission; *(Replaced 10 of 1989 s. 65. Amended 18 of 2006 s. 78)*

(c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or *(Repealed 10 of 1989 s. 65. Added 4 of 1998 s. 7. Amended 18 of 2006 s. 78)*

(d) *(Repealed 10 of 1989 s. 65)*

(e) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588). *(Added 18 of 2006 s. 78)*

(Added 68 of 1988 s. 2. Amended 4 of 1998 s. 7)

(5B) The Legislative Council may, by resolution, amend subsection (5A). *(Added 68 of 1988 s. 2)*

(5C) The Monetary Authority may attach a condition to any disclosure of information made pursuant to subsection (5)(b), (c), (d), (e), (f), (fa), (gaa) or (ga), and shall attach a condition to any disclosure of information made pursuant to subsection (5)(g), that neither— *(Amended 49 of 1995 s. 36; 6 of 2002 s. 12; 7 of 2004 s. 55)*

(a) the person to whom the information has been disclosed; nor

(b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a),

shall disclose that information to any other person without the consent of the Monetary Authority. *(Added 95 of 1991 s. 40)*

(5D) Subsection (5)(h) shall not operate to require the Monetary Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. *(Added 95 of 1991 s. 40. Amended 94 of 1993 s. 28)*

(6) Any person who—

(a) contravenes subsection (1);

(b) aids, abets, counsels or procures any person to contravene subsection (1); or

(c) knowing that the condition referred to in subsection (5C) has been attached to a disclosure of information made pursuant to subsection (5), contravenes, or aids, abets, counsels or procures any person to contravene, that condition, *(Added 95 of 1991 s. 40)*

commits an offence and is liable—

(i) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

(7) Subsection (5)(a), (e) and (g) shall apply to and in relation to approved money brokers and former approved money brokers as it applies to and in relation to authorized institutions and former authorized institutions respectively, and the other provisions of this Ordinance shall be construed accordingly. *(Added 4 of 1997 s. 17)*

(Amended 3 of 1990 s. 46; 82 of 1992 s. 20)

121. Disclosure of information relating to authorized institutions

(1) Subject to subsection (3), and notwithstanding section 120, the Monetary Authority may disclose information to an authority in a place outside Hong Kong where—

(a) that authority exercises functions in that place corresponding to the functions of—

(i) the Monetary Authority; or

(ii) an authorized statutory office within the meaning of section 120(5A); and

(b) in the opinion of the Monetary Authority—

(i) that authority is subject to adequate secrecy provisions in that place; and

(ii) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or

(iii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed. *(Replaced 95 of 1991 s. 41)*

(2) Subject to subsection (3) and notwithstanding section 120, the Monetary Authority may, if he considers that it is in the interests of customers of the representative office, provide to the appropriate recognized banking supervisory authority of a place outside Hong Kong which is, in his opinion, subject to adequate secrecy provisions in that place information on matters relating to the affairs of a local representative office which is maintained by a bank incorporated in that place or in respect of which the Monetary Authority is of the opinion that

the authority has primary supervisory responsibility. *(Amended 49 of 1995 s. 37)*

(2A) *(Repealed 95 of 1991 s. 41)*

(3) The Monetary Authority—

(a) may, subject to paragraph (b), attach a condition to any disclosure of information made pursuant to this section;

(b) shall, to the extent that any disclosure of information made pursuant to this section relates to the affairs of any individual customer of an authorized institution or a local representative office, attach a condition,

that neither—

(i) the person to whom the information has been disclosed; nor

(ii) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (i),

shall disclose that information to any other person without the consent of the Monetary Authority. *(Replaced 42 of 1999 s. 12)*

(Amended 82 of 1992 s. 25)

122. Winding-up of authorized institutions

(1) The provisions of CWUMPO with regard to a creditors' voluntary winding-up shall not apply to authorized institutions.

(2) On a petition by the Financial Secretary, acting in accordance with a direction of the Chief Executive in Council under section 53(1)(iii), the Court of First Instance may— *(Amended 68 of 1999 s. 3)*

(a) on any ground specified in section 177 of CWUMPO; or

(b) if it is satisfied that it is in the public interest that the authorized institution or former authorized institution should be wound up,

order the winding-up of an authorized institution or former authorized institution in accordance with the provisions of CWUMPO relating to the winding-up of companies.

(3) Where before the presentation of a petition for the winding up of an authorized institution by the Court of First Instance, and whether or not the petition is presented by the Financial Secretary, there has in respect of the institution been a direction given under section 52(1)(C) which has continued in force at all times until the presentation of the petition, and a winding-up order is made thereon, then, notwithstanding the provisions of section 184(2) of CWUMPO, for the purposes of sections 170, 179, 182, 183, 266B, 267A, 269 and 274, and section 271(1)(d), (e), (h), (i), (j), (k), (l) and (o), of CWUMPO, the winding up of the institution by the Court of First Instance is deemed to have commenced at the time the direction was so given. *(Replaced 49 of 1995 s. 38. Amended 4 of 1997 s. 18)*

(3A) For the purposes of anything done or suffered to be done by the authorized institution before the commencement date of the Amendment Ordinance, subsection (3) applies as if the reference to section 266B of CWUMPO in that subsection were a reference to section 266 of the pre-amended CWUMPO. *(Added 14 of 2016 s. 183)*

(3B) For the purposes of a charge created on the undertaking or property of the authorized institution before the commencement date of the Amendment Ordinance, subsection (3) applies as if the reference to section 267A of CWUMPO in that subsection were a reference to section 267 of the pre-amended CWUMPO. *(Added 14 of 2016 s. 183)*

(4) Nothing in section 182 of CWUMPO shall invalidate any disposition of the business or property of an authorized institution made by the Manager of the institution, or by the institution under the direction of the Manager, acting in good faith in the course of managing the affairs, business and property of the institution. *(Replaced 49 of 1995 s. 38)*

(5) Where the Financial Secretary is entitled to petition the Court of First Instance by virtue of section 117(5)(f), the Court of First Instance may wind up a deposit-taking company or restricted licence bank or former deposit-taking company or restricted licence bank in accordance with the provisions of CWUMPO relating to the winding-up of companies if— *(Amended 28 of 2012 ss. 912 & 920)*

(a) the deposit-taking company or restricted licence bank is unable to pay sums due and payable to its depositors or is able to pay such sums only by defaulting on its obligations; or

(b) the value of the deposit-taking company's or restricted licence bank's assets is less than the amount of its liabilities. *(Replaced 3 of 1990 s. 47)*

(6) Nothing in this section shall authorize the winding-up of a former deposit-taking company or restricted licence bank which does not continue to have any liability in respect of any deposit for which it had a liability at the time when it was authorized. *(Amended 3 of 1990 s. 47; 49 of 1995 s. 38)*

(7) Where a petition for the winding up of an authorized institution is presented by a person other than the Financial Secretary, a copy of the petition shall be served on the Monetary Authority and he shall be entitled to be heard on the petition and to call, examine and cross-examine any witness and, if he so thinks fit, support or oppose the making of a winding-up order. *(Added 42 of 1999 s. 13)*

(8) In this section—

Amendment Ordinance (《修訂條例》) means the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016);

CWUMPO (《公司(清盤及雜項條文)條例》) means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

pre-amended CWUMPO (《修訂前的公司(清盤及雜項條文)條例》) means CWUMPO as in force immediately before the commencement date of the Amendment Ordinance. *(Added 14 of 2016 s. 183)*

(Amended 25 of 1998 s. 2; 28 of 2012 ss. 912 & 920; 14 of 2016 s. 183)

123. Offences by directors, chief executives, managers, trustees, employees and agents

Any director, chief executive, manager, trustee, employee or agent of any authorized institution who, with intent to deceive— *(Amended 32 of 2001 s. 24)*

(a) wilfully makes, or causes to be made, a false entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution;

(b) wilfully omits to make an entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution, or wilfully causes any such entry to be omitted; or

(c) wilfully alters, abstracts, conceals or destroys an entry in any book of record, or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution, or wilfully causes

any such entry to be altered, abstracted, concealed or destroyed,

commits an offence and is liable—

(i) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

(ii) on summary conviction to a fine at tier 5 and to imprisonment for 2 years.

(Amended 4 of 1997 s. 27)

124. Prohibition on receipt of commission by staff

Any director or employee of an authorized institution, who asks for or receives, consents or agrees to receive any gift, commission, emolument, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relatives, for procuring or endeavouring to procure for any person any advance, loan, financial guarantee or credit facility from that institution or the purchase or discount of any draft, note, cheque, bill of exchange or other obligation by that institution, or for permitting any person to overdraw any account with that institution, commits an offence and is liable —

(a) on conviction upon indictment to a fine at tier 6 and to imprisonment for 5 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 2 years.

(Amended 4 of 1997 s. 27)

125. Search warrants and seizures

(1) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Ordinance has been committed, the magistrate may issue a

warrant empowering any police officer to enter and search any premises specified in the warrant.

(2) A police officer to whom a warrant is issued under subsection (1) may—

(a) break open any outer or inner door of or in any premises which he is empowered by the warrant to enter and search;

(b) inspect, seize and remove anything which the police officer has reasonable grounds for believing to be or to contain evidence of an offence under this Ordinance; and

(c) remove by force any person who obstructs any entry, search, inspection, seizure or removal which he is empowered by this subsection to make.

(3) A person from whom any books, accounts or other documents have been seized and removed under subsection (2) shall, pending any proceedings for an offence under this Ordinance, be entitled to take copies of or extracts from such books, accounts or other documents.

(4) Any person who obstructs a police officer in the exercise of any power conferred on him by subsection (2) commits an offence and is liable on conviction upon indictment or on summary conviction to a fine at tier 5 and to imprisonment for 6 months. *(Amended 4 of 1997 s. 27)*

126. Defence where director or manager, etc. prosecuted

(1) Subject to subsection (2), in proceedings for an offence under this Ordinance it shall be a defence for the person charged to prove that he took reasonable precautions and exercised due diligence to avoid the commission of such an offence by himself or any person under his control. *(Replaced 43 of 1990 s. 10. Amended 32 of 2001 s. 21)*

(2) Subsection (1) shall not apply to an offence under section 18(11), 22(12), 24(12), 25(10), 47(3), 50(6), 53C(14), 53H, 63(7), 64(5), 72A(4), 73(2), 93(1), 97(1), 117(7), 118(5), 120(6), 123, 124 or 125(4). *(Replaced 32 of 2001 s. 21)*

126A. Limit of time for complaint or information

(1) In any case of an offence other than an indictable offence the complaint shall be made to or information laid before a magistrate, or an officer of a magistrate's court who is authorized in writing for that purpose by a magistrate, at any time within 3 years after the commission of the offence and within 6 months after evidence sufficient in the opinion of the Secretary for Justice to justify prosecution comes to his knowledge.

(2) For the purposes of subsection (1) a certificate of the Secretary for Justice as to the date on which such evidence as is mentioned in subsection (1) came to his knowledge shall be conclusive evidence of that fact.

(Added 43 of 1990 s. 11. Amended L.N. 362 of 1997)

127. Indemnity

(1) No liability shall be incurred by— *(Amended 49 of 1995 s. 39)*

(a) any public officer;

(b) any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority; *(Replaced 94 of 1993 s. 29)*

(c) the Advisor of an authorized institution or any person appointed under section 53G(5) by the Advisor; *(Replaced 49 of 1995 s. 39)*

(d) the Manager of an authorized institution or any person appointed under section 53G(5) by the Manager; or *(Replaced 49 of 1995 s. 39)*

(e) any person appointed under section 117(2),

as a result of anything done or omitted to be done by him bona fide in the exercise or purported exercise of any functions conferred or imposed by or under this Ordinance.

(2) No liability shall be incurred by any chief executive, director, manager or employee of an authorized institution as a result of anything done or omitted to be done by him in good faith in the carrying out or purported carrying out of any directions given to him by the Manager of the institution. *(Added 49 of 1995 s. 39)*

128. *(Repealed 95 of 1991 s. 44)*

129. Validity of contract in contravention of this Ordinance or any Ordinance repealed by this Ordinance

(1) Subject to section 70B(4) and (5), the contravention of any prohibition in this Ordinance or in any Ordinance repealed by this Ordinance on the entering into of any contract shall not render that contract unenforceable. *(Amended 64 of 1987 s. 27; 95 of 1991 s. 45)*

(2) Subsection (1) shall be deemed to have had effect from 1 April 1976, so, however, that nothing in that subsection as read with this subsection shall have effect in relation to any legal proceedings commenced before the commencement of this Ordinance.

(3) Subject to section 70B(4) and (5), for the avoidance of doubt, it is hereby declared that the contravention of any prohibition in this Ordinance or in any Ordinance repealed by

this Ordinance on the entering into of any contract shall not render that contract void. *(Added 95 of 1991 s. 45)*

(4) In this section, ***contract*** (合約) includes a deed which is not otherwise a contract. *(Added 95 of 1991 s. 45)*

(5) This section shall not operate to prejudice the operation of section 53B(5) or (8), 53C(7) or (8) or 53E(1)(ii). *(Added 49 of 1995 s. 40)*

130. *(Repealed 49 of 1995 s. 41)*

131. Recovery of fees, expenses, etc.

(1) There shall be recoverable at the suit of the Secretary for Justice as a civil debt due to the Government from the authorized institution concerned- *(Amended 43 of 1990 s. 12)*

(a) the amount of any fees payable under section 19, 45, 48, 51 or 118F; *(Replaced 49 of 1995 s. 42. Amended 4 of 1997 s. 19)*

(b) any remuneration and expenses payable by the authorized institution pursuant to a determination under section 53G(7) to—

(i) the Advisor of the institution or any person appointed under section 53G(5) by the Advisor;

(ii) the Manager of the institution or any person appointed under section 53G(5) by the Manager; *(Replaced 49 of 1995 s. 42)*

(c) *(Repealed 49 of 1995 s. 42)*

(d) any expenses ordered by the Financial Secretary to be defrayed by the authorized institution under section 55(3). *(Amended 67 of 1992 s. 10)*

(e) *(Repealed 67 of 1992 s. 10)*

(2) There shall be recoverable, at the suit of the Secretary for Justice, as a civil debt due from the applicants, jointly and severally, to the Government, any expenses ordered by the Financial Secretary to be defrayed by the applicants under section 55(3).

(3) Subject to subsection (5), any sum recoverable under this section at the suit of the Secretary for Justice shall be a debt due to the Government within the meaning of section 265(1)(d) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and section 38(1)(d) of the Bankruptcy Ordinance (Cap. 6). *(Replaced 49 of 1995 s. 42. Amended 28 of 2012 ss. 912 & 920)*

(4) The fees, remuneration, expenses and sums of money recoverable under this section shall be paid to the Director of Accounting Services. *(Added 82 of 1992 s. 21)*

(5) Any remuneration and expenses referred to in subsection (1)(b) payable by an authorized institution shall, in any winding up by the Court of First Instance of the institution, have the same priority as is given under rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) to any costs, charges and expenses incurred by the Official Receiver. *(Added 49 of 1995 s. 42. Amended 25 of 1998 s. 2)*

(Amended L.N. 362 of 1997; 68 of 1999 s. 3)

131A. Cost related fees to be paid into Exchange Fund

Any part of monies paid to the Director of Accounting Services under section 19, 45, 48, 51, 118F or 131(4), which relates to the administrative or other costs incurred or likely to be incurred by the Exchange Fund in connection with or otherwise in relation to the performance of any function under this Ordinance, shall be paid by him into the Exchange Fund.

(Added 82 of 1992 s. 22. Amended 49 of 1995 s. 43; 4 of 1997 s. 20)

132. Use of language

(1) All entries in books and accounts kept by authorized institutions shall be recorded in the Chinese or English language and the Arabic system of numerals shall be employed. *(Amended 49 of 1995 s. 44)*

(2) All forms and information required to be sent and all returns required to be made to the Monetary Authority pursuant to any of the provisions of this Ordinance shall be compiled in the Chinese or English language and the Arabic system of numerals and, if any such form, information or return is a translation, be certified to the satisfaction of the Monetary Authority as a true and correct translation. *(Amended 82 of 1992 s. 25; 49 of 1995 s. 44)*

(3) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) or (2) commits an offence and is liable on conviction upon indictment or 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; 32 of 2001 s. 24)*

132A. Appeals

(1) Any person (howsoever described) aggrieved by—

(a) a decision of the Monetary Authority under section 16(1)(b), 25(1) or (2), 44(5), 46(5), 49(5), 51A(5), 52(1)(A), (B) or (C) or (3A), 53G(7), 87A(5) or 118C(1)(b); *(Amended 42 of 1999 s. 14; 18 of 2015 s. 63)*

(b) the attachment by the Monetary Authority of any conditions to the person's authorization under section

16(1)(a) or (5) or to the person's certificate of approval under section 118C(1)(a) or (4); *(Amended 18 of 2015 s. 63)*

(c) any conditions referred to in section 18(4)(c) or (5), 22(4)(c) or (5), 24(5)(c) or (6) or 25(3)(c) or (4) attached to a consent given to the person pursuant to section 18(4), 22(4), 24(5) or 25(3), as the case may be;

(d) the refusal by the Monetary Authority to grant approval under section 44(1), 46(1), 49(1), 51A(2), 59B(3), 69(1) or 87A(2)(a); *(Amended 42 of 1999 s. 14; 6 of 2002 s. 13)*

(e) any conditions to which an approval under section 44(1), 46(1), 49(1), 51A(2) or 87A(2)(a) is made subject by the Monetary Authority under section 44(4), 46(4), 49(4), 51A(4) or 87A(4), as the case may be; *(Amended 42 of 1999 s. 14)*

(ea) any conditions to which an approval under section 59B(3) is made subject by the Monetary Authority under that section; *(Added 6 of 2002 s. 13)*

(f) a refusal to give consent under section 71(1) or 73(1) or (1A), conditions attached under section 71(2)(b) to a consent under section 71(1), the withdrawal under section 71(4) of a consent under section 71(1), conditions attached under section 71(5) to a consent under section 71(1) or the amendment under section 71(5) of any such conditions, by the Monetary Authority; *(Replaced 32 of 2001 s. 22)*

(fb) a refusal by the Monetary Authority to give consent under section 97(1), *(Added 32 of 2001 s. 22. Amended 3 of 2012 s. 15)*

(g) *(Repealed 3 of 2012 s. 15)*

(h) *(Repealed 3 of 2012 s. 15)*

may appeal to the Chief Executive in Council against the decision, conditions, refusal, withdrawal, requirement or variation, but that decision or those conditions, or that refusal, withdrawal, requirement or variation, as the case may be, shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.

(2) Any authorized institution aggrieved by the proposed revocation of its authorization under section 22(1) may appeal to the Chief Executive in Council against the proposed revocation.

(3) Any person aggrieved by a decision of the Monetary Authority to serve—

(a) a conditional notice of consent or notice of objection (within the meaning of section 70) on him;

(b) a notice of objection (within the meaning of section 70A) on him,

may appeal to the Chief Executive in Council against the decision, but that decision shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.

(4) Any authorized institution aggrieved by a requirement in a notice under section 95(1) may appeal to the Financial Secretary against the requirement, but that requirement shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.

(5) Any approved money broker aggrieved by the proposed revocation of its approval under section 118D(1) may appeal to the Chief Executive in Council against the proposed revocation.

(6) A person aggrieved by a specified decision of the Monetary Authority made in respect of the person may, by notice in writing given to the Securities and Futures Appeals Tribunal

established by section 216 of the Securities and Futures Ordinance (Cap. 571), apply to the Tribunal for a review of the decision. *(Added 6 of 2002 s. 13)*

(7) The provisions of Part XI of the Securities and Futures Ordinance (Cap. 571) shall apply to and in relation to a notice under subsection (6) as they apply to and in relation to a notice under section 217(1) of that Ordinance. *(Added 6 of 2002 s. 13)*

(8) A specified decision, other than a specified decision mentioned in paragraph (c) of the definition of ***specified decision*** in subsection (10), shall take effect—

(a) where, prior to the expiration of the period of 21 days specified in section 217(3) of the Securities and Futures Ordinance (Cap. 571) as that within which an application for review of the decision shall be made, the person to whom the decision relates notifies the Monetary Authority that he will not make the application, at the time when he so notifies the Monetary Authority;

(b) subject to paragraph (a), where the person does not make an application for review of the decision within the period of 21 days specified in section 217(3) of the Securities and Futures Ordinance (Cap. 571) as that within which the application shall be made, at the time when the period so specified expires; or

(c) where the person makes an application for review of the decision within the period of 21 days specified in section 217(3) of the Securities and Futures Ordinance (Cap. 571) as that within which the application shall be made—

(i) where the decision is confirmed by the Securities and Futures Appeals Tribunal established by

section 216 of that Ordinance, at the time when the decision is so confirmed;

(ii) where the decision is varied, or substituted by another decision, by that Tribunal, at the time when the decision is so varied or substituted, subject however to the terms of the variation or substitution; or

(iii) where the application is withdrawn, at the time when it is so withdrawn. *(Added 6 of 2002 s. 13)*

(9) Notwithstanding subsection (8) and any other provisions of this or any other Ordinance, the Monetary Authority may, in respect of a specified decision, where he considers it appropriate in the interest of the investing public or in the public interest to do so, specify in a notice served on the person to whom the decision relates any time, other than that at which the decision is apart from this subsection to take effect, as the time at which the decision is to take effect, in which case the decision takes effect at the time so specified. *(Added 6 of 2002 s. 13)*

(10) In this section—

specified decision (指明決定) means a decision of the Monetary Authority—

(a) in a notice under section 58A(4) served on the person concerned;

(b) to refuse to grant consent under section 71C(1), to attach pursuant to section 71C(2)(b) conditions to such consent, to withdraw or suspend under section 71C(4) such consent, to attach pursuant to section 71C(9) conditions to such consent or to amend pursuant to section 71C(9) any such conditions; or

(c) to attach pursuant to section 71E(3) conditions to provisional consent given under section 71E(1) or to

amend pursuant to section 71E(3) any such conditions. *(Added 6 of 2002 s. 13)*

(Added 4 of 1997 s. 21. Amended 68 of 1999 s. 3)

132B. Level of fines for offences under this Ordinance

Where this Ordinance provides for a fine for an offence (including a continuing offence) by reference to a tier, the fine applicable for the offence is the amount shown for that tier in the Thirteenth Schedule.

(Added 4 of 1997 s. 21)

133. Power of Monetary Authority to specify forms

(1) Subject to subsection (2), the Monetary Authority may specify the form of any document required under this Ordinance to be in the specified form and the form of such other documents required for the purposes of this Ordinance as he thinks fit.

(2) The Monetary Authority's power under subsection (1), shall be subject to any express requirement under this Ordinance for a form, whether specified or otherwise, to comply with that requirement, but that requirement shall not restrict the exercise of that power in respect of that form to the extent that, in the opinion of the Monetary Authority, his exercise of that power in respect of that form does not contravene that requirement.

(3) For the avoidance of doubt, it is hereby declared that the Monetary Authority's power under subsection (1) may be exercised in such a way as to—

(a) include in the specified form of any document referred to in that subsection a statutory declaration—

(i) to be made by the person completing the form; and

(ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief;

(b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Monetary Authority thinks fit.

(4) A form specified under this section shall be—

(a) completed in accordance with such directions and instructions as are specified in the form;

(b) accompanied by such documents as are specified in the form; and

(c) if the completed form is required to be provided to the Monetary Authority or any other person, so provided in the manner, if any, specified in the form.

(5) In this section, ***document*** (文件) includes any accounts, application, notice and certificate.

(Replaced 49 of 1995 s. 45)

134. Service of notices

(1) Subject to subsection (2), a notice (howsoever described) which is required to be served under this Ordinance, or which may be served under this Ordinance, on an authorized institution shall, in the absence of evidence to the contrary, be deemed to be so served if it is—

(a) left at;

(b) sent by post to; or

(c) sent by telex, facsimile transmission or other similar method to,

the institution's principal place of business in Hong Kong.

(2) A variation, notice, resolution or determination referred to in section 52(2)(b)(i), 53A(2)(b)(i), 53B(7)(b) or (8), 53F(3)(b)(i) or 53G(3)(b) or (8)(b)(iii) which under that section is required to be, or may be, served on an authorized institution incorporated outside Hong Kong at its principal place of business outside Hong Kong shall, in the absence of evidence to the contrary, be deemed to be so served if it is—

(a) given to or served on an officer, within the meaning of section 2(1) of the Companies Ordinance (Cap. 622), of the institution at that place;

(b) sent by post to that place; or

(c) sent by telex, facsimile transmission or other similar method to that place.

(3) Subsection (1) shall not operate to limit the generality of section 827 of the Companies Ordinance (Cap. 622).

(4) Notwithstanding any other provision of this Ordinance (including any such provision referred to in subsection (2)), subsection (2) shall not operate to limit the generality of section 803 of the Companies Ordinance (Cap. 622), and accordingly, a variation, notice, resolution or determination referred to in that subsection may be served on an authorized representative (as defined by section 774(1) of that Ordinance) of the authorized institution concerned.

(Replaced 49 of 1995 s. 45. Amended 28 of 2012 ss. 912 & 920)

134A. Monetary Authority to consult, etc., before attaching conditions to authorization

(1) Before exercising any power under section 16 to attach to the authorization of any authorized institution any condition (including attach by way of amending conditions already attached to the authorization), the Monetary Authority shall,

where he proposes to attach that condition to the authorization of—

(a) each authorized institution, consult with the following persons—

(i) the Banking Advisory Committee;

(ii) the Deposit-taking Companies Advisory Committee;

(iii) The Hong Kong Association of Banks incorporated by section 3 of The Hong Kong Association of Banks Ordinance (Cap. 364); and

(iv) The DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-Taking Companies) incorporated under the Companies Ordinance (Cap. 32) as in force at the time of the incorporation (including any successor thereof); *(Amended 28 of 2012 ss. 912 & 920)*

(b) each authorized institution which is a bank, or which belongs to a class of banks, consult with the persons referred to in paragraph (a)(i) and (iii) or with each such institution;

(c) each authorized institution which is a deposit-taking company or restricted licence bank, or which belongs to a class of deposit-taking companies or restricted licence banks, consult with the persons referred to in paragraph (a)(ii) and (iv) or with each such institution;

(d) a particular authorized institution, give that institution an opportunity, within such period as the Monetary Authority may specify in writing, being a period reasonable in all the circumstances, of being heard.

(2) For the avoidance of doubt, it is hereby declared that any requirement under subsection (1) for the Monetary Authority

to consult with persons referred to in that subsection in respect of any matter referred to in that subsection shall not operate to prevent the Monetary Authority from consulting with such other persons as he thinks fit in respect of that matter.

(Added 49 of 1995 s. 45)

134B. Monetary Authority to consult, etc., before attaching conditions to certificate of approval

(1) Before exercising his power under section 118C to attach to the certificate of approval of any approved money broker any condition (including attach by way of amending conditions already attached to the certificate), the Monetary Authority shall, where he proposes to attach that condition to the certificate of—

(a) each approved money broker which is a member of the Hong Kong Foreign Exchange & Deposit Brokers' Association, consult with that Association;

(b) a particular approved money broker, give the broker an opportunity, within such period as the Monetary Authority may specify, being a period reasonable in all the circumstances, of being heard.

(2) For the avoidance of doubt, it is hereby declared that any requirement under subsection (1) for the Monetary Authority to consult with persons referred to in that subsection in respect of any matter referred to in that subsection shall not operate to prevent the Monetary Authority from consulting with such other persons as he thinks fit in respect of that matter.

(Added 4 of 1997 s. 22)

135. Power to amend Schedules

(1) The Chief Executive in Council may, by notice in the Gazette, amend the First, Seventh, Eighth or Fifteenth Schedule. *(Amended 49 of 1995 s. 46; 68 of 1999 s. 3; 19 of 2005 s. 7)*

(2) The Legislative Council may, by resolution, amend the Second or Thirteenth Schedule.

(3) The Financial Secretary may, by notice in the Gazette, amend the Fifth, Ninth, Eleventh, Twelfth or Fourteenth Schedule. *(Amended 95 of 1991 s. 48; 49 of 1995 s. 46; 42 of 1999 s. 15; 32 of 2001 s. 23; 19 of 2005 s. 7; 3 of 2012 s. 16)*

(4) *(Repealed 95 of 1991 s. 48)*

(Amended 4 of 1997 s. 23)

136. Consent of Secretary for Justice

No prosecution in respect of any offence under this Ordinance shall be instituted without the consent in writing of the Secretary for Justice.

(Amended L.N. 362 of 1997)

137. *(Amendments Incorporated)*

(Amendments Incorporated)

137A. Exclusion of provisions of Gambling Ordinance (Cap. 148)

(1) Subject to subsection (2), the Gambling Ordinance (Cap. 148) shall not apply to any transaction proposed to be entered into, or entered into, by an authorized institution.

(2) Subsection (1) shall not apply to a transaction, or a transaction belonging to a class of transactions, specified by the Monetary Authority by notice in the Gazette as being a transaction, or a class of transactions, as the case may be, to

which that subsection shall not apply. *(Amended 82 of 1992 s. 25)*

(Added 64 of 1987 s. 28)

137B. Prescribed instruments

(1) In this Ordinance—

prescribed instrument (訂明票據)—

(a) means an instrument—

(i) specified in the Sixth Schedule; and

(ii) in respect of which the Monetary Authority, or a person approved under subsection (3)(a) for the purposes of this definition, is the bearer for the purposes of facilitating services for the clearing and settlement of transactions in that instrument; and

(b) includes any right or interest—

(i) arising, whether directly or indirectly, under, or in respect of, an instrument referred to in paragraph (a), and irrespective of whether the right or interest may be enforced, claimed or otherwise maintained—

(A) by a person against the issuer of the instrument; or

(B) by another person against the person referred to in sub-subparagraph (A); and

(ii) which may be evidenced by—

(A) a written document;

(B) information recorded in the form of any entry in a book of account;

(C) information recorded (whether by means of a computer or otherwise) in a non-legible form but which is capable of being reproduced in a legible form; or

(D) any combination of sub-subparagraphs (A), (B) and (C).

(2) Where, but for this subsection, a prescribed instrument would be a security within the meaning of the Securities and Futures Ordinance (Cap. 571), then, notwithstanding the provisions of that Ordinance, the prescribed instrument shall be deemed not to be such a security if, and only if, the instrument concerned specified in the Sixth Schedule is not such a security. *(Amended 5 of 2002 s. 407)*

(3) The Monetary Authority may, by notice in the Gazette—

(a) approve a person for the purposes of the definition of ***prescribed instrument***;

(b) amend the Sixth Schedule.

(4) For the avoidance of doubt, it is hereby declared that a notice under subsection (3)(a) is not subsidiary legislation.

(Added 94 of 1993 s. 31)

PART XXII

TRANSITIONAL, SAVINGS AND REPEAL

138. Interpretation

In this Part, unless the context otherwise requires—

"former bank" (前銀行) means a bank which, immediately before the commencement this Ordinance, held a former banking licence;

"former Banking Advisory Committee" (前銀行業務諮詢委員會) means the Banking Advisory Committee established by section 3 of the former Banking Ordinance and as constituted immediately before the commencement of this Ordinance;

"former banking licence" (前銀行牌照) means a licence granted under section 7 or 42 of the former Banking Ordinance and in force immediately before the commencement of this Ordinance;

"former Banking Ordinance (Cap. 155, 1983 Ed.)" (前《銀行業條例》(第155章, 1983年版) means the Banking Ordinance 1964 repealed by this Ordinance;

"former Commissioner" (前專員) means the person who was, immediately before the commencement of this Ordinance, the Commissioner of Banking under section 4 of the former Banking Ordinance and, for the purposes of this Part, any reference in the former Deposit-taking Companies Ordinance to the Commissioner of Deposit-taking Companies shall be deemed to be a reference to such Commissioner of Banking;

"former Deposit-taking Companies Advisory Committee" (前接受存款公司諮詢委員會) means the Deposit-taking Companies Advisory Committee established by section 4 of the former

Deposit-taking Companies Ordinance and as constituted immediately before the commencement of this Ordinance;

"former deposit-taking licence" (前接受存款牌照) means a licence granted under section 16B of the former Deposit-taking Companies Ordinance and in force immediately before the commencement of this Ordinance;

"former Deposit-taking Companies Ordinance (Cap. 328, 1983 Ed.)" (前《接受存款公司條例》(第328章, 1983年版)) means the Deposit-taking Companies Ordinance 1976 repealed by this Ordinance;

"former registration" (前註冊) means registration under section 10 of the former Deposit-taking Companies Ordinance which was in force immediately before the commencement of this Ordinance.

139. Appointed members of former committees to continue in office

(1) Any member of the former Banking Advisory Committee who was such a member by virtue of an appointment under section 3(2) of the former Banking Ordinance shall, on and from the commencement of this Ordinance, be deemed to be a member of the Banking Advisory Committee as if, on that commencement, he had been appointed under section 4(2) to be a member of the Banking Advisory Committee for the period he had left to serve, immediately before that commencement, as a member of the former Banking Advisory Committee and, for that purpose and for that period, the terms on which he was so appointed as a member of the former Banking Advisory Committee shall be the terms on which he shall be a member of the Banking Advisory Committee.

(2) Any member of the former Deposit-taking Companies Advisory Committee who was such a member by virtue of an appointment under section 5(1)(c) of the former Deposit-taking Companies Ordinance shall, on and from the

commencement of this Ordinance, be deemed to be a member of the Deposit-taking Companies Advisory Committee as if, on that commencement, he had been appointed under section 5(2) to be a member of the Deposit-taking Companies Advisory Committee for the period he had left to serve, immediately before that commencement, as a member of the former Deposit-taking Companies Advisory Committee and, for that purpose and for that period, the terms on which he was so appointed as a member of the former Deposit-taking Companies Advisory Committee shall be the terms on which he shall be a member of the Deposit-taking Companies Advisory Committee.

140. *(Repealed 82 of 1992 s. 23)*

141. Authorized and employed persons to continue to be authorized and employed

Any person who was, immediately before the commencement of this Ordinance, authorized or employed under section 4A of the former Banking Ordinance to assist the former Commissioner in the exercise of his functions and duties under the former Banking Ordinance, either generally or in any particular case, shall, on and from the commencement of this Ordinance, be deemed, in the like capacity, to be authorized or employed to assist the Commissioner in the exercise of his functions under this Ordinance as if, on that commencement, he had been, in the like capacity, authorized or employed under section 8 to assist the Commissioner in the exercise of his functions under this Ordinance for the period he had left, immediately before that commencement, to be so authorized or employed under the former Banking Ordinance.

142. Former applications for licences, etc. deemed to be applications under this Ordinance

Where, immediately before the commencement of this Ordinance,

there was in existence—

(a) an application for a former banking licence under section 6 of the former Banking Ordinance in relation to which the Governor in Council had not granted or refused a former banking licence under section 7 of the former Banking Ordinance;

(b) an application for former registration under section 9 of the former Deposit-taking Companies Ordinance in relation to which there has not been any registration or refusal of registration by the Commissioner under section 10 of the former Deposit-taking Companies Ordinance; or

(c) an application for a former deposit-taking licence under section 16A of the former Deposit-taking Companies Ordinance in relation to which the Financial Secretary had not granted or refused a former deposit-taking licence under section 16B of the former Deposit-taking Companies Ordinance,

then—

(i) in the case of an application referred to in paragraph (a), the application shall be deemed to be an application under section 15 for a banking licence;

(ii) in the case of an application referred to in paragraph (b), the application shall be deemed to be an application under section 20 for registration; and

(iii) in the case of an application referred to in paragraph (c), the application shall be deemed to be an application under section 24 for a deposit-taking licence,

and the provisions of this Ordinance shall apply accordingly.

143. Former licences, etc. deemed to be licences, etc. under this Ordinance

(1) Any former banking licence shall, on and from the commencement of this Ordinance, be deemed to be—

(a) in the case of a former banking licence granted under section 7 of the former Banking Ordinance, a banking licence granted under section 16; *(Amended 43 of 1990 s. 13)*

(b) *(Repealed 43 of 1990 s. 13)*

and the provisions of this Ordinance shall apply accordingly.

(2) Any former registration shall, on and from the commencement of this Ordinance, be deemed to be registration under section 21, and the provisions of this Ordinance shall apply accordingly.

(3) Any former deposit-taking licence shall, on and from the commencement of this Ordinance, be deemed to be a deposit-taking licence granted under section 25, and the provisions of this Ordinance shall apply accordingly.

(4) Notwithstanding Part VII of the former Deposit-taking Companies Ordinance, any former registration or former deposit-taking licence which was, immediately before the commencement of this Ordinance, suspended under that Part shall, on and from that commencement, but subject to section 146, be deemed, for the purposes of subsections (2) and (3) and the definitions of "former registration" and "former deposit-taking licence" in section 138, to be in force immediately before that commencement.

144. Date of payment of certain fees

Where, under this Ordinance, a bank, registered deposit-taking company or licensed deposit-taking company is required to pay any fee specified in the Second Schedule, irrespective of whether the words "authorized institution" are used to create any such requirement, by reference to the anniversary of the date on which

the bank, registered deposit-taking company or licensed deposit-taking company was licensed or registered, as the case may be, or words to that effect, and the banking licence, registration or deposit-taking licence, as the case may be, held by that bank, registered deposit-taking company or licensed deposit-taking company is deemed by virtue of section 143 to be a banking licence, registration or deposit-taking licence, as the case may be, then, for the purposes of paying any such fee, and notwithstanding any other provision of this Ordinance, such reference to the anniversary of the date on which the bank, registered deposit-taking company or licensed deposit-taking company was licensed or registered shall be the anniversary of the date on which the bank, registered deposit-taking company or licensed deposit-taking company was licensed or registered, as the case may be, under the former Banking Ordinance or former Deposit-taking Companies Ordinance, as the case may be.

(Amended 43 of 1990 s. 14)

145. Conditions attached to former licences, etc. deemed to be conditions under this Ordinance

(1) Where, immediately before the commencement of this Ordinance, there was in force any condition attached to a former banking licence under section 7(1)(b) or 7A of the former Banking Ordinance and, on and from that commencement, the former banking licence is deemed by virtue of section 143 to be a banking licence, then, on and from that commencement, any such condition shall be deemed to be a condition attached to the banking licence as if, on that commencement, the Governor in Council had attached such condition under section 17 to the banking licence, and the provisions of this Ordinance shall apply accordingly.

(2) Where, immediately before the commencement of this Ordinance, there was in force any condition attached to a

former deposit-taking licence under section 16B(1)(a) or (3) of the former Deposit-taking Companies Ordinance and, on and from that commencement, the former deposit-taking licence is deemed by virtue of section 143 to be a deposit-taking licence, then, on and from that commencement, any such condition shall be deemed to be a condition attached to the deposit-taking licence as if, on that commencement, the Financial Secretary had attached such condition under section 25(3) to the deposit-taking licence, and the provisions of this Ordinance shall apply accordingly.

(3) Where any local branch to which section 44(3) applies had in force, immediately before the commencement of this Ordinance, an approval under section 12A(1) or (3) of the former Banking Ordinance or section 16H(1) or (3) of the former Deposit-taking Companies Ordinance to which was attached any condition under section 12A(4) of the former Banking Ordinance or section 16H(4) of the former Deposit-taking Companies Ordinance and which condition was in force immediately before that commencement, then, on and from that commencement, any such condition shall be deemed to be attached to the approval under section 44 of the local branch as if, on that commencement, the Commissioner had attached such condition under section 44(4) to the approval, and the provisions of this Ordinance shall apply accordingly.

(4) Where any local representative office to which section 46(2) applies had in force, immediately before the commencement of this Ordinance, an approval under section 12C(1) or (2) of the former Banking Ordinance to which was attached any condition under section 12C(4) of the former Banking Ordinance and which condition was in force immediately before that commencement, then, on and from that commencement, any such condition shall be deemed to be attached to the approval under section 46 of the local representative office as if, on that commencement, the

Commissioner had attached such condition under section 46(4) to the approval, and the provisions of this Ordinance shall apply accordingly.

(5) Where any overseas branch or overseas representative office to which section 49(3) applies had in force, immediately before the commencement of this Ordinance, an approval under section 12F(1) or (3) of the former Banking Ordinance or section 16J(1) or (3) of the former Deposit-taking Companies Ordinance to which was attached any condition under section 12F(4) of the former Banking Ordinance or section 16J(4) of the former Deposit-taking Companies Ordinance and which condition was in force immediately before that commencement, then, on and from that commencement, any such condition shall be deemed to be attached to the approval under section 49 of the overseas branch or overseas representative office, as the case may be, as if, on that commencement, the Commissioner had attached such condition under section 49(4) to the approval, and the provisions of this Ordinance shall apply accordingly.

146. Suspension of former registration, etc. deemed to be suspension under this Ordinance

Where any former registration or former deposit-taking licence which is, on and from the commencement of this Ordinance, deemed by virtue of section 143 to be registration or a deposit-taking licence, was, immediately before that commencement, suspended under Part VII of the former Deposit-taking Companies Ordinance, then, on and from that commencement, that registration or that deposit-taking licence, as the case may be, shall, in the like manner, be deemed to be suspended under Part VI for the period concerned of such suspension left to serve immediately before that commencement as if, on that commencement and for that period, the designated authority under Part VI had suspended that registration

or deposit-taking licence, as the case may be, and the provisions of this Ordinance shall apply accordingly.

147. Actions, etc. under Part IV of former Banking Ordinance deemed to be actions under Part X of this Ordinance

Where an act, matter or thing has been done under Part IV of the former Banking Ordinance by the Commissioner, the Financial Secretary or the Governor in Council to or in relation to a former bank and, on and from the commencement of this Ordinance, the former banking licence held by the former bank is deemed by virtue of section 143 to be a banking licence, then, on and from that commencement, to the extent that but for the enactment of this Ordinance that act, matter or thing would on or after that commencement have had any force or effect or been in operation that act, matter or thing, shall, in the like manner, be deemed to have been done under Part X by the Commissioner, the Financial Secretary or the Governor in Council, as the case may be, to or in relation to the bank which holds that banking licence as if, on that commencement, that act, matter or thing were, to that extent, done under Part X by the Commissioner, the Financial Secretary or the Governor in Council, as the case may be, to or in relation to the bank, and the provisions of this Ordinance shall apply accordingly.

(Amended 3 of 1990 s. 49)

148. Transitional provision in relation to certain letters of comfort

A letter of comfort which was, immediately before the day of *commencement of the Banking (Amendment) (No. 2) Ordinance 1991 (95 of 1991), deemed by section 148 at all times to have been accepted under paragraph (c) of the proviso to section 81(2) shall, on and from that date, be deemed at all times to have been accepted under section 81(6)(b), and the provisions of this Ordinance shall apply accordingly.

(Replaced 95 of 1991 s. 49)

Editorial Note:

* Commencement date: 1 August 1991.

148A. Transitional provisions in relation to section 87

(1) Where, immediately before 1 September 1986, any period allowed under the proviso to section 27(1) of the former Banking Ordinance, or under section 23B(3) of the former Deposit-taking Companies Ordinance, had not expired then, on and from that date, the unexpired portion of that period shall be deemed to be a further period approved under, and for the purposes of, the proviso to section 87(1) as if, on that date, the Commissioner had given such approval under the proviso to section 87(1), and the provisions of this Ordinance shall apply accordingly.

(2) Where, immediately before 1 September 1986, any period allowed under section 23B(2) of the former Deposit-taking Companies Ordinance had not expired then, on and from that date, the unexpired portion of that period shall be deemed to be a further period approved under, and for the purposes of, section 87(2)(a) as if, on that date, the Commissioner had given such approval under section 87(2)(a), and the provisions of this Ordinance shall apply accordingly.

(3) Where, immediately before 1 September 1986, there was in force any approval under section 27(2) of the former Banking Ordinance then, on and from that date, any such approval shall be deemed to be an approval under, and for the purposes of, section 87(2)(b) as if, on that date, the Commissioner had given such approval under section 87(2)(b).

(Added 64 of 1987 s. 29)

149. Transitional provisions in relation to amendments made by Banking (Amendment) Ordinance 1990

(1) In this section—

"deposit-taking licence" (接受存款牌照) means a deposit-taking licence—

(a) granted, or deemed to be granted, under section 25 as in force at any time before the relevant day; and

(b) in force immediately before the relevant day;

"licensed deposit-taking company" (持牌接受存款公司) means a company which, immediately before the relevant day, held a deposit-taking licence;

"relevant day" (有關日期) means the day of *commencement of the relevant Ordinance;

"relevant Ordinance" (有關條例) means the Banking (Amendment) Ordinance 1990 (3 of 1990).

(2) Where, immediately before the relevant day, there was an application for a deposit-taking licence under section 24 in relation to which the Financial Secretary had not granted or refused a deposit-taking licence under section 25 then, on and from the relevant day, that application shall be deemed to be an application under section 24 for a restricted banking licence, and the provisions of this Ordinance shall apply accordingly.

(3) Any deposit-taking licence shall, on and from the relevant day, be deemed to be a restricted banking licence granted under section 25, and the provisions of this Ordinance shall apply accordingly.

(4) Notwithstanding Part VI as in force immediately before the relevant day, any deposit-taking licence which was, immediately before the relevant day, suspended under that Part shall, on and from the relevant day, be deemed, for the purposes of subsection (3) and the definition of "deposit-taking

licence" in subsection (1), to have been in force immediately before the relevant day.

(5) Where, immediately before the relevant day, there was in force any condition attached or deemed to be attached to a deposit-taking licence under section 25 and, on and from the relevant day, the deposit-taking licence is deemed by virtue of subsection (3) to be a restricted banking licence, then, on and from the relevant day, any such condition shall be deemed to be a condition attached to the restricted banking licence as if, on the relevant day, the Financial Secretary had attached such condition under section 25 to the restricted banking licence, and the provisions of this Ordinance shall apply accordingly. *(Amended 49 of 1995 s. 47)*

(6) Where any deposit-taking licence which is, on and from the relevant day, deemed by virtue of subsection (3) to be a restricted banking licence, was, immediately before the relevant day, suspended under Part VI, then, on and from the relevant day, that restricted banking licence shall, in the like manner, be deemed to be suspended under Part VI for the period concerned of such suspension left to serve immediately before the relevant day as if, on the relevant day and for that period, the designated authority under Part VI had suspended that restricted banking licence, and the provisions of this Ordinance shall apply accordingly.

(7) Where an act, matter or thing has been done or deemed to be done under Part X as in force at any time before the relevant day by the Commissioner, the Financial Secretary or the Governor in Council to or in relation to a licensed deposit-taking company and, on and from the relevant day, the deposit-taking licence held by that company is deemed by virtue of subsection (3) to be a restricted banking licence, then, on and from the relevant day, to the extent that but for the enactment of the relevant Ordinance that act, matter or

thing would on or after the relevant day have had any force or effect or been in operation, that act, matter or thing shall, in the like manner, be deemed to have been done under Part X by the Commissioner, the Financial Secretary or the Governor in Council, as the case may be, to or in relation to the restricted licence bank which holds that restricted banking licence as if, on the relevant day, that act, matter or thing were, to that extent, done under Part X by the Commissioner, the Financial Secretary or the Governor in Council, as the case may be, to or in relation to the restricted licence bank, and the provisions of this Ordinance shall apply accordingly.

(8) To the extent that any of the other provisions of this Part have any force or effect or are in operation on or after the relevant day, any reference in those provisions to—

(a) a deposit-taking licence shall be deemed to be a reference to a restricted banking licence; and

(b) a licensed deposit-taking company shall be deemed to be a reference to a restricted licence bank,

and the provisions of this Ordinance shall apply accordingly.

(9)-(13) *(Repealed 95 of 1991 s. 50)*

(Replaced 3 of 1990 s. 50)

Editorial Note:

* Commencement date: 1 February 1990.

150. Transitional provisions in relation to amendments made by Banking (Amendment) (No. 2) Ordinance 1991

(1) In this section—

"relevant day" (有關日期) means the day of *commencement of the relevant Ordinance;

"relevant Ordinance" (有關條例) means the Banking (Amendment) (No. 2) Ordinance 1991 (95 of 1991).

(2)-(3) *(Repealed 42 of 1999 s. 16)*

(4) Where, immediately before the relevant day, there was in existence an application for an approval under section 70 or 72 in relation to which the Commissioner had not granted, or refused to grant, such approval, then, at any time on and from the relevant day, the Commissioner may grant, or refuse to grant, such approval as if the relevant Ordinance had never been enacted, and any such grant of, or refusal to grant, such approval made on or after the relevant day shall have such force or effect or operation as such grant of, or refusal to grant, such approval would have had if the relevant Ordinance had never been enacted.

(5) Where any person to whom section 70 or 72, as in force immediately before the relevant day, applied to had not, before the relevant day, made an application under that section for an approval in respect of the matter by virtue of which that section applies to him, then, on and from the relevant day, that section shall apply to him in respect of such matter as if the relevant Ordinance had never been enacted.

(6) Where, immediately before the relevant day, there was in existence an approval (including any conditions to which such approval is subject), or refusal to grant an approval, under section 70 or 72, then, on and from the relevant day, any such approval (including any conditions to which such approval is subject) or refusal shall have such force or effect or operation as such approval or refusal would have continued to have had if the relevant Ordinance had never been enacted.

(7) For the avoidance of doubt, it is hereby declared that where subsection (4), (5) or (6) applies in relation to any person at any time on and from the relevant day, such application shall be without prejudice to the application of the provisions of

Part XIII in relation to such person at any time on and from the relevant day. *(Amended 42 of 1999 s. 16)*

(8) Where an authorized institution contravenes section 74(1)—

(a) by failing to appoint not less than one alternate chief executive of the institution; and

(b) at any time before the expiration of the period of 6 months immediately following the relevant day, or such further period as the Monetary Authority approves for the purposes of the application of section 71 to any person the institution proposes to appoint as an alternate chief executive, *(Amended 82 of 1992 s. 25)*

section 74(2) shall not apply in relation to that contravention (including at any time on or after the expiration of that period or further period, as the case may be).

(9) The financial exposure of an authorized institution under section 81(2) shall not include financial exposure for any item referred to in paragraph (c) of that section until a notice under section 81(3) in respect of that item is published in the Gazette.

(10) Where an authorized institution contravenes section 81(1), 83(1) or (2)(a), 87(1), 88(1) or 90(1) at any time before the expiration of the period of one year immediately following the relevant day, or such further period as the Monetary Authority approves in writing in any particular case— *(Amended L.N. 349 of 1991; 82 of 1992 s. 25)*

(a) section 81(9), 83(7), 87(3), 88(6) or 90(3), as the case may be, shall not, subject to paragraph (b), apply in relation to that contravention (including at any time on or after the expiration of that period or further period, as the case may be); and

(b) the institution shall, for so long as that contravention of that section continues, comply with that section as if the

words "paid-up capital and reserves" were substituted for the words "capital base" appearing in that section and, accordingly, section 81(9), 83(7), 87(3), 88(6) or 90(3), as the case may be, shall apply in relation to any contravention of that section by that institution as that section applies to that institution with those substituted words.

(11) Where immediately before the commencement of section 16 of the Banking (Amendment) Ordinance 1999 (42 of 1999) a person was lawfully a controller of an authorized institution wholly or partly by virtue of any of the provisions of subsections (2) and (3), then, on and after that commencement—

(a) the repeal effected by that section of those subsections shall not of itself cause the person to cease to be such a controller;

(b) the previous operation of those subsections shall not prevent a conditional notice of consent under section 70 from being served on such a controller. *(Added 42 of 1999 s. 16)*

(Added 95 of 1991 s. 51)

Editorial Note:

* Commencement date: 1 August 1991.

151. Savings in relation to Exchange Fund (Amendment) Ordinance 1992

(1) Notwithstanding the repeal of section 8 of this Ordinance by section 16 of the relevant Ordinance, where immediately before the *commencement of the relevant Ordinance, a person was authorized or employed as a result of an exercise of a power under that repealed section, the exercise of such

power shall continue to have effect and be regarded as having been exercised by the Monetary Authority.

(2) The repeal referred to in subsection (1) shall not be construed as affecting any authorization or employment to which section 141 applied immediately before the commencement of the relevant Ordinance.

(3) Where immediately before the commencement of the relevant Ordinance—

(a) there was in existence an application to which section 142 then applied;

(b) there was in force any condition to which section 145(3), (4) or (5) then applied;

(c) an act, matter or thing to which section 147 then applied had any force or effect or was in operation;

(d) there was in existence an approval to which section 148A then applied;

(e) an act, matter or thing to which section 149(7) then applied had any force or effect or was in operation; or *(Amended L.N. 440 of 1993)*

(f) there was in existence an application to which section 150(4) then applied,

then, on and from the commencement of the relevant Ordinance, the section of this Ordinance which, having regard to paragraph (a), (b), (c), (d), (e) or (f) is the relevant section, shall, in relation to such application, condition, act, matter or thing or approval as may be appropriate, be construed and have effect as if any reference therein to the "Commissioner" were substituted for by a reference to the "Monetary Authority".

(4) Notwithstanding the amendment of section 150(8) and (10) by section 25(2) of the relevant Ordinance, any further

period granted under section 150(8) or (10) and which on the commencement of the relevant Ordinance had not expired, shall continue to run as if that section had not been so amended.

(5) Where—

(a) any act, matter or thing which the Monetary Authority is required, empowered or authorized to do under or pursuant to any enactment, on or after the commencement of the relevant ordinance, was done by any person other than the Monetary Authority before such commencement; and

(b) the act, matter or thing was in force or existence immediately before such commencement,

that act, matter or thing shall continue in force, or where appropriate, to exist, on and from such commencement, as if it had been done by the Monetary Authority.

(6) In this section "relevant Ordinance" (有關條例) means the Exchange Fund (Amendment) Ordinance 1992 (82 of 1992).

(Added 82 of 1992 s. 24)

Editorial Note:

* Commencement date: 1 April 1993.

152. Transitional provisions in relation to Banking (Amendment) Ordinance 1995

(1) In this section—

"former banking licence" (前銀行牌照) means a banking licence—

(a) granted, or deemed to be granted, under section 16 as in force at any time before the relevant day; and

(b) in force immediately before the relevant day;

"former registration" (前註冊) means registration—

(a) given, or deemed to be given, under section 21 as in force at any time before the relevant day; and

(b) in force immediately before the relevant day;

"former restricted banking licence" (前有限制銀行牌照) means a restricted banking licence—

(a) granted, or deemed to be granted, under section 25 as in force at any time before the relevant day; and

(b) in force immediately before the relevant day;

"relevant day" (有關日期) means the day of *commencement of the relevant Ordinance;

"relevant Ordinance" (有關條例) means the Banking (Amendment) Ordinance 1995 (49 of 1995).

(2) Where, immediately before the relevant day, there was in existence—

(a) an application for a banking licence under section 15 in relation to which the Governor in Council has not granted or refused a banking licence under section 16;

(b) an application for registration as a deposit-taking company under section 20 in relation to which there has not been any registration or refusal of registration by the Monetary Authority under section 21; or

(c) an application for a restricted banking licence under section 24 in relation to which the Financial Secretary has not granted or refused a restricted banking licence under section 25,

then, on and from the relevant day, the application shall be deemed to be an application under section 15 for authorization to carry on—

(i) in the case of paragraph (a), banking business;

(ii) in the case of paragraph (b), a business of taking deposits as a deposit-taking company;

(iii) in the case of paragraph (c), a business of taking deposits as a restricted licence bank,

and the provisions of this Ordinance shall apply accordingly.

(3) Any former banking licence, former registration or former restricted banking licence shall, on and from the relevant day, be deemed to be—

(a) in the case of a former banking licence, a banking licence granted under section 16;

(b) in the case of former registration, registration under that section;

(c) in the case of a former restricted banking licence, a restricted banking licence granted under that section,

and the provisions of this Ordinance shall apply accordingly.

(4) Notwithstanding Part VI as in force immediately before the relevant day, any former registration or former restricted banking licence which was, immediately before the relevant day, suspended under that Part shall, on and from the relevant day, be deemed to have been in force immediately before the relevant day for the purposes of—

(a) in the case of former registration, subsection (3) and the definition of "former registration" in subsection (1);

(b) in the case of a former restricted banking licence, subsection (3) and the definition of "former restricted banking licence" in subsection (1).

(5) Where—

(a) immediately before the relevant day, there was in force any condition attached or deemed to be attached to—

(i) a former banking licence under section 16 or 17;

(ii) former registration under section 21 or 22; or

(iii) a former restricted banking licence under section 25; and

(b) on and from the relevant day, that former banking licence, former registration or former restricted banking licence is deemed by virtue of subsection (3) to be a banking licence, registration or restricted banking licence, as the case may be,

then, on and from the relevant day, any such condition shall be deemed to be a condition attached to that banking licence, registration or restricted banking licence, as the case may be, as if, on the relevant day, the Monetary Authority had attached such condition under section 16 to that banking licence, registration or restricted banking licence, as the case may be, and notwithstanding that the term "authorization" is used in section 16(1)(a) and (5), and the provisions of this Ordinance shall apply accordingly.

(6) Where any former registration or former restricted banking licence which is, on and from the relevant day, deemed by virtue of subsection (3) to be registration or a restricted banking licence, as the case may be, was, immediately before the relevant day, suspended under Part VI, then, on and from the relevant day, that registration or restricted banking licence, as the case may be, shall, in the like manner, be deemed to be suspended under that Part for the period concerned of such suspension left to serve immediately before the relevant day as if, on the relevant day and for that period, the Monetary Authority had under that Part suspended that registration or restricted banking licence, as the case may be, and notwithstanding that the term "authorization" is used in that Part, and the provisions of this Ordinance shall apply accordingly.

(7) Where—

(a) immediately before the relevant day, there was in existence an application under Part VII for the transfer of any former banking licence, former registration or former restricted banking licence from an authorized institution to another person in relation to which the designated authority within the meaning of that Part had not granted or refused such transfer; and

(b) on and from the relevant day, that former banking licence, former registration or former restricted banking licence is deemed by virtue of subsection (3) to be a banking licence, registration or restricted banking licence, as the case may be,

then, on and from the relevant day, that application shall be deemed to be an application under Part VII to the Monetary Authority for such transfer, and notwithstanding that the term "authorization" is used in Part VII, and the provisions of this Ordinance shall apply accordingly.

(8) Where—

(a) an act, matter or thing has been done or deemed to be done under Part X as in force at any time before the relevant day by the Monetary Authority, the Financial Secretary or the Governor in Council to or in relation to an authorized institution; and

(b) on and from the relevant day, the former banking licence, former registration or former restricted banking licence held by that institution is deemed by virtue of subsection (3) to be a banking licence, registration or restricted banking licence, as the case may be,

then, on and from the relevant day, to the extent that but for the enactment of the relevant Ordinance that act, matter or thing would on or after the relevant day have had any force or effect or been in operation, that act, matter or thing shall, in

the like manner, and subject to such modifications as may be necessary, be deemed to have been done under Part X by the Monetary Authority, the Financial Secretary or the Governor in Council, as the case may be, to or in relation to the bank, deposit-taking company or restricted licence bank, as the case may be, which holds that banking licence, registration or restricted banking licence, as the case may be, as if, on the relevant day, that act, matter or thing were, to that extent, done under Part X by the Monetary Authority, the Financial Secretary or the Governor in Council, as the case may be, to or in relation to that bank, deposit-taking company or restricted licence bank, as the case may be, and the provisions of this Ordinance shall apply accordingly.

(9) To the extent that any of the other provisions of this Part have any force or effect or are in operation on or after the relevant day, they shall be read, and have such force or effect or operation, as the case may be, subject to such modifications as are necessary to take into account the provisions of this section.

(Added 49 of 1995 s. 48)

Editorial Note:

* Commencement date: 15 November 1995.

153. Transitional provisions in relation to Banking (Amendment) Ordinance 1997

(1) In this section—

"relevant day" (有關日期) means the day of commencement of the Banking (Amendment) Ordinance 1997 (4 of 1997);

"relevant period" (有關期限) means the period of 3 months immediately following the relevant day.

(2)-(3) *(Repealed 18 of 2015 s. 64)*

(4) Where a person would, but for this section, be liable to be prosecuted for an offence under section 118A(2) for acting as a money broker without being an approved money broker, then the person shall not be so liable—

(a) in any case, until the expiry of—

(i) the relevant period; or

(ii) such further period as the Monetary Authority may, on application made to him by the person before the expiry of the relevant period, by notice in writing allow;

(b) in any case where, before the expiry of the relevant period, the person makes an application under section 118B for approval, until the date from which the person is approved under section 118C(1)(a) to act as a money broker;

(c) in any case where, before the expiry of the relevant period, the person makes an application under section 118B for approval the Monetary Authority refuses under section 118C(1)(b) to approve the person to act as a money broker, until the expiry of 14 days immediately following that refusal;

(d) if paragraph (c) is applicable, until the expiry of such further period as the Monetary Authority may, on application made to him by the person before the expiry of that period of 14 days, by notice in writing allow.

(5) The Monetary Authority may, by notice in writing served on any person to whom subsection (4) applies, require the person to act as a money broker in accordance with such conditions—

(a) as the Monetary Authority could, under this Ordinance, attach to the certificate of approval of any approved money broker; and

(b) specified in the notice.

(6) Any person who contravenes a requirement specified in a notice under subsection (5) served on the person, and every director and manager of such a person which is a company, commits an offence and is liable— *(Amended 18 of 2015 s. 64)*

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or

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

(7) For the avoidance of doubt, it is hereby declared that—

(a) an appeal under section 132A shall not affect the operation of this section;

(b) no person shall be prosecuted for an offence for which the person is not liable by virtue of the operation of subsection (4). *(Amended 18 of 2015 s. 64)*

(Added 4 of 1997 s. 24; Amended E.R. 1 of 2013)

SCHEDULE 1

[ss. 2(1), 12(3), 14(1) & 135(1)]

SPECIFIED PERIOD AND SPECIFIED SUMS

1. 3 months.

2. The sum for the purposes of section 14(1)(a) is $100,000 or an equivalent amount in any other currency.

3. The sum for the purposes of section 14(1)(b) is $500,000 or an equivalent amount in any other currency.

(First Schedule replaced 3 of 1990 s. 51)

SCHEDULE 2

[ss. 19, 23, 26, 27, 45, 48, 51, 109, 118F, 135(2) & 144]

(Amended 4 of 1997 s. 25)

FEES

		$
1.	Banking licence fee (section 19(1)) *(Replaced 49 of 1995 s. 49)*	474340
1A.	Renewal of banking licence fee (section 19(2)) *(Added 49 of 1995 s. 49)* .	474340
2.	Registration fee (section 19(1))	113020
3.	Renewal of registration fee (section 19(2))	113020
4.	Restricted banking licence fee (section 19(1))	384270
5.	Renewal of Restricted banking licence fee (section 19(2))	384270
6.	Inspection fee (section 20(5))	10
7.	Fee for a copy or extract per page (section 20(5))	5
8.	Fee for the establishment of a local branch of a bank, other than a restricted licence bank (section 45(1))	22400
9.	Annual fee for maintaining a local branch of a bank, other than a restricted licence bank (section 45(1), (2) and (3)) *(Amended 32 of 2001 s. 25)*	22400
10.	Fee for the establishment of a local branch of a restricted licence bank or deposit-taking company (section 45(1))	19110
11.	Annual fee for maintaining a local branch of a restricted licence bank or deposit-taking company (section 45(1), (2) and (3)) *(Amended 32 of 2001 s. 25)*	19110
12.	Fee for the establishment of a local representative office (section 48(1)).	22400
13.	Annual fee for maintaining a local representative office (section 48(1), (2), (3) and (4)) *(Amended 32 of 2001 s. 25)*	22400

14. Fee for the establishment of an overseas branch of a bank other than a restricted licence bank (section 51(1))	44800
15. Annual fee for maintaining an overseas branch of a bank other than a restricted licence bank (section 51(1) and (2))	44800
16. Fee for the establishment of an overseas branch of a restricted licence bank or deposit-taking company (section 51(1))	38400
17. Annual fee for maintaining an overseas branch of a restricted licence bank or deposit-taking company (section 51(1) and (2))	38400
18. Fee for the establishment of an overseas representative office of a bank other than a restricted licence bank (section 51(1))	11200
19. Annual fee for maintaining an overseas representative office of a bank other than a restricted licence bank (section 51(1) and (2))	11200
20. Fee for the establishment of an overseas representative office of a restricted licence bank or deposit-taking company (section 51(1))	19110
21. Annual fee for maintaining an overseas representative office of a restricted licence bank or deposit-taking company (section 51(1) and (2)) ..	19110
22. Approved money broker fee (section 118F(1)) *(Added 4 of 1997 s. 25)*	44800
23. Renewal of approved money broker fee (section 118F(2)) *(Added 4 of 1997 s. 25)*	44800

(Second Schedule replaced 26 of 1988 s. 2. Amended 14 of 1989 s. 2; 3 of 1990 s. 52; 29 of 1990 s. 2; 43 of 1990 s. 15; 41 of 1991 s. 2; 49 of 1995 s. 49)

Schedule 3

(Repealed 19 of 2005 s. 7)

Schedule 4

(Repealed 3 of 2012 s. 17)

SCHEDULE 5

[ss. 92(2)(c) & (7) & 135(3)]
(Amended 32 of 2001 s. 26)

REQUIREMENTS APPLICABLE TO PRESCRIBED ADVERTISEMENTS

1. Interpretation

(1) In this Schedule—

"deposit-taker" (接受存款人), in relation to a prescribed advertisement, means the person with whom the deposits which are invited by the advertisement are to be made;

"full name" (全名), in relation to a person, means the name under which that person carries on business and, if different and if that person is a body corporate, its corporate name;

"liabilities" (負債) includes provisions where such provisions have not been deducted from value of assets.

(2) A reference in this Schedule to the payment of interest in respect of a deposit includes a reference to the payment of any premium in respect of the deposit, and to the crediting of interest to the deposit so as to constitute an accretion to the principal.

(3) For the purposes of this Schedule, a prescribed advertisement which contains information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit shall be treated as if it contained an invitation to

make a deposit, and references to an invitation to make a deposit shall be construed accordingly.

2. **Warning**

Every prescribed advertisement shall contain a prominent warning to the effect that the deposit-taker is not an authorized institution within the meaning of this Ordinance and is therefore not subject to the supervision of the Monetary Authority.

(Amended 82 of 1992 s. 25)

3. **General requirements for prescribed advertisements**

Every prescribed advertisement shall state—

(a) the full name of the deposit-taker;

(b) the country or territory in which the deposit-taker's principal place of business is situated, described as such; and

(c) if the deposit-taker is a body corporate, the country or territory in which it is incorporated, described as such, unless this is the same as the country or territory referred to in subparagraph (b).

4. **Assets and liabilities**

(1) Every prescribed advertisement shall state the amount of the paid-up capital and reserves, described as such, of the deposit-taker (if a body corporate) or the amount of

the total assets less liabilities, described as such, of the deposit-taker (if a person other than a body corporate).

(2) Where a prescribed advertisement contains any reference to the amount of the assets of the deposit-taker, it shall state the total amount of the deposit-taker's liabilities, described as such, which statement shall be not less prominent than such reference.

(3) Subparagraphs (1) and (2) shall be treated as complied with if the prescribed advertisement states that the amount of any assets or paid-up capital and reserves required to be stated exceeds an amount specified in the advertisement or that the amount of any liabilities required to be stated does not exceed an amount so specified.

(4) A prescribed advertisement shall not contain any reference to the assets or liabilities of any person other than the deposit-taker.

5. **Deposit protection arrangements**

A prescribed advertisement shall not state or imply that the deposits which are invited or their repayment, or interest or the payment of interest in respect of them, will be guaranteed, secured, insured, or the subject of any other form of protection, unless it states—

(a) the form of the protection;

(b) the extent of the protection; and

(c) the full name of the person who will be liable to meet any claim by the depositor by virtue of the arrangements conferring the protection.

6. **Interest**

(1) This paragraph applies to a prescribed advertisement which specifies the rate at which interest will be payable in respect of the deposits which are invited.

(2) Every prescribed advertisement to which this paragraph applies shall state—

(a) the minimum amount, if any, which must be deposited to earn that rate of interest;

(b) the period of time, if any, during which no interest will be payable;

(c) the minimum period of time, if any, during which a deposit must be retained by the deposit-taker in order to earn that rate of interest;

(d) the minimum period of notice, if any, which must be given before repayment may be required of a deposit earning that rate of interest; and

(e) the intervals at which the interest will be paid.

(3) If the rate of interest which is specified is not an annual rate of simple interest, the prescribed advertisement shall state the basis on which the rate will be calculated.

(4) If the rate of interest which is specified may be varied during the period for which the deposit will be held this shall be stated in the prescribed advertisement.

(5) If interest will or may not be paid in full at the rate which is specified, this shall be stated in the prescribed advertisement, and the advertisement shall state the nature and the amount of or rate of any deductions which will or may be made from the interest before payment.

(6) If the rate of interest which is specified is or may not be the rate at which interest will be payable in respect of the deposits on the date on which the prescribed advertisement is issued, this shall be stated in the advertisement, and the advertisement shall state the date on which interest was payable at the rate which is specified, such date being as close as is reasonably practicable to the date on which the advertisement is issued.

(7) If the prescribed advertisement specifies more than one rate of interest payable in respect of deposits of a particular amount, the advertisement shall contain the information required by any of subparagraphs (2) to (6) in relation to each such rate.

(8) Where different rates of interest apply to deposits of different amounts, the prescribed advertisement shall contain the information required by any of subparagraphs (2) to (6) in relation to each such rate.

7. **Currency**

Every prescribed advertisement shall state the currency in which the deposits are to be made.

8. **Supplementary provisions**

(1) Subject to subparagraph (2), the matters required by this Schedule to be included in a prescribed advertisement shall be shown clearly and legibly or, in the case of an advertisement by way of sound broadcasting, spoken clearly.

(2) In the case of a prescribed advertisement by way of television or exhibition or cinematographic film, the matters required by this Schedule to be included shall be shown clearly and legibly or spoken clearly.

(Fifth Schedule replaced 95 of 1991 s. 53)

SCHEDULE 6

[s. 137B]

SPECIFIED INSTRUMENTS

1. Any certificate of deposit, being a document- *(Amended L.N. 120 of 1994)*

   (a) relating to money, in any currency, which has been deposited with the issuer or some other person;

   (b) which recognizes an obligation to pay a stated amount to bearer, with or without interest; and

   (c) by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable.

2. Any instrument, other than a bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) or a promissory note within the meaning of section 89 of the Bills of Exchange Ordinance, being a document evidencing an obligation to pay a stated or determinable amount to bearer or to order, with or without interest, being an instrument by the delivery of which, with or without endorsement, the right to receive that stated or determinable amount, with or without interest, is transferable.

(Added L.N. 120 of 1994)

(Sixth Schedule added 94 of 1993 s. 33)

Schedule 7

[ss. 16(2) & (10), 17, 29(2) & 135(1) & 8th Sch.]

Minimum Criteria for Authorization

1. (1) In this Schedule—

adequate (足夠), in relation to systems of control, includes operating effectively;

controller (控權人) includes a minority shareholder controller;

net debit balance (借方淨差額), in relation to a company, means the aggregate of the excess of accumulated losses over accumulated profits disclosed in the profit and loss account, and other reserves separately disclosed in the balance sheet, of the most recent audited accounts of the company;

system of control (管控制度) includes procedures.

(2) For the purposes of the calculation of the paid-up share capital of a company required by this Schedule, there shall be deducted from such share capital any net debit balance.

(3) For the avoidance of doubt, it is hereby declared that where pursuant to the provisions of this Schedule the Monetary Authority holds an opinion, or is satisfied, in relation to any matter, his holding that opinion or being so satisfied, as the case may be, shall not of itself bind the Monetary Authority—

(a) to continue to hold that opinion or to be so satisfied, as the case may be, whether before, on or after the authorization, if any, of the company to which the matter directly or indirectly relates (including any case where that company is seeking a different authorization); or

(b) to hold any similar opinion or to be similarly satisfied, as the case may be, in respect of any similar matter which directly or indirectly relates to any other company seeking or having the same or a different authorization from that first-mentioned company.

(4) Without prejudice to the generality of subparagraph (3), the Monetary Authority may regard himself as being satisfied in relation to any matter in respect of which he may be satisfied pursuant to the provisions of this Schedule where—

(a) the matter directly or indirectly relates to a company incorporated outside Hong Kong;

(b) the relevant banking supervisory authority informs the Monetary Authority that it is satisfied in relation to that matter; and

(c) the Monetary Authority is satisfied as to the scope and nature of the supervision exercised by that authority.

(5) For the avoidance of doubt, it is hereby declared that subparagraph (4) shall operate before, on and after the authorization, if any, of the company to which any matter referred to in that subparagraph directly or indirectly relates.

(6) *(Repealed L.N. 99 of 2012)*

(Amended 19 of 2005 s. 7)

2. If the company is incorporated outside Hong Kong, it is a bank—

(a) as defined in section 46(9); and

(b) in respect of which the Monetary Authority is satisfied that it is adequately supervised by the relevant banking supervisory authority.

3. The Monetary Authority is satisfied that he knows the identity of each controller of the company.

4. If the company is incorporated in Hong Kong, the Monetary Authority is satisfied that each person who is, or is to be, a director, controller, chief executive or executive officer of the company is a fit and proper person to hold the particular position which he holds or is to hold.

(Amended 6 of 2002 s. 14)

5. If the company is incorporated outside Hong Kong, the Monetary Authority is satisfied that each person who is, or is to be—

(a) a chief executive, or executive officer, of the business in Hong Kong of the company; *(Amended 6 of 2002 s. 14)*

(b) a director, controller or chief executive of the business of the company in the place where it is incorporated,

is a fit and proper person to hold the particular position which he holds or is to hold.

5A. The Monetary Authority is satisfied that the company has, and will if it is authorized continue to have, adequate systems of control to ensure that each person who is, or is to be, a manager of the company is a fit and proper person to hold the particular position which he holds or is to hold.

(Added 32 of 2001 s. 27)

6. The Monetary Authority is satisfied that the company presently has, and will if it is authorized continue to have, adequate financial

resources (whether actual or contingent) for the nature and scale of its operations and, without prejudice to the generality of the foregoing—

*(a) in the case of a company seeking authorization to carry on banking business in Hong Kong, the aggregate amount of its paid-up share capital and the balance of its share premium account (if any) is not less than $300,000,000 or an equivalent amount in any other approved currency; *(Amended L.N. 130 of 2001; L.N. 63 of 2002)*

(b) in the case of a company seeking authorization to carry on a deposit-taking business as a deposit-taking company, the aggregate amount of its paid-up share capital and the balance of its share premium account (if any) is not less than $25,000,000 or an equivalent amount in any other approved currency; *(Amended L.N. 130 of 2001)*

(c) in the case of a company seeking authorization to carry on a deposit-taking business as a restricted licence bank, the aggregate amount of its paid-up share capital and the balance of its share premium account (if any) is not less than $100,000,000 or an equivalent amount in any other approved currency; *(Amended L.N. 130 of 2001)*

(d) in the case of a company incorporated in Hong Kong, the company, if it is authorized, will on and after authorization comply with the rules made under section 97C(1) applicable to it. *(Amended L.N. 431 of 1997; 19 of 2005 s. 7; 3 of 2012 s. 18; 28 of 2012 ss. 912 & 920)*

(e) *(Repealed 19 of 2005 s. 7)*

7. The Monetary Authority is satisfied that the company—

(a) presently maintains, and will if it is authorized continue to maintain, adequate liquidity to meet its obligations as they will or may fall due; and

(b) without prejudice to the generality of subparagraph (a), if it is authorized, will on and after authorization comply with the rules made under section 97H(1) applicable to it. *(Amended 3 of 2012 s. 18)*

8. The Monetary Authority is satisfied that the company, if it is authorized, will on and after authorization comply with the provisions of Part XV applicable to it.

9. The Monetary Authority is satisfied that the company presently maintains, and will if it is authorized continue to maintain, adequate provision for depreciation or diminution in the value of its assets (including provision for bad and doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which will or may occur.

10. The Monetary Authority is satisfied that the company presently has, and will if it is authorized continue to have, adequate accounting systems and adequate systems of control.

11. If the company is incorporated in Hong Kong, the Monetary Authority is satisfied that it presently discloses, and will if it is authorized continue to disclose, adequate information—

(a) in relation to the state of its affairs, including its profit and loss and its financial resources (including capital

resources and liquidity resources); and *(Amended 19 of 2005 s. 7; 3 of 2012 s. 18)*

(b) in—

(i) its audited annual accounts within the meaning of section 60(11);

(ii) any supplementary information to those audited annual accounts;

(iii) the report of the directors under section 388 of the Companies Ordinance (Cap. 622); and *(Amended 28 of 2012 ss. 912 & 920)*

(iv) the institution's cash flow statement, together with any notes thereon, where the statement does not already form part of those audited annual accounts.

12. The Monetary Authority is satisfied that the business (including any business which is not banking business or the business of taking deposits) of the company is presently, and will if it is authorized continue to be, carried on— *(Amended 6 of 2002 s. 14)*

(a) with integrity, prudence and the appropriate degree of professional competence; and

(b) in a manner which is not detrimental, or likely to be detrimental, to the interests of depositors or potential depositors.

13. If the company seeking authorization to carry on banking business in Hong Kong is a company incorporated in a place outside Hong Kong, either—

(a) there is, in the opinion of the Monetary Authority, an acceptable degree of reciprocity in respect of banks

incorporated in Hong Kong seeking to carry on banking business in that place; or

(b) that place is, or is part of the territory of, a member of the World Trade Organization.

(Replaced L.N. 99 of 2012)

(Seventh Schedule added 49 of 1995 s. 52)

(Format changes—E.R. 2 of 2012)

Editorial Note:

* For the transitional provision relating to the amendments made by the Banking Ordinance (Amendment of Seventh Schedule) Notice 2002 *(L.N. 63 of 2002)*, see section 2 of that Notice.

SCHEDULE 8

[ss. 22(1) & 135(1)]

GROUNDS FOR REVOCATION OF AUTHORIZATION

1. In this Schedule, "controller" (控權人) includes a minority shareholder controller.

*2. The Monetary Authority is satisfied that, if the authorized institution were not authorized and were to make an application under section 15 for authorization in respect of the business referred to in that section presently being carried on by it, section 16(2) would prohibit him from so authorizing it (but excluding the criteria specified in paragraphs 2(b) and 13 of the Seventh Schedule).

3. The Monetary Authority is satisfied that the authorized institution proposes to make, or has made, any composition or arrangement with its creditors or is insolvent or is being or has been wound up or is otherwise dissolved.

4. The authorized institution has made a report to the Monetary Authority under section 67 that it is likely to become unable to meet its obligations or is about to suspend payment or the Monetary Authority is satisfied that the institution is so unable or has suspended payment.

5. The Monetary Authority is satisfied that the authorized institution has not provided him, whether before or after being authorized, with such information of a material nature relating to it, and to any circumstances likely to affect its method of business, as is required under this Ordinance.

6. The Monetary Authority is satisfied that the authorized institution has provided him, whether before or after being authorized, with information which is, to a material extent, false, misleading or inaccurate, and whether or not such information was so provided pursuant to a requirement under this Ordinance.

7. The Monetary Authority is satisfied that the authorized institution has contravened any condition attached under section 16 of this Ordinance to its authorization.

8. The Monetary Authority is satisfied that the authorized institution has—

(a) in the case of a bank, ceased to carry on banking business;

(b) in any other case, ceased to carry on a business of taking deposits.

9. The objects of the authorized institution as stated in its memorandum and articles of association or other document constituting the company no longer include the object of—

(a) in the case of a bank, carrying on banking business;

(b) in any other case, carrying on a business of taking deposits.

10. The authorized institution has failed to pay any fee required by section 19 to be paid by it after being advised in writing by the Monetary Authority that it is contravening that section.

11. The authorized institution has failed to comply with any requirement under section 60 applicable to it after being advised in writing by the Monetary Authority that it is contravening that section.

12. In the case of an authorized institution which is a deposit-taking company or restricted licence bank, the institution has contravened section 14(1) or (3).

13. A person has become a controller of the authorized institution after having been served with a notice of objection, within the meaning of section 70, objecting to his becoming such a controller.

14. A person continues to be a controller of the authorized institution after having been served with a notice of objection, within the meaning of section 70 or 70A, objecting to his being such a controller.

15. A person has become or continues to be a chief executive or director of the authorized institution in contravention of section 71.

15A. A person has become or continues to be an executive officer of the authorized institution in contravention of section 71C.

(Added 6 of 2002 s. 15)

16. The authorized institution is in contravention of section 74.

17. The authorized institution engages in business practices specified in a notice under section 82(1).

18. The Monetary Authority is satisfied that the interests of depositors or potential depositors of the authorized institution are in any other manner threatened by the institution continuing to be authorized.

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.

21. The authorized institution has failed to comply with any requirement under the Deposit Protection Scheme Ordinance (Cap. 581) applicable to the institution.

(Added 7 of 2004 s. 55)

(Eighth Schedule added 49 of 1995 s. 52)

Editorial Note:
* The operation of this paragraph is affected by the Banking Ordinance (Amendment of Seventh Schedule) Notice 2002 *(L.N. 63 of 2002)*. See the transitional provision in section 2 of that Notice.

SCHEDULE 9

[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 or local office. *(Amended 32 of 2001 s. 28)*

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.

18. Power to grant or accept a surrender of a lease or tenancy of any of the property of the institution, and to take a lease or tenancy of any property required or convenient for the business of the institution.

19. Power to make any arrangement or compromise on behalf of the institution.

20. Power to call up any uncalled capital of the institution.

21. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the institution and to receive dividends, and to accede to trust deeds for the creditors of any such person.

22. Power to change the situation of the institution's business office.

23. Power to do all other things incidental to the exercise of the powers specified in this Schedule.

(Ninth Schedule added 49 of 1995 s. 52)

Schedule 10

(Repealed 42 of 1999 s. 18)

SCHEDULE 11

[ss. 118C(2) & (7) & 135(3)]

MINIMUM CRITERIA FOR APPROVAL AS MONEY BROKER

1. (1) In this Schedule—

"adequate" (足夠), in relation to systems of control, includes operating effectively;

"controller" (控權人) includes a minority shareholder controller;

"net debit balance" (借方淨差額), in relation to a company, means the aggregate of the excess of accumulated losses over accumulated profits disclosed in the profit and loss account, and other reserves separately disclosed in the balance sheet, of the most recent audited accounts of the company;

"systems of control" (管控制度) includes procedures.

(2) For the purpose of the calculation of the paid-up share capital of a company required by this Schedule, there shall be deducted from such share capital any net debit balance.

(3) For the avoidance of doubt, it is hereby declared that where pursuant to the provisions of this Schedule the Monetary Authority holds an opinion, or is satisfied, in relation to any matter, his holding that opinion or being so satisfied, as the case may be, shall not of itself bind the Monetary Authority—

(a) to continue to hold that opinion or to be so satisfied, as the case may be, whether before, on or after the approval, if any, of the company to which the matter directly or indirectly relates; or

(b) to hold any similar opinion or to be similarly satisfied, as the case may be, in respect of any similar matter which directly or indirectly relates to any other company seeking approval.

(4) Without prejudice to the generality of subparagraph (3), the Monetary Authority may regard himself as being satisfied in relation to any matter in respect of which he may be satisfied pursuant to the provisions of this Schedule where—

(a) the matter directly or indirectly relates to a company incorporated outside Hong Kong.

(b) the relevant money broker supervisory authority informs the Monetary Authority that it is satisfied in relation to that matter; and

(c) the Monetary Authority is satisfied as to the scope and nature of the supervision exercised by that authority.

(5) For the avoidance of doubt, it is hereby declared that subparagraph (4) shall operate before, on and after the approval, if any, of the company to which any matter referred to in that subparagraph directly or indirectly relates.

(Amended 19 of 2005 s. 7)

2. The Monetary Authority is satisfied that he knows the identity of each controller of the company.

3. If the company is incorporated in Hong Kong, the Monetary Authority is satisfied that each person who is, or is to be, a director, controller or chief executive of the company is a fit and proper person to hold the particular position which he holds or is to hold.

4. If the company is incorporated outside Hong Kong, the Monetary Authority is satisfied that each person who is, or is to be—

(a) a chief executive of the business in Hong Kong of the company;

(b) a director, controller or chief executive of the business of the company in the place where it is incorporated.

is a fit and proper person to hold the particular position which he holds or is to hold.

5. The Monetary Authority is satisfied that the company presently has, and will if it is approved continue to have, adequate financial resources (whether actual or contingent) for the nature and scale of its operations and, without prejudice to the generality of the foregoing, the aggregate amount of its paid-up share capital and the balance of its share premium account (if any) is not less than $5,000,000 or an equivalent amount in any other approved currency.

(Amended L.N. 137 of 2001; 28 of 2012 ss. 912 & 920)

6. The Monetary Authority is satisfied that the company presently has, and will if it is approved continue to have, adequate accounting systems and adequate systems of control.

7. The Monetary Authority is satisfied that the business of the company is presently, and will if it is approved continue to be, carried on with integrity, prudence and the appropriate degree of professional competence.

(Eleventh Schedule added 4 of 1997 s. 26)

SCHEDULE 12

[ss. 118D(1)(a) & 135(3)]

GROUNDS FOR REVOCATION OF APPROVAL OF MONEY BROKER

1. The Monetary Authority is satisfied that, if the approved money broker were not approved and were to make an application under section 118B for approval, section 118C(2) would prohibit him from approving it.

2. The Monetary Authority is satisfied that the approved money broker has not provided him, whether before or after being approved, with such information of a material nature relating to it, and to any circumstances likely to affect its method of business, as is required under this Ordinance.

3. The Monetary Authority is satisfied that the approved money broker has provided him, whether before or after being approved, with information which is, to a material extent, false, misleading or inaccurate, and whether or not such information was so provided pursuant to a requirement under this Ordinance.

4. The Monetary Authority is satisfied that the approved money broker has contravened any condition attached under section 118C to its certificate of approval.

5. The Monetary Authority is satisfied that the approved money broker has ceased to act as a money broker.

6. The approved money broker has failed to pay any fee required by section 118F to be paid by it after being advised in writing by the Monetary Authority that it is contravening that section.

7. The approved money broker requests in writing the Monetary Authority to revoke its approval.

8. The Monetary Authority is satisfied that the approved money broker engages in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre.

(Twelfth Schedule added 4 of 1997 s. 26)

SCHEDULE 13

[ss. 132B & 135(2)]

LEVEL OF FINES FOR OFFENCES

Tier 1	$4,000
Tier 2	$10,000
Tier 3	$20,000
Tier 4	$50,000
Tier 5	$100,000
Tier 6	$200,000
Tier 7	$400,000
Tier 8	$1,000,000
Tier 9	$2,000,000

(Thirteenth Schedule added 4 of 1997 s. 26)

Schedule 14

[ss. 2, 72B & 135(3)]

Affairs or Business of Authorized Institutions Specified for Purposes of Definition of Manager

1. In this Schedule—

banking or other financial services (銀行或其他財務服務) includes the taking of deposits, the provision of payment and remittance services, the issuance of credit cards, debit cards or stored value facilities, facilities for the purchase or sale of foreign currencies, securities or other financial instruments, the provision of financial advice and the incurring of financial exposure mentioned in section 81(2) of this Ordinance; *(Amended 18 of 2015 s. 65)*

corporate banking (公司銀行業務), in relation to an authorized institution, means the provision by the institution of banking or other financial services to companies, but does not include such services so provided as part of the institution's retail banking;

institutional banking (機構銀行業務), in relation to an authorized institution, means the provision by the institution of banking and other financial services to authorized institutions, banks incorporated outside Hong Kong which are not authorized institutions or other financial institutions;

international banking (國際銀行業務), in relation to an authorized institution incorporated in Hong Kong, means the provision of banking or other financial services through overseas offices or subsidiaries of the institution;

private banking (私人銀行業務), in relation to an authorized institution, means the provision by the institution of banking or other financial services to individuals who are considered by the institution to be of high net worth, but does not include such services so provided as part of the institution's retail banking;

retail banking (零售銀行業務), in relation to an authorized institution, means the provision by the institution of banking or other financial services to individuals, firms, partnerships, unincorporated businesses or companies;

treasury (財政管理), in relation to an authorized institution, means the management by the institution of the liquidity and funding of the institution and the trading of foreign currencies, securities or other financial instruments.

2. The carrying on of business of any of the following descriptions or of any of their equivalents within an authorized institution—

(a) retail banking;

(b) private banking;

(c) corporate banking;

(d) international banking;

(e) institutional banking;

(f) treasury; or

(g) any other business which is material to the institution.

3. The maintenance of the accounts or the accounting systems of an authorized institution.

4. The maintenance of systems of control of an authorized institution, including those systems intended to manage the risks of the institution.

5. The maintenance of systems of control of an authorized institution to protect it against involvement in money laundering.

6. The development, operation and maintenance of computer systems for an authorized institution.

7. The conduct of internal audits or inspections of the institution's affairs or business.

8. The function of ensuring that an authorized institution complies with laws, regulations or guidelines that are applicable to it.

(Fourteenth Schedule added 32 of 2001 s. 29)

(Format changes—E.R. 1 of 2013)

Schedule 15

[ss. 101A, 101E, 101I & 135]

Provisions Relating to Banking Review Tribunal*

1. Interpretation

In this Schedule—

Chairman (主席) means Chairman of the Review Tribunal;

member (成員) means a member of the Review Tribunal;

parties (雙方), in relation to an application to the Review Tribunal for a review of a decision of the Monetary Authority, means the person making the application and the Monetary Authority.

2. Tenure of Chairman

(1) The term of appointment of a person as Chairman shall notexceed 3 years.

(2) A person whose term of appointment or reappointment as Chairman has expired may be reappointed.

(3) A person appointed as Chairman may resign his office by giving notice in writing to the Chief Executive, and the notice shall take effect on the date specified in the notice or, if no such date is specified, on the date of receipt of the notice by the Chief Executive.

(4) If the Chief Executive is satisfied that the person appointed as Chairman—

(a) has become bankrupt;

(b) is incapacitated by physical or mental illness;

(c) is otherwise unable or unfit to perform the functions of Chairman; or

(d) is no longer qualified for appointment as Chairman under section 101A(2) of this Ordinance,

the Chief Executive may, by notice published in the Gazette, revoke the person's appointment as Chairman; and upon such revocation the office becomes vacant.

3. Tenure of members

(1) The term of appointment of a member shall not exceed 3 years.

(2) A member whose term of appointment or reappointment has expired may be reappointed.

(3) A member may resign by giving notice in writing to the Chief Executive, and the notice shall take effect on the date specified in the notice or, if no such date is specified, on the date of receipt of the notice by the Chief Executive.

(4) If the Chief Executive is satisfied that a member—

(a) has become bankrupt;

(b) is incapacitated by physical or mental illness;

(c) is otherwise unable or unfit to perform the functions of a member; or

(d) is no longer qualified for appointment as a member under section 101A(3) of this Ordinance,

the Chief Executive may, by notice published in the Gazette, revoke the member's appointment.

4. Further provisions relating to Chairman and members

(1) If the person appointed as Chairman under section 101A of this Ordinance is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chief Executive may appoint a person who is qualified for appointment as Chairman under that section to act as Chairman, and as such to exercise all the functions of Chairman, for the period during which the first-mentioned person is so precluded.

(2) If a person appointed as a member under section 101A of this Ordinance is precluded by illness, absence from Hong Kong or any other cause from taking part in proceedings of the Review Tribunal, the Chief Executive may appoint a person who is qualified for appointment as a member under that section to act as a member, and as such to take part in proceedings of the Review Tribunal, for the period during which the first-mentioned person is so precluded.

(3) If at the expiry of the term of appointment of the person who is or is acting as Chairman, or of a person who is or is acting as a member, the hearing of a review has begun but the review has not been determined, that person may continue to act as Chairman or as a member (as the case may be) for the purposes of that review until the review has been determined.

(4) If during the hearing of a review there is any change in the person who is or is acting as Chairman or in the persons who are or are acting as members, then—

(a) if the parties to the review so consent, the hearing may continue notwithstanding that change; or

(b) in the absence of such consent, the hearing shall not continue but may begin anew.

5. Procedure

(1) The Review Tribunal shall convene on such occasions as the Chairman considers necessary to determine a review.

(2) The Chairman may, at any time after an application for a review of a decision has been made, give directions to the parties to the review concerning—

(a) procedural matters to be complied with by any of the parties; and

(b) the time within which such procedural matters are to be complied with.

(3) The quorum for any sitting of the Review Tribunal shall be the Chairman and 2 members.

(4) At a sitting of the Review Tribunal—

(a) the Chairman shall preside; and

(b) every question before the Review Tribunal shall be determined by the majority of the votes cast by the Chairman and members present, except that a question of law shall be determined by the Chairman alone.

(5) The right to be heard conferred by section 101C(3) of this Ordinance may be exercised in person or—

(a) in the case of a corporation, through its officer or employee;

(b) in the case of the Monetary Authority, through a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority,

or may be exercised through a solicitor or counsel or, with the leave of the Review Tribunal, through any other person.

(6) The Chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Review Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

6. Privileges and immunities

Except as otherwise provided in this Ordinance—

(a) the Review Tribunal, its Chairman and its members; and

(b) the parties to, and any witness, solicitor, counsel or other person involved in, a review,

shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

(Fifteenth Schedule added 19 of 2005 s. 7)

(Format changes—E.R. 1 of 2013)

Editorial Note:
* *(Amended 3 of 2012 s. 20)*