

《銀行業條例》
(第 155 章)

目錄

條次		頁次
	第 I 部	
	導言	
1.	簡稱	1-1
2.	釋義	1-1
3.	適用範圍	1-47
	第 II 部	
	委任、金融管理專員的職能、金融管理專員的報告及行政長官發出指示的權力 #	
4.	銀行業務諮詢委員會	2-1
5.	接受存款公司諮詢委員會	2-3
6.	(廢除)	2-3
7.	金融管理專員的職能	2-3
8.	(廢除)	2-7
9.	金融管理專員的報告	2-7
10.	行政長官發出指示的權力	2-9

Banking Ordinance
(Cap. 155)

Contents

Section	Page
Part I	
Preliminary	
1. Short title	1-2
2. Interpretation	1-2
3. Application	1-48
Part II	
Appointments, Functions of Monetary Authority, Reports by Monetary Authority and Power of Chief Executive to Give Directions#	
4. Banking Advisory Committee	2-2
5. Deposit-taking Companies Advisory Committee	2-4
6. (Repealed)	2-4
7. Functions of the Monetary Authority	2-4
8. (Repealed)	2-8
9. Reports by Monetary Authority	2-8
10. Power of Chief Executive to give directions	2-10

條次		頁次
	第 III 部	
	銀行業務及接受存款業務只准由認可機構經營	
11.	銀行業務只限由持牌銀行經營	3-1
12.	接受存款業務的限制	3-1
13.	批給豁免的權力	3-5
14.	接受存款公司不得接受少於指明款項的存款	3-5
14A.	(廢除)	3-9
	第 IV 部	
	認可	
15.	認可的申請等	4-1
16.	認可的批給或拒絕等	4-1
17.	擬成立的公司的認可申請	4-9
18.	對認可的更改	4-9
19.	認可機構須繳付的費用	4-13
20.	認可機構的紀錄冊等	4-15
21.	將名稱載入紀錄冊或將名稱從紀錄冊上刪除以及暫停認可的公布	4-27
	第 V 部	
	認可的撤銷	

Section		Page
	PART III	
	BANKING BUSINESS AND BUSINESS OF TAKING DEPOSITS TO BE CARRIED ON BY AUTHORIZED INSTITUTIONS ONLY	
11.	Banking business restricted to licensed banks	3-2
12.	Restriction on business of taking deposits	3-2
13.	Power to grant exemptions	3-6
14.	Deposit-taking company not to take deposits less than specified sum	3-6
14A.	(Repealed)	3-10
	PART IV	
	AUTHORIZATION	
15.	Application for authorization, etc.	4-2
16.	Grant or refusal of authorization, etc.	4-2
17.	Application for authorization in the case of proposed company	4-10
18.	Variation of authorization	4-10
19.	Fees payable by authorized institutions	4-14
20.	Register of authorized institutions, etc.	4-16
21.	Publication of names entered in or removed from register and suspensions	4-28
	PART V	
	REVOCATION OF AUTHORIZATION	

T-5
第 155 章T-6
Cap. 155

條次	頁次
22.	認可的撤銷
23.	撤銷認可之程序及效力
第 VI 部 認可的暫停	
24.	臨時暫停認可
25.	暫停認可
26.	陳詞的機會
27.	暫停認可的效力
第 VII 部 認可的轉讓	
28.	認可的轉讓
29.	申請轉讓
30.	轉讓證明書等
31.	出讓人及受讓人的法律責任及特權
32-43.	(廢除)
第 VIII 部 本地分行、本地辦事處、本地代表辦事處 及費用 *	
44.	管制本地分行的設立等
45.	就本地分行而支付的費用

Section	Page
22.	Revocation of authorization
23.	Procedure on and effect of revocation of authorization
PART VI SUSPENSION OF AUTHORIZATION	
24.	Temporary suspensions
25.	Suspensions
26.	Opportunity of being heard
27.	Effect of suspension
PART VII TRANSFER OF AUTHORIZATION	
28.	Transfer of authorization
29.	Application for transfer
30.	Certificate of transfer, etc.
31.	Liabilities and privileges of transferer and transferee
32-43.	(Repealed)
PART VIII LOCAL BRANCHES, LOCAL OFFICES, LOCAL REPRESENTATIVE OFFICES AND FEES*	
44.	Control of establishment, etc. of local branches
45.	Fees in respect of local branches

條次		頁次
45A.	在本地辦事處開始營業須予通知	8-5
46.	管制本地代表辦事處的設立等	8-7
47.	本地代表辦事處的資料提供及審查	8-11
48.	就本地代表辦事處而支付的費用	8-15
	第 IX 部 海外分行、海外代表辦事處、費用及海外 銀行法團 *	
49.	管制海外分行及海外代表辦事處的設立等	9-1
50.	關於海外分行及海外代表辦事處的條件	9-3
51.	就海外分行及海外代表辦事處而支付的費用	9-11
51A.	管制海外銀行法團的設立等	9-13
	第 X 部 管制認可機構的權力	
52.	金融管理專員的權力	10-1
53.	行政長官會同行政會議的權力	10-15

Section		Page
45A.	Notification of commencement of business at local offices	8-6
46.	Control of establishment, etc. of local representative offices	8-8
47.	Supply of information and examination of local representative offices	8-12
48.	Fees in respect of local representative offices	8-16
	PART IX OVERSEAS BRANCHES, OVERSEAS REPRESENTATIVE OFFICES, FEES AND OVERSEAS BANKING CORPORATIONS*	
49.	Control of establishment, etc. of overseas branches and overseas representative offices	9-2
50.	Conditions regarding overseas branches and overseas representative offices	9-4
51.	Fees in respect of overseas branches and overseas representative offices	9-12
51A.	Control of establishment, etc. of overseas banking corporations	9-14
	PART X POWERS OF CONTROL OVER AUTHORIZED INSTITUTIONS	
52.	Powers of Monetary Authority	10-2
53.	Powers of Chief Executive in Council	10-16

條次	頁次
53A. 就根據第 52(1)(B) 或 (C) 條發出的指示等的通知	10-17
53B. 根據第 52(1)(C) 條發出的指示的效力	10-19
53C. 經理人的權力	10-27
53D. 原訟法庭可批准某些決議	10-37
53E. 原訟法庭可作出某些命令	10-43
53F. 根據第 52(1)(B) 或 (C) 條發出的指示的期限	10-45
53G. 顧問、經理人及助理	10-49
53H. 對經理人的妨礙等	10-55
54. (廢除)	10-57
55. 認可機構的審查及調查等	10-57
56. 認可機構簿冊的交出等	10-59
57-58. (廢除)	10-63
58A. 就有關人士採取紀律行動	10-63

第 XI 部 審計及會議

59. 審計	11-1
59A. 就核數師而發出的通知	11-5

Section	Page
53A. Notification of direction under section 52(1)(B) or (C), etc.	10-18
53B. Effect of direction under section 52(1)(C)	10-20
53C. Powers of Manager	10-28
53D. Court of First Instance may approve certain resolutions	10-38
53E. Court of First Instance may make certain orders	10-44
53F. Duration of direction under section 52(1)(B) or (C)	10-46
53G. Advisors, Managers and assistants	10-50
53H. Obstruction, etc. of Manager	10-56
54. (Repealed)	10-58
55. Examination and investigation of authorized institutions, etc.	10-58
56. Production of authorized institution's, etc., books, etc.	10-60
57-58. (Repealed)	10-64
58A. Disciplinary action in respect of relevant individuals	10-64

Part XI Audits and Meetings

59. Audit	11-2
59A. Notification in respect of auditors	11-6

T-11
第 155 章T-12
Cap. 155

條次		頁次
59B.	認可機構就其財政年度結束須發出的通知等	11-7
60.	經審計的資產負債表等的公布	11-11
60A.	向公眾人士披露關於財務狀況的資料	11-17
61.	核數師向金融管理專員傳達資料	11-21
62.	(廢除)	11-23
第 XII 部 由認可機構披露資料		
63.	須向金融管理專員呈交的申報表及資料	12-1
63A.	核數師須向金融管理專員報告對認可機構的財務狀況在很大程度上有不良影響的事宜	12-11
63B.	在若干情況下註冊機構的核數師須向金融管理專員呈交報告	12-13
64.	關於持有股份的資料等	12-13
65.	章程的修改	12-17
66.	認可機構停止接受存款時須通知金融管理專員	12-19
67.	報告無能力履行義務的責任	12-19
68.	由香港以外地方的當局進行的審查	12-21

Section		Page
59B.	Notification by authorized institution of end of financial year, etc.	11-8
60.	Publication of audited balance sheet, etc.	11-12
60A.	Disclosure to the general public of information relating to financial affairs	11-18
61.	Communication by auditor with Monetary Authority	11-22
62.	(Repealed)	11-24
Part XII Disclosure of Information by Authorized Institutions		
63.	Returns and information to be submitted to the Monetary Authority	12-2
63A.	Auditor to report to Monetary Authority any matter which adversely affects financial position of authorized institution to material extent	12-12
63B.	Auditors of registered institutions to submit report to Monetary Authority in certain cases	12-14
64.	Information on shareholding, etc.	12-14
65.	Alteration in constitution	12-18
66.	Authorized institution to notify Monetary Authority when it ceases to take deposits	12-20
67.	Duty to report inability to meet obligations	12-20

條次	頁次
第 XIII A 部 恢復規劃	
68A.	釋義 12A-1
68B.	適用範圍 12A-1
68C.	擬訂、維持和呈交恢復計劃的規定 12A-1
68D.	施加規定的一般權力 12A-3
68E.	修訂恢復計劃的規定 12A-5
68F.	實施恢復計劃的規定 12A-7
68G.	通知的規定 12A-9
68H.	認可機構的控權公司 12A-11
68I.	關乎恢復規劃的罪行 12A-13
第 XIII 部 認可機構的擁有及管理	
69.	合併等須獲得批准 13-1
70.	適用於擬成為在香港成立為法團的認可機構控權人的人及若干現時為在香港成立為法團的認可機構控權人的條款 13-5
70A.	就現有控權人提出反對 13-19
70B.	對股份的限制及股份的售賣 13-23

Section	Page
68.	Examination by authorities outside Hong Kong 12-22
Part XIII A Recovery Planning	
68A.	Interpretation 12A-2
68B.	Application 12A-2
68C.	Requirements to prepare, maintain and submit recovery plan 12A-2
68D.	General power to impose requirements 12A-4
68E.	Requirement to revise recovery plan 12A-6
68F.	Requirement to implement recovery plan 12A-8
68G.	Requirement to notify 12A-10
68H.	Holding company of authorized institution 12A-12
68I.	Offences relating to recovery planning 12A-14
PART XIII OWNERSHIP AND MANAGEMENT OF AUTHORIZED INSTITUTIONS	
69.	Amalgamation, etc. requires approval 13-2
70.	Provisions applicable to persons proposing to become controllers, and to certain existing controllers, of authorized institutions incorporated in Hong Kong 13-6
70A.	Objection to existing controllers 13-20
70B.	Restrictions on and sale of shares 13-24

T-15
第 155 章T-16
Cap. 155

條次	頁次
70C. 禁止某些人以間接控權人的身分行事	13-35
70D. 對企圖逃避限制的懲罰	13-41
71. 行政總裁及董事須得金融管理專員的同意	13-43
71C. 須得到金融管理專員同意方可成為註冊機構的主管人員	13-51
71D. 主管人員的委任	13-63
71E. 就尋求金融管理專員給予第 71C(1) 條所指的同意以成為主管人員的人給予臨時同意	13-63
71F. 就某些註冊機構而言有關第 71C 及 71D 條的過渡性條文	13-67
72. (廢除)	13-67
72A. 金融管理專員可規定指明的人呈交資料	13-67
72B. 關於經理的委任等的通知	13-71
73. 禁止某些人以認可機構的僱員的身分行事，但得金融管理專員同意者除外	13-75
74. 行政總裁的委任	13-79
第 XIV 部 (廢除)	
75-78. (廢除)	14-1

Section	Page
70C. Prohibition on certain persons acting as indirect controllers	13-36
70D. Punishment for attempted evasion of restrictions	13-42
71. Chief executives and directors require Monetary Authority's consent	13-44
71C. Executive officers of registered institutions require Monetary Authority's consent	13-52
71D. Appointment of executive officers	13-64
71E. Grant of provisional consent in relation to persons seeking Monetary Authority's consent under section 71C(1) to be executive officers	13-64
71F. Transitional provisions in relation to sections 71C and 71D in the case of certain registered institutions	13-68
72. (Repealed)	13-68
72A. Monetary Authority may require specified persons to submit information	13-68
72B. Notification of appointment of manager, etc.	13-72
73. Certain persons prohibited from acting as employees of authorized institutions except with consent of Monetary Authority	13-76
74. Appointment of chief executive	13-80
Part XIV (Repealed)	
75-78. (Repealed)	14-2

T-17
第 155 章

T-18
Cap. 155

條次		頁次
	第 XV 部	
	認可機構的風險承擔及權益的限度	
79.	釋義及適用範圍	15-1
79A.	金融管理專員可規定本部的條文以綜合基礎而適用於某些認可機構	15-5
80.	以本身的股份所作的保證而放貸款項等	15-5
81.	認可機構放款的限度	15-7
81A.	認可機構的風險承擔及權益的限度	15-23
81B.	補救行動	15-31
81C.	罪行：沒有遵守訂明通知規定，或沒有遵從補救行動規定	15-33
82.	金融管理專員可就認可機構的營業手法刊登守則	15-35
83.	向董事等放款的限度	15-37
84.	(廢除)	15-43
85.	向僱員放款的限度	15-45
86.	款項存放在外地銀行時金融管理專員的權力	15-45
87.	(廢除)	15-51

Section		Page
	Part XV	
	Limitations on Exposures and Interests of Authorized Institutions	
79.	Interpretation and application	15-2
79A.	Monetary Authority may require provisions of this Part to apply to certain authorized institutions on a consolidated basis	15-6
80.	Advance against security of own shares, etc.	15-6
81.	Limitations on advances by authorized institutions	15-8
81A.	Limitations on exposures and interests of authorized institutions	15-24
81B.	Remedial action	15-32
81C.	Offence of failing to comply with prescribed notification or remedial action requirements	15-34
82.	Monetary Authority may publish guidelines on business practices of authorized institutions	15-36
83.	Limitations on advances to directors, etc. of bank	15-38
84.	(Repealed)	15-44
85.	Limitation on advances to employees	15-46
86.	Powers of Monetary Authority where moneys placed with foreign bank	15-46
87.	(Repealed)	15-52

T-19
第 155 章

T-20
Cap. 155

條次	頁次
87A. 在香港成立為法團的認可機構獲取公司的股本	15-51
88. 認可機構持有土地權益的限度	15-55
89-90. (廢除)	15-57
91. 遵從的證明	15-59
第 XVI 部 廣告、申述及“銀行”稱號的使用	
92. 發出關於存款的廣告等的罪行	16-1
93. 欺詐誘使他人作出存款	16-9
94. 在某些情況下誘使他人作出存款的侵權法律責任	16-11
95. 認可機構發出虛假等的廣告	16-15
96. 某些受禁止的申述	16-15
97. 使用“銀行”名稱的限制	16-17
97A. 關於認可身分的虛假陳述	16-25
第 XVII 部 資本規定	
97B. 目的	16A-1
97C. 資本規定	16A-1

Section	Page
87A. Acquisition by authorized institutions incorporated in Hong Kong of share capital in companies	15-52
88. Limitation on holding of interest in land by authorized institutions	15-56
89-90. (Repealed)	15-58
91. Proof of compliance	15-60
Part XVI ADVERTISEMENTS, REPRESENTATIONS AND USE OF TITLE “BANK”	
92. Offence to issue advertisements, etc. relating to deposits	16-2
93. Fraudulent inducement to make a deposit	16-10
94. Liability in tort for inducing persons to make a deposit in certain cases	16-12
95. False, etc. advertisements by authorized institution	16-16
96. Certain representations prohibited	16-16
97. Restrictions on use of name “bank”	16-18
97A. False statements as to authorized status	16-26
Part XVII Capital Requirements	
97B. Purpose	16A-2
97C. Capital requirements	16A-2

T-21

第 155 章

T-22

Cap. 155

條次		頁次
97D.	訂明通知規定	16A-7
97E.	補救行動	16A-7
97F.	金融管理專員可就個別認可機構更改資本規定規則	16A-9
第 XVIB 部 流動性規定		
97G.	目的	16B-1
97H.	流動性規定	16B-1
97I.	訂明通知規定	16B-7
97J.	補救行動	16B-9
97K.	金融管理專員可就個別認可機構更改流動性規定規則	16B-11
第 XVIC 部 根據第 60A(1)、81A(1)、97C(1) 或 97H(1) 條訂立的規則的實務守則		
97L.	第 XVIC 部的釋義	16C-1
97M.	實務守則	16C-1
97N.	在覆核審裁處進行的程序中使用經批准實務守則	16C-5
第 XVII 部 (廢除)		
98.	(廢除)	17-1

Section		Page
97D.	Prescribed notification requirement	16A-8
97E.	Remedial action	16A-8
97F.	Monetary Authority may vary capital requirement rules for particular authorized institutions	16A-10
Part XVIB Liquidity Requirements		
97G.	Purpose	16B-2
97H.	Liquidity requirements	16B-2
97I.	Prescribed notification requirement	16B-8
97J.	Remedial action	16B-10
97K.	Monetary Authority may vary liquidity requirement rules for particular authorized institutions	16B-12
Part XVIC Codes of Practice for Rules Made under Section 60A(1), 81A(1), 97C(1) or 97H(1)		
97L.	Interpretation of Part XVIC	16C-2
97M.	Codes of practice	16C-2
97N.	Use of approved codes of practice in proceedings before Review Tribunal	16C-6
Part XVII (Repealed)		
98.	(Repealed)	17-2

條次	頁次	Section	Page
98A. (廢除)	17-1	98A. (Repealed)	17-2
99-101. (廢除)	17-1	99-101. (Repealed)	17-2
第 XVIIA 部 銀行業覆核審裁處 #		Part XVIIA Banking Review Tribunal#	
101A. 設立銀行業覆核審裁處 *	17A-1	101A. Establishment of Banking Review Tribunal*	17A-2
101B. 向覆核審裁處提出申請	17A-3	101B. Application to Review Tribunal	17A-4
101C. 覆核審裁處作出的覆核裁定	17A-5	101C. Determination of review by Review Tribunal	17A-6
101D. 覆核審裁處的裁定的登記	17A-7	101D. Registration of determination made by Review Tribunal	17A-8
101E. 覆核審裁處的權力	17A-9	101E. Powers of Review Tribunal	17A-10
101F. 覆核審裁處的聆訊須以非公開形式進行	17A-13	101F. Sittings of Review Tribunal to be held in private	17A-14
101G. 強迫提供的會導致入罪的證據的使用	17A-17	101G. Use of incriminating evidence given under compulsion	17A-18
101H. 向上訴法庭提出上訴	17A-17	101H. Appeal to Court of Appeal	17A-18
101I. 終審法院首席法官訂立規則的權力	17A-19	101I. Power of Chief Justice to make rules	17A-20
第 XVIII 部 (廢除)		Part XVIII (Repealed)	
102-106. (廢除)	18-1	102-106. (Repealed)	18-2
第 XIX 部 (廢除)		Part XIX (Repealed)	
107-116. (廢除)	19-1	107-116. (Repealed)	19-2
第 XX 部 對認可機構的調查			

條次	頁次	Section	Page
<p style="text-align: center;">PART XX INVESTIGATIONS OF AUTHORIZED INSTITUTIONS</p>			
117.	代財政司司長調查	20-1	117. Investigations on behalf of Financial Secretary 20-2
118.	審查員的權力及與調查有關的罪行	20-5	118. Powers of the inspector and offences in connection with the investigation 20-6
<p style="text-align: center;">第 XXA 部 貨幣經紀</p>			
<p style="text-align: center;">PART XXA MONEY BROKERS</p>			
118A.	只有核准貨幣經紀可以貨幣經紀身分行事	20A-1	118A. Only approved money brokers may act as money brokers 20A-2
118B.	核准的申請	20A-1	118B. Application for approval 20A-2
118C.	核准申請的決定	20A-1	118C. Determination of application for approval 20A-2
118D.	核准的撤銷	20A-5	118D. Revocation of approval 20A-6
118E.	撤銷核准的程序及效力	20A-7	118E. Procedure on and effect of revocation of approval 20A-8
118F.	核准貨幣經紀須繳付的費用	20A-9	118F. Fees payable by approved money brokers 20A-10
<p style="text-align: center;">第 XXI 部 雜項條文</p>			
<p style="text-align: center;">Part XXI Miscellaneous</p>			
119.	由行政長官會同行政會議決定銀行業務或接受存款業務是否正在經營	21-1	119. Chief Executive in Council to decide whether or not banking business or business of taking deposits is being conducted 21-2
119A.	認可機構不得設定某些押記並須將某些民事或刑事法律程序通知金融管理專員	21-1	119A. Authorized institutions not to create certain charges and to notify Monetary Authority of certain civil or criminal proceedings 21-2
120.	公事保密	21-5	120. Official secrecy 21-6

條次		頁次	Section		Page
121.	披露與認可機構有關的資料	21-19	121.	Disclosure of information relating to authorized institutions	21-20
122.	認可機構的清盤	21-23	122.	Winding-up of authorized institutions	21-24
123.	董事、行政總裁、經理、受託人、僱員及代理人的罪行	21-29	123.	Offences by directors, chief executives, managers, trustees, employees and agents	21-30
124.	禁止職員收取佣金	21-31	124.	Prohibition on receipt of commission by staff	21-32
125.	搜查令及檢取	21-31	125.	Search warrants and seizures	21-32
126.	董事等被檢控時的免責辯護	21-33	126.	Defence where director or manager, etc. prosecuted	21-34
126A.	提出投訴或告發的時間限制	21-33	126A.	Limit of time for complaint or information	21-34
127.	彌償	21-35	127.	Indemnity	21-36
128.	(廢除)	21-37	128.	(Repealed)	21-38
129.	違反本條例或由本條例廢除的任何條例的合約的有效性	21-37	129.	Validity of contract in contravention of this Ordinance or any Ordinance repealed by this Ordinance	21-38
130.	(廢除)	21-37	130.	(Repealed)	21-38
131.	費用、開支等的追討	21-37	131.	Recovery of fees, expenses, etc.	21-38
131A.	須付予外匯基金的費用	21-41	131A.	Cost related fees to be paid into Exchange Fund	21-42
132.	語文的使用	21-41	132.	Use of language	21-42
132A.	上訴	21-43	132A.	Appeals	21-44
132B.	本條例所訂罪行的罰款等級	21-51	132B.	Level of fines for offences under this Ordinance	21-52

條次	頁次
133. 金融管理專員指明表格的權力	21-51
134. 通知的送達	21-55
134A. 金融管理專員對認可附加條件前須作諮詢等	21-57
134B. 金融管理專員對核准證明書附加條件前須作諮詢等	21-59
135. 修訂附表的權力	21-61
136. 律政司司長的同意	21-61
137. (已將修訂編入)	21-63
137A. 《賭博條例》的條文的豁除	21-63
137B. 訂明票據	21-63
第 XXII 部 過渡、保留及廢除條文	
138. 釋義	22-1
139. 前委員會的委任成員須繼續任職	22-3
140. (廢除)	22-5
141. 獲授權及受僱的人士須繼續獲授權和受僱	22-5
142. 牌照等的前申請當作為根據本條例提出的申請	22-5

Section	Page
133. Power of Monetary Authority to specify forms	21-52
134. Service of notices	21-56
134A. Monetary Authority to consult, etc., before attaching conditions to authorization	21-58
134B. Monetary Authority to consult, etc., before attaching conditions to certificate of approval	21-60
135. Power to amend Schedules	21-62
136. Consent of Secretary for Justice	21-62
137. (Amendments Incorporated)	21-64
137A. Exclusion of provisions of Gambling Ordinance (Cap. 148)	21-64
137B. Prescribed instruments	21-64
PART XXII TRANSITIONAL, SAVINGS AND REPEAL	
138. Interpretation	22-2
139. Appointed members of former committees to continue in office	22-4
140. (Repealed)	22-6
141. Authorized and employed persons to continue to be authorized and employed	22-6
142. Former applications for licences, etc. deemed to be applications under this Ordinance	22-6

條次	頁次
143. 前牌照等當作為根據本條例批給的牌照等	22-7
144. 某些費用的繳付日期	22-9
145. 附加在前牌照等的條件當作為根據本條例附加的條件	22-11
146. 前註冊等的暫停當作為根據本條例作出的暫停	22-15
147. 根據前《銀行業條例》第 IV 部所作的行動等當作為根據本條例第 X 部所作的行動	22-17
148. 與某些聯繫證明書有關的過渡條文	22-17
148A. (廢除)	22-19
149. 與藉《1990 年銀行業 (修訂) 條例》作出的修訂有關的過渡條文	22-19
150. 與藉《1991 年銀行業 (修訂) (第 2 號) 條例》作出的修訂有關的過渡條文	22-25
151. 與《1992 年外匯基金 (修訂) 條例》# 有關的保留條文	22-31
152. 與《1995 年銀行業 (修訂) 條例》# 有關的過渡條文	22-35
153. 與《1997 年銀行業 (修訂) 條例》有關的過渡條文	22-45
附表 1 指明期間及指明款項	S1-1

Section	Page
143. Former licences, etc. deemed to be licences, etc. under this Ordinance	22-8
144. Date of payment of certain fees	22-10
145. Conditions attached to former licences, etc. deemed to be conditions under this Ordinance	22-12
146. Suspension of former registration, etc. deemed to be suspension under this Ordinance	22-16
147. Actions, etc. under Part IV of former Banking Ordinance deemed to be actions under Part X of this Ordinance	22-18
148. Transitional provision in relation to certain letters of comfort	22-18
148A. (Repealed)	22-20
149. Transitional provisions in relation to amendments made by Banking (Amendment) Ordinance 1990	22-20
150. Transitional provisions in relation to amendments made by Banking (Amendment) (No. 2) Ordinance 1991	22-26
151. Savings in relation to Exchange Fund (Amendment) Ordinance 1992	22-32
152. Transitional provisions in relation to Banking (Amendment) Ordinance 1995	22-36
153. Transitional provisions in relation to Banking (Amendment) Ordinance 1997	22-46

條次		頁次	Section		Page
			SCHEDULE 1	SPECIFIED PERIOD AND SPECIFIED SUMS	S1-2
附表 2	費用	S2-1	SCHEDULE 2	FEES	S2-2
附表 3	(廢除)	S3-1	Schedule 3	(Repealed)	S3-2
附表 4	(廢除)	S4-1	Schedule 4	(Repealed)	S4-2
附表 5	適用於訂明廣告的規定	S5-1	SCHEDULE 5	REQUIREMENTS APPLICABLE TO PRESCRIBED ADVERTISEMENTS	S5-2
附表 6	指明票據	S6-1	SCHEDULE 6	SPECIFIED INSTRUMENTS	S6-2
附表 7	認可的最低準則	S7-1	Schedule 7	Minimum Criteria for Authorization	S7-2
附表 8	撤銷認可的理由	S8-1	SCHEDULE 8	GROUND FOR REVOCATION OF AUTHORIZATION	S8-2
附表 9	認可機構的經理人的權力	S9-1	SCHEDULE 9	POWERS OF MANAGER OF AUTHORIZED INSTITUTION	S9-2
附表 10	(廢除)	S10-1	Schedule 10	(Repealed)	S10-2
附表 11	核准為貨幣經紀的最低準則	S11-1	SCHEDULE 11	MINIMUM CRITERIA FOR APPROVAL AS MONEY BROKER	S11-2
附表 12	撤銷貨幣經紀核准的理由	S12-1	SCHEDULE 12	GROUND FOR REVOCATION OF APPROVAL OF MONEY BROKER	S12-2
附表 13	罪行的罰款等級	S13-1	SCHEDULE 13	LEVEL OF FINES FOR OFFENCES	S13-2
附表 14	為經理的定義而指明的認可機構事務或業務	S14-1	Schedule 14	Affairs or Business of Authorized Institutions Specified for Purposes of Definition of Manager	S14-2
附表 15	關於銀行業覆核審裁處的條文 *	S15-1	Schedule 15	Provisions Relating to Banking Review Tribunal*	S15-2

本條例旨在規管銀行業務及接受存款業務；就認可機構的監管訂定條文，以便提供措施以保障存款人；促進銀行業體系的整體穩定與有效運作；就貨幣經紀的監管訂定條文；以及就附帶或相關的事宜，訂定條文。

(由 1997 年第 4 號第 2 條修訂)

[1986 年 9 月 1 日]

(格式變更——2013 年第 1 號編輯修訂紀錄)

第 I 部

導言

(* 格式變更——2013 年第 1 號編輯修訂紀錄)

編輯附註：

* 第 I 部的格式已按現行法例樣式更新。

1. 簡稱

- (1) 本條例可引稱為《銀行業條例》。
- (2) (已失時效而略去——2013 年第 1 號編輯修訂紀錄)

2. 釋義

- (1) 在本條例中，除文意另有所指外——

大股東控權人 (majority shareholder controller) 就任何公司而言，指在該公司的任何大會上，或在以該公司為附屬公司的另一間公司的任何大會上，單獨或連同任何一名或多於一名相聯者有權行使超過 50% 表決權或有權控制超

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)

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,

過 50% 表決權的行使的任何人；(由 1991 年第 95 號第 2 條增補)

小股東控權人 (minority shareholder controller) 就任何公司而言，指在該公司的任何大會上，或在以該公司為附屬公司的另一間公司的任何大會上，單獨或連同任何一名或多於一名相聯者有權行使不少於 10% 但不超過 50% 表決權或有權控制不少於 10% 但不超過 50% 表決權的行使的任何人；(由 1991 年第 95 號第 2 條增補)

工作日 (working day) 指不屬公眾假日或烈風警告日 (即《司法程序 (烈風警告期間聆訊延期) 條例》(第 62 章) 第 2 條所指的烈風警告日) 的任何日子；(由 1991 年第 95 號第 2 條增補)

工具牌照 (SVF licence) 就某銀行而言，指根據《支付系統及儲值支付工具條例》(第 584 章) 第 8G 條視為批給該銀行的牌照；(由 2015 年第 18 號第 56 條增補)

不成功 (unsuccessful) 就上訴而言，包括任何放棄上訴或撤回上訴的情況；(由 1995 年第 49 號第 2 條增補)

公司 (company) 指 ——

- (a) 根據《公司條例》(第 622 章) 成立為法團的法人團體；(由 2012 年第 28 號第 912 及 920 條修訂)
- (ab) 根據《公司條例》(第 622 章) 第 2(1) 條所界定的《舊有公司條例》成立為法團的法人團體；(由 2012 年第 28 號第 912 及 920 條增補)
- (b) 藉任何其他條例成立為法團的法人團體；或
- (c) 在香港以外成立為法團的法人團體；(由 1993 年第 94 號第 2 條修訂)

公眾人士 (public) 指香港的公眾人士，並包括其中任何類別的公眾人士；(由 2001 年第 32 號第 2 條增補)

巴塞爾委員會 (Basel Committee) 指秘書處設於瑞士巴塞爾國際清算銀行的巴塞爾銀行監管委員會，該委員會旨在於

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 —

世界各地推廣穩健的銀行業監管標準；(由 2012 年第 3 號第 3 條增補)

文件 (document) 包括符合以下說明的刊物 (包括報章、雜誌、期刊或其他定期刊物、海報、公告、啓事、通知、通告、冊子、小冊子、傳單或招股章程) ——

- (a) 以公眾人士為對象的，或公眾人士相當可能會取得或閱讀 (不論是否同時取得和閱讀) 的；及
- (b) 以機械、電子、磁力、光學、人手或其他方式製作的；(由 2001 年第 32 號第 2 條代替)

主管人員 (executive officer) 就註冊機構而言，指根據第 71D 條就該機構委任的主管人員；(由 2002 年第 6 號第 2 條增補)

外匯基金 (Exchange Fund) 指根據《外匯基金條例》(第 66 章) 設立的外匯基金；(由 1992 年第 82 號第 11 條增補)

本地分行 (local branch) 就任何認可機構而言 ——

- (a) 如該機構是一間銀行，並且 ——
 - (i) 是在香港成立為法團的，指該機構在香港經營以下業務的營業地點 (但該機構在香港的主要營業地點及自動櫃員機除外) ——
 - (A) 銀行業務；或
 - (B) 會使該機構招致第 81(2) 條所述的財務風險的任何其他業務，
 而該地點是公眾人士可為該業務的目的而通常進出的；
 - (ii) 是在香港以外成立為法團的，指該機構在香港經營以下業務的營業地點 (但該機構在香港的主要營業地點及自動櫃員機除外) ——
 - (A) 銀行業務；或
 - (B) 會使該機構招致第 81(2) 條所述的財務風險的任何其他業務，

- (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*)

而該地點是公眾人士可為該業務的目的而通常進出的；及

- (b) 如該機構是一間接受存款公司或有限制牌照銀行，指該公司或銀行在香港經營以下業務的營業地點（但該公司或銀行在香港的主要營業地點及自動櫃員機除外）——

- (i) 接受存款業務；或
- (ii) 會使該公司或銀行招致第 81(2) 條所述的財務風險的任何其他業務，

而該地點是公眾人士可為該業務的目的而通常進出的；（由 2001 年第 32 號第 2 條代替）

本地代表辦事處 (local representative office) 指第 46(9) 條所指的銀行在香港的辦事處；（由 1993 年第 94 號第 2 條代替）

本地辦事處 (local office) 就任何認可機構而言 ——

- (a) 除 (b) 段另有規定外，指用於推廣或協助其業務的該機構在香港的營業地點，而該地點是公眾人士可為該業務的目的而通常進出的；
- (b) 不包括 ——
 - (i) 該機構在香港的主要營業地點；
 - (ii) 該機構設立或維持的本地分行；
 - (iii) 自動櫃員機；
 - (iv) 純粹用於其事務或業務的行政事宜或處理交易的該機構的營業地點；或
 - (v) （凡有根據第 (14)(ca) 款作出的公告，宣布某營業地點或某類別的營業地點不屬本定義所指的營業地點或某類別的營業地點）該公告所宣布的該機構的營業地點或該機構的屬於該公告所宣布的類別的營業地點（視屬何情況而定）；（由 2001 年第 32 號第 2 條增補）

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;

交易服務 (dealing service) 指不論是親身或藉電子方式或其他方式提供予某人的服務，而該人藉該服務具有能力出價投標或提出價格或匯率 ——

- (a) 以達成**貨幣經紀**的定義(a)段提述的任何類型協議(而不論任何該等協議是否達成)；及
- (b) 該投標、價格或匯率 ——
 - (i) 可被屬報價對象的任何其他人接受；或
 - (ii) 可依據該服務而配對；(由 1997 年第 4 號第 3 條增補)

在香港以外成立為法團 (incorporated outside Hong Kong) 包括以任何方式在香港以外設立；(由 1993 年第 94 號第 2 條增補)

在香港以外成立為法團的認可機構 (authorized institution incorporated outside Hong Kong) 指藉或根據在香港以外任何地方的法律或其他權限而成立為法團的認可機構；(由 1990 年第 3 號第 2 條修訂；由 1993 年第 94 號第 2 條修訂)

在香港成立為法團的認可機構 (authorized institution incorporated in Hong Kong) 指藉或根據《公司條例》(第 622 章)、《公司條例》(第 622 章) 第 2(1) 條所界定的《舊有公司條例》或任何其他條例在香港成立為法團的認可機構；凡提述在香港成立為法團的銀行、在香港成立為法團的接受存款公司或在香港成立為法團的有限制牌照銀行之處，須據此解釋；(由 1990 年第 3 號第 2 條修訂；由 2012 年第 28 號第 912 及 920 條修訂)

多邊發展銀行 (multilateral development bank) 指金融管理專員根據第 (19) 款指明的任何銀行或借貸或發展團體；(由 2005 年第 19 號第 7 條增補)

存款 (deposit) ——

- (a) 指以下貸款 ——
 - (i) 有利息的、無利息的或負利息的；或

- (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

(ii) 須附以溢價付還的或須附以任何以金錢或金錢的等值為代價付還的；但

(b) 不包括 ——

(i) 符合以下說明的貸款：貸款條款涉及某公司發行債權證或其他證券，而已有一份招股章程根據《公司(清盤及雜項條文)條例》(第 32 章)就該項發行而註冊；

(ii) 貸款條款是關於提供財產或服務的貸款；

(iii) 某公司給予另一間公司(兩者均不是認可機構)的貸款，而當時兩者其中之一，是其餘另一公司的附屬公司，或兩者均是另外一間公司的附屬公司；或

(iv) 《支付系統及儲值支付工具條例》(第 584 章)第 2 條所界定的任何儲值金額或工具按金，(由 2015 年第 18 號第 56 條代替)

而凡本條例提述接受存款或作出存款之處，須據此解釋；

存款人 (depositor) 指有權獲付還存款的人，而不論該筆存款是否由他作出；

有限制牌照銀行 (restricted licence bank) 指持有有效的有限制銀行牌照的公司；(由 1990 年第 3 號第 2 條增補)

有限制銀行牌照 (restricted banking licence) 指根據第 16 條批給的有限制銀行牌照；(由 1990 年第 3 號第 2 條增補。由 1995 年第 49 號第 2 條修訂)

自動櫃員機 (automated teller machine) 指由認可機構或其他人安裝而直接或間接與某認可機構所使用的電腦系統接駁並向該認可機構的客戶提供設施的終端裝置；(由 2001 年第 32 號第 2 條代替)

行使 (exercise) 就職能而言，包括執行與履行；(由 1991 年第 95 號第 2 條增補)

(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*)

行政總裁 (chief executive) 就任何認可機構而言，指根據第 74 條就該機構而委任的行政總裁，並包括如此委任的候補行政總裁；(由 1991 年第 95 號第 2 條修訂)

受規管活動 (regulated activity) 就註冊機構而言，指 ——

- (a) 《證券及期貨條例》(第 571 章) 附表 1 所指的受規管活動；而
- (b) 該機構就該類活動 ——
 - (i) 是獲註冊進行該類活動的；及
 - (ii) 是憑藉以下條文或註冊證明書獲註冊的 ——
 - (A) 就任何屬**註冊機構**的定義(a)段所指的機構而言，《證券及期貨條例》(第 571 章) 附表 10 第 25(a) 或 32 條；
 - (B) 就任何其他註冊機構而言，批給該機構的註冊證明書；(由 2002 年第 6 號第 2 條增補)

股份 (share) 指公司股本內的股份；除在股額與股份之間有明訂或隱含的區別外，股份亦包括股額；**股東** (shareholder) 一詞，包括股額持有人；

股份溢價帳 (share premium account) 指獲撥入已發行股份 (不論是以現金溢價或其他溢價發行的股份) 的溢價總額或總值的帳項；(由 2005 年第 19 號第 7 條增補。由 2012 年第 28 號第 912 及 920 條修訂)

金融管理專員 (Monetary Authority) 指根據《外匯基金條例》(第 66 章) 第 5A 條委任的金融管理專員；(由 1992 年第 82 號第 11 條增補)

附屬公司 (subsidiary) 就法人團體而言，具有《公司條例》(第 622 章) 第 15 條所給予的涵義；(由 2018 年第 6 號第 3 條增補)

前核數師 (former auditor) 指以前是認可機構的核數師或前認可機構的核數師的人；(由 1990 年第 43 號第 2 條增補)

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*)

前認可機構 (former authorized institution) 指以前是銀行、有限牌照銀行或接受存款公司的機構；(由 1990 年第 43 號第 2 條增補)

指明款項 (specified sum) ——

- (a) 就接受存款公司而言，指第 14(1)(a) 條提述的款項；及
- (b) 就有限牌照銀行而言，指第 14(1)(b) 條提述的款項；(由 1990 年第 3 號第 2 條修訂)

相聯者 (associate) 就任何有權行使有關某公司的表決權、或有關控制有關某公司的表決權的行使、或持有某公司股份的人而言，指任何其他人，而前者是有一份以明示或隱含方式而與後者有關的口頭或書面協議或安排的，而該協議或安排是與獲取、持有或處置該公司的股份或其他權益有關的，或根據該協議或安排，他們在行使他們有關該公司的表決權時是共同行動的；(由 1991 年第 95 號第 2 條增補)

紀錄冊 (register) 指根據第 20 條備存的紀錄冊；(由 1995 年第 49 號第 2 條代替)

要求 (require) 指合理地要求；(由 2001 年第 32 號第 2 條增補)

香港銀行公會 (The Hong Kong Association of Banks) 指藉《香港銀行公會條例》(第 364 章) 第 3 條成立為法團並以香港銀行公會為名的法人團體；(由 2005 年第 19 號第 7 條增補)

核准 (approval) ——

- (a) 就擬以貨幣經紀身分行事的公司而言，指根據第 118C(1)(a) 條核准公司以貨幣經紀身分行事；
- (b) 就貨幣經紀而言，指該貨幣經紀所持有的核准證明書；(由 1997 年第 4 號第 3 條增補)

核准貨幣 (approved currency) 指 ——

- (a) 可自由兌換為港元的貨幣；或

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 (控股公司), in relation to a body corporate, has the meaning given by section 13 of the Companies Ordinance (Cap. 622); (Added 6 of 2018 s. 3)

(b) 獲金融管理專員核准的貨幣；(由 1987 年第 64 號第 2 條增補。由 1992 年第 82 號第 11 條修訂)

核准貨幣經紀 (approved money broker) 指持有有效核准證明書的貨幣經紀；(由 1997 年第 4 號第 3 條增補)

核准證明書 (certificate of approval) 指根據第 118C(1)(a) 條附於送達某公司的通知書的核准證明書；(由 1997 年第 4 號第 3 條增補)

核數師 (auditor) 指《專業會計師條例》(第 50 章) 所界定的執業會計師；(由 2004 年第 23 號第 56 條修訂)

流動性規定規則 (liquidity requirement rule) 指根據第 97H(1)(a) 條訂立的規則；(由 2012 年第 3 號第 3 條增補)

海外分行 (overseas branch) 指任何在香港成立為法團的認可機構在香港以外經營銀行業務或經營接受存款業務(視屬何情況而定) 的分行，不論該分行的業務是否受該分行所在地的法律或規例限制，亦不論該分行是否在該地被提述為代理人；

海外代表辦事處 (overseas representative office) 指在香港成立為法團的認可機構在香港以外的辦事處，但海外分行除外；

帳目 (accounts) 指以書寫、印刷或藉任何機器或裝置備存的任何帳目；

控權人 (controller) 就任何公司而言——

- (a) 並就本條例所有條文而言，指該公司以下任何人——
 - (i) 間接控權人；或
 - (ii) 大股東控權人；及
- (b) 並就第 XIII 部條文而言，包括任何屬該公司小股東控權人的人，

而凡本條例提述控制 (control) 之處，須據此解釋；(由 1991 年第 95 號第 2 條代替)

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

控權公司 (holding company) 就法人團體而言，具有《公司條例》(第 622 章) 第 13 條所給予的涵義；(由 2018 年第 6 號第 3 條增補)

接受存款公司 (deposit-taking company) 指一間現時註冊的公司；(由 1990 年第 3 號第 2 條代替。由 1995 年第 49 號第 2 條修訂)

接受存款公司諮詢委員會 (Deposit-taking Companies Advisory Committee) 指由第 5 條設立的接受存款公司諮詢委員會；

第 1 級國家 (Tier 1 country) 指香港及符合下述說明的香港以外的任何國家或地方 ——

- (a) 屬經濟合作與發展組織成員；或
- (b) 已經與國際貨幣基金會訂立特別借貸安排，而該借貸安排是與國際貨幣基金會的借款一般安排相聯的，但不包括任何符合下述說明的國家或地方 ——
- (c) 在過去 5 年內曾經重組對外國債 (不論是欠中央政府的或欠非中央政府債權人的)；或
- (d) 金融管理專員藉憲報公告指明為就本定義而言不視為第 1 級國家的國家或地方；(由 2005 年第 19 號第 7 條增補)

處置可行性覆檢審裁處 (Resolvability Review Tribunal) 指 ——

- (a) 《金融機構 (處置機制) 條例》(第 628 章) 第 110(1) 條所設立的審裁處；或 (編輯修訂 —— 2017 年第 2 號編輯修訂紀錄)
- (b) 根據該條例第 111(1) 條增設的審裁處；(由 2016 年第 23 號第 209 條增補)

處置補償審裁處 (Resolution Compensation Tribunal) 指 ——

- (a) 《金融機構 (處置機制) 條例》(第 628 章) 第 127(1) 條所設立的審裁處；或 (編輯修訂 —— 2017 年第 2 號編輯修訂紀錄)

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),

- (b) 根據該條例第 128(1) 條增設的審裁處；(由 2016 年第 23 號第 209 條增補)

處置機制當局 (resolution authority) 具有《金融機構 (處置機制) 條例》(第 628 章) 第 2(1) 條所給予的涵義；(由 2016 年第 23 號第 209 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)

貨幣 (currency) 包括 ——

- (a) 歐洲貨幣單位；及
- (b) 任何兌換媒介而該兌換媒介屬根據第 (5)(a) 款所作並正生效的宣布的標的者；(由 1993 年第 94 號第 2 條增補)

貨幣經紀 (money broker) ——

- (a) 除 (b) 段另有規定外，指符合以下說明的人：該人為酬賞 (不論是以佣金、費用或其他方式) 在香港或從香港經營洽談、安排或促進 (不論是藉電子或其他方式) 在其他人之間達成協議的業務，或向在香港的人士提供洽談、安排或促進 (不論是藉電子或其他方式) 在其他人之間達成協議的服務，而 ——
 - (i) 該等協議是關乎 ——
 - (A) 作出任何貨幣存款；
 - (B) 購買或出售任何貨幣，而不論所購買或出售的貨幣是否將會立即予以收取或交付，或於未來任何時間或於發生任何未來事件後予以收取或交付；或
 - (C) 購買或出售任何票據或屬於某類別票據的任何票據，而該票據或該類別票據是根據第 (14)(a) 款在公告內宣布屬就本定義而言的票據或某類別票據 (視屬何情況而定)；
 - (ii) 上述其他人之一屬一間認可機構；及

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

- (iii) 該人是作為不少於一名上述其他人的代理人或作為提供予不少於一名上述其他人的交易服務的提供者，而經營該業務或提供該服務；
- (b) 不包括任何認可機構，而——
 - (i) 除 (c) 段另有規定外，亦不包括任何以貨幣經紀身分行事的人，該人如此行事須是完全附屬或附帶於其所經營的業務，而該業務（如是在香港或從香港經營的話）不屬或（假若該業務在香港或從香港經營的話）不會屬以貨幣經紀身分行事的業務；或
 - (ii) 亦不包括根據第 (14)(b) 款在公告內宣布為不屬就本定義而言的人，以及屬如此宣布為不屬就本定義而言的某類別人士的人；
- (c) 包括根據第 (14)(c) 款在公告內宣布為本定義 (b)(i) 段不適用的人，亦包括屬如此宣布為本定義 (b)(i) 段不適用的某類別人士的人；（由 1997 年第 4 號第 3 條增補）

陳詞機會 (opportunity of being heard) 指一個合理的陳詞機會；
（由 2002 年第 6 號第 2 條增補）

發出 (issue) 就任何廣告、邀請或文件而言，包括——

- (a) 藉親自造訪；
- (b) 在報章、雜誌、期刊或其他定期刊物；
- (c) 藉海報、公告、啓事或通知的展示；
- (d) 以通告、冊子、小冊子或傳單的方式；
- (e) 藉照片展覽或放映電影片；
- (f) 藉聲音或電視廣播；
- (g) 藉電腦或其他電子器材；或
- (h) 以其他方式（不論是以機械、電子、磁力、光學、人手或其他媒介，或藉光、影像或聲音或其他媒介的產生或傳送），

- (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,

發布、傳遞、分發或以其他方式散發該廣告、邀請或文件，並包括安排或授權發出該廣告、邀請或文件；(由 2001 年第 32 號第 2 條代替)

短期存款 (short-term deposit) 指原訂存款到期的期間短於附表 1 第 1 項所指明的期間的存款，或短期通知的期間或通知的期間短於該指明期間的存款；(由 1990 年第 3 號第 2 條修訂)

短期通知款項 (money at call) 指在要求付款後不超過 24 小時內須付的款項，但不包括須按要求隨時支付的款項；

註冊 (registered) 指根據第 16 條註冊；(由 1995 年第 49 號第 2 條代替)

註冊機構 (registered institution) 指 ——

- (a) 《證券及期貨條例》(第 571 章) 附表 10 第 25(a) 或 32 條適用的認可機構；或
- (b) 獲批給註冊證明書的認可機構；(由 2002 年第 6 號第 2 條增補)

註冊證明書 (certificate of registration) 指符合以下說明的註冊證明書 ——

- (a) 根據《證券及期貨條例》(第 571 章) 第 119 條批給的；及
- (b) 有效的；(由 2002 年第 6 號第 2 條增補)

間接控權人 (indirect controller) 就任何公司而言，指所發出的指示或指令獲得該公司的董事、或以該公司為附屬公司的另一間公司的董事慣常按照行事的任何人，但經理人或顧問不包括在內，又如所發出的指示或指令獲得該等董事慣常按照行事的任何人僅是因為該等董事按照該人以專業身分所提供的意見而行事者，則該人亦不包括在內；(由 1991 年第 95 號第 2 條增補。由 1995 年第 49 號第 2 條修訂)

經理 (manager) ——

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 ——

- (a) 除 (c) 段另有規定外，就在香港成立為法團的認可機構而言，指獲該機構委任、或獲為該機構或代該機構行事的人委任、或獲根據與該機構作出的安排行事的人委任，以擔任（不論是單獨或與其他人一起擔任）該機構的在附表 14 指明的任何一項或多於一項的事務或業務的主要負責人的個人，但該機構的董事及行政總裁除外；
- (b) 除 (c) 段另有規定外，就在香港以外成立為法團的認可機構而言，指獲該機構委任、或獲為該機構或代該機構行事的人委任、或獲根據與該機構作出的安排行事的人委任，以擔任（不論是單獨或與其他人一起擔任）該機構在香港的在附表 14 指明的任何一項或多於一項的事務或業務的主要負責人的個人，但該機構的行政總裁除外；
- (c) 在有根據第 (14)(cb) 款作出的公告，宣布某人或某類別人士不屬本定義所指的經理或某類別的經理的情況下，不包括該公告所宣布的人，亦不包括屬於該公告所宣布的類別的人；（由 2001 年第 32 號第 2 條代替）

經理人 (Manager) 就任何認可機構而言，指依據第 52(1)(C) 條委任為該機構經理人的人；（由 1995 年第 49 號第 2 條增補）

董事 (director) 包括以任何職稱擔任董事職位的人；

資本基礎 (capital base) 就任何機構而言，指下述項目的總和——

- (a) 以下各項數額（但每項數額僅限於金融管理專員根據第 97C(1) 條訂立的規則所訂明的範圍內）即——（由 2012 年第 3 號第 3 條修訂）
 - (i) 該機構的繳足款股本；
 - (ii) 該機構的股份溢價帳（如有的話）的貸方款額；（由 2012 年第 28 號第 912 及 920 條修訂）

- (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

(iii) 該機構的經審計的保留收益；及

(iv) 該機構的已公布的儲備；及

(b) 金融管理專員為施行本段而在根據第 97C(1) 條訂立的規則中訂明的該機構的其他資源的數額；(由 2005 年第 19 號第 7 條增補。由 2012 年第 3 號第 3 條修訂)

資本規定規則 (capital requirement rule) 指根據第 97C(1)(a) 條訂立的規則；(由 2012 年第 3 號第 3 條增補)

認可 (authorization) 視情況所需，指——

(a) 根據第 16 條對公司經營銀行業務、作為接受存款公司經營接受存款業務或作為有限制牌照銀行經營接受存款業務(視屬何情況而定)作出的認可；

(b) 認可機構持有的銀行牌照、註冊或有限制銀行牌照(視屬何情況而定)；(由 1995 年第 49 號第 2 條增補)

認可機構 (authorized institution) 指——

(a) 銀行；(由 1990 年第 3 號第 2 條修訂)

(b) 有限制牌照銀行；或(由 1990 年第 3 號第 2 條代替)

(c) 接受存款公司；(由 1990 年第 3 號第 2 條增補)

認可證券市場 (recognized stock market) 的涵義與《證券及期貨條例》(第 571 章)附表 1 第 1 部第 1 條中該詞的涵義相同；(由 2002 年第 5 號第 407 條增補)

銀行 (bank) 指持有有效銀行牌照的公司；(由 1990 年第 43 號第 2 條修訂)

銀行牌照 (banking licence) 指根據第 16 條批給的銀行牌照；(由 1990 年第 43 號第 2 條修訂)

銀行業務 (banking business) 指以下業務的一種或兩種——

(a) 以來往、存款、儲蓄或其他相類的帳戶從公眾人士收取款項，而該等款項須按要求隨時付還，或須在少於附表 1 第 1 項指明的期間內付還，或須按短於

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)

該期間的短期通知期間或通知期間付還，但該等款項不包括《支付系統及儲值支付工具條例》(第 584 章) 第 2 條所界定的任何儲值金額或工具按金；(由 1997 年第 4 號第 3 條修訂；由 2015 年第 18 號第 56 條修訂)

(b) 支付或收取客戶所發出或存入的支票；

銀行業務諮詢委員會 (Banking Advisory Committee) 指由第 4 條設立的銀行業務諮詢委員會；

廣告 (advertisement) 包括各種形式的廣告，不論是口頭作出的，或是以機械、電子、磁力、光學、人手或其他方式製作的；(由 2001 年第 32 號第 2 條代替)

儲備 (reserves) 就任何認可機構而言，指在該機構的帳目上出現的儲備，但不包括藉着減低資產的價值或藉着為固定資產作折舊所提撥的準備金而表示的任何儲備；(由 1991 年第 95 號第 2 條增補)

邀請 (invitation) 包括要約及邀請，不論是口頭作出的，或是以機械、電子、磁力、光學、人手或其他方式製作的；(由 2001 年第 32 號第 2 條增補)

職能 (functions) 包括權力及責任；

覆核審裁處 (Review Tribunal) 指第 101A 條所設立的銀行業覆核審裁處；(由 2012 年第 3 號第 3 條代替)

證監會 (Securities and Futures Commission) 指《證券及期貨條例》(第 571 章) 提述的證券及期貨事務監察委員會；(由 2002 年第 6 號第 2 條增補)

顧問 (Advisor) 就任何認可機構而言，指依據第 52(1)(B) 條委任為該機構的顧問的人；(由 1995 年第 49 號第 2 條增補)

DTC 公會 (The DTC Association) 指根據在當其時有效的《公司條例》(第 32 章) 成立為法團的香港有限牌照銀行及接受存款公司公會。(由 2005 年第 19 號第 7 條增補。由 2012 年第 28 號第 912 及 920 條修訂)

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)

resolution authority (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); (Added 23 of 2016 s. 209. Amended E.R. 2 of 2017)

Resolution Compensation Tribunal (處置補償審裁處) means—

- (a) the Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); or (Amended E.R. 2 of 2017)
- (b) an additional tribunal established under section 128(1) of that Ordinance; (Added 23 of 2016 s. 209)

(由 1990 年第 3 號第 2 條修訂；由 1992 年第 82 號第 11 條修訂；由 1993 年第 94 號第 2 條修訂；由 1995 年第 49 號第 2 條修訂；由 2002 年第 5 號第 407 條修訂；由 2012 年第 3 號第 3 條修訂；由 2012 年第 28 號第 912 及 920 條修訂；由 2018 年第 6 號第 3 條修訂)

(2) 為施行本條例 ——

- (a) 接受存款包括顯示為準備接受存款；
- (b) 由任何人在公眾地方藉展示或展覽方式而發出的廣告、邀請或文件，在該人安排或授權將該廣告、邀請或文件展示或展覽的每一天，均視為由該人發出的廣告、邀請或文件；
- (c) 凡所包含或載有的資料相當可能直接或間接引致公眾人士 ——
 - (i) 作出存款；或
 - (ii) 訂立或要約訂立作出存款的協議，
 的廣告、邀請或文件，即視為是予公眾人士的有關如此行事的廣告、邀請或文件，或視為載有予公眾人士的有關如此行事的廣告、邀請或文件；及
- (d) 由一人代另一人或按另一人的指示而發出的廣告、邀請或文件，即視為由該另一人所發出的廣告、邀請或文件（視屬何情況而定）。（由 2001 年第 32 號第 2 條修訂）
- (3) 在不限制**無力償債** (insolvent) 可能含有其他涵義的一般性的原則下，為施行本條例，如認可機構已停止在業務的通常運作中支付其債項，或在其債項到期時不能支付，即當作無力償債。
- (4) 凡根據本條例規定任何認可機構須向任何人提供設施以調查或審查該機構，該等設施須包括影印設施。
- (5) 凡對於某一兌換媒介就本條例而言是否為貨幣而有疑問或爭議，金融管理專員可藉憲報公告 ——

Resolvability Review Tribunal (處置可行性覆檢審裁處) means—

- (a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628); or (*Amended E.R. 2 of 2017*)
- (b) an additional tribunal established under section 111(1) of that Ordinance; (*Added 23 of 2016 s. 209*)

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) 宣布該兌換媒介就本條例而言是貨幣；
- (b) 宣布該兌換媒介就本條例而言不是貨幣。(由 1993 年第 94 號第 2 條增補)
- (6) 凡本條例提述任何簽署任何文件的人，即包括提述任何授權簽署該文件的人。(由 1995 年第 49 號第 2 條增補)
- (7) 凡本條例任何條文提述的指明表格，即指為施行該條文而根據第 133 條指明的表格。(由 1995 年第 49 號第 2 條增補)
- (8) 為免生疑問，現宣布凡本條例(第 14 條除外)提述的接受存款(或意思相同的文字)，即包括持有存款。(由 1995 年第 49 號第 2 條增補。由 2005 年第 19 號第 8 條修訂)
- (9) 凡本條例提述的有關銀行業監管當局，就在香港以外成立為法團的公司而言，即指金融管理專員認為對該公司具有監管責任而在香港以外的銀行業監管當局(而不論該監管當局是否位於該公司成立為法團的地方)。(由 1995 年第 49 號第 2 條增補。由 1999 年第 42 號第 2 條修訂)
- (10) 在第 18(4)、22(4)、24(5) 及 25(3) 條中，**繼續持有存款**(continuing to hold a deposit) 一詞包括將存款續期。(由 1995 年第 49 號第 2 條增補)
- (11) (由 2015 年第 18 號第 56 條廢除)
- (12) 凡本條例提述任何認可機構(包括前認可機構)的事務、業務及財產，就某銀行而言，該等提述包括(不論直接或間接)產生自或可歸因於根據該銀行的工具牌照發行或促進發行儲值支付工具的、該銀行的任何事務、業務及財產。(由 1997 年第 4 號第 3 條增補。由 2015 年第 18 號第 56 條修訂)
- (13) (由 2015 年第 18 號第 56 條廢除)
- (14) 金融管理專員可藉憲報公告並在該公告指明的條件(如有的話)規限下——
- (a) 宣布某票據或某類別票據屬就**貨幣經紀**定義而言的票據或某類別票據(視屬何情況而定)；

- (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*)

subsidiary (附屬公司), in relation to a body corporate, has the meaning given by section 15 of the Companies Ordinance (Cap. 622); (*Added 6 of 2018 s. 3*)

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—

- (b) 宣布某人或某類別人士不屬就**貨幣經紀**定義而言的貨幣經紀或某類別貨幣經紀(視屬何情況而定);
- (c) 宣布某人或某類別人士屬**貨幣經紀**定義(b)(i)段不適用的人或某類別人士(視屬何情況而定);
- (ca) 宣布某營業地點或某類別營業地點不屬**本地辦事處**的定義所指的營業地點或某類別營業地點(視屬何情況而定); (由 2001 年第 32 號第 2 條增補)
- (cb) 宣布某人或某類別人士不屬**經理**的定義所指的經理或某類別經理(視屬何情況而定)。 (由 2001 年第 32 號第 2 條增補。由 2015 年第 18 號第 56 條修訂)
- (d) (由 2015 年第 18 號第 56 條廢除)
- (15) 現宣布——
 - (a)-(b) (由 2015 年第 18 號第 56 條廢除)
 - (c) 凡本條例提述某人以貨幣經紀身分行事(或意思相同的措詞),即包括某人顯示自己為貨幣經紀;
 - (d) 第(14)款所指的公告是附屬法例。(由 1997 年第 4 號第 3 條增補)
- (16) 凡本條例提述任何持續的罪行,即指由某人的持續失責、拒絕或其他違反本條例的規定(不論如何描述)所構成的罪行,即使由或根據本條例指明的遵從該規定的期限已屆滿。(由 1997 年第 4 號第 3 條增補)
- (17) 為免生疑問,現宣布在本條例中,凡提述認可機構或其他公司的每名董事、每名行政總裁及每名經理均屬犯罪(包括該提述的文法變體或同語族詞句),即指該等董事、行政總裁及經理中任何一人或多於一人可被控以該罪行。(由 2001 年第 32 號第 2 條增補)
- (18) 任何其意是在認可機構或其他公司違反本條例的情況下對該認可機構或公司的每名經理施加刑事法律責任的本條例的條文,須解釋為僅在該項違反是由認可機構或其他公司的任何經理本人或他管轄的任何人的作為或不作

- (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; 6 of 2018 s. 3*)

(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,

為所引致或促成的範圍內對該經理施加刑事法律責任。
(由 2005 年第 19 號第 8 條增補)

- (19) 為施行本條例，金融管理專員可藉憲報公告，指明由 2 個或多於 2 個國家、地區或國際組織藉協議而設立或擔保（但並非為純商業目的而設立或擔保）的任何銀行或借貸或發展團體為多邊發展銀行。（由 2005 年第 19 號第 7 條增補）
- (20) 在本條例中，凡提述發行或促進發行儲值支付工具，即提述《支付系統及儲值支付工具條例》（第 584 章）所指的發行或促進發行儲值支付工具。（由 2015 年第 18 號第 56 條增補）

(編輯修訂——2013 年第 1 號編輯修訂紀錄)

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. 適用範圍

- (1) 本條例第 III 部不適用於 ——
- (a) 根據《受託人條例》(第 29 章) 第 8 部註冊的信託公司接受任何存款；
 - (b) 根據《儲蓄互助社條例》(第 119 章) 註冊的儲蓄互助社接受任何存款；
 - (c) 公司接受任何存款，而存款是以 —— (由 2012 年第 28 號第 912 及 920 條修訂)
 - (i) 已經或將會根據《公司條例》(第 622 章) 登記的按揭或押記作為保證的；
 - (ii) 已經或將會根據在《公司條例》(第 622 章) 附表 9 第 2 條的生效日期 * 之前不時有效的《公司條例》(第 32 章) 中根據《公司條例》(第 622 章) 附表 11 而持續有效的條文登記的按揭或押記作為保證的；或
 - (iii) 已經根據《公司條例》(第 622 章) 第 2(1) 條所界定的《舊有公司條例》登記的按揭或押記作為保證的；(由 2012 年第 28 號第 912 及 920 條修訂)
 - (d) 真誠經營保險業務的人接受任何存款，而存款是在該業務的通常運作中接受的；
 - (e) 真誠經營離職金或公積金的人接受任何存款，而存款是為離職金或公積金目的而接受的；
 - (f) 《稅務條例》(第 112 章) 附表 3 指明的公用事業公司接受任何存款，而存款是從消費者處接受的；(由 1991 年第 95 號第 2 條修訂)
 - (g) 僱主接受任何存款，而存款是從真正僱員處接受的；

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;

- (h) 律師接受任何存款，而存款是在他執業的通常運作中從當事人處接受的或是他作為保證金保存人而接受的；(由 1987 年第 64 號第 3 條修訂)
- (i) (由 1999 年第 78 號第 7 條廢除)
- (j) 根據《證券及期貨條例》(第 571 章)第 V 部獲發牌經營證券交易、期貨合約交易、槓桿式外匯交易或證券保證金融資的業務的法團接受任何存款，而根據該條例第 149 條訂立的規則適用於該等存款；(由 2002 年第 5 號第 407 條代替)
- (ja) 根據《證券及期貨條例》(第 571 章)第 104 條獲認可為集體投資計劃的互惠基金或單位信託接受任何存款；(由 2002 年第 5 號第 407 條代替)
- (k) 根據《證券及期貨條例》(第 571 章)第 III 部獲認可提供該條例附表 5 第 2 部所界定的自動化交易服務的人接受任何存款，而存款是就該交易服務的定義的 (c) 段提述的交易而提供作保證的；(由 2002 年第 5 號第 407 條代替)
- (ka) (由 2002 年第 5 號第 407 條廢除)
- (l) 《證券及期貨條例》(第 571 章)附表 1 第 1 部第 1 條所指的認可結算所接受任何存款，而存款是就該條所指的市場合約而提供作保證的；或 (由 1992 年第 68 號第 20 條增補。由 1995 年第 62 號第 12 條修訂；由 2002 年第 5 號第 407 條修訂)
- (m) 由《外匯基金條例》(第 66 章)設立的外匯基金接受任何存款。(由 1987 年第 64 號第 3 條代替)
- (2) 本條例第 III 部不適用於 ——
 - (a) 從認可機構處接受任何存款；
 - (b) 從在香港以外成立為法團的銀行(而並非認可機構者)處接受任何存款；(由 1993 年第 94 號第 3 條修訂；由 1995 年第 49 號第 3 條修訂)

- (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

- (c) 從根據《放債人條例》(第 163 章)領有牌照的放債人在其從事放債人業務的通常運作中接受任何存款；或
- (d) 從根據《當押商條例》(第 166 章)領有牌照的當押商在其從事當押商業務的通常運作中接受任何存款。
- (3) 即使《香港上海滙豐銀行有限公司條例》(第 70 章)有任何規定，本條例適用於香港上海滙豐銀行有限公司。(由 1989 年第 333 號法律公告修訂；由 1991 年第 95 號第 3 條修訂)
- (4) 凡本條例與《香港上海滙豐銀行有限公司條例》(第 70 章)之間出現衝突或不一致之處，須以本條例的條文為準。(由 1989 年第 333 號法律公告修訂；由 1991 年第 95 號第 3 條修訂)
- (5) 藉或根據 —— (由 2012 年第 28 號第 912 及 920 條修訂)
- (a) 《公司條例》(第 622 章)；或
- (b) 在《公司條例》(第 622 章)附表 9 第 2 條的生效日期 * 之前不時有效的《公司條例》(第 32 章)，
- 成立為法團或註冊的認可機構，須受《公司條例》(第 622 章)、《公司(清盤及雜項條文)條例》(第 32 章)及本條例規限，但如本條例與《公司條例》(第 622 章)或《公司(清盤及雜項條文)條例》(第 32 章)之間有任何衝突之處，須以本條例為準。(由 2012 年第 28 號第 912 及 920 條修訂)
- (編輯修訂 —— 2014 年第 2 號編輯修訂紀錄)

編輯附註：

* 生效日期：2014 年 3 月 3 日。

- 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.

第 II 部

委任、金融管理專員的職能、金融管理專員的報告及 行政長官發出指示的權力

(* 格式變更——2013 年第 1 號編輯修訂紀錄)

編輯附註：

(由 1992 年第 82 號第 25 條修訂；由 1999 年第 68 號第 3 條修訂)

* 第 II 部的格式已按現行法例樣式更新。

4. 銀行業務諮詢委員會

- (1) 現設立銀行業務諮詢委員會，目的是就任何與本條例相關的事宜，尤其與銀行及經營銀行業務有關的事宜，向行政長官提供意見，並在根據第 53(2) 條被諮詢意見時，向行政長官會同行政會議提供意見。(由 1993 年第 94 號第 4 條修訂)
 - (2) 銀行業務諮詢委員會由財政司司長、金融管理專員和行政長官不時委任的其他人組成，由財政司司長出任主席；該等被委任的人不得少於 4 人，亦不得超過 12 人。(由 1997 年第 362 號法律公告修訂)
 - (3) 由行政長官委任的銀行業務諮詢委員會成員，其任期及任職條款由行政長官在其委任書內指明。
 - (4) 在銀行業務諮詢委員會的任何會議上，如主席缺席，財政司司長可委任主席。(由 1997 年第 362 號法律公告修訂)
- (由 1992 年第 82 號第 12 條修訂；由 1999 年第 68 號第 3 條修訂)

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. 接受存款公司諮詢委員會

- (1) 現設立接受存款公司諮詢委員會，目的是就任何與本條例相關的事宜，尤其與接受存款公司和有限制牌照銀行有關及與它們經營接受存款業務有關的事宜，向行政長官提供意見，並在根據第 53(2) 條被諮詢意見時，向行政長官會同行政會議提供意見。*(由 1990 年第 3 號第 3 條修訂；由 1993 年第 94 號第 5 條修訂)*
- (2) 接受存款公司諮詢委員會由財政司司長、金融管理專員和行政長官不時委任的其他人組成，由財政司司長出任主席；該等獲委任的人不得少於 4 人，亦不得超過 12 人。*(由 1997 年第 362 號法律公告修訂)*
- (3) 由行政長官委任的接受存款公司諮詢委員會成員，其任期及任職條款由行政長官在其委任書內指明。
- (4) 在接受存款公司諮詢委員會的任何會議上，如主席缺席，財政司司長可委任主席。*(由 1997 年第 362 號法律公告修訂)*

(由 1992 年第 82 號第 13 條修訂；由 1999 年第 68 號第 3 條修訂)

6. *(由 1992 年第 82 號第 14 條廢除)*

7. 金融管理專員的職能

- (1) 金融管理專員根據本條例具有的主要職能是促進銀行業體系的整體穩定與有效運作。*(由 1992 年第 82 號第 15 條修訂)*

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

- (2) 在不限制第(1)款的一般性的原則下，金融管理專員須——(由 1992 年第 82 號第 25 條修訂)
- (a) 負責監管遵從本條例條文的事宜；
 - (b) 採取一切合理步驟，以確保所有認可機構的主要營業地點、本地分行、本地辦事處、海外分行及海外代表辦事處以及本地代表辦事處均以負責、誠實與務實而有條理的態度經營；(由 2001 年第 32 號第 3 條修訂)
 - (c) 促進與鼓勵認可機構及貨幣經紀維持正當操守標準及良好和穩妥的業務常規；(由 1997 年第 4 號第 4 條修訂)
 - (d) 遏止或協助遏止與認可機構的業務常規有關的非法、不名譽或不正當的行為；
 - (e) 於適當時，在本條例或任何其他條例准許的範圍內，與香港或香港以外任何地方獲承認的金融服務監管當局合作並對其給予協助；(由 1991 年第 95 號第 4 條修訂；由 2002 年第 6 號第 3 條修訂)
 - (f) 考慮並建議與銀行業務及接受存款業務有關的法律改革；及(由 2002 年第 6 號第 3 條修訂)
 - (g) 採取一切合理步驟，以確保任何認可機構所經營的任何銀行業務、任何接受存款業務或任何其他業務是——
 - (i) 以持正和審慎的方式以及適度的專業能力經營的；及
 - (ii) 以無損或相當不可能損及存款人或潛在存款人的利益的方式經營的。(由 2002 年第 6 號第 3 條增補)
- (3) 金融管理專員可不時安排擬備並安排藉憲報公告刊登指引，表明他擬行使藉或根據本條例授予他或委予他的職能的方式。(由 1992 年第 82 號第 25 條修訂；由 2005 年第 19 號第 7 條修訂)

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—

8. (由 1992 年第 82 號第 16 條廢除)

9. 金融管理專員的報告

- (1) 金融管理專員須於每年 12 月 31 日後，在切實可行的範圍內盡快擬備並向財政司司長提交報告，述明在上一年度本條例的運作及其辦事處的工作的情況；報告亦可述明金融管理專員認為就改善本條例的運作及其辦事處的工作而有需要的任何措施。(由 1993 年第 94 號第 6 條修訂；由 1997 年第 362 號法律公告修訂)
- (2) 在根據第 (1) 款擬備的報告內，金融管理專員須促請注意他在上一年度所獲悉的任何違反或規避本條例規定的情況，或他所發現在任何認可機構就該段期間的帳目及財務往來紀錄中有不規則的地方，而他認為該等地方的重要性是足以使他有理在報告內促請注意的。
- (3) 金融管理專員須在他認為有需要時，就他的辦事處的運作及管理方面，向財政司司長報告他認為適宜改善之處。(由 1997 年第 362 號法律公告修訂)
- (4) 行政長官可在任何時間要求金融管理專員向他報告關於本條例的運作或金融管理專員辦事處的工作的事宜，而金融管理專員須隨即據此擬備並向行政長官提交報告。(由 1999 年第 68 號第 3 條修訂)

- (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.

2-9
第 155 章

第 II 部
第 10 條

- (5) 財政司司長收到根據第 (1) 款向他提交的報告後，如他認為適當，可將該報告以他認為適當的方式整份或部分發表，或拒絕將該報告的任何部分發表。(由 1993 年第 94 號第 6 條代替。由 1997 年第 362 號法律公告修訂)
- (6) (由 1993 年第 94 號第 6 條廢除)
(由 1992 年第 82 號第 25 條修訂)

10. 行政長官發出指示的權力

- (1) 行政長官可一般地或在任何個別情況下，就財政司司長及金融管理專員根據本條例行使各自的職能方面，向他們發出他認為適當的指示。
- (2) 財政司司長及金融管理專員根據本條例行使各自的職能時，須遵從行政長官根據本條發出的任何指示。
(由 1992 年第 82 號第 25 條修訂；由 1997 年第 362 號法律公告修訂；由 1999 年第 68 號第 3 條修訂)

Part II
Section 10

2-10
Cap. 155

- (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)

第 III 部**銀行業務及接受存款業務只准由認可機構經營****11. 銀行業務只限由持牌銀行經營**

- (1) 除銀行 (但並非根據第 24 或 25 條當其時被暫時吊銷銀行牌照的銀行) 外, 任何人不得在香港經營銀行業務。 (由 1995 年第 49 號第 4 條修訂)
- (2) 任何人違反本條, 即屬犯罪; 任何公司違反本條, 其每名董事及每名經理均屬犯罪; 而 ——
 - (a) 一經循公訴程序定罪, 可處第 8 級罰款及監禁 5 年; 或 (由 1997 年第 4 號第 27 條修訂)
 - (b) 一經循簡易程序定罪, 可處第 5 級罰款及監禁 6 個月。 (由 1997 年第 4 號第 27 條修訂)

12. 接受存款業務的限制

- (1) 除認可機構 (但並非根據第 24 或 25 條當其時被暫停認可的認可機構) 外, 任何人不得在香港經營接受存款業務。 (由 1995 年第 49 號第 5 條修訂)
- (2) 接受存款公司不得在香港接受任何短期存款。
- (3) 任何接受存款公司如無金融管理專員書面許可, 不得在由該公司接受有關的存款日期起計的短於附表 1 第 1 項指明的期間內, 付還該存款。 (由 1992 年第 82 號第 25 條修訂)
- (4) 任何接受存款公司或有限制牌照銀行, 不得以儲蓄帳戶收取款項。

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

- (5) 在符合第 14 條的規定下，有限制牌照銀行可接受短期存款。*(由 1995 年第 49 號第 5 條修訂)*
- (6) 任何人違反第 (1) 款，即屬犯罪；任何接受存款公司違反第 (2)、(3) 或 (4) 款，其每名董事、每名行政總裁及每名經理均屬犯罪；任何有限制牌照銀行違反第 (4) 款，其每名董事、每名行政總裁及每名經理均屬犯罪；而——*(由 2001 年第 32 號第 24 條修訂)*
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。*(由 1997 年第 4 號第 27 條修訂)*
- (7) 任何人訂立合約或安排或採用任何方法或計劃，其作用或所設計的作用是規避第 (1)、(2)、(3) 或 (4) 款的限制的，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。*(由 1997 年第 4 號第 27 條修訂)*
- (8) 就第 (6) 款所訂罪行的法律程序而言，如證明某人在任何一段 30 天的期間內曾至少分開 5 次接受存款，則在沒有相反證據的情況下，該人即當作已在經營接受存款業務。*(由 1995 年第 49 號第 5 條修訂)*
- (由 1990 年第 3 號第 4 條修訂)*

- 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. 批給豁免的權力**

- (1) 財政司司長可藉憲報公告，豁免任何人或任何類別的人，使其不受第 12(1) 條的規限，又如財政司司長認為適當，亦可在該公告內，就與豁免受第 12(1) 條的規限有關的接受存款業務，豁免該人或該類別的人，使其不受第 92(1) 條的規限。 *(由 1987 年第 64 號第 4 條代替)*
- (2) 根據第 (1) 款批給的豁免，須受該公告內指明的條件所規限。
- (3) 財政司司長可在任何時間藉憲報公告 ——
 - (a) 撤銷根據第 (1) 款批給的豁免；或
 - (b) 撤銷、更改或增加在批給該項豁免時所施加的任何規限條件。

*(由 1997 年第 362 號法律公告修訂)***14. 接受存款公司不得接受少於指明款項的存款**

- (1) 除第 (2) 款另有規定外 ——
 - (a) 接受存款公司不得在香港從存款人處接受任何一筆少於附表 1 第 2 項指明款額的存款；及
 - (b) 有限制牌照銀行不得在香港從存款人處接受任何一筆少於附表 1 第 3 項指明款額的存款。 *(由 1991 年第 95 號第 5 條修訂)*
- (2) 任何接受存款公司或有限制牌照銀行可從任何存款人處接受一筆少於在存款日期適用的指明款項的存款，但在接受該筆存款時，該存款人在該接受存款公司或有限制牌照銀行 (視屬何情況而定)，須有一筆記入其貸方且不少於在該筆存款的存款日期適用的指明款項的款額。
- (3) 除非任何存款人從任何接受存款公司或有限制牌照銀行提取全部記入其貸方的款額，否則該接受存款公司或有

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

限制牌照銀行(視屬何情況而定)不得在任何款項提取時，准許該存款人記入其貸方的結餘額少於指明款項。

- (4) 儘管第(3)款另有規定，如任何存款人在任何接受存款公司或有限制牌照銀行有一筆記入其貸方的款額而適值指明款項經修訂而提高，則該接受存款公司或有限制牌照銀行(視屬何情況而定)，可准許結餘額在款項提取後減至不少於在如此修訂前的指明款項。
- (5) 任何接受存款公司或有限制牌照銀行違反第(1)或(3)款，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (6) 任何人顯示自己(無論以任何接受存款公司、有限制牌照銀行的經紀或代理人或以其他方式顯示)準備從任何人處接受一筆少於指明款項的款項，以在該接受存款公司或有限制牌照銀行(視屬何情況而定)作出該筆款項的存款，或作出該筆款項連同其他款項的存款，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (7) 任何人訂立合約或安排或採用任何方法或計劃，其作用或所設計的作用是規避第(1)或(3)款的限制的，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)

(由 1990 年第 3 號第 5 條修訂)

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

3-9
第 155 章

第 III 部
第 14A 條

PART III
Section 14A

3-10
Cap. 155

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. (由 2015 年第 18 號第 57 條廢除)

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

第 IV 部**認可***(第 IV 部由 1995 年第 49 號第 6 條代替)***15. 認可的申請等**

- (1) 任何公司擬 ——
 - (a) 經營銀行業務；
 - (b) 作為接受存款公司經營接受存款業務；或
 - (c) 作為有限牌照銀行經營接受存款業務，
須向金融管理專員申請認可經營該業務。
- (2) 就任何公司作出認可申請時，須向金融管理專員提交 ——
 - (a) 組織章程大綱及章程細則或組成該公司的其他文件一份，而該等文件須按照金融管理專員規定的方式予以核實；及
 - (b) 金融管理專員所規定的任何其他文件及資料。
- (3) *(由 2015 年第 18 號第 58 條廢除)*

16. 認可的批給或拒絕等

- (1) 在符合第 (2) 及 (6) 款的規定下，金融管理專員收到任何公司按照第 15 條提交的申請後，可 ——
 - (a) 認可該公司經營屬申請標的之業務，但須受他認為於個別情況下恰當附加於該項公司的認可的條件（如有的話）所規限；或

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

4-3
第 155 章

第 IV 部
第 16 條

- (b) 拒絕如此認可該公司。
- (2) 在不限制第 (1)(b) 款的一般性的原則下，如在附表 7 指明的準則中，就該公司有任何一項或多於一項適用於或關於該公司的準則未予符合，則金融管理專員須根據該款拒絕認可該公司。
- (3) 根據第 (1)(a) 款對任何公司的認可須以下列方式作出——
- (a) 如該公司的認可申請標的是經營銀行業務，則藉批給銀行牌照予以認可；
- (b) 如該公司的認可申請標的是作為接受存款公司經營接受存款業務，則藉將該公司註冊予以認可，為此目的，金融管理專員須——
- (i) 將第 20 條指明的有關詳情載入紀錄冊內；及
- (ii) 以書面通知該公司該項註冊及註冊日期；
- (c) 如該公司的認可申請標的是作為有限制牌照銀行經營接受存款業務，則藉批給有限制銀行牌照予以認可。
- (3A)-(3B) (由 2015 年第 18 號第 59 條廢除)
- (4) 金融管理專員如根據第 (1)(b) 款拒絕認可任何公司，須以書面通知該公司——(由 2015 年第 18 號第 59 條修訂)
- (a) 該項拒絕；及
- (b) 拒絕的理由。
- (5) 在不限制第 (1)(a) 款的一般性的原則下但在符合第 134A 條的規定下，金融管理專員可於任何時間，藉向任何認可機構送達的書面通知，對該機構的認可附加他認為恰當的條件(包括藉修訂已附加於該機構的認可的條件而附加者)，或按他認為恰當，取消任何已附加於該機構的認可的條件。(由 2015 年第 18 號第 59 條修訂)
- (6) 金融管理專員在根據第 (1)(b) 款行使其權力而拒絕認可某公司前，須給予該公司在金融管理專員以書面指明的期

PART IV
Section 16

4-4
Cap. 155

- 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

限內陳詞的機會，而該期限是在所有情況下均須屬合理的。(由 2015 年第 18 號第 59 條修訂)

(7) (由 1997 年第 4 號第 27 條廢除)

(8) 任何認可機構違反根據第 (1)(a) 或 (5) 款對其認可附加的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂；由 2015 年第 18 號第 59 條修訂)

(a) 一經循公訴程序定罪，可處第 7 級罰款；或

(b) 一經循簡易程序定罪，可處第 5 級罰款，

如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

(9) 現宣布在不限制第 (1)(a) 或 (5) 款的一般性的原則下，根據該款對某項認可所附加的條件——(由 2015 年第 18 號第 59 條修訂)

(a) 可一般地或在任何個別情況下，對與該項認可有關的認可機構所經營的銀行業務、作為接受存款公司經營接受存款的業務或作為有限制牌照銀行經營接受存款的業務(視屬何情況而定)，施加限制；(由 2015 年第 18 號第 59 條修訂)

(aa)-(ac) (由 2015 年第 18 號第 59 條廢除)

(b) 即使本條例的任何其他條文或任何其他成文法則(包括《公司條例》(第 622 章))的條文另有規定，可就與該項認可有關的認可機構的帳目，包括就以下各項施加規定——(由 2012 年第 28 號第 912 及 920 條修訂)

(i) 第 60(11)條所指的該機構的經審計的周年帳目；

(ii) 該等經審計的周年帳目的任何補充資料；

(iii) 《公司條例》(第 622 章)第 388 條所指的董事報告書；(由 2012 年第 28 號第 912 及 920 條修訂)

(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

- (iv) 該機構的現金流動表，連同該現金流動表上的任何附註（如該表並未構成該等經審計的周年帳目的部分）；
 - (v) 該等經審計的周年帳目、該等補充資料、該報告書、該現金流動表或該等附註的披露（不論是否向公眾或其他人士披露）。
- (10) 為使謀求認可的公司有所遵循，金融管理專員可不時安排擬備並安排藉憲報公告刊登不抵觸本條例的指引，表明他擬行使本條及附表 7 向他授予或委予的職能的方式。

(由 1997 年第 4 號第 7 條修訂)

- 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. 擬成立的公司的認可申請**

任何團體如擬成立一間公司，以經營第 15(1)條所提述的業務，可向金融管理專員申請，要求獲告知在該公司成立為法團後會否獲認可經營該項業務；如有任何該項申請，第 15(2) 及 16 條以及附表 7 的條文，須為顧及該項申請作必需的變通而理解並具有效力。

18. 對認可的更改

- (1) 接受存款公司一經獲認可經營銀行業務或作為有限制牌照銀行經營接受存款業務，即不再是接受存款公司。
- (2) 有限制牌照銀行一經獲認可經營銀行業務或作為接受存款公司經營接受存款業務，即不再是有限制牌照銀行。
- (3) 銀行一經獲認可作為接受存款公司或作為有限制牌照銀行而經營接受存款業務，即不再是銀行。
- (4) 金融管理專員可藉向任何認可機構送達的書面通知，同意該機構繼續持有存款——
 - (a) 而該筆存款，是該機構在第 (1)、(2) 或 (3) 款適用於該機構的日期前所合法接受的；
 - (b) 而如非有本款的規定，在該日期或該日期後持有該筆存款是會違反第 11、12 或 14 條的條文的；及
 - (c) 但須受他認為於個別情況下恰當附加於該項同意的條件（如有的話）所規限，

而據此該機構如在該日期或該日期之後，依據該項同意並按照該等條件（如有的話）繼續持有該筆存款，則須當作沒有因此而違反任何該等條文。

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

- (5) 在不限制第 (4)(c) 款的一般性的原則下，金融管理專員可藉向任何認可機構送達的書面通知，對依據第 (4) 款給予該機構的同意附加他認為恰當的條件（包括藉修訂已附加於該項同意的條件而附加者），或按他認為恰當，取消任何已附加於該項同意的條件。
- (6) 在不限制第 (4)(c) 或 (5) 款的一般性的原則下，該款提述的條件可指明——
- 有關認可機構可持有第 (4) 款所提述的存款的期間；
 - 該機構可持有或動用該筆存款的方式。
- (7) 金融管理專員可藉向任何認可機構送達的書面通知，規定該機構在通知書內指明的期限，按該通知書內指明的方式，呈交他為確定該機構是否正遵從第 (4)(c) 或 (5) 款所提述而且是附加於依據第 (4) 款給予該機構的同意的條件而合理地規定的資料。
- (8) *(由 1997 年第 4 號第 27 條廢除)*
- (9) 任何認可機構違反第 (4)(c) 或 (5) 款所提述而且是附加於依據第 (4) 款給予該機構的同意的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪——*(由 2001 年第 32 號第 24 條修訂)*
- 一經循公訴程序定罪，可處第 7 級罰款；或
 - 一經循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。*(由 1997 年第 4 號第 27 條修訂)*
- (10) 任何認可機構無合理辯解而沒有遵從根據第 (7) 款所作的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——*(由 2001 年第 32 號第 24 條修訂)*
- 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或

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

4-13
第 155 章

第 IV 部
第 19 條

- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
- (11) 任何人就根據第 (7) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。(由 1997 年第 4 號第 27 條修訂)

19. 認可機構須繳付的費用

- (1) 認可機構須在其獲認可日期後 14 天內，向庫務署署長繳

PART IV
Section 19

4-14
Cap. 155

- 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

4-15
第 155 章

第 IV 部
第 20 條

付費用如下 ——

- (a) 如屬銀行，繳付附表 2 所指明的銀行牌照費；
- (b) 如屬接受存款公司，繳付附表 2 所指明的註冊費；
- (c) 如屬有限制牌照銀行，繳付附表 2 所指明的有限制銀行牌照費。

(2) 認可機構 ——

- (a) 如屬銀行，須每年在其獲認可日期的周年日，向庫務署署長繳付附表 2 所指明的銀行牌照續期費；
- (b) 如屬接受存款公司，須每年在下述日子向庫務署署長繳付附表 2 所指明的註冊續期費 ——
 - (i) 如該公司於 1976 年 4 月 1 日正在經營接受存款業務，則為每年的 4 月 1 日；
 - (ii) 如第 (i) 節不適用，則為其獲認可日期的周年日；
- (c) 如屬有限制牌照銀行，須每年在其獲認可日期的周年日，向庫務署署長繳付附表 2 所指明的有限制銀行牌照續期費。

20. 認可機構的紀錄冊等

- (1) 金融管理專員須以他認為適當的形式，備存載有下述資料的紀錄冊 ——
 - (a) 每間銀行的名稱及其在香港的主要營業地點的地址；

PART IV
Section 20

4-16
Cap. 155

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;

4-17
第 155 章

第 IV 部
第 20 條

- (b) 有本地代表辦事處的每間銀行的名稱，以及每個本地代表辦事處在香港的營業地點的地址；
- (c) 每間接受存款公司的名稱及其在香港的主要營業地點的地址；
- (d) 每間有限制牌照銀行的名稱及其在香港的主要營業地點的地址；
- (e) 如屬在香港以外成立為法團的銀行（包括 (b) 段所提述的銀行）、接受存款公司或有限制牌照銀行，它在香港以外的主要營業地點的地址；（由 2002 年第 6 號第 4 條修訂）
- (ea) 如屬註冊機構——
 - (i) 每名有關人士的姓名及營業地址；
 - (ii) 每名有關人士以何種身分就某類受規管活動中的受規管職能而受聘用；
 - (iii) 每名有關人士首次如此受聘用的日期；及
 - (iv) 金融管理專員在顧及為施行《證券及期貨條例》（第 571 章）第 136(2) 條而根據該條例第 397 條訂立的規則後認為合適的其他資料，
而金融管理專員須在本段生效日期之後 12 個月內備存載有本段所指的資料的紀錄冊；及（由 2002 年第 6 號第 4 條增補）
- (f) 金融管理專員認為適當的其他與銀行、本地代表辦事處、接受存款公司或有限制牌照銀行有關的詳情（包括原訟法庭根據第 53E(1) 條作出的任何命令的詳情）。（由 1998 年第 25 號第 2 條修訂）
- (2) 紀錄冊須存放於金融管理專員的辦事處或金融管理專員在憲報公布的其他地點。
- (3) 金融管理專員可規定任何認可機構（包括謀求成為註冊機構的認可機構）或本地代表辦事處，為施行第 (1) 款而向他呈交他為備存紀錄冊而合理地要求提供的資料，但

PART IV
Section 20

4-18
Cap. 155

- (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

該等資料只限於與該機構或該辦事處（視屬何情況而定）有關的資料。該等資料須在金融管理專員規定的限期內按他規定的方式呈交。（由 2002 年第 6 號第 4 條代替）

- (4) 根據第 (3) 款呈交的任何資料如在呈交後有所改變，呈交該等資料的認可機構或本地代表辦事處須在以下期間內，將該等改變以書面通知金融管理專員——

- (a) 除 (b) 段另有規定外，在該改變發生後 21 天內；
(b) 如屬第 (1)(ea) 款適用者，在該改變發生後 7 個營業日內。（由 2002 年第 6 號第 4 條代替）

(4A) 為使任何公眾人士能確定與其往來的人是否就某註冊機構而言為有關人士；及在該人為該有關人士的情況下，得以確定該人以何種身分就受規管活動中的受規管職能而受聘用及其首次如此受聘用的日期，根據第 (1)(ea) 款而載於紀錄冊的資料須根據第 (5) 款供公眾查閱。（由 2002 年第 6 號第 4 條增補）

(4B) 在不損害本條其他條文的一般性的原則下，金融管理專員須安排在紀錄冊與第 (1)(ea) 款有關的範圍內，將紀錄冊以聯機紀錄形式提供予公眾查閱。（由 2002 年第 6 號第 4 條增補）

- (5) 除第 (5A) 款另有規定外，公眾人士可自金融管理專員在憲報所公布的日期起，在如此公布的時間內，繳付附表 2 指明的費用而——（由 2002 年第 6 號第 4 條修訂）

- (a) 查閱紀錄冊，或取得紀錄冊內記項的副本，或取得紀錄冊的摘錄；或
(b) 查閱根據第 15(2)(a) 條向金融管理專員提交的任何文件，或取得該文件的副本或摘錄。

(5A) 凡有關紀錄冊或有關文件是以聯機紀錄形式提供予公眾查閱，則無需就第 (5) 款提述的查閱或副本或摘錄的取得而繳付該款提述的費用。（由 2002 年第 6 號第 4 條增補）

- (6) 任何文件如看來是——

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

4-21
第 155 章

第 IV 部
第 20 條

- (a) 紀錄冊內任何記項或摘錄的副本，或一間公司根據本條例向金融管理專員提交的任何文件的副本；及
- (b) 經金融管理專員簽署與核證為 (a) 段提述的記項、摘錄或文件的真正副本，
- 則在任何法庭的刑事或民事程序中一經提交，無須再作證明，即可接納為證據，而 ——
- (i) 在沒有相反證據的情況下，法庭須推定 ——
- (A) 該簽署及核證是金融管理專員的簽署及核證；及
- (B) 該文件為 (a) 段提述的記項、摘錄或文件的真正及正確副本；及
- (ii) 該文件為其內所載的一切事宜的表面證據。
- (7) 任何認可機構或本地代表辦事處如無合理辯解而沒有遵從根據第 (3) 款所作的任何規定或沒有遵從第 (4) 款，則沒有遵從該規定或該款的該認可機構的每名董事、每名行政總裁及每名經理，及沒有遵從該規定或該款的該本地代表辦事處的任何主管或看來是主管該本地代表辦事處的人均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂；由 2002 年第 6 號第 4 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。 (由 1997 年第 4 號第 27 條修訂)
- (8) 如任何認可機構或本地代表辦事處根據第 (3) 或 (4) 款而呈交的任何資料在要項上是虛假的，則該認可機構的每名董事、每名行政總裁及每名經理，或任何主管或看似是主管該本地代表辦事處的人 (視屬何情況而定) 均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂；由 2002 年第 6 號第 4 條修訂)

PART IV
Section 20

4-22
Cap. 155

- (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),

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (9) 現宣布 ——
- (a) 認可機構符合《證券及期貨條例》(第 571 章)附表 10 第 25(a) 或 32 條所指一事，不得作為該機構不遵從金融管理專員為施行第 (1)(ea) 款而根據第 (3) 款發出尋求該機構呈交資料的規定的理由；而第 (4)、(7) 及 (8) 款須據此解釋；
- (b) 有關人士符合《證券及期貨條例》(第 571 章)附表 10 第 26(a) 或 33 條所指一事，並禁止在紀錄冊內載有任何第 (1)(ea) 款所提述並關乎他的資料。(由 2002 年第 6 號第 4 條增補)
- (10) 在本條中 ——
- “有關人士”(relevant individual) 就任何註冊機構而言，指任何為該機構 (或代該機構或藉與該機構訂立的安排) 執行任何受規管活動中的受規管職能的人；
- “受規管職能”(regulated function) 就任何註冊機構以業務形式進行的某類受規管活動而言，指為該機構 (或代該機構或藉與該機構訂立的安排) 執行的任何與該類活動有關的職能 (通常由會計師、文員或出納員執行的工作除外)；
- “營業日”(business day) 指任何日子，但以下日子除外 ——
- (a) 公眾假日；或
- (b) 《釋義及通則條例》(第 1 章)第 71(2) 條中所界定的烈風警告日或黑色暴雨警告日。(由 2002 年第 6 號第 4 條增補)

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

4-27
第 155 章

第 IV 部
第 21 條

PART IV
Section 21

4-28
Cap. 155

21. 將名稱載入紀錄冊或將名稱從紀錄冊上刪除以及暫停認可的公布

- (1) 凡銀行 (包括第 20(1)(b) 條提述的銀行)、接受存款公司或有限制牌照銀行的名稱載入紀錄冊，金融管理專員須於其後在合理切實可行的範圍內盡快在憲報刊登該記項的公告。
- (2) 凡公司因第 18(1)、(2) 或 (3) 條而分別不再是接受存款公司、有限制牌照銀行或銀行，金融管理專員須於其後在合理切實可行的範圍內盡快——
 - (a) 將該前接受存款公司、前有限制牌照銀行或前銀行 (視屬何情況而定) 的名稱從紀錄冊上刪除；及
 - (b) 在憲報刊登該項刪除的公告。
- (3) 凡認可機構的認可根據本條例撤銷，金融管理專員須於該項撤銷生效後，在合理切實可行的範圍內盡快——
 - (a) 將該前認可機構的名稱從紀錄冊上刪除；及
 - (b) 在憲報刊登該項撤銷的公告。
- (4) 凡認可機構的認可根據第 24 或 25 條暫停，金融管理專員須於其後在合理切實可行的範圍內盡快——
 - (a) 在紀錄冊內該認可機構的名稱旁加以註明，表示其認可已經如此暫停，而該項暫停如有指明期限，則須在該項註明中提供該期限的詳情；及
 - (b) 在憲報刊登該項註明的公告。

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.

4-29
第 155 章

第 IV 部
第 21 條

- (5) 凡有一項設立本地代表辦事處的批准根據本條例撤銷，金融管理專員須於其後在合理切實可行的範圍內盡快——
- (a) 將維持經營該本地代表辦事處的銀行的名稱從紀錄冊上刪除；及
 - (b) 在憲報刊登該項刪除的公告。
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PART IV
Section 21

4-30
Cap. 155

- (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.
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第 V 部**認可的撤銷***(第 V 部由 1995 年第 49 號第 6 條代替)***22. 認可的撤銷**

- (1) 在符合第 (1A) 及 (3) 款及第 23(1) 條的規定下，金融管理專員可在諮詢財政司司長後，提議——*(由 1997 年第 362 號法律公告修訂；由 2005 年第 19 號第 9 條修訂)*
 - (a) 以附表 8 指明而適用於某認可機構或與該機構有關的任何一項或多於一項理由；及
 - (b) 藉向該機構送達的書面通知，
撤銷該認可機構的認可。
- (1A) 如撤銷某認可機構的認可的理由是該機構以書面向金融管理專員要求撤銷其認可，則第 (1) 款中須在提議撤銷認可機構的認可前諮詢財政司司長的規定並不適用。
(由 2005 年第 19 號第 9 條增補)
- (2) *(由 1997 年第 4 號第 27 條廢除)*
- (3) 如——
 - (a) 任何認可機構向金融管理專員送達書面通知，述明它不擬根據第 132A(2) 條就其認可根據第 (1) 款被提議撤銷一事而提出上訴；
 - (b) 任何認可機構就其認可根據第 (1) 款被提議撤銷一事在《行政上訴規則》(第 1 章，附屬法例 A) 內所指明的可根據第 132A(2) 條提出上訴的期限已屆滿，但該認可機構並沒有提出上訴；或
 - (c) 任何認可機構根據第 132A(2) 條就其認可根據第 (1) 款被提議撤銷一事而提出的上訴並不成功，*(由 1997 年第 4 號第 27 條修訂)*

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

金融管理專員須於其後在合理切實可行的範圍內，盡快藉向該機構送達的書面通知，指明該項撤銷的生效日期（而該項認可即據此於該日期及由該日期起予以撤銷）。

- (4) 金融管理專員可藉向任何認可機構（包括前認可機構）送達的書面通知，同意該機構繼續持有存款——
- (a) 而該筆存款，是該機構在其認可根據第 (1) 款被提議撤銷的生效日期（在根據第 (3) 款向其送達的通知書內指明者）前所合法接受的；
 - (b) 而如非有本款的規定，在該日期或該日期之後持有該筆存款是會違反第 11、12 或 23(2) 條的條文的；及
 - (c) 但須受他認為於個別情況下恰當附加於該項同意的條件（如有的話）所規限，

而據此該機構如在該日期或該日期之後，依據該項同意並按照該等條件（如有的話）繼續持有該筆存款，則須當作沒有因此而違反任何該等條文。

- (5) 在不限制第 (4)(c) 款的一般性的原則下，金融管理專員可藉向任何認可機構（或前認可機構）送達的書面通知，對依據第 (4) 款給予該機構的同意附加他認為恰當的條件（包括藉修訂已附加於該項同意的條件而附加者），或按他認為恰當，取消任何已附加於該項同意的條件。
- (6) 在不限制第 (4)(c) 或 (5) 款的一般性的原則下，該款提述的條件可指明——
 - (a) 有關認可機構（或前認可機構）可持有第 (4) 款所提述的存款的期間；
 - (b) 該機構可持有或動用該筆存款的方式。
- (7) 金融管理專員可藉向任何認可機構（或前認可機構）送達的書面通知，規定該機構在該通知書內指明的期限，按該通知書內指明的方式，呈交他為確定該機構是否會遵從或正遵從（視屬何情況而定）第 (4)(c) 或 (5) 款所提述

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

而且是附加於依據第 (4) 款給予該機構的同意的條件而合理地規定的資料。

- (8) *(由 1997 年第 4 號第 27 條廢除)*
- (9) 金融管理專員如根據第 (3) 款向任何認可機構送達通知，須於其後在合理切實可行的範圍內，盡快在於香港行銷的一份英文報章 (以英文) 及一份中文報章 (以中文) 刊登一則公告，述明——
- (a) 該機構的名稱；
 - (b) 該機構的認可已經根據本條例撤銷；及
 - (c) 該項撤銷在何日並自何日起生效。
- (10) 任何認可機構 (或前認可機構) 違反第 (4)(c) 或 (5) 款所提述而且是附加於依據第 (4) 款給予該機構的同意的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪——*(由 2001 年第 32 號第 24 條修訂)*
- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款，
- 如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。*(由 1997 年第 4 號第 27 條修訂)*
- (11) 任何認可機構 (或前認可機構) 無合理辯解而沒有遵從根據第 (7) 款所作的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——*(由 2001 年第 32 號第 24 條修訂)*
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。*(由 1997 年第 4 號第 27 條修訂)*
- (12) 任何人就根據第 (7) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——

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

5-7
第 155 章

第 V 部
第 22 條

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；
或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)

PART V
Section 22

5-8
Cap. 155

- (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—

23. 撤銷認可之程序及效力

- (1) 金融管理專員在根據第 22(1) 條行使其權力而提議撤銷某認可機構的認可前，須將提議撤銷認可的一項或多於一項理由通知該機構，並須給予該機構在金融管理專員以書面指明的期限內陳詞的機會，而該期限是在所有情況下均須屬合理的。
- (2) 除第 22(4) 條另有規定外，如某認可機構的認可是以某業務為標的，而金融管理專員提議撤銷該認可，則當該項撤銷按照第 22(3) 條生效，該機構須立即停止經營該業務。(由 1997 年第 4 號第 8 條修訂；由 2015 年第 18 號第 60 條修訂)
- (3) 第 22(4) 條或第 (2) 款的施行，並不損害任何人向該條或該款 (視屬何情況而定) 所提述的認可機構 (或前認可機構) 強制執行或以其他方式維護任何權利或權益，亦不損害該機構向任何人強制執行或以其他方式維護任何權利或權益。
- (4) 凡有關認可機構的認可被撤銷的理由是該機構以書面要求金融管理專員撤銷其認可，則第 (1) 款不適用。(由 1997 年第 4 號第 8 條增補)

- (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*)

第 VI 部**認可的暫停***(第 VI 部由 1995 年第 49 號第 6 條代替)***24. 臨時暫停認可**

(1) 凡有以下情況——

- (a) 金融管理專員根據第 22(1) 條可對某認可機構行使他的權力 (而不論金融管理專員是否已就該機構遵從第 23(1) 條); 及
- (b) 金融管理專員——
 - (i) 認為為符合該機構的存款人或潛在存款人的利益而採取緊急行動是有需要的; 或
 - (ii) 獲財政司司長給予意見, 表示他認為採取緊急行動是符合公眾利益的,

則金融管理專員在諮詢財政司司長後——*(由 1997 年第 362 號法律公告修訂)*

- (i) 可藉向該機構送達的書面通知, 暫停其認可為期不超逾 14 天;
 - (ii) 如認為適當, 可因該事情緊急或其他理由, 不給予該機構陳詞的機會而如此暫停該項認可。
- (2) 任何根據第 (1) 款發出的通知書, 可隨附一份通知, 述明金融管理專員正考慮是否根據第 22(1) 或 25 條行使其權力。
- (3) 第 (2) 款提述的任何隨附通知須告知有關認可機構它根據第 23(1) 及 26 條所具有的權利及它可以何方式行使該等權利。
- (4) 如金融管理專員藉著向任何屬於暫停認可 (根據本條或第 25 條作出者) 的標的之認可機構送達書面通知, 決定

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.

6-3
第 155 章

第 VI 部
第 24 條

- 該認可機構的暫停認可在其期限屆滿前某日期終止，則該暫停認可須在該日期終止。
- (5) 金融管理專員可藉向任何認可機構送達的書面通知，同意該機構繼續持有存款——
- (a) 而該筆存款，是該機構在其認可根據第 (1) 款被暫停的生效日期（在根據第 (1) 款向其送達的通知書內指明者）前所合法接受的；
 - (b) 而如非有本款的規定，在該日期或該日期之後持有該筆存款是會違反第 11、12 或 27(1) 條的；及
 - (c) 但須受他認為於個別情況下恰當附加於該項同意的條件（如有的話）所規限，
- 而據此該機構如在該日期或該日期之後，依據該項同意並按照該等條件（如有的話）繼續持有該筆存款，則須當作沒有因此而違反該條。
- (6) 在不限制第 (5)(c) 款的一般性的原則下，金融管理專員可藉向任何認可機構送達的書面通知，對依據第 (5) 款給予該機構的同意附加他認為恰當的條件（包括藉修訂已附加於該項同意的條件而附加者），或按他認為恰當，取消任何已附加於該項同意的條件。
- (7) 在不限制第 (5)(c) 或 (6) 款的一般性的原則下，該款提述的條件可指明——
- (a) 有關認可機構可持有第 (5) 款所提述的存款的期間；
 - (b) 該機構可持有或動用該筆存款的方式。
- (8) 金融管理專員可藉向任何認可機構送達的書面通知，規定該機構在該通知書內指明的期限，按該通知書內指明的方式，呈交他為確定該機構是否正遵從第 (5)(c) 或 (6) 款所提述而且是附加於依據第 (5) 款給予該機構的同意的條件而合理地規定的資料。
- (9) (由 1997 年第 4 號第 27 條廢除)

PART VI
Section 24

6-4
Cap. 155

- (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.

- (10) 任何認可機構違反第 (5)(c) 或 (6) 款所提述而且是附加於依據第 (5) 款給予該機構的同意的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，
- 如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。 (由 1997 年第 4 號第 27 條修訂)
- (11) 任何認可機構無合理辯解而沒有遵從根據第 (8) 款所作的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。 (由 1997 年第 4 號第 27 條修訂)
- (12) 任何人就第 (8) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。 (由 1997 年第 4 號第 27 條修訂)

- (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

6-7
第 155 章

第 VI 部
第 25 條

PART VI
Section 25

6-8
Cap. 155

25. 暫停認可

- (1) 在符合第 26 條的規定下，如金融管理專員根據第 22(1) 條可對某認可機構行使其權力（而不論金融管理專員是否已就該機構遵從第 23(1) 條），金融管理專員在諮詢財政司司長後，可藉向該機構送達的書面通知，暫停該機構的認可為期不超過 6 個月。（由 1997 年第 362 號法律公告修訂）
- (2) 金融管理專員在諮詢財政司司長後，可在根據本條所作的暫停認可的期限屆滿前——（由 1997 年第 362 號法律公告修訂）
 - (a) 藉向屬暫停認可的標的之認可機構送達的書面通知，將該項暫停認可續期；及
 - (b) 將該項暫停認可續期為期不超過 6 個月，由緊接該項暫停認可屆滿時開始計算。

- 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) 金融管理專員可藉向任何認可機構送達的書面通知，同意該機構繼續持有存款 ——
- (a) 而該筆存款，是該機構在其認可根據第 (1) 款被暫停的生效日期（在根據第 (1) 款向其送達的通知書內指明者）前所合法接受的；
 - (b) 而如非有本款的規定，在該日期或該日期之後持有該筆存款是會違反第 11、12 或 27(1) 條的；及
 - (c) 但須受他認為於個別情況下恰當附加於該項同意的條件（如有的話）所規限，
- 而據此該機構如在該日期或該日期之後，依據該項同意並按照該等條件（如有的話）繼續持有該筆存款，則須當作沒有因此而違反該條。
- (4) 在不限制第 (3)(c) 款的一般性的原則下，金融管理專員可藉向任何認可機構送達的書面通知，對依據第 (3) 款給予該機構的同意附加他認為恰當的條件（包括藉修訂已附加於該項同意的條件而附加者），或按他認為恰當，取消任何已附加於該項同意的條件。
- (5) 在不限制第 (3)(c) 或 (4) 款的一般性原則下，該款提述的條件可指明 ——
- (a) 有關認可機構可持有第 (3) 款所提述的存款的期間；
 - (b) 該機構可持有或動用該筆存款的方式。
- (6) 金融管理專員可藉向任何認可機構送達的書面通知，規定該機構在該通知書內指明的期限，按該通知書內指明的方式，呈交他為確定該機構是否正遵從第 (3)(c) 或 (4) 款所提述而且是附加於依據第 (3) 款給予該機構的同意的條件而合理地規定的資料。
- (7) (由 1997 年第 4 號第 27 條廢除)
- (8) 任何認可機構違反第 (3)(c) 或 (4) 款所提述而且是附加於依據第 (3) 款給予該機構的同意的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂)

- (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

6-11
第 155 章

第 VI 部
第 25 條

- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，
如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
- (9) 任何認可機構無合理辯解而沒有遵從根據第 (6) 款所作的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
 - (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，
如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，
如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
- (10) 任何人就根據第 (6) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；
或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)

PART VI
Section 25

6-12
Cap. 155

- 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

6-13
第 155 章

第 VI 部
第 26 條

PART VI
Section 26

6-14
Cap. 155

26. 陳詞的機會

金融管理專員在根據第 25 條行使權力前，須將一項或多於一項理由通知有關認可機構，並給予該機構在金融管理專員以書面指明的期限內陳詞的機會，而該期限是在所有情況下均須屬合理的。

27. 暫停認可的效力

- (1) 在不損害本條的任何其他條文的原則下，凡某認可機構的以某業務為標的之認可根據第 24 或 25 條暫停，則在金融管理專員就該項暫停而給予的通知書所指明的日期並自該日期起，該機構須停止經營該業務，除非與直至暫停認可期終止而沒有撤銷該項認可，亦沒有根據本部另延展暫停期。（由 1997 年第 4 號第 9 條修訂；由 2015 年第 18 號第 61 條修訂）
- (2) 即使某認可機構的認可根據第 24 或 25 條暫停，該機構在其認可暫停的期間，就下述各項而言須繼續為認可機構，但如根據該條送達予該機構的有關通知書內另有指明者則除外——
 - (a) 第 19 條；
 - (b) 第 VIII、IX 及 X 部；
 - (c) 根據本條例委予銀行、接受存款公司或有限制牌照銀行（視屬何情況而定）的所有責任。

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;

6-15
第 155 章

第 VI 部
第 27 條

- (3) 第 24(5) 及 25(3) 條以及本條的施行，並不損害任何人向第 (1) 款所提述的認可機構強制執行或以其他方式維護任何權利或權益，亦不損害該機構向任何人強制執行或以其他方式維護任何權利或權益。
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PART VI
Section 27

6-16
Cap. 155

- (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.
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第 VII 部**認可的轉讓**

(第 VII 部由 1995 年第 49 號第 6 條代替)

28. 認可的轉讓

- (1) 在符合本條例的規定下，任何認可機構的認可可由該機構轉讓予另一人。
- (2) 認可機構的認可轉讓不得生效，直至金融管理專員批給該項轉讓為止或直至金融管理專員指明的較後日期為止。

29. 申請轉讓

- (1) 擬獲轉讓認可機構的認可的人，須向金融管理專員提交認可轉讓的申請。
- (2) 在符合必需的變通下，第 15、16、17 及 19 條以及附表 7 適用於認可機構的認可轉讓申請，猶如該項申請是根據第 15(1) 條作出的認可申請一樣。

30. 轉讓證明書等

金融管理專員如批給認可機構的認可的轉讓，須——

- (a) 向申請人發出轉讓證明書；及
- (b) 遵從他認為適當的第 21 條中與認可轉讓有關的條文。

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

7-3
第 155 章

第 VII 部
第 31 條

PART VII
Section 31

7-4
Cap. 155

31. 出讓人及受讓人的法律責任及特權

轉讓證明書一經根據第 30 條發出 ——

- (a) 申請人即享有並可行使本條例的特權，以及須受本條例的法律責任及罰則的規限，猶如轉讓的認可原是批給申請人的一樣；及
- (b) 轉讓認可的人須停止獲認可，但該項轉讓不得影響該人或任何其他人在該項轉讓前所作、安排、准許或作出的作為或不作為所引致的法律責任。

32-43. (由 1995 年第 49 號第 6 條廢除)

- (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)

第 VIII 部**本地分行、本地辦事處、本地代表辦事處及費用 ***

編輯附註：

* (由 2001 年第 32 號第 4 條修訂)

44. 管制本地分行的設立等

- (1) 如無金融管理專員的批准，認可機構不得設立或維持經營其任何本地分行。
- (2) 第 (1) 款適用於每間認可機構，不論該認可機構是於本條例生效日期之前、當日或之後獲認可；第 (4) 及 (5) 款則適用於根據第 (1) 款批給的批准，不論該項批准是於本條例生效日期之前、當日或之後批給的。(由 1995 年第 49 號第 7 條修訂)
- (3) 第 (1) 款所指的批准，須當作已就本條例生效日期前已合法設立的任何本地分行而批給。
- (3A) 金融管理專員須當作已就於《2001 年銀行業 (修訂) 條例》(2001 年第 32 號) 第 2(a)(v) 條的生效日期 * 前已合法設立並符合“本地分行”的定義 (a)(i)(B) 或 (ii)(B) 或 (b)(ii) 段的本地分行，批給第 (1) 款所指的批准。(由 2001 年第 32 號第 5 條增補)
- (4) 金融管理專員可在任何時間，藉向任何認可機構送達的書面通知，對於就該機構的任何本地分行根據第 (1) 款批給的批准或根據第 (3) 或 (3A) 款當作已批給的批准，附加他認為恰當的條件，或按他認為恰當，修訂或取消任何已如此附加的條件。(由 2001 年第 32 號第 5 條修訂)
- (5) 金融管理專員可在任何時間，在他認為適當的情況下，撤銷就任何本地分行根據第 (1) 款批給的批准或根據第 (3)

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

或 (3A) 款當作已批給的批准。(由 2001 年第 32 號第 5 條修訂)

- (6) 金融管理專員如拒絕根據第 (1) 款批給批准，或根據第 (5) 款撤銷批准，須將該項拒絕或撤銷以書面通知有關認可機構。
- (7) (由 1997 年第 4 號第 27 條廢除)
- (8) 任何認可機構違反第 (1) 款或違反根據第 (4) 款附加的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，
- 如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

(由 1992 年第 82 號第 25 條修訂)

編輯附註：

* 生效日期：2002 年 5 月 24 日。

45. 就本地分行而支付的費用

- (1) 任何認可機構如根據第 44 條獲批准設立本地分行，須就該分行向庫務署署長繳付附表 2 所指明的費用，而該機構只要繼續維持經營該分行，則其後須在該機構獲認可的日期後每年的周年日，向庫務署署長繳付附表 2 所指明的費用。

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

8-5
第 155 章

第 VIII 部
第 45A 條

- (2) 任何認可機構如在本條例生效日期正維持經營第 44(3) 條適用的本地分行，只要其繼續維持經營該分行，則須於該機構獲認可日期後每年的周年日，向庫務署署長繳付附表 2 所指明的費用。
- (3) 任何認可機構如在《2001 年銀行業 (修訂) 條例》(2001 年第 32 號) 第 2(a)(v) 條的生效日期⁺，正維持第 44(3A) 條適用的本地分行，只要該機構繼續維持該分行，則須每年在該機構獲認可日期的周年日，向庫務署署長繳付附表 2 指明的費用。(由 2001 年第 32 號第 6 條增補)

(由 1995 年第 49 號第 8 條修訂)

編輯附註：

⁺ 生效日期：2002 年 5 月 24 日。

45A. 在本地辦事處開始營業須予通知

- (1) 認可機構須在其設立或維持的本地辦事處開始營業前，給予金融管理專員不少於 7 天的書面通知，告知——
- (a) 該本地辦事處的地址；
 - (b) 將在該本地辦事處推廣或協助的業務的性質；及
 - (c) 該本地辦事處擬開始營業的日期。

PART VIII
Section 45A

8-6
Cap. 155

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

8-7
第 155 章第 VIII 部
第 46 條

- (2) 如任何認可機構在本條的生效日期 + 已設立或正維持本地辦事處，而該辦事處已開始營業，則該機構須在該日期後 3 個月內以書面通知金融管理專員，告知 ——
- (a) 該本地辦事處的地址；及
- (b) 在該本地辦事處推廣或協助的業務的性質。
- (3) 任何認可機構違反第 (1) 或 (2) 款，其每名董事、每名行政總裁及每名經理均屬犯罪 ——
- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，
- 如屬持續的罪行，可就罪行持續的期間，另加每日第 2 級罰款。

(由 2001 年第 32 號第 7 條增補)

編輯附註：

+ 生效日期：2002 年 5 月 24 日。

46. 管制本地代表辦事處的設立等

- (1) 如無金融管理專員的批准，銀行不得設立或維持經營其任何本地代表辦事處。*(由 1993 年第 94 號第 11 條代替)*
- (2) 第 (1) 款所指的批准，須當作已就《1993 年銀行業 (修訂) 條例》#(1993 年第 94 號) 生效日期 * 前已合法設立的任何本地代表辦事處而批給。*(由 1993 年第 94 號第 11 條修訂)*
- (2A) 金融管理專員須當作已就符合下述條件的本地代表辦事處批給第 (1) 款所指的批准 ——

PART VIII
Section 468-8
Cap. 155

- (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)*

- (a) 是憑藉第 (9) 款中“銀行”的定義 (a) 及 (b)(i) 段而納入第 (1) 款的適用範圍的；並且
- (b) 是在《2001 年銀行業 (修訂) 條例》(2001 年第 32 號) 第 8(c) 條生效 + 前已合法設立的。(由 2001 年第 32 號第 8 條增補)
- (3) 除非金融管理專員信納該銀行受到有關銀行業監管當局充分監管，否則不得根據第 (1) 款批給批准。(由 1993 年第 94 號第 11 條修訂；由 1995 年第 49 號第 9 條修訂)
- (4) 金融管理專員可在任何時間，藉向任何銀行送達的書面通知，對於就該銀行的任何本地代表辦事處根據第 (1) 款批給的批准或根據第 (2) 或 (2A) 款當作已批給的批准，附加他認為恰當的條件，或按他認為恰當，修訂或取消任何已如此附加的條件。(由 2001 年第 32 號第 8 條修訂)
- (5) 金融管理專員可在任何時間，在他認為適當的情況下，撤銷就任何本地代表辦事處根據第 (1) 款批給的批准或根據第 (2) 或 (2A) 款當作已批給的批准。(由 2001 年第 32 號第 8 條修訂)
- (6) 金融管理專員如拒絕根據第 (1) 款批給批准，或根據第 (5) 款撤銷批准，須將該項拒絕或撤銷以書面通知有關銀行。
- (7) (由 1997 年第 4 號第 27 條廢除)
- (8) 任何本地代表辦事處如屬違反第 (1) 款而設立或維持經營的，或根據第 (4) 款就本地代表辦事處附加的任何條件被違反，則任何主管或看似是主管該本地代表辦事處的人均屬犯罪——
- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
- (9) 在本條中，“銀行”(bank) 指在香港以外成立為法團的公司而該公司——

- (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

8-11
第 155 章

第 VIII 部
第 47 條

- (a) 不是認可機構亦非在其成立為法團的地方獲承認作為中央銀行者；及
 - (b) (i) 是在其成立為法團的地方獲認可或承認為銀行者；或
 - (ii) 可在其成立為法團的地方或在其他地方，合法地接受公眾人士的存款（不論款項是否存入來往帳戶）。（由 2001 年第 32 號第 8 條代替）
- （由 1992 年第 82 號第 25 條修訂）

編輯附註：

+ 生效日期：2002 年 5 月 24 日。

“《1993 年銀行業（修訂）條例》”乃“Banking (Amendment) Ordinance 1993”之譯名。

* 生效日期：1993 年 12 月 31 日。

47. 本地代表辦事處的資料提供及審查

- (1) 任何依據第 46 條維持經營本地代表辦事處的銀行——（由 1993 年第 94 號第 12 條修訂）
 - (a) 須按金融管理專員的規定，向他呈交關於該代表辦事處的職能及工作的資料；

PART VIII
Section 47

8-12
Cap. 155

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)*

- (b) 在金融管理專員欲審查該代表辦事處的職能及工作時，須就該目的讓一名進行審查的人取用該代表辦事處備存的文件以及為進行審查而規定的資料，並讓該人使用為進行審查而規定的設施，亦須向該名進行審查的人交出他規定的文件或其他資料。（由 1992 年第 82 號第 25 條修訂）
- (2) 任何人沒有遵從金融管理專員根據本條作出的任何規定，即屬犯罪 ——（由 1992 年第 82 號第 25 條修訂）
- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。
- (3) 任何人就本條的目的，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (4) 如任何銀行根據本條交出的任何簿冊、帳目、文件、證券、保證或資料，在要項上是虛假的，該銀行的每名董事、每名行政總裁及每名經理均屬犯罪 ——（由 2001 年第 32 號第 24 條修訂）
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- （由 1997 年第 4 號第 27 條修訂）

- (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. 就本地代表辦事處而支付的費用

- (1) 任何銀行如根據第 46(1) 條獲批准設立本地代表辦事處，須就該代表辦事處向庫務署署長繳付附表 2 所指明的費用，而該銀行只要繼續維持經營該代表辦事處，則其後須在根據該條批給批准的日期後每年的周年日，向庫務署署長繳付附表 2 所指明的費用。
- (2) 任何銀行如在《1993 年銀行業 (修訂) 條例》#(1993 年第 94 號) 生效日期 * 正維持經營第 46(2) 條適用而於 1982 年 4 月 1 日前設立的本地代表辦事處，只要其繼續維持經營該代表辦事處，則須於每年 4 月 1 日向庫務署署長繳付附表 2 所指明的費用。
- (3) 任何銀行如在《1993 年銀行業 (修訂) 條例》#(1993 年第 94 號) 生效日期 * 正維持經營第 46(2) 條適用而於 1982 年 4 月 1 日當日或之後設立的本地代表辦事處，只要其繼續維持經營該代表辦事處，則須於根據本條例所廢除的《1964 年銀行業條例》+(第 155 章, 1983 年版) 第 12C(1) 條獲批給批准設立該本地代表辦事處的日期後每年的周年日，向庫務署署長繳付附表 2 所指明的費用。
- (4) 任何銀行如在《2001 年銀行業 (修訂) 條例》(2001 年第 32 號) 第 8(c) 條的生效日期 △，正維持第 46(2A) 條適用的本地代表辦事處，只要該銀行繼續維持該代表辦事處，則須在每年的 4 月 1 日向庫務署署長繳付附表 2 指明的費用。 (*由 2001 年第 32 號第 9 條增補*)

(*由 1993 年第 94 號第 13 條修訂*)

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

8-17
第 155 章

第 VIII 部
第 48 條

編輯附註：

“《1993 年銀行業（修訂）條例》”乃“Banking (Amendment) Ordinance 1993”之譯名。

* 生效日期：1993 年 12 月 31 日。

+ “《1964 年銀行業條例》”乃“Banking Ordinance 1964”之譯名。

△ 生效日期：2002 年 5 月 24 日。

PART VIII
Section 48

8-18
Cap. 155

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.

第 IX 部**海外分行、海外代表辦事處、費用及海外銀行法團 ***

編輯附註：

* (由 1993 年第 94 號第 14 條修訂)

49. 管制海外分行及海外代表辦事處的設立等

- (1) 在不損害第 44 條的原則下，在香港成立為法團的認可機構須受一項條件規限，即如無金融管理專員的批准，該機構不得設立或維持經營其任何海外分行或海外代表辦事處。
- (2) 第 (1) 款適用於每間在香港成立為法團的認可機構，不論該機構是於本條例生效日期之前、當日或之後獲認可；第 (4) 及 (5) 款則適用於根據第 (1) 款批給的批准，不論該項批准是於本條例生效日期之前、當日或之後批給的。
(由 1995 年第 49 號第 10 條修訂)
- (3) 第 (1) 款所指的批准，須當作已就本條例生效日期前已合法設立的任何海外分行或海外代表辦事處而批給。
- (4) 金融管理專員可在任何時間，藉向任何認可機構送達的書面通知，對於就該機構的任何海外分行或海外代表辦事處根據第 (1) 款批給的批准或根據第 (3) 款當作已批給的批准，附加他認為恰當的條件，或按他認為恰當，修訂或取消任何已如此附加的條件。
- (5) 金融管理專員可在任何時間，在他認為適當的情況下，撤銷就任何海外分行或海外代表辦事處根據第 (1) 款批給的批准或根據第 (3) 款當作已批給的批准。

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

9-3
第 155 章

第 IX 部
第 50 條

- (6) 金融管理專員如拒絕根據第 (1) 款批給批准，或根據第 (5) 款撤銷批准，須將該項拒絕或撤銷以書面通知有關認可機構。
- (7) (由 1997 年第 4 號第 27 條廢除)
- (8) 任何認可機構違反第 (1) 款的條件或違反根據第 (4) 款附加的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，
- 而如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
- (由 1992 年第 82 號第 25 條修訂)

50. 關於海外分行及海外代表辦事處的條件

- (1) 每間在香港成立為法團而維持經營其海外分行的認可機構，須受下述條件規限，即——
- (a) 該機構須按金融管理專員指定的格式及指定的相隔期間，向他呈交顯示該海外分行的資產及負債的申報表；

PART IX
Section 50

9-4
Cap. 155

- 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

- (b) 該機構須向金融管理專員呈交他認為為恰當了解該海外分行的職能及工作而需要的進一步資料；該等資料須在金融管理專員規定的期限內，按他規定的方式呈交；
- (c) 如金融管理專員規定任何依據 (a) 段向他呈交的申報表，或任何依據 (b) 段規定向他提交的資料，須隨附一份由該機構在符合第 (2A) 款的規定下委任的一名或多於一名核數師所擬備的報告書，則該機構須呈交一份報告書，載明據該名或該等核數師的意見，該申報表或該等資料是否在所有要項上均正確地從該海外分行的簿冊及紀錄編製而成；(由 1992 年第 67 號第 2 條修訂)
- (d) 如金融管理專員欲審查該海外分行的簿冊、帳目及交易，該機構須就該目的讓一名在維持經營該分行的地方進行審查的人取用該分行的簿冊及帳目、其資產所有權的文件及其他文件、該分行就其顧客的交易而由其持有的所有證券、保證、該分行的現金以及為進行審查而規定的資料，並讓該人使用為進行審查而規定的設施，該機構亦須向該名進行審查的人交出他所規定的簿冊、帳目、文件、證券、保證、現金或其他資料：
- 但在與該項審查的進行相符的範圍內，不得規定在會干擾該海外分行恰當經營其日常業務的時間及地點交出該等簿冊、帳目、文件、證券、保證及現金。
(由 1992 年第 82 號第 25 條修訂)
- (2) 每間在香港成立為法團而維持經營海外代表辦事處的認可機構，須受下述條件規限，即——
- (a) 該機構須按金融管理專員的規定，向他呈交關於該海外代表辦事處的職能及工作的資料；
- (b) 如金融管理專員欲審查該海外代表辦事處的職能及工作，該機構須就該目的讓一名在維持經營該代表辦事處的地方進行審查的人取用該代表辦事處備存

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:

的文件，以及為進行審查而規定的資料，並讓該人使用為進行審查而規定的設施，該機構亦須向該名進行審查的人交出他所規定的文件或其他資料。（由 1992 年第 82 號第 25 條修訂）

(2A) 由認可機構委任以擬備第 (1)(c) 款規定的報告書的一名或多於一名核數師，須是——

- (a) 在如此規定呈交報告書前已由該機構委任，並獲得金融管理專員就擬備該報告書而批准的一名或多於一名核數師；
- (b) 由金融管理專員在諮詢該機構後，就擬備該報告書而批准的一名核數師，或就此而提名的核數師中其中一名核數師；或
- (c) (a) 段所提述的一名核數師及 (b) 段提述的一名核數師，

視乎金融管理專員的規定而定。（由 1992 年第 67 號第 2 條增補。由 1992 年第 82 號第 25 條修訂）

(3) 本條適用於每間在香港成立為法團的認可機構，不論該機構是於本條例生效日期之前、當日或之後認可的。（由 1995 年第 49 號第 11 條修訂）

(4) 任何認可機構違反第 (1) 或 (2) 款內任何條件，或沒有遵從該兩款內的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——（由 2001 年第 32 號第 24 條修訂）

- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 12 個月；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）

(5) 如任何認可機構根據本條交出的任何簿冊、帳目、文件、證券、保證或資料在要項上是虛假的，該機構的每名董事、每名行政總裁及每名經理均屬犯罪——（由 2001 年第 32 號第 24 條修訂）

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

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；
或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (6) 任何人就本條的目的，簽署任何他知道或理應知道在要
項上屬虛假的文件，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；
或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)

- 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

51. 就海外分行及海外代表辦事處而支付的費用

- (1) 每當在香港成立為法團的認可機構根據第 49(1) 條獲得批准設立海外分行或海外代表辦事處，該機構須就該分行或代表辦事處向庫務署署長繳付附表 2 所指明的費用，而該機構只要繼續維持經營該分行或代表辦事處，則其後須在每年該機構獲認可的日期後每年的周年日，向庫務署署長繳付附表 2 所指明的費用。
- (2) 在香港成立為法團的認可機構，如在本條例生效日期正維持經營第 49(3) 條適用的海外分行或海外代表辦事處，只要其繼續維持經營該分行或代表辦事處，則須於該機構獲認可的日期後每年的周年日，向庫務署署長繳付附表 2 所指明的費用。

(由 1995 年第 49 號第 12 條修訂)

- (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. 管制海外銀行法團的設立等**

(1) 在本條中 ——

“有關日期”(relevant day)指《1993 年銀行業(修訂)條例》
#(1993 年第 94 號)的生效日期*；

“海外銀行法團”(overseas banking corporation)指一間公司而
該公司 ——

- (a) 是在香港以外成立為法團(不論它是否一間認可機構)
的；及
- (b) 不論是否在香港以內或香港以外，亦不論是否以來
往帳戶，均可合法地從公眾人士處接受存款。

(2) 在香港成立為法團的認可機構及該機構的任何在香港
成立為法團的控權公司須各自受下述條件規限，
即 —— (由 2012 年第 28 號第 912 及 920 條修訂)

- (a) 如無金融管理專員批准，不得以任何方法設立或收
購海外銀行法團而使該海外銀行法團成為該機構或
該控權公司(視屬何情況而定)的附屬公司；(由
2012 年第 28 號第 912 及 920 條修訂)
- (b) 如就該海外銀行法團而批給的上述批准根據第(5)款
撤銷，不得在撤銷生效之時或之後維持經營該海外
銀行法團為一間附屬公司。

(3) 第(2)款所指的批准，須當作已就任何以下的海外銀行法
團而批給 ——

- (a) 該海外銀行法團於緊接有關日期前是某認可機構的
附屬公司或該機構任何控權公司的附屬公司；或
- (b) 該海外銀行法團在不遲於有關日期後的 3 個月，憑
藉某些作為或情況成為某認可機構的附屬公司或該
機構任何控權公司的附屬公司，而該等作為或情況
實質上在有關日期前已出現。(由 2012 年第 28 號
第 912 及 920 條修訂)

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

- (4) 金融管理專員可在任何時間，藉向任何認可機構或其控權公司送達的書面通知，對於就將成為或現時是該機構的附屬公司或該控權公司的附屬公司（視屬何情況而定）的任何海外銀行法團根據第 (2) 款批給的批准或根據第 (3) 款當作已批給的批准，附加他認為恰當的條件，或按他認為恰當，修訂或取消任何已如此附加的條件。上述附加、修訂或取消自有關通知指明的時間起生效，而該時間須在有關個案的整體情況下屬合理的。（由 1999 年第 42 號第 3 條修訂；由 2012 年第 28 號第 912 及 920 條修訂）
- (5) 金融管理專員可——
- (a) 在他認為適當的情況下；及
- (b) 在由他指明的生效時間，而該時間是在該情況的所有情形下均須屬合理的，
- 撤銷就任何海外銀行法團根據第 (2) 款批給的批准或根據第 (3) 款當作已批給的批准。
- (6) 金融管理專員如拒絕根據第 (2) 款批給批准，或根據第 (5) 款撤銷批准，須將該項拒絕或撤銷以書面通知有關認可機構或其有關控權公司。（由 2012 年第 28 號第 912 及 920 條修訂）
- (7) （由 1997 年第 4 號第 27 條廢除）
- (8) 任何認可機構或其控權公司違反第 (2) 款的條件或違反根據第 (4) 款附加的任何條件，該機構的或該控權公司的每名董事、每名行政總裁及每名經理均屬犯罪——（由 2001 年第 32 號第 24 條修訂；由 2012 年第 28 號第 912 及 920 條修訂）
- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款，
- 如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）
- （由 1993 年第 94 號第 15 條增補）

- (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*)

9-17
第 155 章

第 IX 部
第 51A 條

編輯附註：

* 生效日期：1993 年 12 月 31 日。

“《1993 年銀行業(修訂)條例》”乃“Banking (Amendment) Ordinance 1993”之譯名。

PART IX
Section 51A

9-18
Cap. 155

(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.

第 X 部**管制認可機構的權力****52. 金融管理專員的權力**

- (1) 凡 ——
- (a) 任何認可機構通知金融管理專員它 ——
 - (i) 相當可能會無能力履行它的義務；或
 - (ii) 無力償債或即將中止付款；
 - (b) 任何認可機構無能力履行它的義務或已中止付款；
 - (c) 金融管理專員認為 ——
 - (i) 任何認可機構正以有損以下人士的利益的方式經營其業務 ——
 - (A) 該機構的存款人或潛在存款人；
 - (B) 該機構的債權人；或
 - (C) 就某銀行而言，由該銀行根據其工具牌照發行或促進發行的任何儲值支付工具的使用者或潛在使用者；(由 2015 年第 18 號第 62 條代替)
 - (ii) 任何認可機構無力償債、相當可能會無能力履行它的義務或即將中止付款；
 - (iii) 任何認可機構已違反或沒有遵從本條例的任何條文；
 - (iv) 任何認可機構已違反或沒有遵從根據第 16 條附加於該機構的認可或批准的任何條件、第 49(1) 條指明的條件、第 50(1) 條指明的條件、第 50(2) 條指明的條件或第 51A(2) 條指明的條件；或

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;

- (v) 他根據第 22(1) 條提議撤銷某認可機構的認可的權力可予行使 (而不論第 23(1) 條是否已獲遵從); 或 (由 1997 年第 4 號第 10 條代替)
- (d) 財政司司長向金融管理專員給予意見, 表示他認為符合公眾利益須如此行事, (由 1997 年第 362 號法律公告修訂)
- 則金融管理專員在諮詢財政司司長後, 可不時在他覺得有需要時行使以下一項或多於一項權力 —— (由 1997 年第 362 號法律公告修訂)
- (A) 藉向該機構送達的書面通知, 規定該機構立即就其事務、業務及財產, 採取他認為有需要的任何行動或作出他認為有需要的任何作為或事情 (包括任何對該機構所經營的銀行業務、作為接受存款公司接受存款的業務或作為有限制牌照銀行接受存款的業務, 或經營根據工具牌照發行或促進發行儲值支付工具的業務 (視屬何情況而定) 施加限制的規定); (由 1995 年第 49 號第 13 條代替。由 1997 年第 4 號第 10 條修訂; 由 2015 年第 18 號第 62 條修訂)
- (B) 除第 (3E) 款另有規定外, 發出指示, 規定在該項指示的生效期間, 該機構須就其事務、業務及財產的管理向顧問徵詢意見, 而金融管理專員須為此目的委任一人為該機構的顧問; (由 1995 年第 49 號第 13 條代替)
- (C) 除第 (3D) 及 (3E) 款另有規定外, 發出指示, 規定在該項指示的生效期間, 該項指示所指明的該機構的該等事務、業務及財產須由一名經理人管理, 而金融管理專員須為此目的 ——
- (I) 委任一人為該機構的經理人; 及
- (II) 在該項指示中, 指明該名經理人須遵循 (與本條例的條文不抵觸者) 的一項或多於一項的基本目標; (由 1995 年第 49 號第 13 條代替)

- (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

(D) 向行政長官會同行政會議報告上述情況。(由 1999 年第 68 號第 3 條修訂)

(2) 除有第 (1)(a) 款指明的情況外，金融管理專員不得行使第 (1)(D) 款所授予的權力，除非情況如下——

(a) 該認可機構是在香港成立為法團而根據第 (1)(C) 款發出的指示正就該機構生效的——

(i) 他已向該機構及他認為適當的有關人士(如有的話)發出不少於 7 天(或根據第 (2A) 款容許的較短期間)的書面通知，述明——

(A) 他行使該項權力的意向；及

(B) 他行使該項權力的理由；及

(ii) 他已給予該機構及他認為適當的有關人士(如有的話)就此向他呈交書面申述的機會(該等申述(如有的話)即構成他向行政長官會同行政會議所作報告的一部分)；(由 1995 年第 49 號第 13 條代替。由 1999 年第 68 號第 3 條修訂)

(b) 該認可機構是在香港以外成立為法團而根據第 (1)(C) 款發出的指示正就該機構生效的——

(i) 他已按該機構在香港以外的主要營業地點，向該機構發出不少於 7 天(或根據第 (2A) 款容許的較短期間)的書面通知，述明——

(A) 他行使該項權力的意向；及

(B) 他行使該項權力的理由；及

(ii) 他已給予該機構就此向他呈交書面申述的機會(該等申述(如有的話)即構成他向行政長官會同行政會議所作報告的一部分)；(由 1995 年第 49 號第 13 條代替。由 1999 年第 68 號第 3 條修訂)

(c) 在任何其他情況——

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

- (i) 他已向該認可機構發出不少於 7 天 (或根據第 (2A) 款容許的較短期間) 的書面通知, 述明 ——
 - (A) 他行使該項權力的意向; 及
 - (B) 他行使該項權力的理由; 及
- (ii) 他已給予該機構就此向他呈交書面申述的機會 (該等申述 (如有的話) 即構成他向行政長官會同行政會議所作報告的一部分)。 (由 1995 年第 49 號第 13 條增補。由 1999 年第 68 號第 3 條修訂)
- (2A) 如有以下情形, 金融管理專員可向認可機構及任何有關人士給予少於第 (2) 款提述的 7 天的書面通知 —— (由 1995 年第 49 號第 13 條修訂)
 - (a) 他取得財政司司長的同意如此行事; 及 (由 1997 年第 362 號法律公告修訂)
 - (b) 在當時的情況下, 如此行事是合理的。 (由 1992 年第 67 號第 3 條增補)
- (3) (由 1995 年第 49 號第 13 條廢除)
- (3A) 在符合第 (3D) 款的規定下, 金融管理專員可不時就下述事宜更改根據第 (1)(C) 款發出的指示 ——
 - (a) 屬與指示有關的認可機構的、在指示內所指明的事務、業務及財產;
 - (b) 指示內指明須由該機構的經理人遵循的一項或多於一項的基本目標。 (由 1995 年第 49 號第 13 條增補)
- (3B) 現宣布凡基於根據第 (1)(C) 款發出的指示, 而在根據第 (3A) 款對該項指示作出更改前的任何時間所辦理的任何事情, 不得僅因該項更改以致無效。 (由 1995 年第 49 號第 13 條增補)
- (3C) 在根據第 (1)(C) 款發出的指示就任何認可機構生效的期間內, 在本部中對 ——

- 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

- (a) 該機構的事務、業務或財產或其中任何組合的提述；或
- (b) 該機構的經理人須遵循的一項或多於一項基本目的之提述，
- 除文意另有所指外，須解釋為指在該項指示中所指明而不時根據第 (3A) 款而更改的 ——
- (i) (如 (a) 段適用) 事務、業務或財產或其中任何組合 (視屬何情況而定)；(由 2003 年第 14 號第 24 條修訂)
- (ii) (如 (b) 段適用) 一項或多於一項基本目標。(由 1995 年第 49 號第 13 條增補)
- (3D) 即使本部有任何其他條文，就在香港以外成立為法團的認可機構而根據第 (1)(C) 款發出的任何指示 (包括根據第 (3A) 款對該指示作出的任何更改) 不得適用於該機構的任何事務、業務或財產，但下述者除外 ——
- (a) 該機構在香港或從香港經營或管理的事務及業務；及
- (b) 該機構符合下述其中一種或兩種情況的財產 ——
- (i) 位於香港或從香港管理者；
- (ii) 該機構在香港的主要營業地點或任何本地分行或本地辦事處的資產。(由 1995 年第 49 號第 13 條增補；由 2001 年第 32 號第 10 條修訂)
- (3E) 凡原訟法庭已就認可機構作出清盤命令，金融管理專員不得根據第 (1)(B) 或 (C) 款就該機構發出指示。(由 1995 年第 49 號第 13 條增補。由 1998 年第 25 號第 2 條修訂)
- (3F) 現宣布金融管理專員根據第 (1)(B) 或 (C) 款行使其權力的方式為可 ——
- (a) 委任一公司或一合夥；或
- (b) 在不損害 (a) 段的一般性的原則下，委任 2 人或多於 2 人，

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—

- 為認可機構的顧問或經理人(視屬何情況而定)。(由 1995 年第 49 號第 13 條增補)
- (3G) 金融管理專員如根據第 (1)(C) 款行使其權力所採用方式為委任 2 人或多於 2 人為某認可機構的經理人，則須——
- (a) 藉書面通知，指明根據本條例委予或授予經理人的職責及權力中有何職責及權力，須就該機構——
- (i) 由該等人士中任何一人單獨履行或行使(視屬何情況而定)；(由 2003 年第 14 號第 24 條修訂)
- (ii) 由任何該等人士共同履行或行使(視屬何情況而定)；
- (iii) 由每名該等人士履行或行使(視屬何情況而定)；及
- (b) 將該通知附加於根據該款發出並根據第 53A(1) 條送達該認可機構的有關指示，
- 而本條例的條文(包括第 53G 條)，須為顧及該通知作必需的變通而理解並具有效力。(由 1995 年第 49 號第 13 條增補)
- (3H) 為免生疑問，現宣布根據第 (1)(B) 或 (C) 款獲委任為認可機構的顧問或經理人的人，可以是一名根據《外匯基金條例》(第 66 章)第 5A(3) 條獲委任職位的人。(由 1995 年第 49 號第 13 條增補)
- (3I) (由 1997 年第 4 號第 27 條廢除)
- (4) 任何認可機構不遵從金融管理專員根據第 (1)(A) 款作出的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 9 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間，另加每日第 5 級罰款；或

- (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,

10-13
第 155 章

第 X 部
第 52 條

- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
- (5) 在本條中，“有關人士”(relevant person) 就任何認可機構而言，指以下任何人——
- (a) 該機構的經理人；
 - (b) 該機構的小股東控權人、大股東控權人或間接控權人；
 - (c) 因第 53B(1)(a) 條不再是該機構的行政總裁或董事的人；
 - (d) 憑藉第 53B(2) 條的施行而是該機構的行政總裁或董事的人。(由 1995 年第 49 號第 13 條增補)
- (由 1992 年第 82 號第 25 條修訂)

PART X
Section 52

10-14
Cap. 155

- 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*)

10-15
第 155 章

第 X 部
第 53 條

PART X
Section 53

10-16
Cap. 155

- (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. 行政長官會同行政會議的權力

(具追溯力的適應化修訂——見 1998 年第 25 號第 2 條；1999 年第 68 號第 3 條)

(1) 凡——

- (a) 金融管理專員根據第 52(1)(D) 條向行政長官會同行政會議作出報告；
- (b) 任何人根據第 132A(1) 條向行政長官會同行政會議上訴，反對金融管理專員根據第 52(1)(A)、(B) 或 (C) 或 (3A) 條作出的決定；或 (由 1995 年第 49 號第 14 條修訂；由 1997 年第 4 號第 27 條修訂)

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*)

10-17
第 155 章

第 X 部
第 53A 條

- (c) 財政司司長根據第 117(5)(c) 條向行政長官會同行政會議轉呈報告及財政司司長就該報告作出的建議，
(由 1997 年第 362 號法律公告修訂)
- 在不損害藉第 V 或 VI 部而授予金融管理專員的任何權力的原則下，行政長官會同行政會議可行使以下一項或多於一項權力——(由 1993 年第 94 號第 17 條修訂；由 1995 年第 49 號第 14 條修訂)
- (i) 維持、更改或推翻任何由金融管理專員作出的規定、委任或指示；
- (ii) (由 1995 年第 49 號第 14 條廢除)
- (iii) 指示財政司司長向原訟法庭提出呈請，要求原訟法庭將認可機構或前認可機構清盤。(由 1992 年第 82 號第 25 條修訂；由 1997 年第 362 號法律公告修訂；由 1998 年第 25 號第 2 條修訂)
- (2) 行政長官會同行政會議在考慮第 (1) 款所指的報告或上訴前，可徵詢銀行業務諮詢委員會或接受存款公司諮詢委員會的意見，或兩者的意見，但無須一定遵循該等意見。
- (3) (由 1995 年第 49 號第 14 條廢除)
(由 1999 年第 68 號第 3 條修訂)

53A. 就根據第 52(1)(B) 或 (C) 條發出的指示等的通知

- (1) 根據第 52(1)(B) 或 (C) 條發出的指示須——
- (a) 採用書面形式；
- (b) 送達該項指示中所指明的認可機構，地址為其在香港的主要營業地點；
- (c) 在如此送達後即時生效；及

PART X
Section 53A

10-18
Cap. 155

- (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

10-19
第 155 章

第 X 部
第 53B 條

- (d) 述明就該機構委任的顧問或經理人(視屬何情況而定)的姓名或名稱及地址。
- (2) 根據第 52(3A) 條對根據第 52(1)(C) 條發出的指示所作出的更改，須——
- (a) 採用書面形式；
- (b) 送達——
- (i) 該項指示中所指明的認可機構，地址為其在香港的主要營業地點，但如屬在香港以外成立為法團的認可機構，則須送達該機構在香港以外的主要營業地點；及
- (ii) 該機構的經理人；及
- (c) 在如此送達後即時生效，但如該項更改另有指明，則屬例外。
- (3) 根據第 52(1)(C) 條發出的書面指示，及根據第 52(3A) 條就該指示作出的書面更改，包括該項指示或更改(視屬何情況而定)的副本。
- (4) 就根據第 52(1)(C) 條發出的指示而發出的公告，須由金融管理專員藉憲報公告刊登並以他覺得合宜的其他方式告知公眾。
- (5) 第 (4) 款適用於根據第 52(3G) 條發出的通知，一如其適用於根據第 52(1)(C) 條發出的指示。

(由 1995 年第 49 號第 15 條增補)

53B. 根據第 52(1)(C) 條發出的指示的效力

- (1) 除第 (2) 款及第 53C(3)(a)(i)、(b) 及 (c) 條另有規定外，緊接根據第 52(1)(C) 條發出的指示生效後——

PART X
Section 53B

10-20
Cap. 155

- (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)

- (a) 如該項指示是就在香港成立為法團的認可機構而生效的，則某人作為該機構的行政總裁或董事並在緊接該項指示生效前正生效的委任；
- (b) 如該項指示是就在香港以外成立為法團的認可機構而生效的，則某人作為該機構的行政總裁或董事並在緊接該項指示生效前正生效的委任（僅就該委任與該機構在香港的業務有關的方面而言），
- 須當作撤銷，據此，該人在該項指示生效期間，不得以或繼續以該行政總裁或董事（視屬何情況而定）的身分行事。
- (2) 根據第 52(1)(C) 條發出的有關指示如明確規定第 (1) 款所提述的委任不得根據該款撤銷，則該項委任不得如此撤銷。
- (3) 認可機構無須因第 (1) 款的施行而依據第 72A(2A) 條向金融管理專員發出任何通知。
- (4) 在根據第 52(1)(C) 條發出的指示就任何在香港成立為法團的認可機構生效的期間內——
- (a) 除獲該機構的經理人同意，並有該經理人在場的情況外，不得舉行該機構的會議；
- (b) 除獲該機構的經理人同意外，在該機構的會議上不得通過任何決議。
- (5) 除第 53D 條另有規定外，現宣布——
- (a) 任何在違反第 (4)(b) 款的情況下通過或看來是已在該情況下通過的決議；
- (b) 基於任何該等決議而作出的任何事情，均由於該項違反而屬無效。
- (6) 凡——
- (a) 任何認可機構的任何成員或董事要求該機構的經理人就該機構給予第 (4)(a) 款所提述的同意，該經理人不得不合理地拒絕給予同意；

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.

10-23
第 155 章

第 X 部
第 53B 條

- (b) 已給予上述同意，該經理人須出席與該同意有關的該機構會議。
- (7) 在根據第 52(1)(C) 條發出的指示就任何在香港以外成立為法團的認可機構生效的期間內 ——
- (a) 該機構須就任何可能直接或間接影響其事務、業務或財產而擬提出的決議，在不遲於將會動議該決議的會議前 14 天 (或經理人就任何個別情況准許的較短期限)，向該機構的經理人呈交 ——
- (i) 決議的文本；及
- (ii) 該會議日期、時間、地點的書面通知；
- (b) 如經理人認為 (a) 段所指的決議一旦獲通過，對他就該機構的事務、業務及財產而履行他的責任或行使他的權力方面或會有不良影響或衝突，則他可在 (a)(ii) 段所指的通知中所指明將會動議該決議的會議的舉行時間前，按該機構在香港以外的主要營業地點而藉向該機構送達的書面通知，反對該決議。
- (8) 除第 53D 條另有規定外，現宣布 ——
- (a) 第 (7)(a) 款所提述的任何已通過或看來已通過的決議，而有關認可機構的經理人 ——
- (i) 並沒有就該決議收到第 (7)(a)(i) 款所指的該決議的文本；
- (ii) 並沒有就該決議收到第 (7)(a)(ii) 款所指的有關動議該決議的會議日期、時間和地點的通知；或
- (iii) 已就該決議根據第 (7)(b) 款的規定提出反對；
- (b) 基於任何該等決議而作出的任何事情，均 ——
- (i) 由於 (a)(i)、(ii) 或 (iii) 段 (視屬何情況而定) 的理由；及

PART X
Section 53B

10-24
Cap. 155

- (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

10-25
第 155 章

第 X 部
第 53B 條

- (ii) 在該決議關乎該機構的任何事務、業務及財產的範圍內，
屬無效，直至經理人在金融管理專員同意下，按該機構在香港以外的主要營業地點向該機構送達書面通知（如有的話），述明已批准該決議在如此送達該通知當日或之後生效為止。
- (9) 任何人在違反第 (1) 款的情況下以或繼續以認可機構的行政總裁或董事的身分行事，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）
- (10) 在本條中，“會議” (meeting) 就任何認可機構而言——
- (a) 指——
- (i) 該機構的任何成員大會；或
- (ii) 該機構的任何董事會議；及
- (b) 如該機構是在香港以外成立為法團的，則包括該機構的任何債權人會議。
- (由 1995 年第 49 號第 15 條增補)

PART X
Section 53B

10-26
Cap. 155

- 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—

10-27
第 155 章

第 X 部
第 53C 條

PART X
Section 53C

10-28
Cap. 155

- (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. 經理人的權力

- (1) 在符合他須遵循的一項或多於一項基本目標的規定下，任何認可機構的經理人—
 - (a) 可作出一切為管理該機構的事務、業務及財產所必需的事情；及
 - (b) (在不限制 (a) 段的一般性的原則下) 就該機構具有並可就該機構行使附表 9 指明的一切權力。
- (2) 任何認可機構的經理人可規定因第 53B(1) 或 (2) 條不再是或仍是該機構行政總裁或董事的人 (視屬何情況而定)，呈交有關該機構的事務、業務及財產的資料，而該等資料是經理人就該機構履行他的責任或行使他的權力所合

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

10-29
第 155 章

第 X 部
第 53C 條

理規定的，並須於經理人規定的期限內按他規定的方式呈交。

(3) 在符合第 (4) 款的規定下 ——

(a) 在香港成立為法團的認可機構的經理人 ——

- (i) 可委任任何人 (包括第 53B(1)(a) 條所提述的人) 為該機構的行政總裁或董事，不論是否為填補因第 53B(1)(a) 條的施行或其他原因而出現的空缺；
- (ii) 可在該機構的任何成員會議上，動議任何由一名成員和議或獲金融管理專員批准的決議；
- (iii) 可在該機構的任何董事會議上，動議任何由一名董事和議或獲金融管理專員批准的決議；
- (iv) 可召開該機構的任何成員、董事或債權人會議；

(b) 在香港以外成立為法團的認可機構的經理人，可委任任何人 (包括第 53B(1)(b) 條所提述的人) 為該機構在香港的業務的行政總裁，不論是否為填補因第 53B(1)(b) 條的施行或其他原因而出現的空缺；

(c) 任何認可機構的經理人可撤銷第 53B(2) 條適用的或依據 (a)(i) 或 (b) 段作出的任何委任。

(4) 除獲金融管理專員批准外，認可機構的經理人不得行使任何根據第 (3)(a)(i)、(ii) 或 (iii)、(b) 或 (c) 款授予他的權力。

(5) 第 71(1) 條不適用於任何依據第 (3)(a)(i) 或 (b) 款作出的委任。

(6) 認可機構無須因依據第 (3)(a)(i)、(b) 或 (c) 款作出或撤銷的委任，而須依據第 72A(2A) 條向金融管理專員發出任何通知。

(7) 在根據第 52(1)(C) 條發出的指示就任何認可機構生效的期間內，任何授予以下人士的權力 ——

PART X
Section 53C

10-30
Cap. 155

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).

10-31
第 155 章

第 X 部
第 53C 條

- (a) 該機構或該機構的成員、董事、行政總裁、經理或高級人員，無論是藉——
- (i) 本條例、《公司條例》(第 622 章)或《公司(清盤及雜項條文)條例》(第 32 章)；
 - (ii) 組織章程細則(如屬在香港以外成立為法團的認可機構，包括於該機構成立為法團的地方相等於組織章程細則者)；或
 - (iii) 該機構據以成立為法團的任何其他文書，(由 2012 年第 28 號第 912 及 920 條修訂)
- 授予的；
- (b) (如該機構是在香港以外成立為法團的)有關人員，如行使的方式可干擾該機構的經理人行使他的權力的，則除獲經理人同意外，不得行使，而經理人可一般地或在任何個別情況下給予同意。
- (8) 為免生疑問，現宣布在根據第 52(1)(C) 條發出的指示就任何在香港以外成立為法團的認可機構生效的期間內，如就該機構的事務、業務及財產——
- (a) 該機構的經理人所發出的指示(包括對(b)段所提述人士發出的指示)；與
 - (b) 該機構成員、董事、行政總裁、經理或高級人員，或任何有關人員所發出的指示，
- 之間出現衝突或不一致之處，則在該衝突或不一致(視屬何情況而定)的範圍內，(a)段所提述的指示凌駕(b)段所提述的指示。
- (9) 在符合他須遵循的一項或多於一項基本目標下，認可機構的經理人在行使他的權力時，須當作以該機構的代理人身分行事，就此而言，《防止賄賂條例》(第 201 章)第 9 條適用於——
- (a) 以上述代理人的身分行事的該經理人；及

PART X
Section 53C

10-32
Cap. 155

- (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.

10-33
第 155 章

第 X 部
第 53C 條

- (b) 向以上述代理人的身分行事的該經理人提供該條例所指的利益的任何人，
猶如該條第 (4) 及 (5) 款被略去一樣。
- (10) 任何與認可機構的經理人真誠地並以良好代價交易的人，
無須查詢該經理人是否——
- (a) 在他的權力範圍內行事；
(b) 正遵循一項或多於一項基本目標。
- (11) 獲得金融管理專員事先以書面批准後，認可機構的經理人可以書面形式將根據本條例委予或授予經理人的任何責任及權力，按其認為適當者而加以或不加以限制地轉授予任何人，但因第 52(3G) 條所指的通知而不可由他履行的責任或行使的權力（視屬何情況而定）除外。
- (12) 認可機構的經理人的獲轉授人——
- (a) 須履行獲轉授的責任並可行使獲轉授的權力，猶如獲轉授人是經理人一樣；及
(b) 在沒有相反證據的情況下，須推定為按照轉授的條款行事。
- (13) 任何人無合理辯解而沒有遵從根據第 (2) 款作出的規定，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或（由 1997 年第 4 號第 27 條修訂）
(b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）
- (14) 任何人就遵從根據第 (2) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或（由 1997 年第 4 號第 27 條修訂）

PART X
Section 53C

10-34
Cap. 155

- (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

10-35
第 155 章第 X 部
第 53C 條

- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (15) 任何人就遵從根據第 (2) 款所作的任何規定而交出的任何簿冊、帳目、文件、證券、保證或資料在要項上是虛假的，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；
或 (由 1997 年第 4 號第 27 條修訂)
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (16) 在本條中，就在香港以外成立為法團的認可機構而言，“有關人員”(relevant office-holder) 指——
- (a) 就該機構而言；及
- (b) 在香港以外地方，
任何以下述相類職位而行事的人——
- (i) 香港破產清盤法所指的清盤人、臨時清盤人、接管人或經理人；
- (ii) 聯合王國破產清盤法所指的破產管理人；
- (iii) 第 (17) 款所指的公告中就本定義而指明的職位。
- (17) 財政司司長可藉憲報公告，就“有關人員”的定義而指明職位。(由 1997 年第 362 號法律公告修訂)
- (18) 現宣布第 (17) 款所指的公告是附屬法例。
(由 1995 年第 49 號第 15 條增補)

PART X
Section 53C10-36
Cap. 155

- 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*)

10-37
第 155 章

第 X 部
第 53D 條

PART X
Section 53D

10-38
Cap. 155

- (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. 原訟法庭可批准某些決議

53D. Court of First Instance may approve certain resolutions

10-39
第 155 章

第 X 部
第 53D 條

(具追溯力的適應化修訂——見 1998 年第 25 號第 2 條)

- (1) 在根據第 52(1)(C) 條發出的指示就任何在香港成立為法團的認可機構生效的期間內，原訟法庭可應——
 - (a) 該機構的經理人；或
 - (b) 該機構不少於 100 名成員，或持有該機構已發行股份總數不少於十分之一的成員，
 的申請，批准或拒絕批准任何決議，而該決議——
 - (i) 凡屬 (a) 段適用者，是擬在該機構的成員大會上動議的，但因大會沒有法定人數而沒有如此動議；
 - (ii) 凡屬 (a) 或 (b) 段適用者，已於該機構的成員大會上經恰當動議，但不論因任何理由而未獲通過。
- (2) 在根據第 52(1)(C) 條發出的指示就任何在香港以外成立為法團的認可機構生效的期間內，原訟法庭可應該機構的申請批准或拒絕批准任何決議，而該決議——
 - (a) 是在第 53B(10) 條所指的會議上已通過或看來是已在該會議上通過的任何決議；
 - (b) 是由於第 53B(8)(a)(iii) 條的理由而無效的任何決議；及
 - (c) 已有一份文本，是於該決議通過或看來已通過(視屬何情況而定)之日後不遲於 14 天，按其通過或看來已通過(視屬何情況而定)時的形式，由該機構提供予經理人的。
- (3) 在根據第 (1) 款提出的申請的聆訊中——
 - (a) 經理人及有關認可機構的任何成員；及
 - (b) 金融管理專員，
 有權就該項申請陳詞，並傳召、訊問與盤問任何證人，此外，如他認為適當，亦可支持或反對該項申請的提出。
- (4) 在根據第 (2) 款提出的申請的聆訊中——

PART X
Section 53D

10-40
Cap. 155

(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

10-41
第 155 章

第 X 部
第 53D 條

- (a) 經理人、有關認可機構的任何行政總裁(憑藉第 53B(2) 條的施行而擔任該職位或根據第 53C(3)(b) 條獲委任的行政總裁除外)及一名董事,以及第 53C(16) 條所指的任何有關人員;及
 - (b) 金融管理專員,
- 有權就該項申請陳詞,並傳召、訊問與盤問任何證人,此外,如他認為適當,亦可支持或反對該項申請的提出。
- (5) 凡原訟法庭批准第 (1) 或 (2) 款所提述的決議,則該決議須當作於該項批准作出時通過,並於當時及其後生效,或於原訟法庭認為適當的較後時間通過,並於當時及其後生效。
- (6) 為免生疑問,現宣布凡原訟法庭批准第 (1)(如該款第 (ii) 段適用者) 或 (2) 款所提述的決議,第 53B(5) 或 (8) 條(視屬何情況而定)即在該項批准生效時及生效後停止對該決議適用或停止就該決議適用。

(由 1995 年第 49 號第 15 條增補。由 1998 年第 25 號第 2 條修訂)

PART X
Section 53D

10-42
Cap. 155

- 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. 原訟法庭可作出某些命令**

(具追溯力的適應化修訂——見 1998 年第 25 號第 2 條)

- (1) 在根據第 52(1)(C) 條發出的指示就任何認可機構生效的期間內的任何時間，如該認可機構的經理人提出申請而原訟法庭覺得——

- (a) 任何人即將作出的作為，如作出的話，可能對經理人就該機構的事務、業務或財產履行他的責任或行使他的權力方面有不良影響或造成衝突；或
- (b) 任何人已作出的作為對經理人就該機構的事務、業務或財產履行他的責任或行使他的權力方面有不良影響或造成衝突，

則在符合第 (4) 款的規定下，原訟法庭可在不損害本部任何其他條文的施行下，並在不損害原訟法庭除由本條或憑藉本條外會有權發出的任何命令的原則下，作出以下一項或多於一項命令——

- (i) 如 (a) 段適用，限制該段所提述的人作出該段所提述的作為的命令；
- (ii) 如 (b) 段適用——
 - (A) 宣布該段所提述的作為在命令作出日期當日及之後無效的命令 (但不損害該作為在該日期前的有效性，或基於該作為而在該日期前作出的任何事情的有效性)；
 - (B) 宣布基於該作為而作出的任何事情在命令作出日期當日及之後無效的命令 (但不損害該作為在該日期前的有效性，或基於該作為而在該日期前作出的任何事情的有效性)；
- (iii) 為確保根據本條發出的任何其他命令獲得遵從，指示某人作出或避免作出某指明作為的命令；

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

10-45
第 155 章

第 X 部
第 53F 條

(iv) 原訟法庭認為因根據本條作出的任何其他命令而有需要作出的附屬命令。

- (2) 在根據第 (1) 款作出命令前，原訟法庭可指示將根據該款提出的申請的通知給予其認為適當的人，或指示以其認為適當的方式予以公布，或指示兩者皆作出。
- (3) 在符合第 (4) 款的規定下，原訟法庭可主動或在有人就此向它作出申請時，藉命令推翻、更改或撤銷根據第 (1) 款作出的命令，或暫停施行該命令。
- (4) 原訟法庭根據第 (1) 或 (3) 款作出命令前，須在合理切實可行的範圍內，確定可否信納該命令不會不公平地損害任何人。

(由 1995 年第 49 號第 15 條增補。由 1998 年第 25 號第 2 條修訂)

53F. 根據第 52(1)(B) 或 (C) 條發出的指示的期限

(具追溯力的適應化修訂——見 1999 年第 68 號第 3 條)

- (1) 如有以下情況，金融管理專員須撤銷根據第 52(1)(B) 或 (C) 條發出的指示——
 - (a) 在諮詢財政司司長後，金融管理專員覺得該指示不需要繼續生效；或 (由 1997 年第 362 號法律公告修訂)

PART X
Section 53F

10-46
Cap. 155

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) 該指示有需要撤銷以使 ——
- (i) 行政長官會同行政會議根據第 53(1)(i) 條所作的決定得以生效；或
 - (ii) 行政長官會同行政會議根據第 (2) 款作出的命令得以生效。 (由 1999 年第 68 號第 3 條修訂)
- (2) 行政長官會同行政會議接獲以下人士的申請後 —— (由 1999 年第 68 號第 3 條修訂)
- (a) 如屬根據第 52(1)(B) 條所發出指示的標的認可機構，則為該機構；
 - (b) 如屬根據第 52(1)(C) 條所發出指示的標的並在香港成立為法團的認可機構，則為該機構不少於 100 名成員或為持有該機構已發行股份總數不少於十分之一的成員；
 - (c) 如屬根據第 52(1)(C) 條所發出指示的標的並在香港以外成立為法團的認可機構，則為該機構的任何行政總裁 (憑藉第 53B(2) 條的施行而擔任該職位或根據第 53C(3)(b) 條獲委任的行政總裁除外) 或董事，或任何第 53C(16) 條所指的任何有關人員，
- 如信納該指示不需要繼續生效，可命令金融管理專員撤銷該指示。
- (3) 根據第 (1) 款對根據第 52(1)(B) 或 (C) 條發出的指示所作的撤銷，須 ——
- (a) 採用書面形式；
 - (b) 送達 ——
 - (i) 該項指示中所指明的認可機構，地址為其在香港的主要營業地點，但如屬根據第 52(1)(C) 條就在香港以外成立為法團的認可機構發出的指示，則須送達該機構在香港以外的主要營業地點；及
 - (ii) 該機構的顧問或經理人 (視屬何情況而定)；及

- (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

10-49
第 155 章第 X 部
第 53G 條

- (c) 在如此送達後即時生效，但如該項撤銷內另有指明，則屬例外。
- (4) 根據本條而將根據第 52(1)(C) 條發出的指示撤銷的公告，須由金融管理專員刊登於憲報，並以他覺得合宜的其他方法告知公眾。
- (5) 根據第 (1) 款以書面形式撤銷根據第 52(1)(B) 或 (C) 條發出的指示的撤銷書，包括該撤銷書的副本。
- (6) 為免生疑問，現宣布根據第 (1) 款將根據第 52(1)(C) 條發出的指示撤銷，並不會將任何因第 53B(1) 條的施行而當作已撤銷的委任恢復為有效。

*(由 1995 年第 49 號第 15 條增補)***53G. 顧問、經理人及助理**

- (1) 顧問或經理人可在任何時間藉向金融管理專員發出的書面通知而辭職，但除非與直至獲金融管理專員接納，否則該項辭職並不生效。
- (2) 金融管理專員可在任何時間撤銷對顧問或經理人的委任。
- (3) 凡顧問或經理人的職位依據第 (1) 或 (2) 款而出現空缺，或由於擔任該職位的人去世而導致該職位出現空缺，金融管理專員須立即——

PART X
Section 53G10-50
Cap. 155

- 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.

10-51
第 155 章

第 X 部
第 53G 條

- (a) 委任一人填補該空缺；及
- (b) 按有關認可機構在香港的主要營業地點，向該機構送達一份指明如此委任的人的姓名或名稱及地址的書面通知，但如屬根據第 52(1)(C) 條所發出指示的標的並在香港以外成立為法團的認可機構，該通知須送達該機構在香港以外的主要營業地點。
- (4) 根據第 53F(1) 條將根據第 52(1)(B) 或 (C) 條發出的指示撤銷時，憑藉該指示而作為顧問或經理人的委任，須當作即時撤銷。
- (5) 在符合第 (6) 款的規定下，顧問或經理人可委任他認為適當的技術及專業人士（包括根據《外匯基金條例》(第 66 章) 第 5A(3) 條獲委任職位的人），協助他就有關認可機構的任何事務、業務或財產履行他的責任及行使他的權力。
- (6) 顧問或經理人不得行使他在第 (5) 款下的權力，除非——
 - (a) 他獲得金融管理專員書面批准他如此行使；及
 - (b) 是按照該項批准中所指明的條件（如有的話）行使。
- (7) 金融管理專員在諮詢財政司司長後，可在任何時間釐定認可機構向——（由 1997 年第 362 號法律公告修訂）
 - (a) 該機構的顧問或該顧問根據第 (5) 款委任的任何人；
 - (b) 該機構的經理人或該經理人根據該款委任的任何人，支付的酬金及開支，而不論是否有以下情況，該項釐定均可作出——
 - (i) 顧問或經理人或上述任何人的委任已撤銷或已在其他情況下終止；
 - (ii) 根據第 52(1)(B) 或 (C) 條發出的有關指示已撤銷。
- (8) 凡金融管理專員已根據第 (7) 款作出釐定——
 - (a) 如該項釐定是關於任何認可機構的顧問或該顧問根據第 (5) 款委任的任何人，金融管理專員須按該機構在香港的主要營業地點，向該機構送達該釐定書的文本；

PART X
Section 53G

10-52
Cap. 155

- (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—

10-53
第 155 章

第 X 部
第 53G 條

- (b) 如該項釐定是關於任何認可機構的經理人或該經理人根據第 (5) 款委任的任何人 ——
- (i) 金融管理專員須在合理切實可行的範圍內，盡快在憲報刊登公告，述明 ——
- (A) 已作出釐定；及
- (B) 該機構的名稱；
- (ii) 如該機構是在香港成立為法團的，金融管理專員須向要求索取釐定書文本的該機構成員提供該釐定書的文本；
- (iii) 如該機構是在香港以外成立為法團的，金融管理專員須按該機構在香港以外的主要營業地點，向該機構送達釐定書的文本，並向要求索取釐定書文本的該機構的行政總裁（憑藉第 53B(2) 條的施行而擔任該職位或根據第 53C(3)(b) 條獲委任的行政總裁除外）、董事或成員或任何第 53C(16) 條所指的任何有關人員，提供該釐定書的文本。
- (9) (由 1997 年第 4 號第 27 條廢除)
- (10) 在不損害第 131 條的一般性的原則下，金融管理專員在諮詢財政司司長後，可動用由《外匯基金條例》(第 66 章) 設立的外匯基金，以全數或部分支付依據第 (7) 款的釐定而須支付的任何酬金及開支。(由 1997 年第 362 號法律公告修訂)

(由 1995 年第 49 號第 15 條增補)

PART X
Section 53G

10-54
Cap. 155

- (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

10-55
第 155 章

第 X 部
第 53H 條

PART X
Section 53H

10-56
Cap. 155

53H. 對經理人的妨礙等

任何人故意妨礙、抗拒或延滯——

- (a) 任何認可機構的經理人合法地就該機構履行其責任或行使其權力；或
- (b) 任何合法地協助該經理人履行該等責任或行使該等權力的其他人，

即屬犯罪——

- (i) 一經循公訴程序定罪，可處第 9 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間，另加每日第 5 級罰款；或
- (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。

(由 1995 年第 49 號第 15 條增補。由 1997 年第 4 號第 27 條修訂)

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

10-57
第 155 章

第 X 部
第 54 條

PART X
Section 54

10-58
Cap. 155

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. (由 1995 年第 49 號第 16 條廢除)

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

55. 認可機構的審查及調查等

55. Examination and investigation of authorized institutions, etc.

- (1) 在不限制第 52 條的一般性的原則下，金融管理專員無論是否有給予某認可機構事先通知，可在任何時間審查該認可機構的簿冊、帳目及交易；如屬在香港成立為法團的認可機構，可在任何時間審查該認可機構的任何本地分行、本地辦事處、海外分行、海外代表辦事處、香港以內或以外的附屬公司的簿冊、帳目及交易。*(由 1998 年第 23 號第 2 條修訂；由 2001 年第 32 號第 11 條修訂)*
- (2) 在不限制第 52 條的一般性的原則下，如有以下情況，金融管理專員須調查任何認可機構的簿冊、帳目及交易——
 - (a) 持有該機構已發行股份總數不少於三分之一的該機構股東、或持有不少於十分之一該機構在香港全部存款債務總額或相等於該機構的繳足款股本與其已公布的儲備的總和（以數額較大者為準）的存款人，向金融管理專員申請進行該項調查，並向他呈交令他認為此項調查屬必需的證據，以及向他提供由他規定的保證，以保證調查費用的繳付；或
 - (b) 該機構中止付款，或通知金融管理專員它中止付款的意向。
- (3) 凡屬由金融管理專員依據第 (2) 款進行的調查，財政司司長可命令該項調查招致的一切費用——
 - (a) 須由該認可機構支付；或
 - (b) (如該調查是依據第 (2)(a) 款進行的) 全部由申請進行調查的人士支付，或按財政司司長認為公正的比

- (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.

10-59
第 155 章

第 X 部
第 56 條

率，部分由該認可機構支付。(由 1997 年第 362 號法律公告修訂)

- (4) 第 (1) 款在經必需的變通後，適用於任何核准貨幣經紀和就該貨幣經紀而適用，一如該款適用於任何認可機構和就該認可機構而適用一樣，而本條例其他條文須據此解釋。(由 1997 年第 4 號第 11 條增補)

(由 1992 年第 82 號第 25 條修訂)

56. 認可機構簿冊的交出等

- (1) 為根據第 55 條進行審查或調查，任何認可機構、以及任何認可機構(如屬在香港成立為法團者)的任何本地分行、本地辦事處、海外分行、海外代表辦事處、香港以內或以外的附屬公司，須讓進行審查或調查的人取用其簿冊及帳目、其資產的所有權的文件及其他文件、就其顧客的交易而由其持有的所有證券、保證及其現金，以及為進行審查或調查而規定的資料，並讓該人使用為進行審查或調查而規定的設施，亦須向該進行審查或調查的人，交出他規定的簿冊、帳目、文件、證券、保證、現金或其他資料：

但在與該項審查或調查的進行相符的範圍內，不得規定在會干擾該機構、本地分行、本地辦事處、海外分行、海外代表辦事處或附屬公司(視屬何情況而定)恰當經營其日常業務的時間及地點交出該等簿冊、帳目、文件、證券、保證及現金。(由 1987 年第 64 號第 12 條修訂；

PART X
Section 56

10-60
Cap. 155

- (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:

由 1998 年第 23 號第 2 條修訂；由 2001 年第 32 號第 12 條修訂)

- (2) 任何認可機構無合理辯解而違反本條 (包括由該機構的任何本地分行、本地辦事處、海外分行、海外代表辦事處或附屬公司違反本條)，其每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 1987 年第 64 號第 12 條修訂；由 2001 年第 32 號第 12 及 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 6 級罰款及監禁 12 個月；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。 (由 1997 年第 4 號第 27 條修訂)
- (3) 如任何認可機構、其本地分行、本地辦事處、海外分行、海外代表辦事處或附屬公司根據本條交出的任何簿冊、帳目、文件、證券、保證或任何資料，在要項上是虛假的，該機構的每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 1987 年第 64 號第 12 條修訂；由 2001 年第 32 號第 12 及 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。 (由 1997 年第 4 號第 27 條修訂)
- (4) 本條在經必需的變通後，適用於任何核准貨幣經紀和就該核准貨幣經紀而適用，一如本條適用於任何認可機構和就該任何機構而適用一樣，而本條例其他條文須據此解釋。 (由 1997 年第 4 號第 12 條增補)

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)

10-63
第 155 章

第 X 部
第 57 條

PART X
Section 57

10-64
Cap. 155

- (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. (由 1995 年第 49 號第 16 條廢除)

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

58A. 就有關人士採取紀律行動

58A. Disciplinary action in respect of relevant individuals

- (1) 如 ——
 - (a) 某有關人士犯失當行為或曾在任何時間犯失當行為；或
 - (b) 金融管理專員認為某有關人士並非或已不再是作為有關類別的有關人士的適當人選，
 則金融管理專員可在諮詢證監會後 ——
 - (c) 將該人士的有關資料的全部或部分自紀錄冊刪除；或
 - (d) 將該人士的有關資料的全部或部分暫時中止載在紀錄冊中，為期一段金融管理專員指明的期間或直至金融管理專員指明的事件發生為止。
- (2) 在不局限第 (1) 款的一般性及不局限本條例其他條文的施行的原則下，為免生疑問，現宣布金融管理專員可完全或局部基於證監會向他披露的資料而行使他可根據該款行使的權力，不論該等資料是否由於根據《證券及期貨條例》(第 571 章) 第 182 條進行的調查而產生的。
- (3) 金融管理專員須事先給予所涉有關人士陳詞機會，否則不得根據第 (1) 款針對該人士行使權力。

- (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

10-65
第 155 章

第 X 部
第 58A 條

- (4) 金融管理專員如決定根據第(1)款針對某有關人士行使權力，須藉送達該人士的書面通知，將其決定告知該人士，而該通知須包括——
- (a) 作出該項決定的理由的陳述；
 - (b) 該項決定的生效時間；及
 - (c) (在適用範圍內)根據該項決定將會施加的刪除或暫時中止將有關資料載在紀錄冊中的持續期及條款。
- (4A) 金融管理專員如已根據第(1)款針對任何有關人士而行使權力，他可向公眾人士披露他根據該款作出的決定的詳情、作出該項決定所據的理由以及關於該個案的任何重要事實。(由 2005 年第 19 號第 10 條增補)
- (5) 在不損害證監會根據《證券及期貨條例》(第 571 章)行使任何權力的原則下，金融管理專員可就該條例第 196 或 197 條所指的權力的行使，向證監會作出他認為適當的關於任何有關人士的建議。
- (6) 在本條中——
- “失當行為”(misconduct)就任何有關人士而言，指——
- (a) 違反《證券及期貨條例》(第 571 章)附表 1 所指而適用於該人士的任何有關條文；(由 2016 年第 16 號第 34 條修訂)
 - (b) 與某註冊機構進行的任何受規管活動有關的該人士的作為或不作為，而——
 - (i) 就該機構而言，該人士為有關人士；及
 - (ii) 按金融管理專員的意見，該作為或不作為，是有損或相當可能會有損投資大眾的利益或公眾利益的；或(由 2016 年第 16 號第 34 條代替)
 - (c) 該人士符合以下說明的作為或不作為——
 - (i) 該作為或不作為，關乎進行任何符合以下說明的活動——
 - (A) 並非受規管活動；及

PART X
Section 58A

10-66
Cap. 155

- 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—

10-67
第 155 章

第 X 部
第 58A 條

(B) 是某註冊機構(而就該機構而言,該人士屬有關人士)根據《證券及期貨條例》(第 571 章),可為開放式基金型公司進行的;及

(ii) 按金融管理專員的意見,該作為或不作為,是有損或相當可能會有損投資大眾的利益或公眾利益的,(由 2016 年第 16 號第 34 條增補)

而“犯失當行為”(guilty of misconduct)須據此解釋;

“有關人士”(relevant individual)指第 20(10)條所指的有關人士;

“有關資料”(relevant particulars)就有關人士而言,指載於根據第 20(1)(ea)條備存的紀錄冊內關於該人士的資料。

(7) 就第 (6) 款中“失當行為”的定義的 (b) 及 (c) 段而言,除非金融管理專員已顧及在根據《證券及期貨條例》(第 571 章)第 169 條刊登及發表的任何操守守則或根據該條例第 112ZR 或 399 條刊登或發表的任何守則或指引中所列的、就有關作為或不作為適用的、並在有關作為或不作為發生時有效的條文,否則不得得出該等作為或不作為是有損或相當可能會有損投資大眾的利益或公眾利益的意見。(由 2016 年第 16 號第 34 條修訂)

(由 2002 年第 6 號第 5 條增補)

PART X
Section 58A

10-68
Cap. 155

“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; (*Amended 16 of 2016 s. 34*)
- (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; or (*Amended 16 of 2016 s. 34*)
- (c) an act or omission of the individual that—
 - (i) relates to the carrying on of any activity that—
 - (A) is not a regulated activity; and
 - (B) the registered institution, in relation to which the individual is a relevant individual, may carry on for an open-ended fund company under the Securities and Futures Ordinance (Cap. 571); and
 - (ii) in the opinion of the Monetary Authority, is or is likely to be prejudicial to the interest of the investing public or to the public interest, (*Added 16 of 2016 s. 34*)

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 paragraphs (b) and (c) 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 112ZR or 399 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission. (*Amended 16 of 2016 s. 34*)

(*Added 6 of 2002 s. 5*)

第 XI 部

審計及會議

(* 格式變更——2013 年第 1 號編輯修訂紀錄)

編輯附註：

* 第 XI 部的格式已按現行法例樣式更新。

59. 審計

- (1) 每間認可機構及其核數師，均須遵守《公司條例》(第 622 章)內關於審計公司帳目的規定，不論該機構是否根據該條例而成立為法團的。(由 2012 年第 28 號第 912 及 920 條修訂)
- (2) 金融管理專員在諮詢某認可機構後，可藉向該機構發出的書面通知，規定該機構向他呈交報告書，該報告書須——
 - (a) 由該機構在符合第 (3) 款的規定下委任的一名或多於一名核數師擬備；
 - (b) 載有金融管理專員為根據本條例行使其職能而合理規定報告的事宜，而在不限制該等事宜的一般性的原則下，須載述——
 - (i) 該機構的事務狀況或利潤及虧損，或兩者兼載，按該機構的帳目的審計擬備而成，而該項審計，是就由該份規定呈交報告書的通知書所指明期間而進行的；或
 - (ii) 該機構是否備有足夠的管控制度，而該等制度是在切實可行的範圍內盡可能足夠令該機構的事務、業務及財產得以審慎管理並令該機構遵從其本條例所訂的責任的；及 (由 1995 年第 49 號第 17 條修訂)

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

- (c) 在金融管理專員合理規定的期限內，按金融管理專員合理規定的方式擬備。(由 1992 年第 67 號第 4 條代替。由 1992 年第 82 號第 25 條修訂)
- (3) 由任何認可機構委任以擬備第 (2) 款規定的報告書的一名或多於一名核數師，須是——
- (a) 在如此規定呈交報告書前已由該機構委任，並獲得金融管理專員就擬備該報告書而批准的一名或多於一名核數師；
- (b) 由金融管理專員在諮詢該機構後，就擬備該報告書而批准的一名核數師，或就此而提名的核數師中其中一名核數師；或
- (c) (a) 段所提述的一名核數師及 (b) 段所提述的一名核數師，
- 視乎金融管理專員的規定而定。(由 1992 年第 67 號第 4 條代替。由 1992 年第 82 號第 25 條修訂)
- (4) (由 1999 年第 42 號第 4 條廢除)
- (5) 任何認可機構如違反第 (1) 款或無合理辯解而違反第 (2) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂；由 2005 年第 19 號第 11 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬違反第 (2) 款的持續罪行，可就罪行持續期間，另加每日第 3 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬違反第 (2) 款的持續罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1992 年第 67 號第 4 條修訂；由 1997 年第 4 號第 27 條修訂)
- (6) 在本條中——
- 足夠** (adequate) 一詞就管控制度而言，包括有效運作；

- 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

11-5
第 155 章

第 XI 部
第 59A 條

管控制度 (systems of control) 包括程序。 (由 1992 年第 67 號
第 4 條增補)

(由 1990 年第 43 號第 3 條修訂)

59A. 就核數師而發出的通知

- (1) 如有以下情況，任何在香港成立為法團的認可機構，須立即以書面通知金融管理專員——
 - (a) 該機構——
 - (i) 擬就一項在核數師任期屆滿前免任該核數師的普通決議，向成員發出通知；或
 - (ii) 就一項在核數師任期屆滿時更換該核數師的普通決議，向成員發出通知；或 (由 1995 年第 49 號第 18 條修訂)
 - (b) 有人並非因上述決議而停任該機構的核數師。
- (2) 根據《公司條例》(第 622 章) 第 395、396、397 或 398 條委任的認可機構核數師如有以下情況，須立即以書面通知金融管理專員—— (由 2012 年第 28 號第 912 及 920 條修訂)
 - (a) 在其任期屆滿前辭職；
 - (b) 不謀求再受委任；或
 - (c) 決定在其擬備的該認可機構帳目的報告書內，就《公司條例》(第 622 章) 第 406 或 407 條提及的事宜，

Part XI
Section 59A

11-6
Cap. 155

- (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;

11-7
第 155 章

第 XI 部
第 59B 條

加上保留或不利的聲明。(由 2012 年第 28 號第 912 及 920 條修訂)

- (3) 任何認可機構違反第 (1) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，並可就該機構沒有向金融管理專員發給該款規定的通知的期間，另加每日第 3 級罰款；或 (由 1997 年第 4 號第 27 條修訂)
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，並可就該機構沒有向金融管理專員發給該款規定的通知的期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

(由 1990 年第 43 號第 4 條增補。由 1992 年第 82 號第 25 條修訂)

59B. 認可機構就其財政年度結束須發出的通知等

- (1) 認可機構——
- (a) 如在本條生效日期之前已獲認可，須於該生效日期後一個月內；
- (b) 如屬其他情況，則須於該機構獲認可的日期後一個月內，
- 以書面將其財政年度結束的日期通知金融管理專員。
- (2) 認可機構不得——

Part XI
Section 59B

11-8
Cap. 155

- (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,

11-9
第 155 章

第 XI 部
第 59B 條

- (a) 更改其根據第 (1) 款發出的通知指明的結束日期，但獲金融管理專員根據第 (3)(a) 款批准則除外；
- (b) 使其財政年度超逾 12 個月，但獲金融管理專員根據第 (3)(b) 款批准則除外。
- (3) 金融管理專員可應認可機構的申請，藉送達該機構的書面通知——
 - (a) 批准該機構在他認為適當並在該通知指明的條件的規限下，更改其財政年度結束的日期；
 - (b) 批准該機構在他認為適當並在該通知指明的條件的規限下，有超逾 12 個月的財政年度。
- (4) 任何認可機構違反第 (1) 或 (2) 款或違反根據第 (3) 款送達的通知指明的任何條件，其每名董事、每名行政總裁及每名經理均屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 7 級罰款，如屬違反第 (1) 款者，並可就該機構沒有發出該款所規定的通知的期間的每一日，另處第 3 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款，如屬違反第 (1) 款者，並可就該機構沒有發出該款所規定的通知的期間的每一日，另處第 2 級罰款。

(由 2002 年第 6 號第 6 條增補)

Part XI
Section 59B

11-10
Cap. 155

- 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. 經審計的資產負債表等的公布

(1)-(2) *(由 1999 年第 42 號第 5 條廢除)*

(3) 每間在香港成立為法團的認可機構均須在每個財政年度終結後的 4 個月內，或金融管理專員書面批准的較長限期內，在該機構於香港的主要營業地點的顯眼處及每間本地分行的顯眼處，展示——*(由 1999 年第 42 號第 5 條修訂)*

- (a) 一份該機構在該年度的經審計的帳目；
- (b) 一份依據《公司條例》(第 622 章)第 405 條作出的核數師報告書；
- (c) 一份已經或將會按照該條例第 9 部第 6 分部在大會上提交公司省覽的董事報告書；*(由 2012 年第 28 號第 912 及 920 條修訂)*

(d)-(e) *(由 1999 年第 42 號第 5 條廢除)*

就每份文件而言，須展示直至下次遵從本款如此展示同類文件為止。

- (4) 第 (3) 款提述的每份文件根據第 (3) 款首次展示前，有關認可機構須將該款所提述的文件各一份，連同一份該機構的董事當其時所兼任其他公司董事的所有該等其他公司的名稱的列表，一併向金融管理專員提交。
- (5) 除第 (5A) 款另有規定外，每間在香港以外成立為法團的認可機構，須在不遲於每個財政年度終結後 6 個月，或金融管理專員以書面批准的延長期限內，向金融管理專員提交——*(由 1999 年第 42 號第 5 條修訂)*
 - (a) 一份該機構經審計的周年資產負債表(包括該表上的附註)及一份該年度的損益表；

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

11-13
第 155 章

第 XI 部
第 60 條

- (b) 由核數師或任何一名按照該機構成立為法團所在地的法律而行使相類職能的人士，就該周年資產負債表（包括該表上的附註）及損益表作出的報告書；及
- (c) 凡該機構成立為法團所在地的法律有此規定，一份董事就該機構在該年度的利潤或虧損及該機構在該年度終結時的事務狀況所作出的報告書。
- (5A) 認可機構如獲金融管理專員書面批准，可藉以綜合方式向金融管理專員提交其控權公司的同類文件，從而符合第 (5) 款規定，以代替藉向金融管理專員提交該款規定的文件方式符合該款規定。（由 1999 年第 42 號第 5 條增補。由 2012 年第 28 號第 912 及 920 條修訂）
- (6) 金融管理專員可藉書面通知，豁免已遵從第 (5) 款的認可機構，准許該機構在他認為恰當而附加於該項豁免的條件的規限下，無須遵從第 59(1) 條。
- (7) 任何認可機構就某財政年度已遵從第 (5) 款後，除非金融管理專員另作准許，否則該認可機構須在切實可行的情況下，盡快將根據該款向金融管理專員提交的文件各一份，展示如下——
 - (a) 在該機構在香港的主要營業地點的顯眼處，及每間本地分行的顯眼處展示；及
 - (b) 就任何該等文件，展示至下次遵從本款如此展示同類文件為止。
- (8) 金融管理專員可規定任何認可機構，呈交他認為為恰當了解該機構根據第 (4) 或 (5) 款已提交予金融管理專員的文件而需要的進一步資料；該等資料須在金融管理專員規定的期限內，按他規定的方式呈交。（由 1999 年第 42 號第 5 條修訂；由 2003 年第 14 號第 24 條修訂）
- (9) 任何認可機構違反第 (3)、(4)、(5) 或 (7) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——（由 1999 年第 42 號第 5 條修訂；由 2001 年第 32 號第 24 條修訂）
 - (a) 一經循公訴程序定罪，可處第 7 級罰款；或

Part XI
Section 60

11-14
Cap. 155

- 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—

11-15
第 155 章

第 XI 部
第 60 條

- (b) 一經循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
- (10) 任何認可機構無合理辯解而沒有遵從根據第 (8) 款所作的規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂)
- (11) 在本條中，**經審計的周年帳目** (audited annual accounts) 就任何認可機構而言 —— (由 1999 年第 42 號第 5 條修訂)
- (a) 指該機構的資產負債表及損益表，連同表上的附註，而上述各項須有該機構的核數師依據《公司條例》(第 622 章) 第 405 條作出的報告書；及 (由 2012 年第 28 號第 912 及 920 條修訂)
- (b) 如該核數師在該報告書內就該機構的現金流動表示意見，則包括該機構的現金流動表，連同表上的附註。
- (由 1995 年第 49 號第 19 條代替)

Part XI
Section 60

11-16
Cap. 155

- (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*)

11-17
第 155 章

第 XI 部
第 60A 條

Part XI
Section 60A

11-18
Cap. 155

60A. 向公眾人士披露關於財務狀況的資料

- (1) 金融管理專員在諮詢財政司司長及第 (2) 款指明的人士後，可訂立規則，以訂明認可機構須向公眾人士披露關於其事務狀況（包括其利潤及虧損及其財政資源（包括資本資源及流動性資源））的資料，並訂明該等資料須予披露的方式、時間及期間。（由 2012 年第 3 號第 4 條修訂）
- (2) 為施行第 (1) 款而指明的人士是——
 - (a) 銀行業務諮詢委員會；
 - (b) 接受存款公司諮詢委員會；
 - (c) 香港銀行公會；及
 - (d) DTC 公會。
- (3) 在不局限第 (1) 款的原則下，根據該款訂立的規則——
 - (a) 可就不同類別的認可機構，訂定不同的條文；
 - (b) 可在顧及香港當時的環境下，實施巴塞爾委員會發出的關於披露的銀行業監管標準，不論是實施全部標準或實施該等標準的某部分，並可在實施時作出金融管理專員認為合適的變通；

- (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—

11-19
第 155 章

第 XI 部
第 60A 條

- (c) 可在加以變通或不加以變通的情況下應用、採納或以提述方式收納巴塞爾委員會發出的任何關於披露的文件，不論是應用、採納或收納整份文件或文件的某部分，亦不論是以於文件發出時有效的版本或不時有效的版本為準；
- (d) 可就金融管理專員應有關認可機構的申請而覆核其決定，訂定條文；上述申請是指該機構因金融管理專員根據該規則就該機構作出的決定感到受屈而提出的申請；及
- (e) 可載有因該規則而需要或適宜訂立的附帶條文、補充條文、相應條文、過渡性條文或保留條文。*(由 2012 年第 3 號第 4 條代替)*
- (3A) 根據第 (1) 款訂立的規則，可規定金融管理專員根據該規則作出的決定，屬第 101B(1) 條適用的決定。*(由 2012 年第 3 號第 4 條增補)*
- (4) 任何認可機構如沒有遵從根據第 (1) 款訂立的規則所載的適用於該機構的任何規定，則其每名董事、每名行政總裁及每名經理均屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 7 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間的每一日，另加第 2 級罰款。
- (5) 為免生疑問，現宣布第 (1) 款所指金融管理專員須諮詢任何人士的任何規定，不阻止金融管理專員諮詢他認為適當的其他人士。

(由 2005 年第 19 號第 2 條代替)

Part XI
Section 60A

11-20
Cap. 155

- (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,

11-21
第 155 章

第 XI 部
第 61 條

Part XI
Section 61

11-22
Cap. 155

61. 核數師向金融管理專員傳達資料

- (1) 認可機構的核數師無論是否應金融管理專員的要求，將他以核數師身分所察覺而與金融管理專員在本條例下任何職能有關的事宜的資料或意見，真誠地向金融管理專員傳達，不得因而被視為違反他須履行的責任。(由 1992 年第 82 號第 25 條修訂)
- (2) 第 (1) 款適用於前認可機構的核數師及適用於前核數師，一如該款適用於認可機構的核數師。
- (3) 本條在經必需的變通後，適用於任何核准貨幣經紀的核數師、任何前核准貨幣經紀的核數師及任何前貨幣經紀核數師和就該等核數師而適用，一如本條分別適用於任何認可機構的核數師、任何前認可機構的核數師及前核數師一樣，而本條例其他條文須據此解釋。(由 1997 年第 4 號第 13 條增補)
- (4) 在第 (3) 款中——

前核准貨幣經紀 (former approved money broker) 指以前是核准貨幣經紀的人；

前貨幣經紀核數師 (former money broker auditor) 指以前是核准貨幣經紀或前核准貨幣經紀的核數師的人。(由 1997 年第 4 號第 13 條增補)

(由 1990 年第 43 號第 5 條代替)

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;

11-23
第 155 章

第 XI 部
第 62 條

Part XI
Section 62

11-24
Cap. 155

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. (由 1990 年第 43 號第 6 條廢除)

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

第 XII 部

由認可機構披露資料

(* 格式變更 —— 2013 年第 1 號編輯修訂紀錄)

編輯附註：

* 第 XII 部的格式已按現行法例樣式更新。

63. 須向金融管理專員呈交的申報表及資料

(1) 每間認可機構須 ——

- (a) 在每個公曆月最後一天後不遲於 14 天，向金融管理專員呈交一份顯示該月最後一個營業日或該月最後一天於營業結束時，其在香港的主要營業地點及其所有本地分行的資產及負債的申報表；及
- (b) 分別在 3 月 31 日、6 月 30 日、9 月 30 日及 12 月 31 日完結的每一季度的最後一天後不遲於 14 天，或在金融管理專員批准的任何另一天，向金融管理專員呈交一份顯示在前一季度最後一個營業日或前一季度最後一天於營業結束時，關於其在香港的主要營業地點及其所有本地分行的申報表：

但金融管理專員可藉書面方式給予的准許，容許 (a) 及 (b) 段提述的申報表在相隔較長的期間呈交。(由 1991 年第 95 號第 16 條修訂)

- (2) 金融管理專員可規定認可機構呈交 (包括定期呈交) 他為根據本條例行使他的職能而合理規定的進一步資料，或規定核准貨幣經紀呈交 (包括定期呈交) 他為根據本條例行使他的職能而合理規定的資料；該等資料須在他規定的期限內 (或如規定須定期呈交者，則在該等定期的期限內)，按他規定的方式呈交。(由 1990 年第 3 號第 26 條修訂；由 1995 年第 49 號第 20 條修訂；由 1997 年第 4 號第 14 條修訂)

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

- (2A) 金融管理專員可規定 ——
- (a) 認可機構的任何控權公司；
 - (b) 任何該等控權公司的任何附屬公司；或
 - (c) 認可機構的任何附屬公司，(由 2012 年第 28 號第 912 及 920 條修訂)
- 按以下規定呈交資料 ——
- (i) 無論屬何種情況，呈交他為根據本條例行使他的職能而合理規定的資料；
 - (ii) 如屬 (a) 或 (b) 段的情況，呈交金融管理專員認為符合有關認可機構的存款人或潛在存款人的利益而有需要呈交的資料；及
 - (iii) 在金融管理專員規定的期限內，按他規定的方式呈交該等資料。(由 1995 年第 49 號第 20 條代替)
- (3) 金融管理專員可規定任何認可機構在他的規定中合理指明的日期或該日期之前，向他呈交一份由該機構在符合第 (3B) 款的規定下委任的一名或多於一名核數師所擬備的報告書，載明據該名或該等核數師的意見，該機構依據第 (1) 款向他呈交的申報表，或該機構依據第 (2) 款向他呈交的資料，是否在所有要項上均正確地從該機構的簿冊及紀錄編製而成，而如果並非如此正確編製，其不正確的性質及程度如何。(由 1992 年第 67 號第 5 條代替)
- (3A) 金融管理專員可規定任何認可機構在他的規定中合理指明的日期或該日期之前，向他呈交一份由該機構在符合第 (3B) 款的規定下委任的一名或多於一名核數師所擬備、就首述規定中指明而受第 (3C) 款規限的期間的報告書，載明以下全部或任何事宜 ——
- (a) 據該名或該等核數師的意見，在該段期間內，該機構是否備有足夠的管控制度，而該等制度是在切實可行的範圍內盡可能足夠令 ——
 - (i) 該機構的申報表或資料在所有要項上均正確地從該機構的簿冊及紀錄編製而成；

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,

- (ii) 該機構遵從其第 XII、XV、XVIA 及 XVIB 部所指的責任；(由 2012 年第 3 號第 5 條修訂)
- (iii) (如該機構是在香港成立為法團的) 該機構為資產折舊或資產減值(包括壞帳及呆帳)、會由或可能由該機構解除的法律責任及會出現或可能出現的虧損，維持足夠準備金，
- 而如意見是該等管控制度並不足夠，則其不足夠的性質及程度；
- (b) 在符合第 (3D) 款的規定下，在該段期間內——
- (i) 該名或該等核數師是否覺得該機構在 (a)(ii) 段提述的任何責任上，有重大違反，若如此覺得，該項違反的性質及證據；
- (ii) 如該機構是在香港成立為法團的，該名或該等核數師是否覺得該機構沒有維持 (a)(iii) 段提述的足夠準備金，若如此覺得，其理由或證據；
- (iii) (由 2002 年第 6 號第 7 條廢除)
- (由 1992 年第 67 號第 5 條增補)
- (3B) 由任何認可機構委任以擬備第 (3) 或 (3A) 款所規定報告書的一名或多於一名核數師，須是——
- (a) 在如此規定呈交報告書前已由該機構委任，並獲得金融管理專員就擬備該報告書而批准的一名或多於一名核數師；
- (b) 由金融管理專員在諮詢該機構後，就擬備該報告書而批准的一名核數師，或就此而提名的多於一名核數師的其中一名核數師；或
- (c) (a) 段所提述的一名核數師及 (b) 段所提述的一名核數師，
- 視乎金融管理專員的規定而定。(由 1992 年第 67 號第 5 條增補)

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

12-7
第 155 章

第 XII 部
第 63 條

- (3C) 根據第 (3A) 款在規定中指明的期間，不得超逾 12 個月，但如金融管理專員信納在符合有關認可機構存款人利益或符合公眾利益的情況下需要較長的期間，則屬例外。
(由 1992 年第 67 號第 5 條增補)
- (3D) 除非亦就第 (3A) 款內 (a) 段所提述的事宜規定提交報告書，否則不得就該款內 (b) 段提述的事宜規定提交報告書。
(由 1992 年第 67 號第 5 條增補)
- (3E) (由 2002 年第 6 號第 7 條廢除)
- (3F) 在本條中 ——
足夠 (adequate) 一詞就管控制度而言，包括有效運作；
管控制度 (systems of control) 包括程序。(由 1992 年第 67 號第 5 條增補)
- (4) 儘管第 120 條另有規定，金融管理專員可將根據第 (1) 款提交的申報表中的數字合計以擬備並刊登綜合報表。
- (5) 任何認可機構如無合理辯解而違反第 (1) 款或沒有遵從根據第 (3) 或 (3A) 款作出的規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 5 級罰款；如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1992 年第 67 號第 5 條修訂；由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂；由 2005 年第 19 號第 12 條修訂)
- (6) 任何認可機構或任何核准貨幣經紀無合理辯解而沒有遵從根據第 (2) 款作出的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪；任何認可機構的控權公司，該控權公司的附屬公司，或任何認可機構的附屬公司無合理辯解而沒有遵從根據第 (2A) 款作出的任何規定，沒有遵從該規定的該公司的每名董事、每名行政總裁及每名經理均屬犯罪；而 —— (由 1990 年第 3 號第 26 條修訂；由 1995 年第 49 號第 20 條修訂；由 1997 年第 4 號第 14 條修訂；由 2001 年第 32 號第 24 條修訂；由 2012 年第 28 號第 912 及 920 條修訂)

Part XII
Section 63

12-8
Cap. 155

- 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

12-9
第 155 章

第 XII 部
第 63 條

- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
 - (7) 任何人就本條的目的，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。(由 1997 年第 4 號第 27 條修訂)
- (由 1992 年第 82 號第 25 條修訂)

Part XII
Section 63

12-10
Cap. 155

- 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

12-11
第 155 章

第 XII 部
第 63A 條

Part XII
Section 63A

12-12
Cap. 155

63A. 核數師須向金融管理專員報告對認可機構的財務狀況在很大程度上有不良影響的事宜

(1) 根據 ——

- (a) 第 59(2) 或 63(3) 或 (3A) 條；或
- (b) 《公司條例》(第 622 章) 第 395、396、397 或 398 條，
(由 2012 年第 28 號第 912 及 920 條修訂)

獲委任的核數師，如在執行職責時察覺有他認為對有關認可機構的財務狀況在很大程度上有不良影響的事宜，則須在察覺後，於合理切實可行的範圍內盡快向金融管理專員呈交一份書面報告，述明該事宜的性質及他持該意見的理由。

- (2) 就任何在香港以外成立為法團的認可機構而言，第 (1) 款只適用於其在香港的主要營業地點及其本地分行，而適

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

12-13
第 155 章第 XII 部
第 63B 條

用的情況，猶如該地點聯同該等分行是一個獨立的認可機構一樣。

(由 2002 年第 6 號第 8 條增補)

63B. 在若干情況下註冊機構的核數師須向金融管理專員呈交報告 凡某人——

(a) 在執行他作為根據——

- (i) 第 59(2) 或 63(3) 或 (3A) 條；或
- (ii) 《公司條例》(第 622 章) 第 395、396、397 或 398 條，(由 2012 年第 28 號第 912 及 920 條修訂)

獲委任的核數師的職能；及

(b) 就某註冊機構執行該等職能，

的過程中，察覺到有一項他認為構成該機構不遵從《證券及期貨條例》(第 571 章) 第 157 條所指的任何訂明規定 (但不包括該條例第 149 條所指的規定或根據該條訂立的規則的規定) 的事項，則他須在他察覺該事項後，於合理切實可行的範圍內盡快向金融管理專員呈交一份該事項的書面報告。

(由 2002 年第 6 號第 9 條增補)

64. 關於持有股份的資料等

(1) 如金融管理專員有此規定，每間認可機構須通知他每間

Part XII
Section 63B12-14
Cap. 155

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

有以下情況的公司的名稱及地址，及該公司所經營業務的性質——（由 1990 年第 3 號第 27 條修訂；由 1992 年第 82 號第 25 條修訂）

- (a) 該機構在總數上直接或間接持有該公司的已發行股份的百分之二十或以上的實益擁有權；（由 2012 年第 28 號第 912 及 920 條修訂）
 - (b) 該公司的任何董事或經理兼任該機構的董事、行政總裁或經理；（由 2001 年第 32 號第 24 條修訂）
 - (c) 該公司的名稱與該機構的名稱有共同特徵；
 - (d) 該公司不論以何種方式，與該機構一致行動，以促進該機構的業務；或
 - (e) 該公司的控權人亦是該機構的控權人。
- (2) 金融管理專員可規定任何已依據第 (1) 款向他呈交資料的認可機構，向他呈交他為根據本條行使他的職能而合理規定的進一步資料。（由 1990 年第 3 號第 27 條修訂；由 1992 年第 82 號第 25 條修訂）
 - (3) 根據本條規定須呈交的資料，須在金融管理專員規定的期限內，按他規定的方式呈交。（由 1992 年第 82 號第 25 條修訂）
 - (4) 任何認可機構無合理辯解而沒有遵從根據本條所作的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——（由 2001 年第 32 號第 24 條修訂）
 - (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）
 - (5) 任何人就本條的目的，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪——

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)*

12-17
第 155 章

第 XII 部
第 65 條

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (6) 如任何認可機構根據本條交出的任何簿冊、帳目、文件、證券、保證或資料，在要項上是虛假的，該機構的每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)

65. 章程的修改

- (1) 任何認可機構的組織章程大綱、組織章程細則或其他據以成立為法團的文書有所修改後，該認可機構須於 30 天內以書面向金融管理專員提供經該機構的董事核實的該等修改的詳情。(由 1992 年第 82 號第 25 條修訂)

Part XII
Section 65

12-18
Cap. 155

- (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

12-19
第 155 章

第 XII 部
第 66 條

- (2) 任何認可機構違反本條，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂）

66. 認可機構停止接受存款時須通知金融管理專員

- (1) 認可機構如停止經營接受存款業務或銀行業務（視屬何情況而定），須立即以書面將此事實通知金融管理專員。（由 1992 年第 82 號第 25 條修訂）
- (2) 任何認可機構沒有遵從本條的規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 3 級罰款。（由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂）

67. 報告無能力履行義務的責任

- (1) 如任何認可機構相當可能會無能力履行其義務或即將中止付款，須立即將全部有關的事實、情況及資料，向金融管理專員報告。（由 1992 年第 82 號第 25 條修訂）
- (2) 任何認可機構無合理辯解而沒有遵從第 (1) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——（由 2001 年第 32 號第 24 條修訂）
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或

Part XII
Section 66

12-20
Cap. 155

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)

12-21
第 155 章

第 XII 部
第 68 條

- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）

68. 由香港以外地方的當局進行的審查

在香港以外地方適當且獲承認的銀行業監管當局，經金融管理專員批准後，可審查——

- (a) 下述認可機構在香港的主要營業地點或其任何本地分行或本地辦事處的簿冊、帳目及交易——（由 2001 年第 32 號第 13 條修訂）
- (i) 該認可機構是在該地方成立為法團的，或金融管理專員認為該當局就該認可機構是有主要監管責任的；或
 - (ii) 該認可機構是在香港或香港以外成立為法團並且是在該地方成立為法團的公司的附屬公司，或並且是任何公司的附屬公司而金融管理專員認為該當局就該公司有主要監管責任的；
- (b) 下述銀行的任何本地代表辦事處的文件——
- (i) 該銀行是在該地方成立為法團的，或金融管理專員認為該當局就該銀行是有主要監管責任的；或
 - (ii) 該銀行是在香港以外成立為法團並且是在該地方成立為法團的公司的附屬公司，或並且是任何公司的附屬公司而金融管理專員認為該當局就該公司有主要監管責任的。

Part XII
Section 68

12-22
Cap. 155

- (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

12-23
第 155 章

第 XII 部
第 68 條

Part XII
Section 68

12-24
Cap. 155

(由 1993 年第 94 號第 20 條代替。由 1995 年第 49 號第 21 條修訂)

- (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)

12A-1
第 155 章

第 XIA 部
第 68A 條

Part XIA
Section 68A

12A-2
Cap. 155

第 XIA 部

恢復規劃

(第 XIA 部由 2018 年第 6 號第 4 條增補)

68A. 釋義

在本部中——

恢復計劃 (recovery plan) 指——

- (a) 根據第 68C(1) 條規定的計劃；或
- (b) 如該計劃根據第 68E 條修訂——該經修訂的計劃。

68B. 適用範圍

本部適用於——

- (a) 在香港成立為法團的認可機構；及
- (b) 在香港以外成立為法團的認可機構，而該機構在香港透過分行運作。

68C. 擬訂、維持和呈交恢復計劃的規定

- (1) 金融管理專員可藉向認可機構送達書面通知，規定該機構——
 - (a) 擬訂和維持一份計劃，列出該機構在承受嚴峻壓力時，可為穩定和重建其財政資源及持續經營能力而採取的措施；及
 - (b) 向金融管理專員呈交（包括定期呈交）該計劃。
- (2) 金融管理專員可指明——
 - (a) 恢復計劃的格式，及適用於該計劃的準則；及
 - (b) 該計劃須包括的元素，及以何種方式在計劃中包括該等元素。

Part XIA

Recovery Planning

(Part XIA added 6 of 2018 s. 4)

68A. Interpretation

In this Part—

recovery plan (恢復計劃) means—

- (a) a plan required under section 68C(1); or
- (b) if the plan is revised under section 68E, the revised plan.

68B. Application

This Part applies to—

- (a) an authorized institution incorporated in Hong Kong; and
- (b) an authorized institution incorporated outside Hong Kong, which operates in Hong Kong through a branch.

68C. Requirements to prepare, maintain and submit recovery plan

- (1) The Monetary Authority may, by notice in writing served on an authorized institution, require the institution to—
 - (a) prepare and maintain a plan setting out the measures that the institution can take to stabilize and restore its financial resources and viability when the institution comes under severe stress; and
 - (b) submit (including periodically submit) the plan to the Monetary Authority.
- (2) The Monetary Authority may specify—

12A-3
第 155 章第 XIIA 部
第 68D 條

- (3) 在不局限第 (2) 款的原則下，金融管理專員可指明恢復計劃須包括 ——
- (a) 一個恢復啟動條件的框架，而該等啟動條件是設計用作識辨在何種情況下，有關認可機構須考慮適時實施該計劃中的措施；
 - (b) 一系列實質和可行的恢復方案，而該機構能實施該等方案以穩定和重建其財政資源及持續經營能力，包括維持足夠（就該機構的業務的運作的性質、規模及複雜程度而言）的資本及流動性水平；
 - (c) 一套由該機構啟動該計劃的程序，包括 ——
 - (i) 識辨和報告發生啟動事件的程序，及評估該等事件的影響的責任；及
 - (ii) 決定適當行動的程序；及
 - (d) 一套傳訊計劃，確保在啟動恢復計劃和實施該計劃中的措施時，訊息得以適時傳達。

68D. 施加規定的一般權力

- (1) 金融管理專員可藉向認可機構送達書面通知，就該機構的恢復計劃，施加規定。
- (2) 在不局限第 (1) 款的原則下，有關規定可關乎 ——

Part XIIA
Section 68D12A-4
Cap. 155

- (a) the form of, and the standards applicable to, a recovery plan; and
 - (b) the elements to be included in the plan, and the way they are to be included.
- (3) Without limiting subsection (2), the Monetary Authority may specify that a recovery plan must include—
- (a) a framework of recovery triggers designed to identify the points at which consideration must be given by the authorized institution to the timely implementation of the measures in the plan;
 - (b) a range of material and feasible recovery options that could be implemented by the institution to stabilize and restore its financial resources and viability, including the maintaining of capital and liquidity at levels adequate for the nature, scale and complexity of the institution's operations;
 - (c) a process for activating the plan by the institution, including—
 - (i) the process for identifying and reporting the occurrence of trigger events, and the responsibility for assessing the impact of the events; and
 - (ii) the process for deciding on the appropriate course of action; and
 - (d) a communication plan to ensure timely communication when the recovery plan is activated and the measures in the plan are implemented.

68D. General power to impose requirements

- (1) The Monetary Authority may, by notice in writing served on an authorized institution, impose requirements on the institution in relation to its recovery plan.

12A-5
第 155 章第 XIIA 部
第 68E 條

- (a) 檢討恢復計劃的頻密程度；
 - (b) 有關認可機構須為恢復規劃的目的而維持的資料，以及為規劃的目的而需有的管理訊息體系；及
 - (c) 就監察該恢復規劃程序而設的該機構內部管治安排，以及啟動該計劃和實施該計劃中的措施的程序。
- (3) 除非金融管理專員認為，為了確保有關認可機構在承受嚴峻壓力時，其恢復計劃對穩定和重建其財政資源及持續經營能力屬合適，金融管理專員施加有關規定是有需要或適宜的，否則金融管理專員不得施加該規定。
- (4) 在施加有關規定時，金融管理專員可顧及有關認可機構業務的運作的性質、規模及複雜程度。

68E. 修訂恢復計劃的規定

- (1) 如金融管理專員認為，認可機構的恢復計劃中有不足或構成障礙之處（包括例如該計劃中的措施有不足或構成障礙之處），則本條適用。
- (2) 金融管理專員可藉向有關認可機構送達書面通知——
 - (a) 指明該機構的恢復計劃中的不足或構成障礙之處（包括例如該計劃中的措施的不足或構成障礙之處）；及
 - (b) 規定該機構在該通知指明的期間內，呈交經修訂的恢復計劃，說明已如何糾正該等不足或構成障礙之處。
- (3) 如——

Part XIIA
Section 68E12A-6
Cap. 155

- (2) Without limiting subsection (1), the requirements may relate to—
 - (a) the frequency of review of the recovery plan;
 - (b) the information to be maintained by the authorized institution, and the management information systems required, for the purposes of recovery planning; and
 - (c) the governance arrangements within the institution for oversight of the recovery planning process and the process for activating the plan and implementing the measures in the plan.
- (3) The Monetary Authority must not impose the requirements unless the Monetary Authority considers the imposition necessary or expedient to ensure that the authorized institution's recovery plan is fit for the purpose of stabilizing and restoring its financial resources and viability when the institution comes under severe stress.
- (4) In imposing the requirements, the Monetary Authority may have regard to the nature, scale and complexity of the authorized institution's operations.

68E. Requirement to revise recovery plan

- (1) This section applies if the Monetary Authority considers that there is a deficiency or impediment in the recovery plan of an authorized institution, including, for example, in the measures in the plan.
- (2) The Monetary Authority may, by notice in writing served on the authorized institution—
 - (a) specify the deficiency or impediment in the institution's recovery plan, including, for example, in the measures in the plan; and

12A-7
第 155 章第 XIA 部
第 68F 條

- (a) 有關認可機構沒有遵從該通知所施加的規定；或
 - (b) 金融管理專員認為，該機構呈交的經修訂恢復計劃，並未充分糾正有關的不足或構成障礙之處，
- 則金融管理專員可藉向該機構送達書面通知，規定該機構在該通知指明的期間內，對該計劃作出特定的修訂。
- (4) 根據第 (2)(b) 或 (3) 款指明的期間，須是在有關情況下屬合理的。

68F. 實施恢復計劃的規定

- (1) 如金融管理專員認為有以下情況，則本條適用 ——
 - (a) 認可機構正耽擱實施其恢復計劃中的一項或多於一項措施；
 - (b) 此舉損害該機構的財政穩健程度及持續經營能力；及
 - (c) 該機構有需要實施上述措施，以 ——
 - (i) 穩定和重建該機構的財政資源及持續經營能力；及
 - (ii) 避免對香港金融體系的整體穩定及有效運作，造成不能接受的風險。
- (2) 金融管理專員可藉向有關認可機構送達書面通知 ——
 - (a) 通知該機構，金融管理專員有意規定該機構實施該通知指明的、在該機構的恢復計劃中的一項或多於一項措施；及

Part XIA
Section 68F12A-8
Cap. 155

- (b) require the institution to submit a revised recovery plan within the period specified in the notice demonstrating how the deficiency or impediment has been addressed.
- (3) If—
 - (a) the authorized institution fails to comply with the requirement imposed in the notice; or
 - (b) the Monetary Authority considers that the deficiency or impediment has not been adequately addressed by the revised recovery plan submitted by the institution,

the Monetary Authority may, by notice in writing served on the institution, require it to make specific revisions to the plan within the period specified in the notice.
- (4) The period specified under subsection (2)(b) or (3) must be reasonable in the circumstances.

68F. Requirement to implement recovery plan

- (1) This section applies if the Monetary Authority considers that—
 - (a) an authorized institution is delaying the implementation of one or more of the measures in its recovery plan;
 - (b) the delay is injurious to the financial soundness and viability of the institution; and
 - (c) the institution's implementation of the measure or measures is necessary to—
 - (i) stabilize and restore the financial resources and viability of the institution; and
 - (ii) avoid an unacceptable risk to the general stability and effective working of the financial system in Hong Kong.

12A-9
第 155 章

第 XIIA 部
第 68G 條

- (b) 說明金融管理專員有該意向的理由。
- (3) 有關認可機構可在有關通知指明的期間內，向金融管理專員作出書面申述，述明金融管理專員為何不應施加有關規定。
- (4) 金融管理專員如決定施加有關規定，須藉向有關認可機構送達書面通知——
- (a) 將該決定通知該機構；
- (b) 說明有該決定的理由；及
- (c) 規定該機構在該通知指明的期間內，實施該通知指明的、在該機構恢復計劃中的措施。
- (5) 根據第 (3) 或 (4)(c) 款指明的期間，須是在有關情況下屬合理的。
- (6) 金融管理專員根據第 (4) 款施加規定的決定，屬第 101B(1) 條適用者。

68G. 通知的規定

- (1) 如某事件發生（或相當可能發生），而認可機構須因應該事件，實施其恢復計劃中的措施，則該機構——
- (a) 在察覺此事後，須在切實可行範圍內，盡快將此事通知金融管理專員；及

Part XIIA
Section 68G

12A-10
Cap. 155

- (2) The Monetary Authority may, by notice in writing served on the authorized institution—
- (a) notify the institution that the Monetary Authority intends to require it to implement one or more of the measures in its recovery plan as specified in the notice; and
- (b) give reasons why the Monetary Authority has the intention.
- (3) The authorized institution may, within the period specified in the notice, make representations in writing to the Monetary Authority as to why the Monetary Authority should not impose the requirement.
- (4) If the Monetary Authority decides to impose the requirement, the Monetary Authority must by notice in writing served on the authorized institution—
- (a) notify the institution of the decision;
- (b) give reasons for the decision; and
- (c) require the institution to implement, within the period specified in the notice, the measure or measures in its recovery plan as specified in the notice.
- (5) The period specified under subsection (3) or (4)(c) must be reasonable in the circumstances.
- (6) A decision of the Monetary Authority to impose a requirement under subsection (4) is a decision to which section 101B(1) applies.

68G. Requirement to notify

- (1) If an event that requires an authorized institution to implement a measure in its recovery plan occurs or is likely to occur, the institution must—
- (a) as soon as practicable after becoming aware of the matter, notify the Monetary Authority of the matter; and

12A-11
第 155 章第 XIA 部
第 68H 條

- (b) 須將金融管理專員所規定的關於此事的詳情，提供予金融管理專員，而該等詳情，須在該機構獲通知該規定後，在切實可行範圍內盡快提供。
- (2) 如有關認可機構決定實施其恢復計劃中的措施，則該機構——
- (a) 在作出該決定後，須在切實可行範圍內，盡快將此事通知金融管理專員；及
- (b) 須將金融管理專員所規定的關於此事的詳情，提供予金融管理專員，而該等詳情，須在該機構獲通知該規定後，在切實可行範圍內盡快提供。

68H. 認可機構的控權公司

- (1) 如有以下情況，金融管理專員可就認可機構的控權公司，行使第 68C、68D、68E 及 68F 條所述的權力——
- (a) 該公司藉或根據《公司條例》(第 622 章)、《公司條例》(第 622 章)第 2(1) 條所界定的《舊有公司條例》或任何其他條例，在香港成立為法團；及
- (b) 金融管理專員認為，為了以下目的，行使該權力是有需要或適宜的——
- (i) 促進該機構的財政穩健程度及持續經營能力；或
- (ii) 促進香港金融體系的整體穩定及有效運作。
- (2) 為施行第 (1) 款，第 68C、68D、68E 或 68F 條中提述認可機構，即提述控權公司。
- (3) 如某事件發生 (或相當可能發生)，而有關控權公司須因應該事件，實施其恢復計劃中的措施，則該公司——
- (a) 在察覺此事後，須在切實可行範圍內，盡快將此事通知金融管理專員；及

Part XIA
Section 68H12A-12
Cap. 155

- (b) as soon as practicable after being notified to do so, provide the Monetary Authority with any particulars of the matter that the Monetary Authority requires.
- (2) If the authorized institution decides to implement a measure in its recovery plan, the institution must—
- (a) as soon as practicable after making the decision, notify the Monetary Authority of the matter; and
- (b) as soon as practicable after being notified to do so, provide the Monetary Authority with any particulars of the matter that the Monetary Authority requires.

68H. Holding company of authorized institution

- (1) The Monetary Authority may exercise a power mentioned in sections 68C, 68D, 68E and 68F in relation to a holding company of an authorized institution if—
- (a) the holding company is 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
- (b) the Monetary Authority considers the exercise of the power necessary or expedient to promote—
- (i) the financial soundness and viability of the institution; or
- (ii) the general stability and effective working of the financial system in Hong Kong.
- (2) For the purposes of subsection (1), a reference to an authorized institution in section 68C, 68D, 68E or 68F is a reference to the holding company.

12A-13
第 155 章

第 XIIA 部
第 68I 條

- (b) 須將金融管理專員所規定的關於此事的詳情，提供予金融管理專員，而該等詳情，須在該公司獲通知該規定後，在切實可行範圍內盡快提供。
- (4) 如有關控權公司決定實施其恢復計劃中的措施，則該公司——
 - (a) 在作出該決定後，須在切實可行範圍內，盡快將此事通知金融管理專員；及
 - (b) 須將金融管理專員所規定的關於此事的詳情，提供予金融管理專員，而該等詳情，須在該公司獲通知該規定後，在切實可行範圍內盡快提供。

68I. 關乎恢復規劃的罪行

- (1) 如認可機構無合理辯解，而沒有遵守第 68G 條，或沒有遵從根據第 68C(1)、68D(1)、68E(3) 或 68F(4) 條送達的通知的規定——
 - (a) 該機構即屬犯罪——
 - (i) 一經循公訴程序定罪——可處第 9 級罰款，如屬持續的罪行，可就罪行持續期間的每一日，另處第 5 級罰款；或
 - (ii) 一經循簡易程序定罪——可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間的每一日，另處第 2 級罰款；及
 - (b) 不論該機構有否就該罪行而被控告或定罪，該機構的每名董事、每名行政總裁及每名經理亦屬犯該罪行——

Part XIIA
Section 68I

12A-14
Cap. 155

- (3) If an event that requires the holding company to implement a measure in its recovery plan occurs or is likely to occur, the company must—
 - (a) as soon as practicable after becoming aware of the matter, notify the Monetary Authority of the matter; and
 - (b) as soon as practicable after being notified to do so, provide the Monetary Authority with any particulars of the matter that the Monetary Authority requires.
- (4) If the holding company decides to implement a measure in its recovery plan, the company must—
 - (a) as soon as practicable after making the decision, notify the Monetary Authority of the matter; and
 - (b) as soon as practicable after being notified to do so, provide the Monetary Authority with any particulars of the matter that the Monetary Authority requires.

68I. Offences relating to recovery planning

- (1) If an authorized institution, without reasonable excuse, fails to comply with section 68G, or a requirement of a notice served under section 68C(1), 68D(1), 68E(3) or 68F(4)—
 - (a) the institution commits an offence and is liable—
 - (i) on conviction on indictment—to a fine at tier 9 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, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues; and
 - (b) whether or not the institution is charged with or convicted of the offence, every director, every chief

12A-15
第 155 章第 XIIA 部
第 68I 條

- (i) 一經循公訴程序定罪——可處第 9 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 5 級罰款；或
 - (ii) 一經循簡易程序定罪——可處第 5 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 2 級罰款。
- (2) 如認可機構的控權公司無合理辯解，而沒有遵守第 68H(3) 或 (4) 條，或沒有遵從金融管理專員根據第 68H(1) 條行使其權力而送達的通知的規定——
- (a) 該公司即屬犯罪——
 - (i) 一經循公訴程序定罪——可處第 9 級罰款，如屬持續的罪行，可就罪行持續期間的每一日，另處第 5 級罰款；或
 - (ii) 一經循簡易程序定罪——可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間的每一日，另處第 2 級罰款；及
 - (b) 不論該公司有否就該罪行而被控告或定罪，該公司的每名高級人員亦屬犯該罪行——
 - (i) 一經循公訴程序定罪——可處第 9 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 5 級罰款；或
 - (ii) 一經循簡易程序定罪——可處第 5 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 2 級罰款。
- (3) 在第 (2) 款中——
- 高級人員** (officer) 就控權公司而言，指——
- (a) 該公司的董事；
 - (b) 該公司的行政總裁或副行政總裁；或

Part XIIA
Section 68I12A-16
Cap. 155

- executive and every manager of the institution also commits the offence and is liable—
- (i) on conviction on 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.
- (2) If a holding company of an authorized institution, without reasonable excuse, fails to comply with section 68H(3) or (4), or a requirement of a notice served by the Monetary Authority in the exercise of the Monetary Authority's powers under section 68H(1)—
- (a) the company commits an offence and is liable—
 - (i) on conviction on indictment—to a fine at tier 9 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, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues; and
 - (b) whether or not the company is charged with or convicted of the offence, every officer of the company also commits the offence and is liable—
 - (i) on conviction on 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

12A-17
第 155 章

第 XIIA 部
第 68I 條

- (c) 符合以下說明的人：由該公司僱用、為該公司行事、代該公司行事或根據與該公司訂立的安排而行事，並主要負責（獨自或連同其他人）——
- (i) 管理該公司的部分業務；或
 - (ii) 執行該公司的一項或多於一項監控職能。
- (4) 在第 (3) 款**高級人員**的定義中 ——
- 行政總裁** (chief executive officer) 具有《金融機構（處置機制）條例》（第 628 章）第 2(1) 條所給予的涵義；
- 副行政總裁** (deputy chief executive officer) 具有《金融機構（處置機制）條例》（第 628 章）第 2(1) 條所給予的涵義；
- 監控職能** (control function) 具有《金融機構（處置機制）條例》（第 628 章）第 2(1) 條所給予的涵義。

Part XIIA
Section 68I

12A-18
Cap. 155

- (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.
- (3) In subsection (2)—
- officer** (高級人員), in relation to a holding company, means—
- (a) a director of the company;
 - (b) the chief executive officer or a deputy chief executive officer of the company; or
 - (c) a person who is employed by, or acts for or on behalf of or under an arrangement with, the company and is principally responsible, alone or jointly with others, for—
 - (i) the management of part of the business of the company; or
 - (ii) the performance of one or more of the control functions of the company.
- (4) In the definition of **officer** in subsection (3)—
- chief executive officer** (行政總裁) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628);
- control function** (監控職能) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628);
- deputy chief executive officer** (副行政總裁) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628).

第 XIII 部**認可機構的擁有及管理****69. 合併等須獲得批准**

- (1) 在香港成立為法團的認可機構，如無金融管理專員事先書面批准，不得——（由 1990 年第 3 號第 28 條修訂；由 1992 年第 82 號第 25 條修訂；由 1995 年第 49 號第 22 條修訂）
- (a) 作出任何安排或訂立任何協議，以出售或處置以下業務的全部或任何部分——
- (i) 如屬銀行，則為其銀行業務；及
- (ii) 如屬有限制牌照銀行或接受存款公司，則為其接受存款業務；或（由 1990 年第 3 號第 28 條修訂）
- (b) （由 1991 年第 95 號第 17 條廢除）
- (2) 在香港成立為法團的認可機構如——
- (a) 作出任何安排或訂立任何協議，以出售或處置其全部或任何部分業務，則不論該安排或協議是否依據第 (1)(a) 款的批准作出或訂立；或
- (b) 進行任何資本重整，（由 1991 年第 95 號第 17 條修訂）須在作出該項安排、訂立該項協議或進行該項重整後，在切實可行範圍內盡快以書面通知金融管理專員該項安排、協議或重整（視屬何情況而定），另——
- (i) 該通知書須由該機構一名董事簽署；及
- (ii) 該機構須就該項安排、協議或重整，向金融管理專員提供他需要的資料。（由 1992 年第 82 號第 25 條修訂）

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—

- (3) (由 1997 年第 4 號第 27 條廢除)
- (4) 任何認可機構違反第 (1) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (5) 任何認可機構違反第 (2) 款，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂)
- (6) 如任何認可機構根據本條交出的任何資料在要項上是虛假的，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (由 1987 年第 64 號第 14 條代替)

- (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. 適用於擬成為在香港成立為法團的認可機構控權人的人及若干現時為在香港成立為法團的認可機構控權人的條款**

- (1) 本條適用於下述的人，即成為或本身為在香港成立為法團的認可機構的 ——
- (a) 大股東控權人；或
 - (b) 間接控權人，
一如其適用於成為或本身為（視屬何情況而定）在香港成立為法團的認可機構的小股東控權人。
- (2) 在本條中 ——
- “反對通知書” (notice of objection) 指反對該通知書內指明的人成為或本身為（視屬何情況而定）該通知書內指明的認可機構小股東控權人的書面通知；
- “有條件同意通知書” (conditional notice of consent) 指在“同意通知書”定義中 (b) 段提述的同意通知書；
- “同意通知書” (notice of consent) 指指明以下事宜的書面通知 ——
- (a) 對於該通知書內指明的人成為或本身為（視屬何情況而定）該通知書內指明的認可機構小股東控權人一事，並無反對；或
 - (b) 對於不反對該通知書內指明的人成為或本身為（視屬何情況而定）該通知書內指明的認可機構小股東控權人一事，所須附加的條件限制。
- (3) 在不抵觸第 (4) 款的規定下，任何人不得成為在香港成立為法團的認可機構的小股東控權人，除非 ——
- (a) 該人已向金融管理專員送達書面通知，述明他擬成為該等控權人；及
 - (b) 有以下任何一種情況 ——

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.

- (i) 除第 (17) 款另有規定外，金融管理專員在該通知書送達日期起 3 個月屆滿前，向他送達同意通知書；或
 - (ii) 該期限已屆滿而金融管理專員並無向他送達反對通知書。
- (4) 任何人向金融管理專員送達的第 (3)(a) 款提述的通知書，不得視為已遵從該款的規定，但在關於該人在以下日期起計的 12 個月屆滿前成為該通知書所指認可機構的小股東控權人的方面則除外——
 - (a) 如該人已獲送達同意通知書，則為他獲送達該同意通知書當日；
 - (b) 如第 (3)(b) 款提述的期限屆滿而該條所指明的兩種情況均沒有出現，則為該期限屆滿當日；
 - (c) 如該人已獲送達反對通知書而就該反對通知書根據第 132A(3) 條提出的上訴已得直，則為該上訴得直當日。(由 1997 年第 4 號第 27 條修訂)
- (5) 任何人——
 - (a) 在違反第 (3) 款的情況下成為認可機構的小股東控權人；
 - (b) 並不知道他憑藉成為該等控權人的作為或情況，是有如此效果的；及
 - (c) 其後察覺到 he 已成為該等控權人這一事實，須在察覺該事實後不遲於 14 天，向金融管理專員送達書面通知，述明 he 已成為該等控權人。
- (6) 在不抵觸第 (7)、(8)、(9) 及 (10) 款的規定下，金融管理專員可向任何人送達——
 - (a) 同意通知書；或
 - (b) 反對通知書。
- (6A) 為免生疑問，現宣布金融管理專員向任何已成為認可機構小股東控權人的人送達的有條件同意通知書，可撤銷

- (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—

先前向該人送達的關於該人成為或本身為(視屬何情況而定)該等控權人的同意通知書(如有的話)。(由 1999 年第 42 號第 7 條增補)

- (7) 在不限制金融管理專員在有條件同意通知書內可指明的條件的一般性的原則下，他可在該通知書內指明他認為為保障該通知書所指明認可機構的存款人及潛在存款人的利益而屬恰當的條件。
- (8) 金融管理專員如信納有以下情況，不得向任何人送達反對通知書——
- (a) 該人是成為或本身為(視屬何情況而定)該通知書內指明的認可機構小股東控權人的適當的人；
 - (b) 該機構的存款人或潛在存款人的利益，並不會或並無(視屬何情況而定)因該人成為或本身為(視屬何情況而定)該等控權人而以其他方式受到威脅；及
 - (c) 如該人——
 - (i) 現時並非該等控權人，在考慮到他假若成為該等控權人時，他對該機構相當可能有的影響——
 - (A) 如金融管理專員認為該機構現時正審慎經營其業務，則該機構相當可能如此繼續經營其業務；
 - (B) 如金融管理專員並不如此認為，則該人相當可能進行足夠的補救行動；
 - (ii) 現時是該等控權人，在考慮到他作為該等控權人而對該機構有的影響——
 - (A) 如金融管理專員認為在該人成為該等控權人前，該機構已審慎經營其業務，則該機構現時已如此並相當可能如此繼續經營其業務；
 - (B) 如金融管理專員並不如此認為，則該人現正進行或相當可能進行足夠的補救行動。

- (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—

13-11
第 155 章

第 XIII 部
第 70 條

- (9) 金融管理專員不得向一名已成為認可機構小股東控權人的人，送達反對通知書——（由 1999 年第 42 號第 7 條修訂）
- (a) 除非該人是在違反第 (3) 款下成為該等小股東控權人的；
- (b) 除第 (17) 款另有規定外，該項送達是緊接金融管理專員察覺該違反事宜 3 個月屆滿之後的。
- (10) 金融管理專員向任何人送達有條件同意通知書或反對通知書前，須向該人送達初步通知書——
- (a) 述明金融管理專員正考慮向他送達有條件同意通知書或反對通知書（視屬何情況而定）；
- (b) 如金融管理專員正考慮向他送達——
- (i) 有條件同意通知書，該初步通知書須指明金融管理專員擬在該有條件同意通知書內指明的條件；
- (ii) 反對通知書，該初步通知書須指明就第 (8) 款提述的事宜中，金融管理專員不信納何事；及
- (c) 述明他可在初步通知書送達日期起 1 個月內向金融管理專員作出書面申述。
- (11) 凡有申述按照第 (10)(c) 款作出，金融管理專員在決定是否送達有關的有條件同意通知書或反對通知書（視屬何情況而定）時，須考慮該等申述。
- (12) 送達任何人的有條件同意通知書，在下述情況下，可指明在根據第 (10) 款送達該人的初步通知書內沒有指明的條件——
- (a) 該人同意該等條件；或
- (b) 一份隨後而指明該等條件的初步通知書，已根據該款送達該人。（由 2018 年第 17 號第 62 條代替）
- (13) 送達任何人的反對通知書——

PART XIII
Section 70

13-12
Cap. 155

- (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.

13-13
第 155 章第 XIII 部
第 70 條

- (a) 在符合 (b) 段的規定下，須指明第 (8) 款所提述的事宜中，金融管理專員不信納何事；及 (由 2018 年第 17 號第 62 條修訂)
- (b) 不得指明在根據第 (10) 款送達該人的初步通知書內沒有指明的任何此等事宜。(由 2018 年第 17 號第 62 條修訂)
- (c) (由 2018 年第 17 號第 62 條廢除)
- (14) 金融管理專員如就第 (8) 款提述的事宜考慮向任何人或已經向任何人 (視屬何情況而定) 送達反對通知書，則無須向該人披露該等事宜的任何詳情。
- (15) (由 1997 年第 4 號第 27 條廢除)
- (16) 如金融管理專員依據第 72A 條規定一名已根據第 (3)(a) 或 (5) 款發出書面通知的人呈交資料，則第 (3)(b) 或 (9)(b) 款 (視屬何情況而定) 所提述的期限，須加上由施加該規定至接獲該等資料的一段時間。
- (17) 第 (3)(b) 或 (9)(b) 款提述的期限 (連同根據第 (16) 款延伸的期限) 如本應屆滿的，則在可按照第 (10)(c) 款作出申述的期限屆滿後 14 天之前，不得屆滿。
- (18) 除第 (19) 款另有規定外，任何人違反第 (3) 款，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。(由 1997 年第 4 號第 27 條修訂)
- (19) 凡任何人被控犯了第 (18) 款所訂罪行，如能證明他並不知道他憑藉成為有關認可機構小股東控權人的作為或情況，是有如此效果的，則可以此作為免責辯護。
- (20) 任何人違反第 (5) 款，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或

PART XIII
Section 7013-14
Cap. 155

- (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.

13-15
第 155 章

第 XIII 部
第 70 條

- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）
- (21) 任何人違反向他送達的有條件同意通知書內所指明的任何條件，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）
- (由 1991 年第 95 號第 18 條代替。由 1992 年第 82 號第 25 條修訂)

PART XIII
Section 70

13-16
Cap. 155

- (12) A conditional notice of consent served on a person may specify conditions which were not specified in the preliminary notice served under subsection (10) on that person where—
- (a) that person consents to those conditions; or
- (b) a subsequent preliminary notice specifying those conditions has been served under that subsection on that person. (*Replaced 17 of 2018 s. 62*)
- (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; and (*Amended 17 of 2018 s. 62*)
- (b) shall not specify any such matters which were not specified in the preliminary notice served under subsection (10) on that person. (*Amended 17 of 2018 s. 62*)
- (c) (*Repealed 17 of 2018 s. 62*)
- (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. 就現有控權人提出反對

- (1) 本條適用於下述的人，即本身為在香港成立為法團的認可機構的——
 - (a) 大股東控權人；或
 - (b) 間接控權人，
一如其適用於本身為在香港成立為法團的認可機構的小股東控權人的人。
- (2) 在本條中，除文意另有所指外，“反對通知書”(notice of objection)指反對該通知書內指明的人本身為該通知書內指明的認可機構小股東控權人的書面通知。
- (3) 在符合第(4)款的規定下，金融管理專員可向以下的人送達反對通知書——
 - (a) 在香港成立為法團的認可機構的小股東控權人——
 - (i) 而他並非在違反第 70(3)條下本身為該等控權人的；或
 - (ii) 而他是在違反該條下本身為該等控權人的，但金融管理專員因第 70(9)(b)條被禁止根據第 70(6)條向他送達反對通知書；及
 - (b) 金融管理專員覺得——
 - (i) 該人不是或不再是作為該等控權人的適當的人；
 - (ii) 該機構的存款人或潛在存款人的利益，可能因該人本身為該等控權人而以其他方式受到威脅；或
 - (iii) 該人已違反根據第 70(6)條向他送達的有條件同意通知書內指明的任何條件。

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—

13-21
第 155 章

第 XIII 部
第 70A 條

- (4) 金融管理專員向任何人送達反對通知書前，須向該人送達初步通知書——
- (a) 述明金融管理專員正考慮向他送達反對通知書；
 - (b) 指明金融管理專員是就第 (3)(b) 款內提述的何種事宜而考慮向他送達反對通知書的；及
 - (c) 述明他可在初步通知書送達日期起 1 個月內向金融管理專員作出書面申述。
- (5) 凡申述是按照第 (4)(c) 款作出的，金融管理專員在決定是否送達有關的反對通知書時，須考慮該等申述。
- (6) 反對通知書——
- (a) 在符合 (b) 段的規定下，須指明該通知書是就第 (3)(b) 款中提述的何種事宜而送達的；
 - (b) 不得指明在根據第 (4) 款向他送達的初步通知書內沒有指明的任何此等事宜；及
 - (c) 須載明藉第 (8) 款所授予權利的詳情。
- (7) 金融管理專員如就第 (3)(b) 款提述的事宜正考慮向任何人或已經向任何人（視屬何情況而定）送達反對通知書，則無須向該人披露該等事宜的任何詳情。
- (8) (由 1997 年第 4 號第 27 條廢除)
(由 1991 年第 95 號第 18 條增補。由 1992 年第 82 號第 25 條修訂)

PART XIII
Section 70A

13-22
Cap. 155

- (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;

13-23
第 155 章

第 XIII 部
第 70B 條

PART XIII
Section 70B

13-24
Cap. 155

70B. 對股份的限制及股份的售賣

- (1) 本條適用於本身為在香港成立為法團的認可機構的大股東控權人的人，一如其適用於本身為在香港成立為法團的認可機構的小股東控權人的人。
- (2) 任何人如有以下情形，則本條授予的權力可予行使——
 - (a) 在違反第 70(3) 條的情況下成為認可機構的小股東控權人，而該等情況是——
 - (i) 該人已根據第 70(3)(a) 條就該機構向金融管理專員送達書面通知，但第 70(3)(b) 條所指明的兩種情況均沒有出現；
 - (ii) 並沒有根據第 70(5) 條就該項違反送達書面通知；
 - (iii) 該人已根據第 70(5) 條就該項違反向金融管理專員送達書面通知，金融管理專員已根據第 70(6) 條就該項違反向該人送達反對通知書，而——
 - (A) 該人就金融管理專員向他送達該反對通知書的決定在《行政上訴規則》(第 1 章，附屬法例 A) 內指明的可根據第 132A(3) 條提

- (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

- 出上訴的期限已屆滿，但該人並沒有提出上訴；或
- (B) 該人根據第 132A(3) 條就金融管理專員向他如此送達該反對通知書的決定而提出的上訴不成功；或
- (iv) 該人已就該項違反根據第 70(18) 條被定罪；或
- (b) 就本身為認可機構小股東控權人而根據第 70A(3) 條獲送達反對通知書後，仍繼續為該等控權人，而——
- (i) 該人就金融管理專員向他送達該反對通知書的決定在《行政上訴規則》(第 1 章，附屬法例 A) 內指明的可根據第 132A(3) 條提出上訴的期限已屆滿，但該人並沒有提出上訴；或
- (ii) 該人根據第 132A(3) 條就金融管理專員向他如此送達該反對通知書的決定而提出的上訴不成功。(由 1997 年第 4 號第 27 條修訂)
- (3) 在不抵觸第 (8) 款的規定下，金融管理專員可藉向有關的人送達的書面通知，指示本條適用的任何指明股份須受以下一項或多於一項限制所規限，直至另行通知為止——
- (a) 轉讓該等股份或(如股份屬未發行股份)轉讓獲發該等未發行股份的權利，以及發行該等未發行股份，均屬無效；
- (b) 不得就該等股份行使表決權；
- (c) 不得依憑該等股份，或依據向該等股份的持有人提出的要約而再發行股份；
- (d) 除非在清盤的情況下，否則不得支付有關認可機構或其他公司在股份方面欠付的任何款項，不論該等款項是否就股本而支付。

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)

13-27
第 155 章

第 XIII 部
第 70B 條

- (4) 凡任何股份受第 (3)(a) 款所訂的限制所規限，則任何轉讓該等股份的協議或（如股份屬未發行股份）轉讓獲發該等未發行股份的權利的協議，均屬無效。
- (5) 凡任何股份受第 (3)(c) 或 (d) 款所訂的限制所規限，則任何轉讓依憑該等股份而獲發其他股份的權利的協議，或任何轉讓在非清盤情況下就該等股份收取款項的權利的協議，均屬無效。
- (6) 凡任何股份受第 (3) 款所訂的限制所規限，任何受該等限制影響的人，可要求金融管理專員就該等股份而提出第 (7)(a) 款提述的申請；凡有該等要求提出，在該等要求提出後不遲於 1 個月——
 - (a) 如金融管理專員因第 (9) 款被禁止提出該等申請，金融管理專員須向該人送達書面通知，述明他被禁止提出該等申請；
 - (b) 如屬其他情況，金融管理專員須——
 - (i) 依照該要求行事；或
 - (ii) 向該人送達書面通知，述明他不擬依照該要求行事。
- (7) 在不抵觸第 (9) 款的條文下，原訟法庭可——（由 1998 年第 25 號第 2 條修訂）
 - (a) 應金融管理專員的申請，命令售賣本條適用的任何指明股份，如該等股份當其時正受第 (3) 款所訂的任何限制所規限，則可命令該等股份不再受該等限制所規限；
 - (b) 應一名已根據第 (6) 款提出要求的人的申請，在以下情況下——
 - (i) 該款 (b) 段適用於該項要求；及
 - (ii) 該人就該項要求根據該款 (b)(ii) 段獲送達書面通知；或

PART XIII
Section 70B

13-28
Cap. 155

- (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—

13-29
第 155 章

第 XIII 部
第 70B 條

PART XIII
Section 70B

13-30
Cap. 155

- (iii) 該款指明的期限屆滿而就該項要求於該款 (b) 段提述的兩種情況均沒有出現，
命令將與該項要求有關的任何股份售賣並不再受第 (3) 款的任何限制規限。
- (8) 凡金融管理專員已憑藉第 (2)(a)(ii) 款向有關的人送達第 (3) 款所指的書面通知，而 ——
- (a) 該人在該通知書送達後不遲於 14 天，就該通知書所指違反第 70(3) 條一事，根據第 70(5) 條向金融管理專員送達書面通知；及
- (b) (i) 在第 70(9)(b) 條容許送達第 70(6) 條所指的反對通知書的期限內，金融管理專員並沒有就該項違反向該人如此送達該等反對通知書；或
- (ii) 該等反對通知書已在該期間內如此送達，但該人根據第 132A(3) 條就金融管理專員向他如此送達該等反對通知書的決定而提出的上訴得直，
(由 1997 年第 4 號第 27 條修訂)
- 兩種情況以較先出現的為準，
則金融管理專員須立即向該人送達意指撤銷該首述通知書的書面通知。
- (9) 除非符合下述情況，否則金融管理專員不得憑藉第 (2)(a)(ii) 款而提出第 (7)(a) 款所提述的申請 ——
- (a) 該項申請與根據第 (3) 款發出的書面通知內所指的股份有關；及
- (b) 獲送達該通知書的人並沒有在該通知書送達後 14 天內，根據第 70(5) 條就與該通知書有關的違反第 70(3) 條一事，送達書面通知；
但本款並不損害金融管理專員隨後憑藉第 (2)(a)(iii) 款就該等股份提出該等申請的權力。(由 1992 年第 82 號第 19 條修訂)
- (10) 凡已根據第 (7) 款作出命令，則原訟法庭可應金融管理專員的申請，作出原訟法庭認為適當並與該等股份的出售

- (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).

或轉讓有關的進一步命令 (包括飭令該等股份的持有人須安排將該等股份在該命令指明的限期內轉讓予該命令指明的金融管理專員的代名人的命令)。(由 1998 年第 25 號第 2 條修訂; 由 2001 年第 32 號第 14 條修訂)

- (11) 凡任何股份依據本條的命令售出，則該項售賣的收益在減去該項售賣的費用後，除原訟法庭另有指明外，須為享有該等所得收益的實益權益的人的利益而繳存於法院，而任何該等人可向原訟法庭申請作出命令，將該等所得收益全部或部分支付予他。(由 1998 年第 25 號第 2 條修訂; 由 2001 年第 32 號第 14 條修訂)
- (12) 本條的適用範圍如下 ——
- (a) 凡有關的人憑藉有關認可機構的股份而屬該機構的小股東控權人，本條適用於所有由該人或其任何相聯者所持有的該機構的該等股份，而在緊接他成為該等控權人之前，該等股份並不是如此持有的；及
- (b) 凡有關的人憑藉他本人或其任何相聯者所獲取的另一間公司的股份而成為有關認可機構的小股東控權人，本條適用於所有由該人或其任何相聯者所持有的該公司的股份，而在緊接他成為該等控權人之前，該等股份並不是如此持有的。
- (13) 根據第 (3) 或 (8) 款向有關的人送達的書面通知的副本，須送達予通知書所關乎的股份所屬的認可機構或其他公司，如通知書關乎該人的相聯者所持有的股份，則須送達該相聯者。
- (14) 終審法院首席法官可訂立規則，規管與根據第 (7) 款提出的申請 (包括任何類別的申請) 有關的常規及程序。(由 1998 年第 25 號第 2 條修訂)
- (15) 現宣布 ——
- (a) 任何人不會僅因為第 (3)(b) 款的施行而違反第 70 條；

- (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

13-33
第 155 章

第 XIII 部
第 70B 條

- (b) 原訟法庭根據第 (7) 款就有關股份作出命令時，可同時根據第 (10) 款就該等股份作出命令。(由 2001 年第 32 號第 14 條增補)
(由 1991 年第 95 號第 18 條增補。由 1992 年第 82 號第 25 條修訂)

PART XIII
Section 70B

13-34
Cap. 155

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

13-35
第 155 章

第 XIII 部
第 70C 條

PART XIII
Section 70C

13-36
Cap. 155

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. 禁止某些人以間接控權人的身分行事

70C. Prohibition on certain persons acting as indirect controllers

- (1) 在本條中，“受禁制的人”(prohibited person)就認可機構而言，指以下任何人——
- (a) 就他成為或本身為(視屬何情況而定)該機構的間接控權人而根據第 70(6) 條獲送達反對通知書，而——
- (i) 該人就金融管理專員向他送達該反對通知書的決定在《行政上訴規則》(第 1 章，附屬法例 A)內指明的可根據第 132A(3) 條提出上訴的期限已屆滿，但該人並沒有提出上訴；或
- (ii) 該人根據第 132A(3) 條就金融管理專員向他如此送達該反對通知書的決定而提出的上訴不成功；或
- (b) 就他本身為該機構的間接控權人而根據第 70A(3) 條獲送達反對通知書，而——
- (i) 該人就金融管理專員向他送達該反對通知書的決定在《行政上訴規則》(第 1 章，附屬法例 A)內指明的可根據第 132A(3) 條提出上訴的期限已屆滿，但該人並沒有提出上訴；或
- (ii) 該人根據第 132A(3) 條就金融管理專員向他如此送達該反對通知書的決定而提出的上訴不成功。(由 1992 年第 82 號第 25 條修訂)
- (2) 任何人就一間認可機構而言如屬受禁制的人，不得以或繼續以(視屬何情況而定)該機構的間接控權人的身分行事，據此，不得以或須停止以(視屬何情況而定)該等控權人的身分向該機構的董事，或向該機構為附屬公司的另一間公司的董事，發出任何指示或指令。
- (3) 認可機構的任何董事，或認可機構為附屬公司的另一間公司的任何董事，如接獲(不論直接或間接)任何指示或指令——
- (a) 而該董事知道或理應知道發出指示或指令的人，就該機構而言，是一名受禁制的人；及

- (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,

13-39
第 155 章

第 XIII 部
第 70C 條

- (b) 而因第 (2) 款，該等指示或指令是禁止如此發出的，或會合理地解釋為是禁止如此發出的，則該董事須將該等指示或指令，以及其發出的情形，立即通知金融管理專員。(由 1992 年第 82 號第 25 條修訂)
- (4) 任何受禁制的人違反第 (2) 款，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。
- (5) 任何董事無合理辯解而違反第 (3) 款，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。
- (由 1991 年第 95 號第 18 條增補。由 1997 年第 4 號第 27 條修訂)

PART XIII
Section 70C

13-40
Cap. 155

- 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,

70D. 對企圖逃避限制的懲罰

(1) 任何人 ——

- (a) 行使或其本意是行使任何權利，以處置任何股份或處置獲發該等股份的權利，而該人知道如此行事是違反根據第 70B(3) 條規限該等股份的限制的；(由 2001 年第 32 號第 15 條代替)
- (b) 以持有人或投票代表的身分就任何該等股份投票，而該人知道如此行事是違反 (a) 段所述的限制的；(由 2001 年第 32 號第 15 條代替)
- (c) 就任何該等股份委任投票代表，而該人知道就任何該等股份投票是違反 (a) 段所述的限制的；(由 2001 年第 32 號第 15 條代替)
- (d) 本身是任何該等股份的持有人，但沒有將該等股份受 (a) 段所述的限制所規限一事，通知任何他不知道是察覺該事的、但他知道 (撇開該等限制不談) 是有權以持有人或投票代表身分就該等股份投票的人；或 (由 2001 年第 32 號第 15 條代替)
- (e) 本身是任何該等股份的持有人，或本身是有權依憑該等股份而獲發其他股份的人，或本身是有權在非清盤情況下就該等股份收取任何款項的人，而訂立根據第 70B(4) 或 (5) 條屬無效的協議，(由 2001 年第 32 號第 15 條增補)

即屬犯罪 ——

- (i) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

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—

13-43
第 155 章

第 XIII 部
第 71 條

- (2) 凡任何認可機構或其他公司的股份在違反第 70B(3) 條所訂的限制下發行，或任何認可機構或其他公司在違反該等限制下支付款項，則該認可機構或其他公司（視屬何情況而定）的任何董事、行政總裁或經理，如明知並故意容許該等股份的發行或該等款項的支付（視屬何情況而定），即屬犯罪——（由 2001 年第 32 號第 24 條修訂；由 2005 年第 19 號第 13 條修訂）
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- （由 1991 年第 95 號第 18 條增補。由 1997 年第 4 號第 27 條修訂）

71. 行政總裁及董事須得金融管理專員的同意

- (1) 除第 53C(5) 條另有規定外，任何人——
- (a) 如沒有金融管理專員的書面同意，不得成為——
- (i) 任何認可機構的行政總裁；或
- (ii) 任何在香港成立為法團的認可機構的董事；
- (b) 如在沒有該項同意下成為該行政總裁或董事，則不得在沒有該項同意的情況下以或繼續以該行政總裁或董事（視屬何情況而定）的身分行事；
- (c) 不得違反根據第 (2)(b) 或 (5) 款附加而不時有效的條件；或

PART XIII
Section 71

13-44
Cap. 155

- (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

- (d) 在該項同意根據第 (4) 款被撤回後，不得以或繼續以該行政總裁或董事的身分行事。
- (2) 金融管理專員 ——
- (a) 除非信納有關的人是有關認可機構的行政總裁或董事的適當人選，否則須拒絕根據第 (1) 款給予同意；
- (b) 可於根據第 (1) 款給予同意時，附加他認為恰當的條件，以確保或進一步確保有關的人會繼續是有關認可機構的行政總裁或董事的適當人選。
- (3) 如金融管理專員 ——
- (a) 根據第 (1) 款給予同意，則他須在其後的合理切實可行的範圍內盡快向有關的人及有關認可機構發出書面通知，並在通知內指明任何附加於該項同意的條件；
- (b) 拒絕根據第 (1) 款給予同意，則他須在其後的合理切實可行的範圍內盡快向有關的人及有關認可機構發出書面通知，並在通知內指明拒絕的理由。
- (4) 如金融管理專員 ——
- (a) 已作出決定，不再信納某認可機構的行政總裁或董事是該機構的行政總裁或董事的適當人選；
- (b) 已就該決定向該行政總裁或董事發出不少於 7 天的事先通知，並在通知內指明其理由以及附上一份本條的文本；並且
- (c) 已考慮該行政總裁或董事向他提交的任何書面申述，則金融管理專員可藉送達該行政總裁或董事及該機構的書面通知，撤回根據第 (1) 款給予的同意。
- (5) 如金融管理專員 ——
- (a) 已作出決定，信納需要對某項已根據第 (1) 款給予的同意附加條件，或任何附加於如此給予的同意的條件需予修訂，以確保或進一步確保獲給予該項同意

- 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—

的認可機構行政總裁或董事會繼續是該機構的行政總裁或董事的適當人選；

- (b) 已就該決定向該行政總裁或董事發出不少於 7 天的事先通知，並在通知內指明其理由以及附上一份本條的文本；並且
- (c) 已考慮該行政總裁或董事向他提交的任何書面申述，則金融管理專員可藉送達該行政總裁或董事及該機構的書面通知，對該項同意附加條件，或修訂任何已附加於該項同意的條件（視屬何情況而定）。
- (6) 任何人違反第 (1) 款，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續的期間，另加每日第 2 級罰款。
- (7) 凡任何人獲委任在緊接他作為某認可機構的行政總裁或董事的任期屆滿後，繼續擔任該職位，則就第 (1) 款而言，該人不得被視為成為該機構的行政總裁或董事。
- (8) 就本條而言，凡任何人獲金融管理專員根據第 (1) 款給予同意，出任某認可機構的行政總裁，而該人亦正擔任該機構的行政總裁，則該人出任該機構的董事無須取得金融管理專員根據第 (1) 款給予的同意。
- (9) 凡任何人在緊接《2001 年銀行業（修訂）條例》(2001 年第 32 號) 第 16 條的生效日期 * 前，已獲或被視為已獲金融管理專員根據當時有效的本條（“原有條文”）給予同意（“原有同意”），出任某認可機構的行政總裁或董事，則於該生效日期 * 當日及之後——
 - (a) 該項原有同意須當作是金融管理專員根據第 (1) 款就該人出任該機構的行政總裁或董事（視屬何情況而定）而給予的同意（“當作同意”）；及

- (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.

13-49
第 155 章

第 XIII 部
第 71 條

(b) 根據原有條文附加於該項原有同意的條件，須當作是根據第 (2)(b) 款附加於當作同意的條件，

而第 (4)、(5) 及 (8) 款須據此適用。

(由 2001 年第 32 號第 16 條代替)

編輯附註：

* 生效日期：2002 年 5 月 24 日。

PART XIII
Section 71

13-50
Cap. 155

- (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

13-51
第 155 章第 XIII 部
第 71C 條PART XIII
Section 71C13-52
Cap. 155**71C. 須得到金融管理專員同意方可成為註冊機構的主管人員**

- (1) 除第 71E 及 71F 條另有規定外，任何人 ——
 - (a) 如無金融管理專員的書面同意，不得成為任何註冊機構的主管人員；
 - (b) 如在無該項同意下成為該人員，則不得在無該項同意的情況下以或繼續以該人員的身分行事；
 - (c) 不得違反根據第 (2)(b) 或 (9) 款附加而不時生效的條件；或
 - (d) 在該項同意根據第 (4) 款被撤回後，不得以或繼續以該人員的身分行事。
- (2) 金融管理專員 ——
 - (a) 須拒絕給予第 (1) 款所指的同意，除非他信納有關的人 ——
 - (i) 是擔任有關註冊機構的主管人員的適當人選；及
 - (ii) 在該機構內具有充分的權限以擔任該人員；
 - (b) 可給予第 (1) 款所指的同意，並附加他認為合適的條件。
- (3) 凡金融管理專員給予或拒絕給予第 (1) 款所指的同意，他須在其後的合理切實可行的範圍內盡快 ——

- (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;

13-53
第 155 章

第 XIII 部
第 71C 條

- (a) (如屬給予同意的情況)向有關的人及有關註冊機構發出書面通知，並在通知內指明附加於該項同意的條件；
- (b) (如屬拒絕給予同意的情況)向有關的人及有關註冊機構發出書面通知，並在通知內指明拒絕的理由。
- (4) 凡——
 - (a) 某主管人員犯失當行為或曾在任何時間犯失當行為；或
 - (b) 金融管理專員已不再信納某註冊機構的主管人員——
 - (i) 是擔任有關類別的主管人員的適當人選；或
 - (ii) 在該機構內具有充分的權限以擔任該人員，
 則金融管理專員可在諮詢證監會後，藉送達該人員及該機構的書面通知——
 - (c) 撤回有關同意；或
 - (d) 暫時撤回該同意，為期一段金融管理專員指明的期間或直至金融管理專員指明的事件發生為止。
- (5) 在不局限第(4)款的一般性及不局限本條例其他條文的施行的原則下，為免生疑問，現宣布金融管理專員可完全或局部基於證監會向他披露的資料而行使他可根據該款行使的權力，不論該等資料是否由於根據《證券及期貨條例》(第 571 章)第 182 條進行的調查而產生的。
- (6) 金融管理專員須事先給予所涉主管人員陳詞機會，否則不得根據第(4)款針對該人員行使權力。
- (7) 金融管理專員如決定根據第(4)款針對某主管人員行使權力，須藉送達該人員的書面通知，將其決定告知該人員，而該通知須包括——
 - (a) 作出該項決定的理由的陳述；
 - (b) 該項決定的生效時間；及

PART XIII
Section 71C

13-54
Cap. 155

- (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

13-55
第 155 章

第 XIII 部
第 71C 條

- (c) (在適用範圍內) 根據該項決定將會施加的撤回或暫時撤回有關同意的持續期及條款。
- (7A) 金融管理專員如已根據第 (4) 款針對某主管人員而行使權力，他可向公眾人士披露他根據該款作出的決定的詳情、作出該項決定所據的理由以及關於該個案的任何重要事實。(由 2005 年第 19 號第 14 條增補)
- (8) 在不損害證監會根據《證券及期貨條例》(第 571 章) 行使任何權力的原則下，金融管理專員可就該條例第 196 或 197 條所指的權力的行使，向證監會作出他認為適當的關於任何主管人員的建議。
- (9) 凡金融管理專員 ——
- (a) 已決定他信納根據第 (1) 款給予的同意須附加條件或任何已附加於該項同意的條件須予修訂；
- (b) 已向有關主管人員發出不少於 7 天的事先通知，將該決定告知該人員並指明其理由，以及附有一份本條的文本；及
- (c) 已考慮該人員向他提交的任何書面申述，則金融管理專員可藉送達該人員及有關註冊機構的書面通知，附加條件於第 (1) 款所指的同意或修訂任何已附加於該項同意的條件(視屬何情況而定)。
- (10) 任何人違反第 (1) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續的期間，另加每日第 2 級罰款。
- (11) 任何人在下述情況下，不得就第 (1) 款而言被視為成為某註冊機構的主管人員 ——
- (a) 如在他作為該機構的主管人員的任期(“該任期”)屆滿後，隨即再獲委任為該機構的主管人員；及

PART XIII
Section 71C

13-56
Cap. 155

- 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

13-57
第 155 章

第 XIII 部
第 71C 條

- (b) 在該任期內他是就某類受規管活動獲委任為該主管人員的，而他是就同一類受規管活動而再獲委任的。
- (12) 在本條中 ——
- “失當行為” (misconduct) 就任何主管人員而言，指 ——
- (a) 違反《證券及期貨條例》(第 571 章) 附表 1 所指而適用於該人員的任何有關係文；
 - (b) 違反 ——
 - (i) 根據第 (2)(b) 款附加於第 (1) 款所指的關乎該人員的同意的條件或違反根據第 (9) 款附加於該項同意的條件或對該等條件的修訂；或
 - (ii) 根據第 71E(3) 條附加於第 71E(1) 條所指的關乎該人員的臨時同意的條件或對該等條件的修訂；(由 2016 年第 16 號第 35 條修訂)
 - (c) 與某註冊機構進行的任何受規管活動有關的該人員的作為或不作為，而 ——
 - (i) 就該機構而言，該人員為主管人員；及
 - (ii) 按金融管理專員的意見，該作為或不作為，是有損或相當可能會有損投資大眾的利益或公眾利益的；或 (由 2016 年第 16 號第 35 條代替)
 - (d) 該人員符合以下說明的作為或不作為 ——
 - (i) 該作為或不作為，關乎進行任何符合以下說明的活動 ——
 - (A) 並非受規管活動；及
 - (B) 是某註冊機構 (而就該機構而言，該人員屬主管人員) 根據《證券及期貨條例》(第 571 章)，可為開放式基金型公司進行的；及
 - (ii) 按金融管理專員的意見，該作為或不作為，是有損或相當可能會有損投資大眾的利益或公眾利益的，(由 2016 年第 16 號第 35 條增補)

PART XIII
Section 71C

13-58
Cap. 155

- 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

13-59
第 155 章

第 XIII 部
第 71C 條

- 而“犯失當行為”(guilty of misconduct)須據此解釋。
- (13) 如某註冊機構因作出某行為，而屬犯或曾在任何時間屬犯《證券及期貨條例》(第 571 章)第 193(1)條中“失當行為”的定義的 (a)、(b)、(c)、(d) 或 (e) 段所指的失當行為，而該行為是在該機構的某主管人員的同意或縱容下發生或是可歸因於該人員的疏忽的，則該行為亦視為該人員的失當行為，而“犯失當行為”亦須據此解釋。(由 2016 年第 16 號第 35 條修訂)
- (14) 就第 (12) 款中“失當行為”的定義的 (c) 及 (d) 段而言，除非金融管理專員已顧及在根據《證券及期貨條例》(第 571 章)第 169 條刊登及發表的任何操守守則或根據該條例第 112ZR 或 399 條刊登或發表的任何守則或指引中所列的、就有關作為或不作為適用的、並在有關作為或不作為發生時有效的條文，否則不得得出該等作為或不作為是有損或相當可能會有損投資大眾的利益或公眾利益的意見。(由 2016 年第 16 號第 35 條修訂)
- (由 2002 年第 6 號第 10 條增補)

PART XIII
Section 71C

13-60
Cap. 155

- (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; (Amended 16 of 2016 s. 35)
- (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; or (Amended 16 of 2016 s. 35)
- (d) an act or omission of the officer that—
- (i) relates to the carrying on of any activity that—
- (A) is not a regulated activity; and

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

(ii) in the opinion of the Monetary Authority, is or is likely to be prejudicial to the interest of the investing public or to the public interest, (*Added 16 of 2016 s. 35*)

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), (d) or (e) 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. (*Amended 16 of 2016 s. 35*)

(14) For the purposes of paragraphs (c) and (d) 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 112ZR or 399 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission. (*Amended 16 of 2016 s. 35*)

(*Added 6 of 2002 s. 10*)

71D. 主管人員的委任

除第 71F 條另有規定外，每間註冊機構須委任不少於 2 名主管人員——

- (a) (i) (如屬在香港成立的機構) 以負責直接監督該機構所經營的每項構成受規管活動的業務的經營；
- (ii) (如屬在香港以外成立的機構) 以負責直接監督該機構在香港所經營的每項構成受規管活動的業務的經營；及
- (b) 而獲委任者須為個人。

(由 2002 年第 6 號第 10 條增補)

71E. 就尋求金融管理專員給予第 71C(1) 條所指的同意以成為主管人員的人給予臨時同意

- (1) 如有人尋求第 71C(1) 條所指的同意，以成為認可機構的主管人員，金融管理專員可應該人的要求，在第 (2) 款的規限下，行使其絕對酌情決定權給予該人臨時同意，以成為該人員。
- (2) 除非作出第 (1) 款所指的要求的人令金融管理專員信納給予該款所指的臨時同意，並不損害——
 - (a) 有關註冊機構的存款人或潛在存款人的利益；及
 - (b) 投資大眾的利益，否則金融管理專員須拒絕給予該項同意。
- (3) 金融管理專員可在他認為適合附加的條件的規限下，給予任何人第 (1) 款所指的臨時同意；並可隨時藉送達該人

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

13-65
第 155 章

第 XIII 部
第 71E 條

- 及有關註冊機構的書面通知，附加條件於該項同意或修訂任何已附加於該項同意的條件（視屬何情況而定）。
- (4) 第 (3) 款所指的附加條件或修訂 ——
- (a) 在給予有關的臨時同意時生效；或
- (b) 在該款所指的有關通知送達時生效或在該通知中指明的時間生效（以較遲者為準），視屬何情況而定。
- (5) 根據第 (1) 款給予任何人的臨時同意，在該人及有關註冊機構接獲 71C(3) 條所指的關於同意或拒絕同意該人成為該機構的主管人員的通知時，即當作撤銷。
- (6) 金融管理專員可在考慮到有關註冊機構的存款人或潛在存款人或投資大眾的利益時，行使其絕對酌情決定權 ——
- (a) 藉向獲給予第 (1) 款所指的臨時同意的人及該機構發出書面通知，撤回該項同意；而
- (b) 該項撤回自該通知中指明的日期起生效，但該日期必須在通知如此發出後的 7 天之後。

(由 2002 年第 6 號第 10 條增補)

PART XIII
Section 71E

13-66
Cap. 155

- (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)

13-67
第 155 章

第 XIII 部
第 71F 條

71F. 就某些註冊機構而言有關第 71C 及 71D 條的過渡性條文

在任何註冊機構屬“註冊機構”的定義(a)段所指的機構的期間內，第 71C 及 71D 條均不適用於該等機構，亦不就該等機構而適用。

(由 2002 年第 6 號第 10 條增補)

72. (由 1991 年第 95 號第 20 條廢除)

72A. 金融管理專員可規定指明的人呈交資料

(1) 就本條而言，“指明的人”(specified person)指——

- (a) 任何擬成為在香港成立為法團的認可機構的控權人的人；(由 1991 年第 95 號第 21 條代替)
- (aa) 任何是第 20(10)條所指的有關人士的人；(由 2002 年第 6 號第 11 條增補)
- (b) 任何是認可機構的行政總裁的人或是註冊機構的主管人員的人；(由 2002 年第 6 號第 11 條修訂)
- (c) 任何是在香港成立為法團的認可機構的董事或控權人的人；或 (由 1991 年第 95 號第 21 條修訂)
- (d) 任何正謀求第 71(1) 或 71C(1) 條所指的金融管理專員的同意的人。(由 1992 年第 82 號第 25 條修訂；由 2002 年第 6 號第 11 條修訂)

(2) 金融管理專員可規定指明的人呈交他為根據本條例行使他的職能而合理規定的資料；該等資料須在他規定的期限內，按他規定的方式呈交。(由 1992 年第 82 號第 25 條修訂；由 1993 年第 94 號第 21 條修訂)

(2A) 除第 53B(3) 條另有規定外，認可機構如察覺任何人就該機構已成為或不再是指明的人這一事實，須於察覺該事實後不遲於 14 天以書面通知金融管理專員該事實。(由

PART XIII
Section 71F

13-68
Cap. 155

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

1991 年第 95 號第 21 條增補。由 1992 年第 82 號第 25 條修訂；由 1995 年第 49 號第 24 條修訂)

- (3) 任何指明的人 (除第 (1)(a) 或 (d) 款提述的人外) 無合理辯解而沒有遵從第 (2) 款的任何規定，即屬犯罪 —— (由 1991 年第 95 號第 21 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。
- (4) 任何指明的人就遵從根據第 (2) 款所作的任何規定，簽署任何他知道或理應知道在要項上屬虛假的文件，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (5) 如任何指明的人就遵從根據第 (2) 款所作的任何規定而交出的任何簿冊、帳目、文件、證券、保證或資料，在要項上是虛假的，該人即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (6) 任何認可機構違反第 (2A) 款，其每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，

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.

13-71
第 155 章

第 XIII 部
第 72B 條

如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1991 年第 95 號第 21 條增補。)
(由 1990 年第 3 號第 29 條增補。由 1997 年第 4 號第 27 條修訂)

72B. 關於經理的委任等的通知

- (1) 除第 (2) 及 (3) 款另有規定外，認可機構須在以下日期後的 14 天內——
 - (a) 任何人成為該機構的經理的日期；
 - (b) 任何人不再是該機構的經理的日期；或
 - (c) 任何人以該機構的經理的身分，成為該機構的在附表 14 指明的任何事務或業務的主要負責人(不論是單獨或與其他人一起擔任主要負責人)的日期，不

PART XIII
Section 72B

13-72
Cap. 155

- (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

論該事務或業務是附加於或是取代該人原來以該身分承擔的任何其他職責的，

向金融管理專員及該人發出書面通知，告知——

- (i) 該日期；
 - (ii) 該人成為該機構的經理後或不再是該機構的經理前（包括任何屬 (c) 段的情況）所負責的該機構的事務或業務的詳情；及
 - (iii) （如屬向金融管理專員發出的通知）金融管理專員為根據本條例行使其職能而可要求的關於該人的其他詳情。
- (2) 在第 (3) 款的規限下，如任何經理的委任是真正的臨時性質的委任，則有關認可機構無須就該經理而遵從第 (1) 款。
- (3) 就委任經理而言，如——
- (a) 認可機構憑藉第 (2) 款而沒有遵從第 (1) 款；而
 - (b) 該委任其後不再是臨時性質的委任，則——
 - (i) 第 (1) 款自該委任不再是臨時性質的委任的日期起就該經理而適用；而
 - (ii) 第 (1) 款所述的該機構就該經理遵從該款的限期的起計日期，是第 (i) 段所述的日期。
- (4) 任何認可機構違反第 (1) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續的期間，另加每日第 2 級罰款。

(由 2001 年第 32 號第 17 條增補)

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.

13-75
第 155 章

第 XIII 部
第 73 條

PART XIII
Section 73

13-76
Cap. 155

73. 禁止某些人以認可機構的僱員的身分行事，但得金融管理專員同意者除外

(1) 任何人 ——

- (a) 破產或與其債權人達成債務重整協議；
- (b) 曾在任何地方被裁定犯了涉及欺詐或不誠實的罪行；或
- (c) 對於他現時或曾經擔任董事、行政總裁或經理的一間認可機構，知道或理應知道 —— (由 2001 年第 32 號第 18 條修訂)
 - (i) 該機構正在或已經清盤或以其他方式解散；或
 - (ii) 該機構的牌照或註冊 (視屬何情況而定) 已經撤銷，(由 1993 年第 94 號第 22 條代替)

則該人如無金融管理專員書面同意，不得成為認可機構的僱員 (如屬 (c) 段適用的情形，則不得成為另一間認可機構的僱員)，或如無金融管理專員書面同意而已經成為該等僱員，則不得以或繼續以該僱員的身分行事。(由 1992 年第 82 號第 25 條修訂；由 1993 年第 94 號第 22 條修訂)

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

13-77
第 155 章

第 XIII 部
第 73 條

- (1A) 任何人如在成為某認可機構的僱員之時或之後 (不論他在有關日期之前、當日或之後成為該等僱員) ——
- (a) 在有關日期當日或之後破產或與其債權人達成債務重整協議；
 - (b) 在有關日期或之後曾在任何地方被裁定犯了涉及欺詐或不誠實的罪行；或
 - (c) 對於他現時或曾經擔任董事、行政總裁或經理的另一間認可機構，知道或理應知道 —— (由 2001 年第 32 號第 18 條修訂)
 - (i) 該機構在有關日期當日或之後正在或已經清盤或以其他方式解散；或
 - (ii) 該機構的牌照或註冊 (視屬何情況而定) 已經在有關日期當日或之後撤銷，
- 不得 ——
- (i) (就 (a) 或 (b) 段所述情況而言) 沒有金融管理專員書面同意而繼續以該等僱員的身分行事；
 - (ii) (就 (c) 段所述情況而言) 繼續以該等僱員的身分行事 ——
 - (A) 除非他已經將該先前受僱一事通知金融管理專員，並要求金融管理專員同意他繼續以該等僱員的身分行事；或
 - (B) 如金融管理專員拒絕給予該項同意。 (由 1993 年第 94 號第 22 條增補)
- (1B) 金融管理專員如拒絕根據第 (1) 或 (1A) 款給予同意，須在切實可行範圍內盡快以書面將其拒絕一事通知有關的人。 (由 1993 年第 94 號第 22 條增補)
- (1C) (由 1997 年第 4 號第 27 條廢除)
- (1D) 如因某人擔任某認可機構董事或參與其管理，以致第 (1) 或 (1A) 款的 (c) 段適用於該人，而金融管理專員已根據該款給予該人同意，則就該機構而言，並僅就該機構而

PART XIII
Section 73

13-78
Cap. 155

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*)

13-79
第 155 章

第 XIII 部
第 74 條

- 言，該段不得再適用於該人。(由 1999 年第 42 號第 8 條增補)
- (2) 任何違反第 (1) 或 (1A) 款的人，即屬犯罪——(由 1993 年第 94 號第 22 條修訂)
- (a) 一經循公訴程序定罪，可處第 6 級罰款及監禁 12 個月；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。(由 1997 年第 4 號第 27 條修訂)
- (3) 在本條中，“有關日期”(relevant day)指《1993 年銀行業(修訂)條例》#(1993 年第 94 號)的生效日期*。(由 1993 年第 94 號第 22 條增補)

編輯附註：

* 生效日期：1993 年 12 月 31 日。

“《1993 年銀行業(修訂)條例》”乃“Banking (Amendment) Ordinance 1993”之譯名。

74. 行政總裁的委任

- (1) 在不抵觸第 53B(1) 及 53C(3) 條的規定下，每間認可機構須就該機構委任一名行政總裁及不少於一名候補行政總裁，各人須——(由 1995 年第 49 號第 25 條修訂)
- (a) 為個別人士；及
- (b) 通常居於香港，

PART XIII
Section 74

13-80
Cap. 155

- (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-
- (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-
- (a) an individual; and

13-81
第 155 章

第 XIII 部
第 74 條

但如屬在香港以外成立為法團的認可機構，則該行政總裁或候補行政總裁只須就該機構在香港的業務方面是行政總裁或候補行政總裁（視屬何情況而定）即可。（由 1991 年第 95 號第 22 條修訂）

- (1A) 任何認可機構的行政總裁如因患病、不在香港或其他因由以致不能執行其作為行政總裁的職能，該機構的候補行政總裁須署理該行政總裁一職。（由 1991 年第 95 號第 22 條增補）
- (2) 任何認可機構違反第 (1) 款，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1991 年第 95 號第 22 條修訂；由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂）

PART XIII
Section 74

13-82
Cap. 155

(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)

14-1
第 155 章

第 XIV 部
第 75 條

Part XIV
Section 75

14-2
Cap. 155

第 XIV 部

(由 1991 年第 95 號第 23 條廢除)

75-78. (由 1991 年第 95 號第 23 條廢除)

Part XIV

(*Repealed 95 of 1991 s. 23*)

75-78. (*Repealed 95 of 1991 s. 23*)

第 XV 部

認可機構的風險承擔及權益的限度

(由 2018 年第 6 號第 5 條修訂)
(格式變更——2013 年第 1 號編輯修訂紀錄)

79. 釋義及適用範圍

(1) 在本部中——

非上市公司 (non-listed company) 指沒有在認可證券市場上市的公司；(由 2002 年第 5 號第 407 條修訂)

但財政司司長藉憲報公告而就本定義所指定的任何公共法定法團，須當作不是一間非上市公司；(由 1997 年第 362 號法律公告修訂)

價值 (value) 指——

- (a) 如屬公司股份，指現行帳面價值及當其時尚未就股份繳付的款額的總和；及 (由 1991 年第 95 號第 24 條修訂)
- (b) 如屬任何其他情形，則指現行帳面價值；

親屬 (relative) 指——

- (a) 任何直接祖先，任何該等祖先的任何配偶或前配偶，以及任何該等配偶或前配偶的任何兄弟姊妹；(由 1995 年第 49 號第 26 條代替)
- (b) 任何直接後裔，任何該等後裔的任何配偶或前配偶；(由 1995 年第 49 號第 26 條代替)
- (c) 任何兄弟姊妹、伯父、伯母、叔父、叔母、舅父、舅母、姑丈、姑母、姨丈、姨母、侄、侄女、甥、甥女，及任何堂兄弟、堂姊妹、表兄弟、表姊妹；(由 1995 年第 49 號第 26 條代替)

Part XV

Limitations on Exposures and Interests of Authorized Institutions

(Amended 6 of 2018 s. 5)
(Format changes—E.R. 1 of 2013)

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)

- (d) 任何配偶或前配偶，任何該等配偶或前配偶的任何直接祖先，以及任何該等配偶或前配偶的任何兄弟姊妹，(由 1995 年第 49 號第 26 條增補)
另就本定義而言，任何繼子或繼女須當作是其親生父親或母親的子女，亦須當作是其繼父或繼母的子女，任何領養子女須當作是其領養父親或母親的子女，而配偶包括如同配偶般生活的任何人。(由 1991 年第 95 號第 24 條修訂)
- (2) 為施行本部，認可機構的資本基礎，指按照根據第 97C(1) 條訂立的規則所釐定的該機構的資本基礎。(由 1991 年第 95 號第 24 條代替。由 2005 年第 19 號第 7 條修訂；由 2012 年第 3 號第 6 條修訂)
- (3) 為施行第 83 及 85 條，**無保證** (unsecured) 指在無保證情況下批給，或在有保證的情況下所批給的任何放款、貸款或信貸融通、或所招致的財務擔保或其他債務在任何時間所超逾構成保證的資產的市場價值的部分；而**保證** (security) 則指依金融管理專員意見，會是審慎的銀行家可接受的一項保證。(由 1991 年第 95 號第 24 條修訂；由 1992 年第 82 號第 25 條修訂)
- (4) 就在香港以外成立為法團的任何認可機構而言，第 80、82、85、86 條，以及第 91 條(在與該機構有關的範圍內)，只適用於該機構在香港的主要營業地點及其本地分行，猶如該主要營業地點及該等分行共同是一間單獨的認可機構一樣。(由 1987 年第 64 號第 19 條修訂；由 1991 年第 95 號第 24 條修訂)
- (5) 財政司司長可藉憲報公告修訂**親屬**的定義。(由 1995 年第 49 號第 26 條增補。由 1997 年第 362 號法律公告修訂)

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)

15-5
第 155 章

第 XV 部
第 79A 條

Part XV
Section 79A

15-6
Cap. 155

79A. 金融管理專員可規定本部的條文以綜合基礎而適用於某些認可機構

- (1) 在不抵觸第 (2) 款的規定下，就與本部任何條文適用於任何在香港成立為法團且有附屬公司的認可機構有關的各方面而言，金融管理專員可藉向該機構發出書面通知而規定該條文——
 - (a) 以綜合基礎代替非綜合基礎而適用於該機構；或
 - (b) 同以綜合基礎及非綜合基礎而適用於該機構。
- (2) 金融管理專員可在根據第 (1) 款向認可機構發出的通知書內規定，通知書所涉及的本部條文，只是就通知書內指明的認可機構的附屬公司而以綜合基礎適用於該機構。
- (3) 認可機構的附屬公司向該認可機構呈交資料，以協助或使該機構能遵從根據第 (1) 款向該機構發出的通知書，不得因而被視為違反其須遵行的責任。

(由 1991 年第 95 號第 25 條增補。由 1992 年第 82 號第 25 條修訂)

80. 以本身的股份所作的保證而放貸款項等

- (1) 認可機構不得以本身的股份所作的保證而批給任何放款、貸款或信貸融通（包括信用證），或給予任何財務擔保，或招致任何其他債務。（由 1991 年第 95 號第 26 條修訂）

- (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*)

15-7
第 155 章

第 XV 部
第 81 條

- (2) 任何認可機構不得以下述公司股份所作的保證而批給任何放款、貸款或信貸融通（包括信用證），或給予任何財務擔保，或招致任何其他債務，除非該認可機構獲得金融管理專員書面批准，並受金融管理專員認為恰當附加於該項批准的條件所規限——（由 1991 年第 95 號第 26 條修訂；由 1992 年第 82 號第 25 條修訂）
- 該機構的任何控權公司；
 - 該機構的任何附屬公司；或
 - 該機構任何控權公司的任何其他附屬公司。（由 2012 年第 28 號第 912 及 920 條修訂）
- (3) 任何認可機構違反第 (1) 或 (2) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——（由 2001 年第 32 號第 24 條修訂）
- 一經循公訴程序定罪，可處第 6 級罰款及監禁 12 個月；或
 - 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。（由 1997 年第 4 號第 27 條修訂）

81. 認可機構放款的限度

- (1) 除第 (4)、(4A)、(5) 及 (6) 款另有規定外，任何在香港成立為法團的認可機構對——（由 1995 年第 49 號第 27 條修訂）
- 任何一人；
 - 兩間或多於兩間公司，而該等公司——
 - 是同一間控權公司的附屬公司；或（由 2012 年第 28 號第 912 及 920 條修訂）
 - 的控權人是同一人（但不是公司）；

Part XV
Section 81

15-8
Cap. 155

- (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*)
- any holding company of the institution;
 - any subsidiary of the institution; or
 - 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*)
- on conviction upon indictment to a fine at tier 6 and to imprisonment for 12 months; or
 - 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*)
- any one person;
 - two or more companies which—
 - are subsidiaries of the same holding company; or
 - have the same controller (not being a company);

- (c) 任何控股公司以及其一間或多於一間附屬公司；或
(由 2012 年第 28 號第 912 及 920 條修訂)
- (d) 任何一人 (但不是公司)，以及該人為控股人的一間或多於一間公司，
所承擔的財務風險，不得超逾一筆相等於該機構的資本基礎的 25% 的款額。
- (2) 為施行本條，任何認可機構對第 (1)(a)、(b)、(c) 或 (d) 款提述的任何人、公司或兩者的組合而承擔的財務風險，須合併下列各項計算——
- (a) 給予該人、公司或兩者的組合 (視屬何情況而定) 的全部放款、貸款及信貸融通 (包括信用證)；
- (b) 該機構所持有而由該人、公司或兩者的組合 (視屬何情況而定) 所發行的股份及債權證 (屬《公司條例》(第 622 章) 第 2 條中所指為股份及債權證者) 的價值；
(由 1999 年第 42 號第 9 條修訂；由 2012 年第 28 號第 912 及 920 條修訂)
- (ba) 在第 (2A) 款所指的公告中宣布為屬本段範圍內的、該機構對該人、公司或兩者的組合 (視屬何情況而定) 所承擔的財務風險；及 (由 1999 年第 42 號第 9 條增補)
- (c) (如就該機構而言有屬根據第 97C(1) 條訂立的規則所指的資產負債表外的項目的任何項目，而該項目的另一方是該人、公司或兩者的組合 (視屬何情況而定)) 將以下兩者相乘所得之數—— (由 2012 年第 3 號第 7 條修訂)
- (i) 該項目的本金額；及
- (ii) 金融管理專員依據第 (3) 款就該項目而指明的因數。 (由 2005 年第 19 號第 7 條代替)
- (2A) 金融管理專員可藉憲報公告並在該公告指明的條件 (如有) 的話) 的規限下，宣布該公告指明的財務風險屬第 (2)(ba) 款範圍內的財務風險。 (由 1999 年第 42 號第 9 條增補)

- (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.

15-11
第 155 章

第 XV 部
第 81 條

- (2B) 現宣布第 (2A) 款所指的公告是附屬法例。(由 1999 年第 42 號第 9 條增補)
- (3) 金融管理專員可為施行第 (2)(c) 款而藉憲報公告指明因數，任何該等公告並可就該款提述的不同項目指明不同的因數。
- (4) 凡 ——
- (a) 在第 (1)(a) 款提述的人，是認可機構的附屬公司或控權公司，或是該控權公司的附屬公司；
- (b) 第 (1)(b)(i) 款提述的控權公司，是認可機構或是認可機構的控權公司；或
- (c) 第 (1)(c) 款提述的控權公司是認可機構的控權公司，金融管理專員可藉向該機構發出的書面通知，在他認為於個別情況下恰當附加的條件的規限下，指明第 (1)(a)、(b)(i) 或 (c) 款 (視屬何情況而定) 在釐定該機構所承擔的財務風險方面並不適用，而據此第 (1)(a)、(b)(i) 或 (c) 款 (視屬何情況而定) 即不適用。(由 2012 年第 28 號第 912 及 920 條修訂)
- (4A) 凡 ——
- (a) 第 (1)(b)(i) 款所提述的控權公司是根據《財政司司長法團條例》(第 1015 章) 設立的財政司司長法團；(由 1997 年第 362 號法律公告修訂；由 1999 年第 68 號第 3 條修訂；由 2012 年第 28 號第 912 及 920 條修訂)
- (b) 第 (1)(b)(ii) 款所提述的控權人是政府；
- (c) 第 (1)(c) 款提述的控權公司是財政司司長法團；或 (由 1997 年第 362 號法律公告修訂；由 2012 年第 28 號第 912 及 920 條修訂)
- (d) 第 (1)(d) 款提述的控權人是政府，第 (1)(b)(i) 或 (ii)、(c) 或 (d) 款 (視屬何情況而定) 在釐定有關機構所承擔的財務風險方面並不適用，而據此該款即不適用。(由 1995 年第 49 號第 27 條增補)

Part XV
Section 81

15-12
Cap. 155

- (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

- (5) 凡 ——
- (a) 任何認可機構就 2 項或多於 2 項的信託而對一名受託人承擔財務風險；及
- (b) 第 (1)(a)、(b)、(c) 或 (d) 款提述的任何人士、公司或兩者的組合是該名受託人，

金融管理專員可藉向該機構發出的書面通知，在他認為於個別情況下恰當附加的條件的規限下，指明該機構對該人、公司或兩者的組合（視屬何情況而定）而承擔的財務風險，可超逾一筆相等於該機構的資本基礎的 25% 款額，惟超逾的款額不得比該通知書中指明者為多，而該機構承擔的該等財務風險，據此可比首述款額超逾不多於通知書中所指明的款額。

- (6) 為施行本條，認可機構所承擔的財務風險不包括 ——

- (a) 對其他認可機構承擔的任何財務風險；
- (b) 在以下限度內所承擔的任何財務風險 ——
- (i) 用以下項目作保證的限度 ——
- (A) 現金存款；
- (B) 擔保；
- (C) 金融管理專員認為類似擔保的其他承擔；或
- (D) 由第 1 級國家的中央政府或中央銀行所發行或所擔保的證券；或（由 1992 年第 67 號第 6 條增補。由 2005 年第 19 號第 7 條修訂）

- (ii) 由聯繫證明書涵蓋者，

而該現金存款、擔保、其他承擔、證券或聯繫證明書（視屬何情況而定）是獲得金融管理專員接受的，並受他認為於一般情況下或個別情況下就此恰當附加的條件所規限；（由 1992 年第 67 號第 6 條修訂）

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 include—

- (a) any financial exposure to other authorized institutions;

15-15
第 155 章

第 XV 部
第 81 條

Part XV
Section 81

15-16
Cap. 155

- (c) 因購買匯票或貨品所有權文件而招致的任何財務風險，而該匯票或文件持有人是就從香港輸出的貨品而有權在香港以外地方收取款項的；
- (d) 憑 (c) 段提述的任何匯票或文件而作出的任何放款、貸款及信貸融通；
- (e) 對政府承擔的任何財務風險；
- (f) 對任何其他政府承擔的任何財務風險，但金融管理專員認為就本條而言不應接受的政府則除外；
- (g) 對在香港以外成立為法團而為非認可機構的銀行承擔的任何財務風險，而金融管理專員認為該銀行是受有關的銀行業監管當局足夠監管的；(由 1995 年第 49 號第 27 條代替)
- (h) 因該機構批給的融通而作為保證持有的任何股本或債務證券，或在符合第 (7) 款的規定下，在該機構獲清償欠它的債項的過程中由該機構獲取的任何股本或債務證券；
 - (i) 根據包銷合約或分包銷合約而招致的任何財務風險，而 ——
 - (i) 如非本款規定，則該財務風險會是第 (2)(b) 款所訂的財務風險；
 - (ii) 該財務風險的期間不超過 7 個工作日，或金融管理專員書面批准的延長期間，並須受金融管理專員認為於任何個別情況下就此恰當附加的條件所規限；
- (j) 根據包銷合約或分包銷合約而招致的財務風險，而如非本款規定，該財務風險會是第 (2)(c) 款所訂的財務風險；
- (k) 由該機構給予某人的任何彌償保證，以保障他免受由於他登記股份轉讓而可能招致的任何損害，而 ——

- (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;

- (i) 完成轉讓或看來完成轉讓所憑藉的文書，是由該機構的附屬公司提供或看來是如此提供的；
- (ii) 該文書上的認證署名，是該附屬公司用以在該等文書上印上該署名的機器所印上的；及
- (iii) 該署名是不合法地在該文書上印上的，或由該機構給予該人的任何財務擔保，而該擔保是就該附屬公司所給予該人任何類似的彌償保證而給予的；(由 1992 年第 67 號第 6 條修訂)
- (ka) 對多邊發展銀行承擔的任何財務風險；(由 1995 年第 49 號第 27 條增補)
- (kb) 對《房屋條例》(第 283 章)所指的房屋委員會承擔的任何財務風險，而該等財務風險，是為施行居者有其屋計劃或私人機構參建居屋計劃而由房屋委員會給予的擔保所引致的；(由 1995 年第 49 號第 27 條增補。由 1999 年第 42 號第 9 條修訂)
- (kc) 對香港按揭證券有限公司承擔的財務風險，而該等財務風險，是因香港按揭證券有限公司為施行按揭保險計劃而須承擔的義務所引致的；(由 1999 年第 42 號第 9 條增補)
- (l) 在該機構簿冊內已作沖銷或提撥特定準備金的限度內的財務風險；(由 1992 年第 67 號第 6 條增補。由 2004 年第 10 號法律公告修訂)
- (m) 為施行香港按揭證券有限公司設立的“有擔保通遞按揭證券化計劃”而委予以下任何公司的義務所引致的對以下公司承擔的財務風險——
 - (i) 香港按揭證券有限公司；或
 - (ii) 任何發行與該計劃有關的按揭證券的公司。(由 2004 年第 10 號法律公告增補)
- (6A) 財政司司長可藉憲報公告修訂第 (6) 款。(由 1995 年第 49 號第 27 條增補。由 1997 年第 362 號法律公告修訂)

- (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;

15-19
第 155 章

第 XV 部
第 81 條

Part XV
Section 81

15-20
Cap. 155

- (7) 認可機構在獲清償欠它的債項的過程中所獲取的所有股本及債務證券，須在最早的合適機會處置，而無論如何不得遲於獲取該等股本及債務證券後的 18 個月或金融管理專員書面批准的延長期間處置，並須受金融管理專員於任何個別情況下認為就此恰當附加的條件所規限。
- (8) 就本條而言 ——
- (a) **人 (person)** 一詞，包括任何合夥，公共機構，以及屬法團或並非法團的任何團體；
- (b) **債務證券 (debt securities)** 一詞指除股票、股額或入口或出口貿易匯票外的任何證券；(由 2005 年第 19 號第 7 條代替)
- (c) 放款、貸款、信貸融通、擔保或債務，就任何對其負有法律責任或對其負上或有法律責任的人而言，不論該人的身分是主債務人、擔保人或其他，均須當作為批給該人的且屬尚欠的；
但本段對擔保人的提述，不包括根據下述協議對另一人的義務作出擔保的人 (不屬認可機構者) ——
- (i) 租購協議，即委託保管貨品的協議，而根據該協議，受寄人可購買該貨品，或該貨品的產權將轉移給或可轉移給該受寄人；或
- (ii) 有條件售賣協議，即售賣貨品的協議，而根據該協議，貨品的買價或其部分可以分期付款方式支付，而貨品的產權則留歸賣方 (即使買方管有該貨品)，直至該協議所指明的分期付款或其他方面的條件獲得履行為止；及
- (d) 認可機構屬成員的合夥，須當作為該機構的附屬公司。
- (9) 任何認可機構違反第 (1) 款，其每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂)

- (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

15-21
第 155 章

第 XV 部
第 81 條

- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)
- (由 1991 年第 95 號第 27 條代替。由 1992 年第 82 號第 25 條修訂)

Part XV
Section 81

15-22
Cap. 155

- (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

15-23
第 155 章

第 XV 部
第 81A 條

Part XV
Section 81A

15-24
Cap. 155

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*)

81A. 認可機構的風險承擔及權益的限度

- (1) 金融管理專員可在諮詢財政司司長及第 (2) 款指明的人後，為以下目的，訂立規則——

81A. Limitations on exposures and interests of authorized institutions

- (1) The Monetary Authority may, after consultation with the

15-25
第 155 章

第 XV 部
第 81A 條

- (a) 對認可機構招致的風險承擔，訂明限度，包括 ——
- (i) 對某個或某一組對手方的風險承擔；
 - (ii) 對與該機構有連繫的一方的風險承擔；
 - (iii) 對該機構的僱員的風險承擔；
 - (iv) 因以下述股份或票據所作的保證，而招致的風險承擔 ——
 - (A) 該機構本身的股份；或
 - (B) 由該機構發行的、屬資本性質的其他票據；及
 - (v) 因以下述公司發行的股份所作的保證，而招致的風險承擔，或因以下述公司發行的、屬資本性質的其他票據所作的保證，而招致的風險承擔 ——
 - (A) 該機構的控權公司或附屬公司；或
 - (B) 該機構的控權公司的其他附屬公司；
- (b) 對認可機構對某些資產 (或某些類別的資產) 的風險承擔，或該機構持有的某些資產 (或某些類別的資產) 的權益，訂明限度，包括 ——
- (i) 對其他公司的股權的直接或間接風險承擔；及
 - (ii) 持有土地權益 (不論有關土地是位於香港以內或以外) ；
- (c) 訂明 (a) 及 (b) 段所述的風險承擔及持有權益的任何組合的限度總額；及
- (d) 有關連的目的。
- (2) 為施行第 (1) 款而指明的人為 ——
- (a) 銀行業務諮詢委員會；
 - (b) 接受存款公司諮詢委員會；
 - (c) 香港銀行公會；及

Part XV
Section 81A

15-26
Cap. 155

Financial Secretary and the persons specified in subsection (2), make rules—

- (a) prescribing limits on the exposures incurred by an authorized institution, including—
- (i) exposures to a counterparty or a group of counterparties;
 - (ii) exposures to a party connected to the institution;
 - (iii) exposures to an employee of the institution;
 - (iv) exposures incurred against the security of—
 - (A) the institution's own shares; or
 - (B) other instruments issued by the institution that are capital in nature; and
 - (v) exposures incurred against the security of shares, or other instruments that are capital in nature, issued by—
 - (A) a holding company or subsidiary of the institution; or
 - (B) any other subsidiary of a holding company of the institution;
- (b) prescribing limits on the exposures of an authorized institution to, or the holding by the institution of interests in, certain assets or classes of assets, including—
- (i) direct or indirect exposures to the equity of any other company; and
 - (ii) the holding of interests in land (whether situated in or outside Hong Kong);
- (c) prescribing aggregate limits on any combination of exposures and holding of interests mentioned in paragraphs (a) and (b); and

- (d) DTC 公會。
- (3) 在不局限第 (1) 款的原則下，上述規則可 ——
- (a) 在考慮到與屬每一類別的認可機構有關聯的風險的情況下，就不同類別的認可機構，訂定不同的條文；
 - (b) 在顧及香港當時的情況下，實施由巴塞爾委員會發出的、關於銀行的風險承擔或持有權益的限度的銀行業監管標準，不論是實施全部標準或標準的某部分，並可在實施時作出金融管理專員認為合適的變通；
 - (c) 在加以變通或不加以變通的情況下，應用、採納或以提述方式收納由巴塞爾委員會發出的、任何關於銀行的風險承擔或持有權益的限度的文件，不論是應用、採納或收納整份文件或文件的某部分，亦不論是以於文件發出時有效的版本或不時有效的版本為準；
 - (d) 就有一間或多於一間附屬公司的在香港成立為法團的認可機構而言 —— 指明或賦權金融管理專員指明，該等規則中某些適用於該機構的條文 ——
 - (i) 按非綜合基礎，適用於該機構；
 - (ii) 按綜合基礎，適用於該機構及一間或多於一間該等附屬公司；或
 - (iii) 按非綜合基礎，適用於該機構，並按綜合基礎，適用於該機構及一間或多於一間該等附屬公司；
 - (e) 就在香港以外成立為法團的認可機構而言 —— 指明或賦權金融管理專員指明，該等規則中某些適用於該機構的條文，只適用於該機構在香港以內的業務；
 - (f) 規定在該等規則中訂明的關於認可機構的事宜（包括沒有遵守該等規則中某些條文），屬該機構須為之採取以下行動的事宜 ——
 - (i) 立即通知金融管理專員；及

- (d) 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), the rules may—
- (a) make different provisions for different classes of authorized institutions, taking into account the risks associated with the institutions belonging to each class;
 - (b) give effect to banking supervisory standards relating to limits on banks' exposures or holding of interests 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) apply, adopt or incorporate by reference, with or without modifications, any document relating to limits on banks' exposures or holding of interests 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) in respect of an authorized institution incorporated in Hong Kong that has one or more subsidiaries—specify, or empower the Monetary Authority to specify, that any provision of the rules 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

- (ii) 在金融管理專員的要求下，提供詳情；
 - (g) 就金融管理專員應認可機構的申請而覆核其決定，訂定條文；上述申請，指該機構因金融管理專員根據該等規則就該機構作出的決定感到受屈而提出的申請；
 - (h) 訂明上限及下限，亦可訂明金融管理專員在何種情況下，可決定適用於某認可機構的特定限度；
 - (i) 賦權金融管理專員在其認為合適的任何條件的規限下，就一般情況、任何特定個案或屬任何特定類別的個案，同意招致指明的風險承擔或獲取指明的權益，以致在計算認可機構是否已觸及該等規則中適用於該機構的限度時，無需顧及該風險承擔或權益；
 - (j) 賦權金融管理專員按照該等規則所列的程序，並在該等規則所列的情況下，更改適用於認可機構的限度；及
 - (k) 載有因應該等規則而需要或適宜訂立的附帶條文、補充條文、相應條文、過渡條文或保留條文。
- (4) 有關規則可規定，金融管理專員根據該等規則作出的決定，屬第 101B(1) 條適用者。
- (5) 在本部及第 X 部的規限下，認可機構須遵守有關規則中適用於該機構的條文。
- (6) 為免生疑問，第 (1) 款中要求金融管理專員諮詢任何人的規定，並不阻止金融管理專員諮詢其認為合適的任何其他人。

(由 2018 年第 6 號第 9 條增補)

- (iii) to the institution on an unconsolidated basis and to the institution and one or more of such subsidiaries on a consolidated basis;
- (e) in respect of an authorized institution incorporated outside Hong Kong—specify, or empower the Monetary Authority to specify, that any provision of the rules applicable to the institution is to apply only to the business of the institution in Hong Kong;
- (f) provide that a matter prescribed in the rules relating to an authorized institution (including a failure to comply with any provision of the rules) 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;
- (g) 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;
- (h) prescribe upper and lower limits, and the circumstances in which the Monetary Authority may determine specific limits to apply to an authorized institution;
- (i) empower the Monetary Authority to consent, subject to any conditions the Monetary Authority thinks fit, to the incurring of specified exposures or the acquisition of specified interests generally or in a particular case or class of cases such that the exposures or interests need not be taken into account in calculating whether an authorized institution has reached any limit applicable to the institution under the rules;

15-31
第 155 章

第 XV 部
第 81B 條

Part XV
Section 81B

15-32
Cap. 155

- (j) empower the Monetary Authority to vary, in accordance with any procedure set out in the rules and in circumstances set out in the rules, a limit applicable to an authorized institution; and
- (k) contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules.
- (4) The rules 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 must comply with any provision of the rules applicable to it.
- (6) To avoid doubt, any requirement under subsection (1) for the Monetary Authority to consult with any person does not prevent the Monetary Authority from consulting with any other person that the Monetary Authority thinks fit.

(Added 6 of 2018 s. 9)

81B. 補救行動

- (1) 如某認可機構違反第 81A(5) 條，該機構及金融管理專員須展開討論，以決定該機構應採取何種補救行動，以遵守該條的規定，但金融管理專員不受該等討論約束。
- (2) 金融管理專員在根據第 (1) 款進行討論後，可藉向有關認可機構送達書面通知，規定該機構採取該通知指明的補救行動。
- (3) 為免生疑問，根據本條對某認可機構施加規定，並不影響金融管理專員根據按第 81A(1) 條訂立的規則，就該機構採取任何行動，亦不阻止金融管理專員根據該等規則，就該機構採取任何行動。

(由 2018 年第 6 號第 9 條增補)

81B. Remedial action

- (1) If an authorized institution contravenes section 81A(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 the section, but the Monetary Authority is not bound by the 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) 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

15-33
第 155 章

第 XV 部
第 81C 條

Part XV
Section 81C

15-34
Cap. 155

respect of the institution by the Monetary Authority under the rules made under section 81A(1).

(Added 6 of 2018 s. 9)

81C. 罪行：沒有遵守訂明通知規定，或沒有遵從補救行動規定

(1) 在本條中 ——

訂明通知規定 (prescribed notification requirement) 指根據第 81A(1) 條訂立的規則所訂明的、規定認可機構須立即就該等規則所訂明的事宜通知金融管理專員的規定；

補救行動規定 (remedial action requirement) 指根據第 81B(2) 條送達的通知所施加的規定。

(2) 如認可機構沒有遵守訂明通知規定，或沒有遵從補救行動規定 ——

(a) 該機構即屬犯罪 ——

(i) 一經循公訴程序定罪 —— 可處第 8 級罰款，如屬持續的罪行，可就罪行持續期間的每一日，另處第 3 級罰款；或

(ii) 一經循簡易程序定罪 —— 可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間的每一日，另處第 2 級罰款；及

(b) 不論該機構有否就該罪行而被控告或定罪，該機構的每名董事、每名行政總裁及每名經理亦屬犯該罪行 ——

(i) 一經循公訴程序定罪 —— 可處第 8 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 3 級罰款；或

(ii) 一經循簡易程序定罪 —— 可處第 5 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 2 級罰款。

(由 2018 年第 6 號第 9 條增補)

81C. Offence of failing to comply with prescribed notification or remedial action requirements

(1) In this section—

prescribed notification requirement (訂明通知規定) means a requirement prescribed in the rules made under section 81A(1) to the effect that an authorized institution must in respect of a matter prescribed in the rules immediately notify the Monetary Authority;

remedial action requirement (補救行動規定) means a requirement imposed in a notice served under section 81B(2).

(2) If an authorized institution fails to comply with a prescribed notification requirement or remedial action requirement—

(a) the institution commits an offence and is liable—

(i) on conviction on indictment—to a fine at tier 8 and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues; or

(ii) 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; and

(b) whether or not the institution is charged with or convicted of the offence, every director, every chief executive and every manager of the institution also commits the offence and is liable—

(i) on conviction on indictment—to a fine at tier 8 and to imprisonment for 5 years and, in the case of

15-35
第 155 章

第 XV 部
第 82 條

Part XV
Section 82

15-36
Cap. 155

82. 金融管理專員可就認可機構的營業手法刊登守則

- (1) 在不損害第 7(3) 條或本部其他條文的原則下，金融管理專員在諮詢財政司司長後，可不時藉憲報公告而刊登與本條例不抵觸的守則，使認可機構有所遵循，守則內指明認可機構不應採取的營業手法，原因是金融管理專員認為，該等營業手法將會或可導致認可機構的良好財政狀況，倚賴某單一個體的良好財政狀況。（由 1992 年第 82 號第 25 條修訂；由 1997 年第 362 號法律公告修訂）
- (2) 為施行第 (1) 款，根據該款發出的公告內的守則——
 - (a) 可說明適用於所有認可機構，或公告內指明的某類認可機構；及
 - (b) 可為施行任何該等守則而指明何者構成單一個體，而在不損害該權力的一般性的原則下，可指明任何類別或種類的人或業務可構成該等單一個體。
- (3) 凡任何認可機構採取第 (1) 款公告中指明的營業手法，金融管理專員可在他認為有關情況的重要性足以使他有理由就該機構根據第 X 部行使其任何權力時，行使該等權力。（由 1992 年第 82 號第 25 條修訂；由 1995 年第 49 號第 28 條修訂）

a continuing offence, to a further fine at tier 3 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 6 of 2018 s. 9)

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.

15-37
第 155 章

第 XV 部
第 83 條

Part XV
Section 83

15-38
Cap. 155

83. 向董事等放款的限度

- (1) 除第 (4A) 款另有規定外，任何在香港成立為法團的認可機構，如向第 (4) 款指明的任何人或任何團體提供或代其提供第 (3) 款指明的任何融通，會令到該機構當其時向該等指明的人（一人或多於一人）或該等指明的團體（一個或多於一個）提供或代其提供的該等融通總額因此超逾該機構的資本基礎的 10%，則該機構不得向首述的該人或該團體提供或代其提供任何該等融通。（由 1991 年第 95 號第 28 條代替）
- (2) 在符合第 (1) 及 (4A) 款的規定下，任何在香港成立為法團的認可機構，如向第 (4)(a)、(b)、(c)、(d)、(e) 或 (f) 款指明的任何屬於個別人士的人提供或代其提供第 (3) 款指明的任何融通，會令到該機構當其時向——
 - (a) 該等指明的人（一人或多於一人）提供或代其提供的該等融通總額因此超逾該機構的資本基礎的 5%；
 - (b) 該人提供或代其提供的該等融通總額因此超逾 \$1,000,000，（由 1991 年第 95 號第 28 條代替）
 則該機構不得向首述的該人提供或代其提供任何該等融通。
- (3) 除第 (3A) 款另有規定外，為施行第 (1) 及 (2) 款，以下是指明的融通——（由 1992 年第 67 號第 7 條修訂）
 - (a) 批給或容許有尚欠的無保證放款、無保證貸款或無保證信貸融通，包括無保證的信用證；（由 1991 年第 95 號第 28 條修訂）
 - (b) 給予無保證的財務擔保；及

- (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

15-39
第 155 章

第 XV 部
第 83 條

- (c) 招致任何其他無保證的債務。
- (3A) 第 (3) 款並不包括在有關認可機構簿冊內已作沖銷或提撥特定準備金的限度內的融通。(由 1992 年第 67 號第 7 條增補)
- (4) 為施行第 (1) 及 (2) 款，以下是指明的人及團體——
- (a) 該機構的任何董事；
 - (b) 任何該等董事的任何親屬；
 - (c) 該機構的任何僱員，而該僱員是以個人或以委員會成員身分負責批准貸款申請的；(由 1995 年第 49 號第 29 條修訂)
 - (d) 任何該等僱員的任何親屬；
 - (e) 該機構(但認可機構，或在香港以外成立為法團而並非認可機構但屬金融管理專員為施行本段而批准的銀行則除外)的任何控權人或小股東控權人；(由 1995 年第 49 號第 29 條代替)
 - (f) 任何個別人士的親屬，而該個別人士是該機構控權人或小股東控權人；(由 1992 年第 67 號第 7 條修訂；由 1995 年第 49 號第 29 條修訂)
 - (g) 該機構或其任何控權人、小股東控權人或董事，或其任何控權人、小股東控權人或董事的任何親屬，以董事、合夥人、經理或代理人的身分而有利害關係的任何商號、合夥或非上市公司(但商號、合夥或非上市公司如是認可機構，或在香港以外成立為法團而並非認可機構但屬金融管理專員為施行本段而批准的銀行者則除外)；及(由 1992 年第 82 號第 25 條修訂；由 1995 年第 49 號第 29 條修訂)
 - (h) 該機構的任何控權人、小股東控權人或董事，或該控權人、小股東控權人或董事的任何親屬是擔保人的任何個別人士、商號、合夥或非上市公司。(由 1991 年第 95 號第 28 條修訂；由 1995 年第 49 號第 29 條修訂)

Part XV
Section 83

15-40
Cap. 155

- 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

- (4A) 金融管理專員可藉向認可機構發出的書面通知，在他認為於個別情況下恰當附加的條件的規限下，容許該機構不遵從第(1)或(2)款而向第(4)款指明的任何人或團體（或他在通知書內指明的該等人或該等團體）批給，或代此等人或團體批給任何第(3)款指明的融通（或他在通知書內指明的該等融通）；而該機構依據該通知書並按照該等條件向該等人或團體或代該等人或團體批給任何融通，並無因此違反第(1)或(2)款。（由1987年第64號第21條增補。由1990年第3號第34條修訂；由1991年第95號第28條修訂；由1992年第82號第25條修訂）
- (5) 本條的條文，適用於向某人或團體連同另一人或團體所批給的或代某人或團體連同另一人或團體所批給的融通，一如其適用於向某人或團體各別地批給或代某人或團體各別地批給的融通。
- (6) 為施行第(2)及(4)款，凡向第(4)(a)、(b)、(c)、(d)、(e)或(f)款指明的人所能控制的任何商號、合夥或非上市公司批給或代該商號、合夥或上市公司批給的融通，須視為向該人批給或代該人批給的融通。
- (7) 任何認可機構違反第(1)或(2)款，其每名董事、每名行政總裁及每名經理均屬犯罪——（由1991年第95號第28條修訂；由2001年第32號第24條修訂）
- (a) 一經循公訴程序定罪，可處第7級罰款及監禁2年，如屬持續的罪行，可就罪行持續期間，另加每日第3級罰款；或
- (b) 一經循簡易程序定罪，可處第5級罰款及監禁6個月，如屬持續的罪行，可就罪行持續期間，另加每日第2級罰款。（由1997年第4號第27條修訂）
- (8) 凡在《1995年銀行業（修訂）條例》*(1995年第49號)生效日期前的任何時間，任何認可機構已向以下的人合法地提供或代其合法地提供第(3)款指明的融通——
- (a) 該機構的小股東控權人；
- (b) 該等控權人的任何親屬；

- 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.

15-43
第 155 章

第 XV 部
第 84 條

(c) 該等控權人或其任何親屬，以董事、合夥人、經理或代理人的身分而有利害關係的任何商號、合夥或非上市公司；或

(d) 該等控權人或其任何親屬是擔保人的任何個人、商號、合夥或非上市公司，

則在與該項融通有關的範圍內，本條的施行，猶如在第(4)(e)、(f)、(g)及(h)款中對一名或多於一名小股東控權人(視屬何情況而定)的提述已刪去一樣。(由 1995 年第 49 號第 29 條增補)

編輯附註：

* “《1995 年銀行業(修訂)條例》”乃“Banking (Amendment) Ordinance 1995”之譯名。

84. (由 1991 年第 95 號第 29 條廢除)

Part XV
Section 84

15-44
Cap. 155

(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*)

15-45
第 155 章

第 XV 部
第 85 條

Part XV
Section 85

15-46
Cap. 155

85. 向僱員放款的限度

- (1) 認可機構向其任何一名僱員提供第(2)款指明的融通總額，不得超逾該僱員一年的薪金，但如獲金融管理專員就一般情況或就任何特定情況或特定類別的情況而給予的書面同意，則屬例外。（由 1991 年第 95 號第 30 條修訂；由 1999 年第 42 號第 10 條修訂）
- (2) 為施行第(1)款，以下是指明的融通——
 - (a) 批給或容許有尚欠的無保證放款、無保證貸款或無保證信貸融通，包括無保證的信用證；（由 1991 年第 95 號第 30 條修訂）
 - (b) 給予無保證的財務擔保；及
 - (c) 招致任何其他無保證的債務。
- (3) 任何認可機構違反本條，其每名董事、每名行政總裁及每名經理均屬犯罪——（由 2001 年第 32 號第 24 條修訂）
 - (a) 一經循公訴程序定罪，可處第 6 級罰款及監禁 12 個月；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。（由 1997 年第 4 號第 27 條修訂）

86. 款項存放在外地銀行時金融管理專員的權力

- (1) 凡金融管理專員——

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—

15-47
第 155 章

第 XV 部
第 86 條

- (a) 有理由相信任何認可機構已向任何外地銀行批給任何放款、貸款（無論以存款或其他方式）或信貸融通；及
- (b) 認為作出該等放款、貸款或信貸融通的限度或方式，並不符合該認可機構的存款人的利益，
- 他可藉向該機構發出的書面通知而行使其本條所訂的權力。
- (2) 根據本條發出的通知書，可——
- (a) 禁止該認可機構在通知書送達日期後，向通知書中指明的外地銀行，或向金融管理專員有理由相信與該外地銀行相聯而於通知書中指明的任何其他外地銀行，批給任何放款、貸款或信貸融通；
- (b) （如該認可機構在金融管理專員依據 (a) 段的權力所指明的任何銀行以短期通知、按要求或通知的方式持有任何款項）指示該機構按照持有該等款項的條款而立即要求付還該等款項；
- (c) 禁止該認可機構在金融管理專員依據 (a) 段的權力所指明的任何銀行，容許有以下尚欠項目——
- (i) 憑藉一項根據 (b) 段作出的指示，應已付還該機構的任何款項；
- (ii) 任何待時間逝去或待事情發生後即須付還或可予終止的任何放款、貸款或信貸融通，在該段時間逝去或該事情發生後的該等放款、貸款或信貸融通。
- (3) 第 (2)(a) 款的規定，並不禁止依據任何於通知書送達日期前訂立的協議而於該日期之後批給任何放款或貸款，除非金融管理專員另有指示；但認可機構有責任於收到根據本條發出的通知書後 7 天內，將任何有關協議通知金融管理專員。
- (4) 在本條中——
- 外地銀行** (foreign bank) 指——

Part XV
Section 86

15-48
Cap. 155

- (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

15-49
第 155 章

第 XV 部
第 86 條

- (a) 任何在香港以外成立為法團而並非認可機構的銀行；
(由 1995 年第 49 號第 30 條修訂)
- (b) 任何認可機構於香港以外的任何業務，包括獲得根據本條發出的通知書的認可機構於香港以外的任何業務。
- (5) 任何認可機構無合理辯解而沒有遵從金融管理專員行使其本條所訂的權力時作出的任何規定，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
 - (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

(由 1992 年第 82 號第 25 條修訂)

Part XV
Section 86

15-50
Cap. 155

- 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. (由 2018 年第 6 號第 12 條廢除)

87A. 在香港成立為法團的認可機構獲取公司的股本

- (1) 在本條中，**有關日期** (relevant day) 指《1999 年銀行業 (修訂) 條例》(1999 年第 42 號) 第 11 條的生效日期。
- (2) 在香港成立為法團的認可機構須受下述條件規限——
 - (a) 該機構不得獲取 (不論藉何種方法獲取，亦不論是透過單一次的獲取或一連串的獲取) 某公司 (不論該公司是否由該機構成立) 的全部或部分股本，而致令所獲取的該等股本的價值達該機構於獲取時的資本基礎的 5% 或以上，但如金融管理專員已就該機構擬獲取該等股本一事批給批准，則屬例外；
 - (b) 如就該公司而批給的上述批准根據第 (5) 款被撤銷，則該機構不得在該項撤銷生效之時或之後持有該公司的股本，而致令所持有的該等股本的價值達該機構的資本基礎的 5% 或以上。
- (3) 如——
 - (a) 在香港成立為法團的認可機構在緊接有關日期前已持有某公司的股本，而所持有的該等股本的價值已達該機構的資本基礎的 5% 或以上；
 - (b) 在香港成立為法團的認可機構在有關日期後的 3 個月內始持有某公司的股本，而所持有的該等股本的價值達該機構的資本基礎的 5% 或以上，但該機構是憑藉實質上在有關日期前出現的作為或情況，而持有該等股本，則金融管理專員須當作已根據第 (2)(a) 款就該公司批給批准。
- (4) 凡某認可機構正在或將會持有某公司的股本，其價值達該機構的資本基礎的 5% 或以上，而金融管理專員已根據第 (2)(a) 款就此事批給批准，或根據第 (3) 款被當作已

87. (Repealed 6 of 2018 s. 12)

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

就此事批給批准，金融管理專員可在任何時間，藉送達該機構的書面通知，將他認為恰當的條件附加於該項批准之上，亦可按他認為恰當，修訂或取消任何已如此附加的條件。上述附加、修訂或取消自有關通知指明的時間起生效，而該時間須在有關個案的整體情況下屬合理的。

(5) 金融管理專員可 ——

- (a) 在他認為適當的個案中；及
- (b) 自他指明的在該個案的整體情況下屬合理的時間起，撤銷根據第 (2)(a) 款就任何公司批給的批准或根據第 (3) 款當作已就任何公司批給的批准。

(6) 金融管理專員如拒絕根據第 (2)(a) 款批給批准，或根據第 (5) 款撤銷批准，他須將該項拒絕或撤銷以書面通知有關認可機構。

(7) 凡任何認可機構違反第 (2) 款的條件或違反根據第 (4) 款附加的任何條件，該機構的每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂)

- (a) 一經循公訴程序定罪，可處第 7 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款，
- 如屬持續的罪行，則可就罪行持續期間的每一日，另處第 2 級罰款。

(8) 為施行本條，認可機構獲取的公司股本不包括 ——

- (a) 在該機構獲清償欠它的債項的過程中獲取的股本；或
- (b) 該機構根據包銷合約或分包銷合約獲取的股本，而該等股本的獲取，為期不超過 7 個工作日或金融管理專員書面批准的較長期間，並受金融管理專員認為於個別個案中恰當附加的條件所規限。

(由 1999 年第 42 號第 11 條增補)

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)

15-55
第 155 章

第 XV 部
第 88 條

Part XV
Section 88

15-56
Cap. 155

- (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. 認可機構持有土地權益的限度

- (1) 任何在香港成立為法團的認可機構，所購買或持有位於香港以內或以外土地的一項或多於一項權益，其價值或其價值總額（視屬何情況而定）不得超逾該機構的資本基礎的百分之二十五。（由 1991 年第 95 號第 32 條修訂）
- (2) 除根據第 (1) 款獲准購買或持有的任何土地的價值外，任何認可機構尚可購買或持有位於香港以內或以外的任何價值的土地權益，但須得金融管理專員認為該土地的佔用，是為進行該機構的業務，或為該機構的員工提供房屋或設施而有需要的。（由 1991 年第 95 號第 32 條修訂；由 1992 年第 82 號第 25 條修訂）
- (3) 為施行第 (2) 款，但在不限制該款的一般性的原則下，金融管理專員可憑其酌情決定權而認為某認可機構辦事處所在的整個處所，是進行該機構業務而有需要的處所。（由 1992 年第 82 號第 25 條修訂）

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)*

15-57
第 155 章

第 XV 部
第 89 條

- (4) (由 1991 年第 95 號第 32 條廢除)
- (5) 為施行本條，在評估土地權益的價值時，不得將為保證償還所欠認可機構的債項而按揭給該機構的土地權益價值計算在內，亦不得將依據行使如此按揭的土地的管有權而獲取的任何土地權益價值計算在內，但該項獲取的權益，須在最早的合適機會處置，而無論如何不得遲於獲取該等權益後的 18 個月處置，或須在金融管理專員於個別情況下書面容許的延長期間內處置。(由 1992 年第 82 號第 25 條修訂)
- (6) 任何認可機構違反本條，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

89. (由 1991 年第 95 號第 33 條廢除)

Part XV
Section 89

15-58
Cap. 155

- (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*)

15-59
第 155 章

第 XV 部
第 90 條

Part XV
Section 90

15-60
Cap. 155

90. (由 2018 年第 6 號第 15 條廢除)

91. 遵從的證明

(由 2018 年第 6 號第 16 條修訂)

(* 修訂部分生效 —— 見 2018 年第 102 號法律公告)

- (1) 任何認可機構於任何時間在金融管理專員書面傳喚下，須按他的規定向他交出證據或資料，使他信納該機構並無違反 —— (由 1991 年第 95 號第 35 條代替。由 1992 年第 82 號第 25 條修訂；由 2018 年第 6 號第 16 條修訂)
 - (a) 根據第 81A(1) 條訂立的規則的任何條文；
 - (b) 第 81C(1) 條所界定的補救行動規定；或
 - (c) 根據第 86 條發出的通知的規定。(由 2018 年第 6 號第 16 條修訂)
- (2) 任何認可機構於任何時間在金融管理專員書面傳喚下，須按他的規定向他交出證據或資料，使他信納該機構是否有採取根據第 82 條發出的公告內指明的營業手法。(由 1992 年第 82 號第 25 條修訂)
- (3) 任何認可機構無合理辯解而沒有遵從或拒絕遵從第 (1) 或 (2) 款，其每名董事、每名行政總裁及每名經理均屬犯罪 —— (由 2001 年第 32 號第 24 條修訂)
 - (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

編輯附註：

90. (Repealed 6 of 2018 s. 15)

91. Proof of compliance

(Amended 6 of 2018 s. 16)

(* Amendments partially commenced — see L.N. 102 of 2018)

- (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— (Replaced 95 of 1991 s. 35. Amended 82 of 1992 s. 25; 6 of 2018 s. 16)
 - (a) any provision of the rules made under section 81A(1);
 - (b) a remedial action requirement as defined by section 81C(1); or
 - (c) a requirement of a notice under section 86. (Amended 6 of 2018 s. 16)
- (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

15-61
第 155 章

第 XV 部
第 91 條

* 《2018 年〈2018 年銀行業 (修訂) 條例〉(生效日期) 公告》(2018 年第 102 號法律公告)(b) 段指定 2018 年 7 月 13 日為《2018 年銀行業 (修訂) 條例》(2018 年第 6 號) 第 16(2) 條 (在該條關乎廢除對《銀行業條例》(第 155 章) 第 80、81、83、85 及 88 條的提述的範圍內除外) 開始實施的日期。

Part XV
Section 91

15-62
Cap. 155

(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*)

Editorial Note:

* Paragraph (b) of the Banking (Amendment) Ordinance 2018 (Commencement) Notice 2018 (L.N. 102 of 2018) appoints 13 July 2018 as the day on which section 16(2) (except in so far as it relates to the repeal of the reference to sections 80, 81, 83, 85 and 88 of the Banking Ordinance (Cap. 155)) of the Banking (Amendment) Ordinance 2018 (6 of 2018) comes into operation.

第 XVI 部**廣告、申述及“銀行”稱號的使用****92. 發出關於存款的廣告等的罪行**

- (1) 除第 (2) 款另有規定外，任何人如知道某廣告、邀請或文件屬於或載有一項邀請，邀請公眾人士——
- (a) 作出任何存款；或
 - (b) 訂立或要約訂立作出任何存款的協議，
- 即不得在香港或其他地方發出該廣告、邀請或文件，或為在香港或其他地方發出該廣告、邀請或文件的目的而管有該廣告、邀請或文件。
- (2) 第 (1) 款在——
- (a) 任何廣告、邀請或文件屬於或載有以下邀請的範圍內——
 - (i) 邀請公眾人士在某認可機構作出存款；或
 - (ii) 邀請公眾人士訂立或要約訂立在某認可機構作出存款的協議；
 - (b) 《證券及期貨條例》(第 571 章) 第 103(1) 條憑藉該條例第 103(3)(f)、(g)、(h) 或 (i) 條而不適用於任何廣告、邀請或文件的範圍內或該廣告、邀請或文件的發出是根據該條例第 105(1) 條獲認可的範圍內；(由 2002 年第 5 號第 407 條代替)
 - (c) 任何廣告、邀請或文件屬於或載有符合附表 5 所指明適用於訂明廣告的規定的訂明廣告的範圍內；或
 - (d) 任何廣告、邀請或文件是關乎存款的接受而第 III 部憑藉第 3(1) 或 (2) 條不適用於該項接受的範圍內，不適用於該廣告、邀請或文件。

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

- (3) 除第(5)款另有規定外，任何人違反第(1)款，即屬犯罪——
- (a) 一經循公訴程序定罪，可處第7級罰款及監禁2年；或
- (b) 一經循簡易程序定罪，可處第5級罰款及監禁6個月。
- (4) 就任何根據本條進行的法律程序而言，任何廣告、邀請或文件中指名的人如在該廣告、邀請或文件中顯示自己準備在香港接受任何存款，則在不抵觸第(5)款的情況下，除非該人提出的相反證明成立，否則該廣告、邀請或文件須推定為由該人發出的。
- (5) 任何人在下述情況下不得被視為就第(1)款適用的廣告、邀請或文件而違反該款——
- (a) 他僅向購買者或免費向公眾人士發出或為如此發出的目的而管有載有該廣告、邀請或文件的報章、雜誌、期刊或其他普遍及經常流通的定期刊物；
- (b) 他僅在提供下述服務的過程中發出或為如此發出的目的而管有該廣告、邀請或文件——
- (i) 透過通訊網絡傳送由顧客或任何其他獨立人士提供的資料；或
- (ii) 提供接達該網絡的途徑；
- (c) 他從事發出或安排發出廣告的業務，並且證明——
- (i) 他是為在業務的日常運作過程中發出該廣告、邀請或文件作發出之用而收取該廣告、邀請或文件；
- (ii) 該廣告、邀請或文件的內容是完全由他的某顧客或由他人代他的某顧客設定的；
- (iii) 他在收取或發出該廣告、邀請或文件前，沒有揀選、修改或以其他方式控制該廣告、邀請或文件的內容；並且

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—

- (iv) 他不知道亦無理由相信發出該廣告、邀請或文件會構成罪行；或
- (d) 如 ——
- (i) 他是廣播業者；
- (ii) 他是以廣播業者的身分直播該廣告、邀請或文件；
- (iii) 他在廣播該廣告、邀請或文件前，並沒有揀選、修改或以其他方式控制該廣告、邀請或文件的內容；並且
- (iv) 他按照使他有權廣播的牌照（如有的話）的條款或條件，及按照在《廣播條例》（第 562 章）或《電訊條例》（第 106 章）下發出並以其廣播業者身分適用於他的業務守則或指引（不論實際如何稱述），而就該項廣播行事。
- (6) 為使發出或為發出而管有廣告、邀請或文件的人士有所遵循，金融管理專員可不時安排擬備並藉憲報公告刊登不抵觸本條例的指引，指明金融管理專員在決定其認為第 (1) 款是否適用於某廣告、邀請或文件時顧及的因素。
- (7) 在本條及附表 5 中 ——
- “直播” (broadcast live) 就任何材料（不論實際如何稱述）而言，指事先未經灌錄或攝錄而將該材料廣播；
- “訂明廣告” (prescribed advertisement) 指任何屬於或載有就以下事宜作出邀請的廣告、邀請或文件 ——
- (a) 在香港以外作出存款；或
- (b) 訂立協議或要約訂立協議在香港以外作出存款；
- “廣播” (broadcast) 就任何材料（不論實際如何稱述）而言，包括將該材料所載資料廣播；
- “廣播業者” (broadcaster) 指合法地作出以下作為的人 ——
- (a) 設置與維持《電訊條例》（第 106 章）第 3A 部所指的廣播服務；或

- (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

16-7
第 155 章

第 XVI 部
第 92 條

- (b) 提供《廣播條例》(第 562 章)第 2(1) 條界定的廣播服務。
(由 2001 年第 32 號第 19 條代替。編輯修訂——2012 年第 2 號編輯修訂紀錄)

Part XVI
Section 92

16-8
Cap. 155

- 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. 欺詐誘使他人作出存款

- (1) 任何人藉有欺詐成分或罔顧後果的失實陳述，誘使另一人——
- (a) 向他或任何其他人作出存款；或
 - (b) 訂立或要約訂立任何向他或任何其他人作出存款的協議，
- 即屬犯罪，一經循公訴程序定罪，可處第 9 級罰款及監禁 7 年。（由 1997 年第 4 號第 27 條修訂）
- (2) 就第 (1) 款而言，“有欺詐成分或罔顧後果的失實陳述” (fraudulent or reckless misrepresentation) 指——
- (a) 以下陳述——
 - (i) 作出陳述的人明知是虛假、誤導或有欺騙性的；或
 - (ii) 虛假、誤導或有欺騙性的，並且是罔顧後果作出的；
 - (b) 以下承諾——
 - (i) 作出承諾的人無意履行的；
 - (ii) 作出承諾的人明知是無法履行的；或
 - (iii) 罔顧後果作出的；
 - (c) 以下預測——
 - (i) 作出預測的人明知，根據他作出預測時他已知的事實，該預測是沒有依據的；或
 - (ii) 根據作出預測的人作出預測時他已知的事實，該預測是沒有依據的，並且是罔顧後果作出的；或

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

16-11
第 155 章

第 XVI 部
第 94 條

- (d) 因作出陳述的人或作出預測的人蓄意或罔顧後果遺漏重要事實，以致成為虛假、誤導或有欺騙性的任何陳述或預測。

94. 在某些情況下誘使他人作出存款的侵權法律責任

- (1) 任何人藉有欺詐成分、罔顧後果或疏忽的失實陳述，誘使另一人向他或任何其他人作出存款，須負責賠償該名如此被誘使的人因依賴該項失實陳述而蒙受的任何金錢損失。
- (2) 就第 (1) 款而言，“有欺詐成分、罔顧後果或疏忽的失實陳述”(fraudulent, reckless or negligent misrepresentation) 指——
 - (a) 以下陳述——
 - (i) 作出陳述的人明知是虛假、誤導或有欺騙性的；
 - (ii) 虛假、誤導或有欺騙性的，並且是罔顧後果作出的；或
 - (iii) 虛假、誤導或有欺騙性的，並且是在作出時無採取合理程度的謹慎以確保其準確性的；
 - (b) 以下承諾——
 - (i) 作出允諾的人無意履行的；
 - (ii) 作出允諾的人明知是無法履行的；或
 - (iii) 罔顧後果作出的，或在作出時無採取合理程度的謹慎以確保能予履行的；
 - (c) 以下預測——
 - (i) 作出預測的人明知，根據他作出預測時他已知的事實，該預測是沒有依據的；或

Part XVI
Section 94

16-12
Cap. 155

- (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;

16-13
第 155 章

第 XVI 部
第 94 條

- (ii) 根據作出預測的人作出預測時他已知的事實，該預測是沒有依據的，並且是罔顧後果作出的，或在作出時無採取合理程度的謹慎以確定該等事實的準確性的；或
- (d) 因作出陳述的人或作出預測的人蓄意、罔顧後果或疏忽地遺漏重要事實，以致成為虛假、誤導或有欺騙性的任何陳述或預測。
- (3) 就本條而言，如任何與本條有關的陳述、承諾或預測是由某公司作出的，則在該項陳述、承諾或預測作出時是該公司董事或控權人的每名人士，須當作已安排或已容許作出該項陳述、承諾或預測，直至相反證明成立為止。
- (4) 本條不影響任何人在普通法方面的任何法律責任。
- (5) 即使根據本條提出的訴訟所依據或將依據的證據在經證實後披露有人犯某罪行，而並無任何人就該罪行被檢控或定罪，該訴訟仍可根據本條提出。
- (6) 就本條而言，“公司”(company)除指第 2 條界定的公司外，亦指任何其他團體，而不論該團體是法人團體或非法人團體。

Part XVI
Section 94

16-14
Cap. 155

- (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.

16-15
第 155 章

第 XVI 部
第 95 條

Part XVI
Section 95

16-16
Cap. 155

95. 認可機構發出虛假等的廣告

- (1) 如金融管理專員認為所發出與任何認可機構業務有關的任何廣告是作出虛假、誤導或有欺騙性的陳述或任何申述的，可藉向該機構送達的書面通知，規定該機構撤回或(如情況有需要)除去該等廣告，並停止發出該等廣告，而獲送達該通知書的認可機構，須據此遵從該通知書。
(由 1992 年第 82 號第 25 條修訂)
- (2) (由 1997 年第 4 號第 27 條廢除)
- (3) 任何認可機構沒有遵從或拒絕遵從根據本條向其送達的通知書，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
 - (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間，另加每日第 3 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂)

96. 某些受禁止的申述

- (1) 任何認可機構不得在書面或口頭的通訊中，以任何方式向任何人申述或默示或容許向任何人申述或默示該機構

- (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

16-17
第 155 章

第 XVI 部
第 97 條

在任何方面已獲得政府、財政司司長或金融管理專員的批准。(由 1992 年第 82 號第 25 條修訂；由 1997 年第 362 號法律公告修訂)

- (2) 僅因作出一項意指某認可機構已獲認可的陳述並不違反第 (1) 款。(由 1995 年第 49 號第 31 條修訂)
- (3) 任何認可機構無合理辯解而違反第 (1) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——(由 2001 年第 32 號第 24 條修訂)
 - (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。(由 1997 年第 4 號第 27 條修訂)

97. 使用“銀行”名稱的限制

- (1) 除本條另有規定外，除銀行外，或除一間在成立為法團的地方獲承認為中央銀行的機構外，任何人如無金融管理專員一般地或在任何個別情況或某類別情況下給予的書面同意而——(由 1990 年第 3 號第 39 條修訂；由 1991 年第 95 號第 37 條修訂；由 1992 年第 82 號第 25 條修訂；由 1995 年第 49 號第 32 條修訂)
 - (a) 在該人於香港經營業務時採用的稱謂或名稱內，使用“bank”一字或該字的任何英文派生詞，或其任何語文的譯文，或使用中文“銀行”一詞，或使用以“b”、“a”、“n”、“k”此次序排列的字母；或(由 1995 年第 49 號第 32 條修訂)
 - (b) 在任何票據頭、信紙、公告、廣告內，或以任何其他方式，申述該人是一間銀行或正在香港經營銀行業務，
即屬犯罪——

Part XVI
Section 97

16-18
Cap. 155

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

- (i) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或（由 2001 年第 32 號第 20 條修訂）
- (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。（由 1997 年第 4 號第 27 條修訂）

(1A) 凡銀行 ——

(a)-(b) （由 1993 年第 94 號第 23 條廢除）

- (c) 在其成立為法團的地方，作為銀行經營業務時所使用的名稱內，使用第 (1)(a) 款適用的任何詞語，

則第 (1)(a) 款並不禁止該銀行的本地代表辦事處在香港進行代表辦事處的職能及工作時使用的名稱內，使用同一名稱，或該名稱的任何語文的譯文，但該名稱 ——

- (i) 須緊接“representative office”此詞語連同使用，且該詞語的語文須與該名稱的語文相同（該詞語如屬中文，須為“代表辦事處”的字樣）；及
- (ii) 不得較該詞語更為顯明。（由 1991 年第 95 號第 37 條增補）

- (1AA) 凡金融管理專員根據第 (1) 款給予同意或拒絕根據該款給予同意，他須在其後的合理切實可行的範圍內盡快將給予或拒絕給予同意一事以書面通知尋求取得該項同意的人，如他拒絕給予同意，他並須在該通知內指明拒絕理由。（由 2001 年第 32 號第 20 條增補）

(1B) （由 1995 年第 49 號第 32 條廢除）

- (2) 本條並不適用於任何為保障或促進銀行之間之共同利益而成立的銀行公會，或為保障或促進銀行僱員之間之共同利益而成立的銀行僱員協會。
- (3) 第 (1)(a) 款並不禁止有限制牌照銀行在其於香港經營接受存款業務時使用的稱謂內，使用指明詞語。（由 1990 年第 3 號第 39 條增補）
- (4) 凡有限制牌照銀行 ——
 - (a) 在香港以外成立為法團；

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*)

- (b) 在其成立為法團的地方是一間銀行；及
- (c) 在其成立為法團的地方，作為銀行經營業務時所使用的名稱內，使用第 (1)(a) 款適用的任何詞語，
- 則第 (1)(a) 款並不禁止該有限牌照銀行在香港經營接受存款業務時使用的名稱內，使用同一名稱，或該名稱的任何語文的譯文，但該名稱——
- (i) 須緊接“restricted licence bank”此詞語連同使用，且該詞語的語文須與該名稱的語文相同（該詞語如屬中文，須為第 (6) 款“指明詞語”定義內 (a) 段指明的字樣）；及
- (ii) 不得較該詞語更為顯明。（由 1990 年第 3 號第 39 條增補）
- (5) 本條例並不影響就任何有限牌照銀行或接受存款公司是否為銀行（並非就本條例而言）的問題所作的決定，而據此本條例並不禁止有限牌照銀行或接受存款公司在以下任何情況下，就它本身而使用第 (1)(a) 款適用的任何詞語——
- (a) 它擬遵照或利用任何有關法律或慣例的規定；及
- (b) 為能聲言它正遵照該規定或有權利用該規定，它有需要使用任何該等詞語。（由 1990 年第 3 號第 39 條增補）
- (6) 在本條中——
- “有關法律或慣例的規定” (relevant provision of law or custom) 指對任何人（因該人是銀行）授予利益的、或只就任何人（因該人是銀行）有其他影響的任何成文法則、根據成文法則訂立的任何文書、任何國際協定、任何法律規則或任何商業習慣或常規；
- “指明詞語” (specified term) 指以下任何詞語——
- (a) “有限牌照銀行”或“restricted licence bank”；
- (b) “商人銀行”或“merchant bank”；

- (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

- (c) “投資銀行”或“investment bank”；
- (d) “批發銀行”或“wholesale bank”；
- (e) 由金融管理專員藉憲報公告就本定義而指明為指明詞語的任何詞語，(由 1992 年第 82 號第 25 條修訂)
- 並包括上述詞語的任何中文或英文的派生詞；(由 1990 年第 3 號第 39 條增補。由 1995 年第 49 號第 32 條修訂)
- “稱謂”(description)包括使用第(1)(a)款適用的任何詞語的任何陳述(不論是否書面陳述)，而該陳述可解釋為指任何人(不論如何描述)為任何銀行(而不論該銀行是否為認可的或存在的銀行)的——
- (a) 附屬公司；
- (b) 控權公司；或
- (c) 控權公司的附屬公司。(由 1995 年第 49 號第 32 條增補。由 2012 年第 28 號第 912 及 920 條修訂)
- (7) 如在緊接《1995 年銀行業(修訂)條例》*(1995 年第 49 號)的生效日期前，任何公司正合法行使根據在緊接該生效日期前正生效的第(1B)款授予它的特權，則該公司可繼續行使該特權，猶如——
- (a) 該款沒有被廢除一樣，但在該款(a)段內“title”一字則由“name”一字取代；及
- (b) 在緊接該生效日期前正生效的第(6)款內“specified bank”的定義沒有被廢除一樣，但該定義的(a)及(b)(i)段內“licensed under section 16”等字則由“authorized”一字取代。(由 1995 年第 49 號第 32 條增補)

編輯附註：

* “《1995 年銀行業(修訂)條例》”乃“Banking (Amendment) Ordinance 1995”之譯名。

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”;

16-25
第 155 章

第 XVI 部
第 97A 條

Part XVI
Section 97A

16-26
Cap. 155

(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. 關於認可身分的虛假陳述

- (1) 除第 97 條另有規定外，任何人不得向人描述自己，或以其他方式顯示他本人，以表示或被合理地解釋為表示他是——（由 1997 年第 4 號第 15 條修訂）
- (a) 認可機構，或正在香港經營接受存款業務，除非他是認可機構；
 - (b) 銀行，或正在香港經營銀行業務，除非他是銀行；
 - (c) 有限制牌照銀行，除非他是有限制牌照銀行；
 - (d) 接受存款公司，除非他是接受存款公司；或
 - (e) 本地代表辦事處，除非他是本地代表辦事處。

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;

16-27
第 155 章

第 XVI 部
第 97A 條

- (2) 任何人違反第 (1) 款，即屬犯罪 ——
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
(由 1997 年第 4 號第 27 條修訂)
- (由 1991 年第 95 號第 38 條增補)
-

Part XVI
Section 97A

16-28
Cap. 155

- (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*)
-

第 XVIA 部**資本規定***(第 XVIA 部由 2012 年第 3 號第 8 條增補)***97B. 目的**

本部的目的，在於確保在香港成立為法團的認可機構維持足夠的資本資源，達致與穩健和穩妥（指經考慮到與該等機構有關聯的風險下屬穩健和穩妥）的做法一致的水平。

97C. 資本規定

- (1) 金融管理專員可在諮詢財政司司長及第 (2) 款指明的人後，為以下目的訂立規則——
 - (a) 考慮到與在香港成立為法團的認可機構有關聯的風險，為該等機構訂明資本規定；及
 - (b) 有關連的目的。
- (2) 為施行第 (1) 款而指明的人為——
 - (a) 銀行業務諮詢委員會；
 - (b) 接受存款公司諮詢委員會；
 - (c) 香港銀行公會；及
 - (d) DTC 公會。
- (3) 在不局限第 (1) 款的原則下，根據該款訂立的規則——
 - (a) 可考慮到與屬每一類別在香港成立為法團的認可機構有關聯的風險，就不同類別的認可機構，訂定不同的條文；
 - (b) 可在顧及香港當時的環境下，實施巴塞爾委員會發出的關於資本的銀行業監管標準，不論是實施全部

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,

標準或實施該等標準的某部分，並可在實施時作出金融管理專員認為合適的變通；

- (c) 可在加以變通或不加以變通的情況下應用、採納或以提述方式收納巴塞爾委員會發出的任何關於資本的文件，不論是應用、採納或收納整份文件或文件的某部分，亦不論是以於文件發出時有效的版本或不時有效的版本為準；
- (d) 可就有一間或多於一間附屬公司的認可機構，指明或賦權金融管理專員指明，適用於該機構的任何資本規定規則，須——
 - (i) 以非綜合基礎適用於該機構；
 - (ii) 以綜合基礎適用於該機構及一間或多於一間該等附屬公司；或
 - (iii) 以非綜合基礎適用於該機構，及以綜合基礎適用於該機構及一間或多於一間該等附屬公司；
- (e) 可規定在該規則中訂明的關於認可機構的事宜（包括沒有遵從資本規定規則），屬該機構須為之採取以下行動的事宜——
 - (i) 立即通知金融管理專員；及
 - (ii) 在金融管理專員的要求下，提供詳情；
- (f) 可就金融管理專員應有關認可機構的申請而覆核其決定，訂定條文；上述申請是指該機構因金融管理專員根據該規則就該機構作出的決定感到受屈而提出的申請；
- (g) 可訂明以一個有上限及下限的範圍的形式表達的資本規定，亦可訂明金融管理專員在何種情況下可決定一個在該範圍內的適用於某認可機構的特定資本規定；及
- (h) 可載有因該規則而需要或適宜訂立的附帶條文、補充條文、相應條文、過渡性條文或保留條文。

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;

16A-5
第 155 章第 XVIA 部
第 97C 條

- (4) 根據第 (1) 款訂立的規則，可規定金融管理專員根據該規則作出的決定，屬第 101B(1) 條適用的決定。
- (5) 除本部及第 X 部另有規定外，在香港成立為法團的認可機構，須遵從根據第 (1) 款訂立並對它適用的規則。
- (6) 根據第 98A(1) 條訂立並在緊接《2012 年銀行業 (修訂) 條例》(2012 年第 3 號) 第 9 條的 * 生效日期前有效的規則，在該日期當日及之後當作根據第 (1) 款訂立，並據此可由根據該款訂立的規則予以修訂。
- (7) 為免生疑問，第 (1) 款中要求金融管理專員諮詢任何人的規定，並不阻止金融管理專員諮詢金融管理專員認為合適的任何其他人。

編輯附註：

* 生效日期：2013 年 1 月 1 日。

Part XVIA
Section 97C16A-6
Cap. 155

- (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.

16A-7
第 155 章

第 XVIA 部
第 97D 條

Part XVIA
Section 97D

16A-8
Cap. 155

97D. 訂明通知規定

- (1) 在本條中——

訂明通知規定 (prescribed notification requirement) 指根據第 97C(1) 條訂立的規則所訂明的、要求認可機構須立即就該規則所訂明的事宜通知金融管理專員的規定。

- (2) 如某認可機構為遵從訂明通知規定，而就沒有遵從關於該機構須維持的最低資本水平的資本規定規則一事，通知金融管理專員，金融管理專員須立即通知財政司司長，並向財政司司長提供財政司司長要求的關於該不遵從事件的任何詳情。
- (3) 如認可機構沒有遵從對它適用的訂明通知規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 3 級罰款。

97E. 補救行動

- (1) 如某認可機構違反第 97C(5) 條，該機構及金融管理專員須展開討論，以決定該機構應採取何種補救行動以遵從該條的規定，但金融管理專員不受任何上述討論約束。
- (2) 金融管理專員根據第 (1) 款進行任何討論後，可藉向有關認可機構送達的書面通知，規定該機構採取該通知指明的補救行動。
- (3) 金融管理專員在根據第 (2) 款送達的通知內對某認可機構施加規定的決定，屬第 101B(1) 條適用的決定。

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

16A-9
第 155 章第 XVIA 部
第 97F 條

- (4) 如認可機構沒有遵從任何在根據第 (2) 款送達的通知內施加的規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 3 級罰款。
- (5) 為免生疑問，根據本條對某認可機構施加規定，並不影響金融管理專員根據按第 97C(1) 條訂立的規則，就該機構採取任何行動，亦不阻止金融管理專員根據該規則，就該機構採取任何行動。

97F. 金融管理專員可就個別認可機構更改資本規定規則

- (1) 除第 (2)、(3)、(4) 及 (5) 款另有規定外，如金融管理專員考慮到與某認可機構有關聯的風險，並基於合理理由，信納更改適用於該機構的任何資本規定規則屬穩妥做法，即可藉向該機構送達的書面通知，作出該更改。
- (2) 如金融管理專員擬根據第 (1) 款向某認可機構送達通知，金融管理專員須向該機構送達該通知的草擬本 (**通知草擬本**)。
- (3) 向某認可機構送達的通知草擬本須——
- (a) 指明——
- (i) 擬更改的資本規定規則；
- (ii) 擬更改有關資本規定規則的方式；及

Part XVIA
Section 97F16A-10
Cap. 155

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—

16A-11
第 155 章

第 XVIA 部
第 97F 條

Part XVIA
Section 97F

16A-12
Cap. 155

- (iii) 擬作出該更改的理由；及
- (b) 包含一項陳述，指出該機構可在自該通知草擬本送達日期起計的 14 日（或金融管理專員於個別個案中容許的較長時間）內，就該通知草擬本內根據 (a)(i)、(ii) 及 (iii) 段指明的任何或所有事宜，向金融管理專員作出書面申述。
- (4) 如有按照第 (3)(b) 款就送達某認可機構的通知草擬本作出的申述，金融管理專員可在考慮該等申述後——
 - (a) 根據第 (1) 款，向該機構送達在內容方面與通知草擬本實質上相同的通知；
 - (b) 根據第 (1) 款，向該機構送達在內容方面經修改的通知，而該等修改是考慮到該等申述中任何一項或多於一項令金融管理專員信納應作出有關修改的該等申述而作出的；或
 - (c) 因為該等申述中一項或多於一項申述令金融管理專員信納不應採取 (a) 段所述的行動，亦不應採取 (b) 段所述的行動，而選擇不根據第 (1) 款向該機構送達通知。
- (5) 如沒有按照第 (3)(b) 款就送達某認可機構的通知草擬本作出的申述，金融管理專員可根據第 (1) 款，向該機構送達在內容方面與通知草擬本實質上相同的通知。
- (6) 如適用於某認可機構的任何資本規定規則根據本條被更改，本部（包括根據第 97C(1) 條訂立的規則）經作出所有因考慮到如此更改後的資本規定規則而必需作出的變通後，就該機構而適用。
- (7) 金融管理專員根據第 (1) 款更改任何資本規定規則的決定，屬第 101B(1) 條適用的決定。
- (8) 為免生疑問——
 - (a) 金融管理專員可向某認可機構送達通知草擬本，以取代送達該機構的一份先前的通知草擬本；及

- (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,

16A-13
第 155 章

第 XVIA 部
第 97F 條

- (b) 在第 (4)(a) 或 (5) 款中，凡提述“在內容方面與通知草擬本實質上相同”，不得解釋為包括第 (3)(b) 款所述的須包含在通知草擬本內的陳述。
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Part XVIA
Section 97F

16A-14
Cap. 155

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.
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第 XVIB 部**流動性規定***(第 XVIB 部由 2012 年第 3 號第 8 條增補)***97G. 目的**

本部的目的，在於確保認可機構維持足夠的流動性資源，達致與穩健和穩妥（指經考慮到與該等機構有關聯的流動性風險下屬穩健和穩妥）的做法一致的水平。

97H. 流動性規定

- (1) 金融管理專員可在諮詢財政司司長及第 (2) 款指明的人後，為以下目的訂立規則——
 - (a) 考慮到與認可機構有關聯的流動性風險，為該等機構訂明流動性規定；及
 - (b) 有關連的目的。
- (2) 為施行第 (1) 款而指明的人為——
 - (a) 銀行業務諮詢委員會；
 - (b) 接受存款公司諮詢委員會；
 - (c) 香港銀行公會；及
 - (d) DTC 公會。
- (3) 在不局限第 (1) 款的原則下，根據該款訂立的規則——
 - (a) 可考慮到與屬每一類別的認可機構有關聯的流動性風險，就不同類別的認可機構，訂定不同的條文；
 - (b) 可在顧及香港當時的環境下，實施巴塞爾委員會發出的關於流動性的銀行業監管標準，不論是實施全部標準或實施該等標準的某部分，並可在實施時作出金融管理專員認為合適的變通；

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

16B-3
第 155 章

第 XVIB 部
第 97H 條

- (c) 可在加以變通或不加以變通的情況下應用、採納或以提述方式收納巴塞爾委員會發出的任何關於流動性的文件，不論是應用、採納或收納整份文件或文件的某部分，亦不論是以於文件發出時有效的版本或不時有效的版本為準；
- (d) 可就在香港成立為法團的認可機構指明或賦權金融管理專員指明，適用於該機構的任何流動性規定規則，須以其業務包括其全部或任何部分在香港以內或以外的業務的基礎而適用；
- (e) 可就有一間或多於一間第 (4) 款所指的聯繫實體的在香港成立為法團的認可機構，指明或賦權金融管理專員指明，適用於該機構的任何流動性規定規則，須——
 - (i) 以非綜合基礎適用於該機構；
 - (ii) 以綜合基礎適用於該機構及一間或多於一間該等實體；或
 - (iii) 以非綜合基礎適用於該機構，及以綜合基礎適用於該機構及一間或多於一間該等實體；
- (f) 可就在香港以外成立為法團的認可機構指明或賦權金融管理專員指明，適用於該機構的任何流動性規定規則，只適用於該機構在香港以內的業務；
- (g) 可規定在該規則中訂明的關於認可機構的事宜（包括沒有遵從流動性規定規則），屬該機構須為之採取以下行動的事宜——
 - (i) 立即通知金融管理專員；及
 - (ii) 在金融管理專員的要求下，提供詳情；
- (h) 可就金融管理專員應有關認可機構的申請而覆核其決定，訂定條文；上述申請是指該機構因金融管理專員根據該規則就該機構作出的決定感到受屈而提出的申請；

Part XVIB
Section 97H

16B-4
Cap. 155

- 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

16B-5
第 155 章第 XVIB 部
第 97H 條

- (i) 可訂明以一個有上限及下限的範圍的形式表達的流動性規定，亦可訂明金融管理專員在何種情況下可決定一個在該範圍內的適用於某認可機構的特定流動性規定；及
 - (j) 可載有因該規則而需要或適宜訂立的附帶條文、補充條文、相應條文、過渡性條文或保留條文。
- (4) 為施行第(3)(e)款——
- (a) 如任何屬法團的實體符合以下條件，即屬某認可機構的聯繫實體——
 - (i) 該實體屬該機構的附屬公司；
 - (ii) 該機構有權在該實體的任何大會上，行使或控制行使不少於 20% 但不超過 50% 表決權；或
 - (iii) 該機構對該實體的事務的處理有重大影響力（包括直接或間接參與作出該實體的財政及運作政策決定的權力）；及
 - (b) 如某認可機構對某不屬法團的實體的事務的處理有重大影響力（包括直接或間接參與作出該實體的財政及運作政策決定的權力），該實體即屬該機構的聯繫實體。
- (5) 根據第(1)款訂立的規則，可規定金融管理專員根據該規則作出的決定，屬第 101B(1) 條適用的決定。
- (6) 除本部及第 X 部另有規定外，認可機構須遵從根據第(1)款訂立並對它適用的規則。
- (7) 為免生疑問，第(1)款中要求金融管理專員諮詢任何人的規定，並不阻止金融管理專員諮詢金融管理專員認為合適的任何其他人。

Part XVIB
Section 97H16B-6
Cap. 155

- 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

16B-7
第 155 章

第 XVIB 部
第 97I 條

Part XVIB
Section 97I

16B-8
Cap. 155

- (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. 訂明通知規定

(1) 在本條中 ——

訂明通知規定 (prescribed notification requirement) 指根據第 97H(1) 條訂立的規則所訂明的、要求認可機構須立即就該規則所訂明的事宜通知金融管理專員的規定。

(2) 如某認可機構為遵從訂明通知規定，而就沒有遵從關於該機構須維持的最低流動性水平的流動性規定規則一事，通知金融管理專員，金融管理專員須立即通知財政司司長，並向財政司司長提供財政司司長要求的關於該不遵從事件的任何詳情。

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

16B-9
第 155 章

第 XVIB 部
第 97J 條

- (3) 如認可機構沒有遵從對它適用的訂明通知規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 3 級罰款。

97J. 補救行動

- (1) 如某認可機構違反第 97H(6) 條，該機構及金融管理專員須展開討論，以決定該機構應採取何種補救行動以遵從該條的規定，但金融管理專員不受任何上述討論約束。
- (2) 金融管理專員根據第 (1) 款進行任何討論後，可藉向有關認可機構送達的書面通知，規定該機構採取該通知指明的補救行動。
- (3) 金融管理專員在根據第 (2) 款送達的通知內對某認可機構施加規定的決定，屬第 101B(1) 條適用的決定。
- (4) 如認可機構沒有遵從任何在根據第 (2) 款送達的通知內施加的規定，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 3 級罰款。
- (5) 為免生疑問，根據本條對某認可機構施加規定，並不影響金融管理專員根據按第 97H(1) 條訂立的規則，就該機構採取任何行動，亦不阻止金融管理專員根據該規則，就該機構採取任何行動。

Part XVIB
Section 97J

16B-10
Cap. 155

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

16B-11
第 155 章

第 XVIB 部
第 97K 條

Part XVIB
Section 97K

16B-12
Cap. 155

97K. 金融管理專員可就個別認可機構更改流動性規定規則

- (1) 除第 (2)、(3)、(4) 及 (5) 款另有規定外，如金融管理專員考慮到與某認可機構有關聯的流動性風險，並基於合理理由，信納更改適用於該機構的任何流動性規定規則屬穩妥做法，即可藉向該機構送達的書面通知，作出該更改。
- (2) 如金融管理專員擬根據第 (1) 款向某認可機構送達通知，金融管理專員須向該機構送達該通知的草擬本 (**通知草擬本**)。
- (3) 向某認可機構送達的通知草擬本須——
 - (a) 指明——
 - (i) 擬更改的流動性規定規則；
 - (ii) 擬更改有關流動性規定規則的方式；及
 - (iii) 擬作出該更改的理由；及
 - (b) 包含一項陳述，指出該機構可在自該通知草擬本送達日期起計的 14 日 (或金融管理專員於個別個案中容許的較長時間) 內，就該通知草擬本內根據 (a)(i)、(ii) 及 (iii) 段指明的任何或所有事宜，向金融管理專員作出書面申述。
- (4) 如有按照第 (3)(b) 款就送達某認可機構的通知草擬本作出的申述，金融管理專員可在考慮該等申述後——
 - (a) 根據第 (1) 款，向該機構送達在內容方面與通知草擬本實質上相同的通知；

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

16B-13
第 155 章

第 XVIB 部
第 97K 條

- (b) 根據第 (1) 款，向該機構送達在內容方面經修改的通知，而該等修改是考慮到該等申述中任何一項或多於一項令金融管理專員信納應作出有關修改的該等申述而作出的；或
- (c) 因為該等申述中一項或多於一項申述令金融管理專員信納不應採取 (a) 段所述的行動，亦不應採取 (b) 段所述的行動，而選擇不根據第 (1) 款向該機構送達通知。
- (5) 如沒有按照第 (3)(b) 款就送達某認可機構的通知草擬本作出的申述，金融管理專員可根據第 (1) 款，向該機構送達在內容方面與通知草擬本實質上相同的通知。
- (6) 如適用於某認可機構的任何流動性規定規則根據本條被更改，本部 (包括根據第 97H(1) 條訂立的規則) 經作出所有因考慮到如此更改後的流動性規定規則而必需作出的變通後，就該機構而適用。
- (7) 金融管理專員根據第 (1) 款更改任何流動性規定規則的決定，屬第 101B(1) 條適用的決定。
- (8) 為免生疑問 ——
 - (a) 金融管理專員可向某認可機構送達通知草擬本，以取代送達該機構的一份先前的通知草擬本；及
 - (b) 在第 (4)(a) 或 (5) 款中，凡提述“在內容方面與通知草擬本實質上相同”，不得解釋為包括第 (3)(b) 款所述的須包含在通知草擬本內的陳述。

Part XVIB
Section 97K

16B-14
Cap. 155

- 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.

16B-15
第 155 章

第 XVIB 部

Part XVIB
Section 97K

16B-16
Cap. 155

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- (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.
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第 XVIC 部**根據第 60A(1)、81A(1)、97C(1) 或 97H(1) 條訂立的規則的實務守則***(第 XVIC 部由 2012 年第 3 號第 8 條增補。由 2018 年第 6 號第 17 條修訂)***97L. 第 XVIC 部的釋義**

(1) 在本部中 ——

相關條文 (relevant provisions) 指根據第 60A(1)、81A(1)、97C(1) 或 97H(1) 條訂立的任何規則的任何條文；(由 2018 年第 6 號第 18 條修訂)

實務守則 (code of practice) 包括 ——

- (a) 守則的部分；及
 - (b) 技術備忘錄及標準，不論是否採用方程式、列表或圖表的形式。
- (2) 在本部中，凡提述經批准實務守則，即包括提述該實務守則在經過根據第 97M 條獲批准的修訂（不論是全面或局部修訂）後當其時有效的守則。

97M. 實務守則

- (1) 為了就任何相關條文提供指引的目的，金融管理專員可在諮詢第 (2) 款指明的人後 ——
- (a) 批准及發出金融管理專員認為適當的實務守則（不論是否由金融管理專員擬備）；或
 - (b) 批准由其他人或擬由其他人發出而金融管理專員認為適當的實務守則。
- (2) 為施行第 (1) 款而指明的人為 ——
- (a) 銀行業務諮詢委員會；

Part XVIC**Codes of Practice for Rules Made under Section 60A(1), 81A(1), 97C(1) or 97H(1)***(Part XVIC added 3 of 2012 s. 8. Amended 6 of 2018 s. 17)***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), 81A(1), 97C(1) or 97H(1).
(Amended 6 of 2018 s. 18)

- (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.

16C-3
第 155 章第 XVIC 部
第 97M 條

- (b) 接受存款公司諮詢委員會；
- (c) 香港銀行公會；及
- (d) DTC 公會。
- (3) 金融管理專員如根據第 (1) 款批准實務守則，須藉在憲報刊登的公告——
 - (a) 指出有關守則，並指明該項批准的生效日期；及
 - (b) 指明該守則是為哪些相關條文而批准的。
- (4) 金融管理專員可——
 - (a) 修訂金融管理專員根據本條擬備的經批准實務守則；及
 - (b) 批准對或擬對經批准實務守則作出的修訂，
 而在任何上述情況下，第 (1)、(2) 及 (3) 款經所有必需的變通後，就對修訂該實務守則的批准而適用，一如該等條文就根據第 (1) 款對任何實務守則的批准而適用一樣。
- (5) 金融管理專員可在諮詢第 (2) 款指明的人後，藉在憲報刊登的公告，撤回金融管理專員對任何實務守則的批准。
- (6) 金融管理專員須在第 (5) 款所指的公告內，指出該公告所關乎的實務守則，並指明金融管理專員對該實務守則的批准的撤回日期。
- (7) 一份看來是經金融管理專員或經其授權核證為在核證中指明的日期有效的、根據本條批准的實務守則或（如實務守則已根據本條修訂）經如此修訂的實務守則（視屬何情況而定）的文件，一經於在覆核審裁處進行的程序中交出，無須再行證明，即可被接納為證據，而在該程序中，在相反證明成立之前——
 - (a) 有關簽署及核證，須推定為金融管理專員或金融管理專員為此目的而授權的人的簽署及核證；及
 - (b) 該文件須推定為在核證中指明的日期有效的守則或經如此修訂的守則（視屬何情況而定）。

Part XVIC
Section 97M16C-4
Cap. 155

- (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.

16C-5
第 155 章

第 XVIC 部
第 97N 條

- (8) 為免生疑問，第 (1) 或 (5) 款中要求金融管理專員諮詢任何人的規定，並不阻止金融管理專員諮詢金融管理專員認為合適的任何其他人。

97N. 在覆核審裁處進行的程序中使用經批准實務守則

- (1) 在本條中 ——

訂明規定 (prescribed requirement) 指任何對以下機構施加規定的相關條文 ——

- (a) 每間認可機構；或
 - (b) 屬某認可機構類別的每間認可機構。
- (2) 凡認可機構沒有遵從適用於該機構的經批准實務守則的條文，此事本身並不使該機構可循民事或刑事法律程序被起訴，但如於在覆核審裁處進行的程序中，有指稱指曾發生或正在發生違反某訂明規定的事情，而於該事情

Part XVIC
Section 97N

16C-6
Cap. 155

- (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

16C-7
第 155 章

第 XVIC 部
第 97N 條

發生時有關於該規定的有效實務守則，則為該程序的目的，第 (3) 款就該守則而有效。

- (3) 如於在覆核審裁處進行的程序中，證明在關鍵時間出現沒有遵從經批准實務守則任何條文的情況，而該審裁處覺得該情況攸關金融管理專員為確立某訂明規定遭違反而必須證明的事宜，則除非該審裁處信納在該事宜上，該規定已以遵從該條文以外的其他方式獲得遵從，否則該事宜須視為已獲證明。
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Part XVIC
Section 97N

16C-8
Cap. 155

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.
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17-1
第 155 章

第 XVII 部
第 98 條

Part XVII
Section 98

17-2
Cap. 155

第 XVII 部

(由 2012 年第 3 號第 9 條廢除)

98. (由 2012 年第 3 號第 9 條廢除)

98A. (由 2012 年第 3 號第 9 條廢除)

99-101. (由 2012 年第 3 號第 9 條廢除)

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)

第 XVIIA 部**銀行業覆核審裁處 #***(第 XVIIA 部由 2005 年第 19 號第 6 條增補)**(* 格式變更——2013 年第 1 號編輯修訂紀錄)*

編輯附註：

(由 2012 年第 3 號第 10 條修訂)

* 第 XVIIA 部的格式已按現行法例樣式更新。

101A. 設立銀行業覆核審裁處 *

- (1) 現設立一個審裁處，其中文名稱為“銀行業覆核審裁處”，而其英文名稱為“Banking Review Tribunal”。該審裁處由一名主席及根據第 (3) 款委任的若干名成員組成。
(由 2012 年第 3 號第 11 條修訂)
- (2) 行政長官須藉於憲報刊登的公告委任一名符合以下說明的人士為覆核審裁處主席——
 - (a) 根據《高等法院條例》(第 4 章) 第 9 條合資格獲委任為高等法院法官；及
 - (b) 不屬公職人員，或僅憑藉根據任何條例成立的委員會或審裁處的主席的身分而屬公職人員。
- (3) 行政長官須藉於憲報刊登的公告委任他認為適合獲委任的不屬公職人員的人士為覆核審裁處成員，而如此獲委任的人數在任何時間均不得少於 2 人。
- (4) 覆核審裁處的主席及成員須獲付行政長官認為適當的款額，作為其服務酬金；在該等款額中，須支付予主席的款額由政府一般收入支付，而須支付予成員的款額由根據《外匯基金條例》(第 66 章) 第 3 條設立的外匯基金支付。
- (5) 附表 15 就覆核審裁處而具有效力。

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.

17A-3
第 155 章第 XVIIIA 部
第 101B 條

- (6) 在本部、附表 15 和根據第 101I 條訂立的規則的規限下，覆核審裁處主席可決定覆核審裁處的程序及實務。
- (6A) 在任何於緊接《2012 年銀行業 (修訂) 條例》(2012 年第 3 號) 第 11 條的 ** 生效日期前有效或仍然待決的文書、合約或覆核程序中，凡有對“資本充足事宜覆核審裁處”或“Capital Adequacy Review Tribunal”的提述，在該日期當日及之後，須分別解釋為對“銀行業覆核審裁處”或“Banking Review Tribunal”的提述。(由 2012 年第 3 號第 11 條增補)
- (7) 在本條中，**公職人員** (public officer) 並不包括《司法人員推薦委員會條例》(第 92 章) 第 2 條所指的司法人員或終審法院首席法官委任的司法人員。

編輯附註：

* (由 2012 年第 3 號第 11 條修訂)

** 生效日期：2013 年 1 月 1 日。

101B. 向覆核審裁處提出申請

- (1) 凡金融管理專員就某認可機構作出的決定憑藉第

Part XVIIIA
Section 101B17A-4
Cap. 155

- (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

17A-5
第 155 章第 XVIIA 部
第 101C 條

60A(3A)、68F(6)、81A(4)、97C(4)、97E(3)、97F(7)、97H(5)、97J(3) 或 97K(7) 條屬本條適用的決定，而該機構因該決定感到受屈，則該機構可在第 (3) 款指明的期間內任何時間，向覆核審裁處申請覆核該決定。(由 2012 年第 3 號第 12 條修訂；由 2018 年第 6 號第 19 條修訂)

- (2) 覆核申請須以書面作出，並須述明申請覆核所據的理由。
- (3) 為施行第 (1) 款而指明的期間，為有關認可機構在接獲金融管理專員將有關決定告知該機構的書面通知後起計的 30 天屆滿的期間，或在覆核審裁處在個別個案的情況下容許的較後日期屆滿的期間。
- (4) 向覆核審裁處申請覆核某決定並不令該決定暫緩生效。

101C. 覆核審裁處作出的覆核裁定

- (1) 覆核審裁處須將它接獲的根據第 101B(1) 條提出的覆核某決定的申請的副本送交金融管理專員。
- (2) 金融管理專員在接獲上述副本後，須在切實可行的範圍內盡快將有關決定的副本，連同由他管有的所有其他有關文件，遞交覆核審裁處。
- (3) 覆核審裁處在覆核金融管理專員的決定時，須給予有關申請人及金融管理專員雙方合理的陳詞機會。
- (4) 就在覆核審裁處席前進行的任何程序而言，如任何事實的在相對可能性的衡量下獲確立，則該等事實即屬獲確立。
- (5) 覆核審裁處在對某決定的覆核作出裁定時，可 ——
 - (a) 確認、更改或推翻該決定；或
 - (b) 將有關事宜連同它認為適當的任何指示發還金融管理專員處理。

Part XVIIA
Section 101C17A-6
Cap. 155

of the Monetary Authority made in relation to it, being a decision to which this section applies by virtue of section 60A(3A), 68F(6), 81A(4), 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; 6 of 2018 s. 19)

- (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.

17A-7
第 155 章

第 XVIIIA 部
第 101D 條

- (6) 覆核審裁處在完成覆核後，須在切實可行的範圍內盡快宣告其裁定及該裁定所據的理由。

101D. 覆核審裁處的裁定的登記

- (1) 覆核審裁處作出的裁定須以書面記錄，並須由覆核審裁處主席簽署。
- (2) 原訟法庭可應覆核審裁處按終審法院首席法官根據第 101I 條訂立的規則所訂明的方式而發出的書面通知，在原訟法庭登記覆核審裁處的裁定，而經如此登記的裁定就所有目的而言須視為原訟法庭在其司法管轄權範圍內作出的命令。
- (3) 除第 101H 條另有規定外，覆核審裁處的裁定是最終裁定，不可上訴。
- (4) 就任何在法院進行的法律程序而言，任何文件如看來是經覆核審裁處主席簽署的覆核審裁處某項裁定的紀錄，在沒有相反證據的情況下，須視為妥為作出和簽署的覆核審裁處的裁定而無需提出關於作出或簽署該裁定的證明，亦無需證明簽署該裁定的人確是覆核審裁處主席。

Part XVIIIA
Section 101D

17A-8
Cap. 155

- (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.

17A-9
第 155 章

第 XVIIIA 部
第 101E 條

Part XVIIIA
Section 101E

17A-10
Cap. 155

101E. 覆核審裁處的權力

- (1) 為進行覆核的目的，覆核審裁處可 ——
- (a) 收取及考慮任何屬口述證供、書面陳述或文件形式的材料，不論該材料可否被法院接納作為證據；
 - (b) 決定收取上述材料的方式；
 - (c) 藉覆核審裁處主席簽署的書面通知，要求某人親到該審裁處席前，以及在第 (2) 款的規限下作證和交出由該人管有或控制並關乎該項覆核的標的事項的物品、紀錄或文件；
 - (d) 監誓；
 - (e) 訊問或安排訊問任何親到該審裁處席前的人（不論訊問是否在經宣誓的情況下進行），並要求該人據實回答該審裁處認為就該項覆核而言屬適當的問題；
 - (f) 命令證人為該項覆核的目的藉誓章提供證據；
 - (g) 按該審裁處在顧及公正原則後認為適當的理由及條款和條件，擱置該項覆核的任何程序；
 - (h) 命令向覆核的任何一方或任何被要求為該項覆核的目的親到該審裁處席前的人付給訟費或費用；
 - (i) 在該審裁處就覆核作出裁定前的任何時間聆訊要求擱置該項覆核程序的申請；及
 - (j) 行使進行該項覆核或執行其職能所需或所附帶的其他權力，或作出進行該項覆核或執行其職能所需或所附帶的其他命令。
- (2) 第 (1) 款並不賦權覆核審裁處要求 ——
- (a) 申請人的技術顧問或專家顧問披露關乎申請人以外的人的事務的資料；或
 - (b) 律師或大律師披露他以該身分接收或作出的享有特權的通訊（不論是口頭通訊或書面通訊）。

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.

17A-11
第 155 章

第 XVIIIA 部
第 101E 條

- (3) 為免生疑問，凡某些法律規則基於公眾利益豁免權而准許或規定不提供證據或文件，則該等規則就覆核審裁處的程序而適用，一如該等規則就法院的民事法律程序而適用一樣；據此，在覆核審裁處的程序中，在假使該等程序是法院的民事法律程序便不能要求某人提出、交出或提供任何證據或文件的情況下，即不得根據第 (1) 款向該人作出該等要求。
- (4) 任何人不得 ——
 - (a) 不遵從覆核審裁處根據或依據第 (1) 款或附表 15 作出或給予的命令、通知、禁令或要求；
 - (b) 令覆核審裁處的聆訊無法繼續進行，或在該等聆訊中有其他不檢行為；
 - (c) 在覆核審裁處已根據第 (1) 款要求他親到該審裁處席前後，未經該審裁處准許而在他按該要求須如此在場時離開有關地方；
 - (d) 阻礙任何人為覆核的目的而親到覆核審裁處席前、作證或交出任何物品、紀錄或文件，或作出旨在令人不為該目的作出該等作為的作為；
 - (e) 因為任何人曾親到覆核審裁處席前，而威脅或侮辱他或令他蒙受任何損失；或
 - (f) 因為覆核審裁處主席或該審裁處任何成員以該身分執行其職能，而在任何時間威脅或侮辱他或令他蒙受任何損失。
- (5) 任何人無合理辯解而違反第 (4) 款，即屬犯罪 ——
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (6) 不得僅因遵從覆核審裁處根據或依據第 (1) 款作出或給予的命令、通知、禁令或要求可能會導致某人入罪而豁免該人使其無須遵從該命令、通知、禁令或要求。

Part XVIIIA
Section 101E

17A-12
Cap. 155

- (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;

17A-13
第 155 章

第 XVIIA 部
第 101F 條

Part XVIIA
Section 101F

17A-14
Cap. 155

- (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. 覆核審裁處的聆訊須以非公開形式進行

- (1) 覆核審裁處的聆訊須以非公開形式進行。
- (2) 覆核程序的參與者不得在該等程序進行時或在任何其他時間，發表或以任何其他方式向任何人披露該項覆核的任何資料或他在該項覆核的過程中獲悉的任何資料。
- (3) 第 (2) 款不適用於由覆核程序的參與者作出的符合以下說明的資料披露——
 - (a) 向同一覆核程序中的另一參與者作出的披露，而該項披露是首述的參與者為了妥善地就該項覆核執行其職能而需要作出的；或
 - (b) 為根據第 101H 條就該項覆核向上訴法庭提出上訴的目的而需要作出的。

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

17A-15
第 155 章

第 XVIIIA 部
第 101F 條

- (4) 第 (2) 款不適用於覆核審裁處根據第 (6) 款發表它在任何程序中的裁定所據的理由。
- (5) 任何人違反第 (2) 款，即屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (6) 覆核審裁處可在申請人及金融管理專員的同意下，發表它在任何程序中的裁定所據的理由，或發表該等理由的任何部分的撮要，讓各認可機構知悉概括情況，但發表的內容不得披露以下資料或包含導致披露以下資料的資料——
 - (a) 該等程序中的申請人或證人的身分；
 - (b) 關於該申請人的商業敏感資料；或
 - (c) 取自金融管理專員的機密資料。
- (7) 在本條中，**參與者** (participant) 就覆核程序而言，指覆核審裁處的主席及成員、該等程序中的申請人，以及該項覆核所牽涉的任何證人、律師、大律師或其他人，但在不損害第 120(1) 條的原則下，並不包括金融管理專員。

Part XVIIIA
Section 101F

17A-16
Cap. 155

- (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.

17A-17
第 155 章

第 XVIIIA 部
第 101G 條

Part XVIIIA
Section 101G

17A-18
Cap. 155

101G. 強迫提供的會導致入罪的證據的使用

- (1) 本條適用於任何人依據覆核審裁處根據第 101E(1)(c)、(e)、(f) 或 (j) 條作出的要求或命令而提出或提供的證據、答案或資料。
- (2) 即使本條例其他條文另有規定，上述的人提出或提供的證據、答案或資料或覆核審裁處作出的要求或命令均不得在法院的刑事法律程序中獲接納為針對該人的證據，但如該人就該證據、答案或資料而被控犯第 101E(4)(a) 條或《刑事罪行條例》(第 200 章) 第 V 部所訂罪行或被控犯作假證供罪，則就該罪行而進行的刑事法律程序屬例外。

101H. 向上訴法庭提出上訴

- (1) 在覆核審裁處席前進行的覆核程序的一方如對該審裁處在該等程序中作出的決定或對該項覆核的裁定感到不滿，可針對該決定或裁定而就法律論點向上訴法庭提出上訴。
- (2) 凡有上訴根據第 (1) 款提出，上訴法庭可應覆核程序任何一方向它提出的申請，命令在上訴法庭認為適當的在訟費、繳存款項於覆核審裁處或其他方面的條件的規限下，擱置該等程序或擱置執行覆核審裁處的有關裁定，但根據第 (1) 款提出的上訴本身並不具有擱置該等程序或擱置執行該裁定的效力。
- (3) 上訴法庭可確認、更改或推翻上訴所針對的決定或裁定，亦可將有關事宜連同它認為適當的指示發還覆核審裁處或金融管理專員處理。
- (4) 《高等法院規則》(第 4 章，附屬法例 A) 在不抵觸本條例的範圍內就上述上訴而適用。

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

17A-19
第 155 章

第 XVIIIA 部
第 101I 條

- (5) 在根據本條提出的上訴中，上訴法庭可作出它認為適當的飭令支付訟費的命令。

101I. 終審法院首席法官訂立規則的權力

終審法院首席法官可訂立規則——

- (a) 就本部或附表 15 第 5 條沒有規定而關乎根據本部提出覆核申請或進行覆核的程序事宜或其他事宜，作出規定；
- (b) 就為施行本部或附表 15 第 5 條而發出或送達任何文件（不論如何稱述）作出規定；
- (c) 就關乎依據第 101D(2) 條在原訟法庭登記覆核審裁處的裁定的事宜作出規定；
- (d) 規管根據第 101H 條提出的上訴的聆訊程序；或
- (e) 訂明任何根據本部或附表 15 第 5 條規定須予訂明的事情。

Part XVIIIA
Section 101I

17A-20
Cap. 155

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.

18-1
第 155 章

第 XVIII 部
第 102 條

Part XVIII
Section 102

18-2
Cap. 155

第 XVIII 部

(由 2012 年第 3 號第 13 條廢除)

102-106. (由 2012 年第 3 號第 13 條廢除)

Part XVIII

(*Repealed 3 of 2012 s. 13*)

102-106. (*Repealed 3 of 2012 s. 13*)

19-1
第 155 章

第 XIX 部
第 107 條

Part XIX
Section 107

19-2
Cap. 155

第 XIX 部

(由 1990 年第 43 號第 8 條廢除)

107-116. (由 1990 年第 43 號第 8 條廢除)

Part XIX

(*Repealed 43 of 1990 s. 8*)

107-116. (*Repealed 43 of 1990 s. 8*)

第 XX 部

對認可機構的調查

117. 代財政司司長調查

(具追溯力的適應化修訂——見 1998 年第 25 號第 2 條；1999 年第 68 號第 3 條)

- (1) 金融管理專員如覺得為符合某認可機構或前認可機構的存款人的利益或為符合公眾利益，應該查究該機構的事務、業務或財產，可向財政司司長作出表明此意的報告。
(由 1992 年第 82 號第 25 條修訂；由 1995 年第 49 號第 34 條修訂)
- (2) 財政司司長在收到第 (1) 款所指的報告後，可委任適任的人，就有關的認可機構或前認可機構的事務、業務及財產的狀況及處理，或財政司司長所指明的該機構的某一方面，向財政司司長及金融管理專員報告。(由 1995 年第 49 號第 34 條代替)
- (3) 財政司司長在根據第 (2) 款作出委任後，可不時於該名獲如此委任的人向他報告前，規定該人查究有關的認可機構或前認可機構的任何其他方面。(由 1995 年第 49 號第 34 條修訂)
- (4) 根據第 (2) 款獲委任的人所獲支付的酬金及津貼以及委任的條款，由財政司司長不時決定。
- (5) 財政司司長收到根據第 (2) 款獲委任的人的報告後，在不限制他根據本條例可行使任何其他權力的一般性的原則下——
 - (a) 如他認為符合公眾利益，可安排將本條所指的報告以他認為適當的方式整份或部分發表：

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

但根據本段發表的報告，在沒有認可機構的任何個別客戶的同意下，不得使該客戶可被識別或揭露其事務的詳情；

- (b) 可規定根據第 (2) 款獲委任的人就該報告內引起的任何事宜，再作報告；
 - (c) 可將該報告轉呈行政長官會同行政會議，建議行政長官會同行政會議根據第 53(1)(iii) 條行使其權力；
(由 1995 年第 49 號第 34 條代替。由 1999 年第 68 號第 3 條修訂)
 - (d) 如看似有人可能犯了罪，可將該報告轉呈律政司司長；
 - (e) (由 1995 年第 49 號第 34 條廢除)
 - (f) 可根據第 122(5) 條向原訟法庭申請清盤令。(由 1990 年第 3 號第 44 條修訂；由 1998 年第 25 號第 2 條修訂)
 - (6) 財政司司長不得在前認可機構於第 (1) 款所指的報告的日期前 12 個月或以上已停止作為認可機構的情況下，行使他在第 (2) 款下的權力。
 - (7) 任何人——
 - (a) 意圖使本條的目的不能達到或為阻延或妨礙根據本條進行調查而——
 - (i) 隱藏、銷毀、切割或更改與根據第 (2) 款委任的人所進行調查的標的事宜有關的文件；或
 - (ii) 將任何該等文件送出香港或安排送出香港，或與他人串謀將該等文件送出香港；或
 - (b) 明知而向根據第 (2) 款獲委任的人提供在要項上屬虛假或誤導的任何資料，
- 即屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 4 級罰款及監禁 2 年。(由 1997 年第 4 號第 27 條修訂)

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—

20-5
第 155 章

第 XX 部
第 118 條

- (8) 為免生疑問，現宣布在第 (6) 款內提述的“前認可機構”(former authorized institution)，包括在《1990 年銀行業(修訂)條例》#(1990 年第 3 號)生效日期*前的任何時間正生效的本條例中所指的接受存款公司的任何人。(由 1990 年第 3 號第 44 條增補)

(由 1997 年第 362 號法律公告修訂)

編輯附註：

* 生效日期：1990 年 2 月 1 日。

“《1990 年銀行業(修訂)條例》”乃“Banking (Amendment) Ordinance 1990”之譯名。

118. 審查員的權力及與調查有關的罪行

- (1) 除本條另有規定外，審查員可決定根據第 117 條進行的查究的方式。
- (2) 審查員如認為為進行其調查而有需要，亦可調查任何公司的事務、業務及財產，而該公司是或於任何有關時間曾是——
 - (a) 事務、業務及財產正受調查的團體的控權公司或附屬公司；

PART XX
Section 118

20-6
Cap. 155

- (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—

20-7
第 155 章

第 XX 部
第 118 條

- (b) 該團體的控權公司的附屬公司；或
- (c) 該團體的附屬公司的控權公司。(由 2012 年第 28 號第 912 及 920 條修訂)
- (3) 任何事務、業務及財產正受調查(無論是憑藉第 117(2)條或第 (2) 款受調查)的公司,其每名董事、經理、僱員或代理人,以及任何管有與該項調查有關的簿冊、文據或資料的人士——
 - (a) 有責任向審查員交出由他保管或支配而涉及有關公司的所有簿冊及文據;
 - (b) 如被如此規定,有責任到審查員席前;及
 - (c) 有責任據實與盡他所能回答審查員向他提出任何與調查有關的問題:
但審查員不得規定律師或大律師披露他們以律師或大律師的身分而獲悉或作出的任何享有特權的通訊(無論該通訊是口頭或書面的)。
- (4) 任何人就審查員根據第 (3)(c) 款提出問題而作出的任何答覆,在任何刑事法律程序中不可接納為證據,但根據本條提出的刑事法律程序則除外。
- (5) 公司的任何董事、經理、僱員或代理人,以及任何其他人士——
 - (a) 無合理辯解而沒有交出根據第 (3) 款他有責任交出的任何簿冊或文據;或
 - (b) 無合理辯解而在根據本條被如此規定時,沒有到審查員席前;或
 - (c) 對於審查員就根據第 117 條所調查的事務、業務及財產,或憑藉第 (2) 款正在調查的任何團體的事務、業務及財產而向他提出的任何問題,沒有盡他所能回答,

PART XX
Section 118

20-8
Cap. 155

- (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

20-9
第 155 章

第 XX 部
第 118 條

均屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 4 級罰款及監禁 6 個月。(由 1997 年第 4 號第 27 條修訂)

(6) 在本條中——

- (a) “審查員”(inspector)指根據第 117(2) 條委任的人；
- (b) 凡提述公司的董事、經理、僱員或代理人，包括提述曾任該公司但不再是該公司董事、經理、僱員或代理人的人；
- (c) “代理人”(agent)就一間事務、業務及財產正受調查的公司而言，包括該公司的銀行及律師，以及任何由該公司僱用為其核數師的人，不論該人是否該團體的高級人員。

(由 1995 年第 49 號第 35 條修訂)

PART XX
Section 118

20-10
Cap. 155

- (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)

第 XXA 部

貨幣經紀

(第 XXA 部由 1997 年第 4 號第 16 條增補)

118A. 只有核准貨幣經紀可以貨幣經紀身分行事

- (1) 除核准貨幣經紀外，任何人不得以貨幣經紀身分行事。
- (2) 任何人違反第 (1) 款，即屬犯罪；任何公司違反第 (1) 款，其每名董事及每名經理均屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (3) 任何人訂立合約或安排或採用任何方法或計劃，其作用或所設計的作用是規避第 (1) 款的限制的，該人即屬犯罪——
 - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(由 1997 年第 4 號第 16 條增補)

118B. 核准的申請

任何公司擬以貨幣經紀身分行事，須向金融管理專員申請核准。

(由 1997 年第 4 號第 16 條增補)

118C. 核准申請的決定

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 to 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

20A-3
第 155 章第 XXA 部
第 118C 條

- (1) 在符合第 (2) 及 (5) 款的規定下，金融管理專員收到任何公司根據第 118B 條提交的申請後，可藉向該公司送達書面通知 ——
 - (a) 核准該公司以貨幣經紀身分行事 ——
 - (i) 自按指明格式發出的附於該通知書的核准證明書所指明的日期 (如有的話) 起生效；及
 - (ii) 但須受他認為於個別情況下附加於該證明書屬恰當的條件 (如有的話) 所規限；或
 - (b) 拒絕如此核准該公司。
- (2) 在不限制第 (1)(b) 款的一般性的原則下，如在附表 11 指明的準則中，就該公司有任何一項或多於一項適用於或關於該公司的準則未予符合，則金融管理專員須根據該款拒絕核准該公司。
- (3) 金融管理專員如根據第 (1)(b) 款拒絕核准任何公司，須以書面通知該公司 ——
 - (a) 該項拒絕；及
 - (b) 拒絕的理由。
- (4) 在不限制第 (1)(a) 款的一般性的原則下，金融管理專員可於任何時間，藉向某核准貨幣經紀送達的書面通知，對該貨幣經紀的核准證明書附加他認為恰當的條件 (包括藉修訂已附加於該證明書的條件而附加者)，或按他認為恰當，取消任何已附加於該證明書的條件。
- (5) 金融管理專員在根據第 (1)(b) 款行使其權力而拒絕核准某公司前，須給予該公司在金融管理專員以書面指明的期限內陳詞的機會，而該期限在所有情況下均須屬合理的。
- (6) 任何核准貨幣經紀違反根據第 (1)(a) 或 (4) 款對其核准證明書附加的任何條件，其每名董事及每名經理均屬犯罪 ——
 - (a) 一經循公訴程序定罪，可處第 7 級罰款；或
 - (b) 一經循簡易程序定罪，可處第 5 級罰款，

PART XXA
Section 118C20A-4
Cap. 155

- (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

20A-5
第 155 章第 XXA 部
第 118D 條

如屬持續的罪行，可就罪行持續期間的每一日，另加第 2 級罰款。

- (7) 為使謀求核准的公司有所遵循，金融管理專員可不時安排擬備並藉憲報公告刊登不抵觸本條例的指引，表明他擬行使本條及附表 11 向他授予或委予的職能的方式。

(由 1997 年第 4 號第 16 條增補)

118D. 核准的撤銷

- (1) 在符合第 (1A) 及 (2) 款及第 118E 條的規定下，金融管理專員可在諮詢財政司司長後，提議——(由 1997 年第 362 號法律公告修訂；由 2005 年第 19 號第 15 條修訂)
- (a) 以附表 12 指明而適用於某核准貨幣經紀或與該經紀有關的任何一項或多於一項理由；及
- (b) 藉向該經紀送達的書面通知，
撤銷該經紀的核准。
- (1A) 如撤銷某核准貨幣經紀的核准的理由是該貨幣經紀以書面向金融管理專員要求撤銷其核准，則第 (1) 款中須在提議撤銷核准貨幣經紀的核准前諮詢財政司司長的規定並不適用。(由 2005 年第 19 號第 15 條增補)
- (2) 如——

PART XXA
Section 118D20A-6
Cap. 155

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

20A-7
第 155 章第 XXA 部
第 118E 條

- (a) 任何核准貨幣經紀向金融管理專員送達書面通知，述明它不擬根據第 132A(5) 條就其核准根據第 (1) 款被提議撤銷一事而提出上訴；
 - (b) 任何核准貨幣經紀就其核准根據第 (1) 款被提議撤銷一事在《行政上訴規則》(第 1 章，附屬法例 A) 所指明的可根據第 132A(5) 條提出上訴的期限已屆滿，但該經紀並沒有提出上訴；或
 - (c) 任何核准貨幣經紀根據第 132A(5) 條就其核准根據第 (1) 款被提議撤銷一事而提出的上訴並不成功，
- 金融管理專員須於其後在合理切實可行的範圍內，盡快藉向該經紀送達的書面通知，指明該項撤銷的生效日期 (而該項核准即據此於該日期及由該日期起予以撤銷)。

(由 1997 年第 4 號第 16 條增補)

118E. 撤銷核准的程序及效力

- (1) 除第 (4) 款另有規定外，金融管理專員在根據第 118D 條行使其權力而提議撤銷某核准貨幣經紀的核准前，須將提議撤銷核准的一項或多於一項理由通知該經紀，並須給予該經紀在金融管理專員以書面指明的期限內陳詞的機會，而該期限在所有情況下均須屬合理的。
- (2) 如有提議撤銷某核准貨幣經紀的核准，則該項撤銷一經按照第 118D(2) 條生效，該經紀須立即停止以貨幣經紀身分行事。
- (3) 第 (2) 款的施行並不損害任何人向該款所提述的核准貨幣經紀 (或前核准貨幣經紀) 強制執行或以其他方式維護任

PART XXA
Section 118E20A-8
Cap. 155

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

20A-9
第 155 章

第 XXA 部
第 118F 條

何權利或權益，亦不損害該經紀向任何人強制執行或以其他方式維護任何權利或權益。

- (4) 凡有關核准貨幣經紀的核准被撤銷的理由是該經紀以書面要求金融管理專員撤銷其核准，則第 (1) 款不適用。

(由 1997 年第 4 號第 16 條增補)

118F. 核准貨幣經紀須繳付的費用

- (1) 核准貨幣經紀須在其獲核准日期後 14 天內，向庫務署署長繳付附表 2 指明的核准貨幣經紀的費用。
- (2) 核准貨幣經紀須每年在其獲核准日期的周年日，向庫務署署長繳付附表 2 指明的核准貨幣經紀續期費。

(由 1997 年第 4 號第 16 條增補)

PART XXA
Section 118F

20A-10
Cap. 155

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.

第 XXI 部**雜項條文**

(* 格式變更——2012 年第 2 號編輯修訂紀錄)

編輯附註：

* 第 XXI 部的格式已按現行法例樣式更新。

119. 由行政長官會同行政會議決定銀行業務或接受存款業務是否正在經營

- (1) 對於任何人是否正在經營銀行業務或接受存款業務一事，如有爭議，該事宜須呈交行政長官會同行政會議以作決定，但就違反本條例的罪行而提出檢控的情況除外；而就本條例的各方面而言，行政長官會同行政會議的決定是最終及具決定性的。(由 1999 年第 68 號第 3 條修訂)
- (2) 根據第 (1) 款而呈交事宜以作決定，可由財政司司長，或由任何與該事宜的決定有利害關係的銀行、接受存款公司或有限制牌照銀行或人士呈交。(由 1990 年第 3 號第 45 條修訂；由 1997 年第 362 號法律公告修訂)

119A. 認可機構不得設定某些押記並須將某些民事或刑事法律程序通知金融管理專員

- (1) 在本條中——

押記 (charge) 包括留置權、產權負擔、衡平法權益及第三者權利；

資產 (assets) 包括在香港以外的資產；

價值 (value) 具有第 79(1) 條給予該詞的涵義。

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) 除第 (3) 款另有規定外，在香港成立為法團的認可機構，除非獲得金融管理專員批准（而金融管理專員可就該項批准施加其認為合適的條件），否則不得在下述任何一種情況下，藉任何方法在其資產上設定任何押記——
- (a) 其總資產上（不包括對銷項目）現存的所有押記的總價值，是該等總資產的價值的 5% 或以上；或
- (b) 設定該押記會導致其總資產上（不包括對銷項目）的所有押記（包括首述押記）的總價值，超逾該等總資產的價值的 5%。
- (3) 金融管理專員可藉在憲報刊登的公告，指明第 (2) 款不適用的押記或某類別的押記。
- (4) 凡有任何民事或刑事法律程序針對任何在香港成立為法團的認可機構而提起，無論該法律程序是在本條生效日期 * 之前、當日或之後提起，如該法律程序對該機構的財政狀況有重要影響或可能會有重要影響，則該機構須立即將該法律程序通知金融管理專員，並向金融管理專員提供金融管理專員要求的關於該法律程序的任何詳情。
- (5) 如認可機構違反第 (2) 或 (4) 款，其每名董事、每名行政總裁及每名經理均屬犯罪——
- (a) 一經循公訴程序定罪，可處第 7 級罰款及監禁 2 年，如屬持續的罪行，可就罪行持續期間的每一日，另處第 3 級罰款；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月，如屬持續的罪行，可就罪行持續期間的每一日，另處第 2 級罰款。
- (6) 根據第 106(2) 條訂立並在緊接《2012 年銀行業（修訂）條例》(2012 年第 3 號) 第 14 條的生效日期 * 前有效的公告，在該日期當日 * 及之後當作根據第 (3) 款訂立，並據此可由根據該款訂立的公告予以修訂。

(由 2012 年第 3 號第 14 條增補)

- (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

21-5
第 155 章

第 XXI 部
第 120 條

Part XXI
Section 120

21-6
Cap. 155

編輯附註：

* 生效日期：2015 年 1 月 1 日。

120. 公事保密

- (1) 每名本款適用的人士，除因根據本條例行使任何職能或因施行本條例的條文而有需要外——（由 1987 年第 64 號第 26 條修訂）
 - (a) 對於他在根據本條例行使任何職能時獲悉與任何人的事務有關的一切事宜，均須保密與協助保密；
 - (b) 不得將該等事宜傳達他人，但與該等事宜有關的人除外；及
 - (c) 不得容受或准許任何人取用由本款適用的人所管有、保管或控制的任何紀錄。
- (2) 第 (1) 款適用於現在或曾經是——
 - (a) 公職人員；
 - (b) 獲金融管理專員授權的人；
 - (c) 認可機構的顧問；（由 1995 年第 49 號第 36 條代替）
 - (d) 認可機構的經理人；（由 1995 年第 49 號第 36 條代替）

- (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;

- (da) 根據第 53G(5) 條獲委任的人；(由 1995 年第 49 號第 36 條增補)
- (e) 根據第 117(2) 條獲委任的人；及
- (f) 憑藉 (b)、(c)、(d) 或 (e) 段而為本款適用的人所僱用或協助該人的人，
- 且根據本條例行使或曾根據本條例行使任何職能的人。
- (3) 如認可機構的經理人根據《稅務條例》(第 112 章) 第 51 條須遵從提交報稅表及資料的通知，則第 (1) 款不適用。(由 1995 年第 49 號第 36 條代替)
- (4) 任何根據第 47、50、55 或 117 條進行審查或調查的過程中行使任何職能的人，或任何收到根據第 47、50、55、56、59、63 或 64 條呈交的報告、申報表或資料的人，均無須向任何法院交出任何簿冊、帳目或其他文件，或向法院洩露或傳達他在根據本條例行使他的職能時所獲悉的任何事宜或事情，但在任何罪行的檢控過程中或在由原訟法庭根據第 122 條清盤的過程中有此需要的，則屬例外。(由 1992 年第 67 號第 9 條修訂；由 1998 年第 25 號第 2 條修訂)
- (5) 第 (1) 款不適用於 ——
- (a) 以撮要形式將多間認可機構提供的類似資料作資料披露，而該撮要的擬定方式是足以防止可從該撮要中確定與任何某間認可機構業務有關的詳情的；
- (b) 目的是為提起任何刑事法律程序或在其他方面就任何刑事法律程序(不論是否根據本條例)而披露資料；
- (c) 由本條例引起的任何其他法律程序的有關事宜；
- (d) 應律政司司長的要求，向警方或廉政專員公署披露與任何刑事投訴的正當調查有關的資料；(由 1997 年第 362 號法律公告修訂)
- (da) 向覆核審裁處披露資料；(由 2005 年第 19 號第 7 條增補)

- (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

- (db) 向根據《打擊洗錢及恐怖分子資金籌集條例》(第 615 章)第 55 條設立的打擊洗錢及恐怖分子資金籌集覆核審裁處披露資料；(由 2011 年第 15 號第 86 條增補。由 2018 年第 4 號第 42 條修訂)
- (dc) 向處置補償審裁處披露資料；(由 2016 年第 23 號第 210 條增補)
- (dd) 向處置可行性覆檢審裁處披露資料；(由 2016 年第 23 號第 210 條增補)
- (de) 由金融管理專員向處置機制當局披露資料，以使該當局能夠行使該當局在《金融機構(處置機制)條例》(第 628 章)下的職能，或協助該當局行使該等職能；(由 2016 年第 23 號第 210 條增補。編輯修訂——2017 年第 2 號編輯修訂紀錄)
- (e) 目的是為提起任何紀律程序或在其他方面就任何紀律程序而由金融管理專員披露資料，而該紀律程序是與認可機構或前認可機構的核數師或前核數師(無論該核數師或前核數師(視屬何情況而定)是否根據第 50、59 或 63 條獲委任)行使其專業職責有關的；(由 1990 年第 43 號第 9 條代替。由 1992 年第 67 號第 9 條修訂)
- (f) 由金融管理專員向行政長官、財政司司長、獲財政司司長委任以調查公司事務的審查員、任何擔任認可法定職位的人或任何由財政司司長為本段的目的而授權的公職人員披露資料，而金融管理專員認為——(由 1993 年第 96 號法律公告修訂；由 1997 年第 362 號法律公告修訂；由 1999 年第 68 號第 3 條修訂；由 2002 年第 106 號法律公告修訂)
 - (i) 為符合存款人或潛在存款人的利益或公眾利益，如此披露資料是適宜或合宜的；或
 - (ii) 該項披露會使接獲資料者行使其職能或會協助接獲資料者行使其職能，且如此披露資料並不

- 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 Review Tribunal established under section 55 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615); (*Added 15 of 2011 s. 86. Amended 4 of 2018 s. 42*)
- (dc) to the disclosure of information to the Resolution Compensation Tribunal; (*Added 23 of 2016 s. 210*)
- (dd) to the disclosure of information to the Resolvability Review Tribunal; (*Added 23 of 2016 s. 210*)
- (de) to the disclosure of information by the Monetary Authority to a resolution authority for the purpose of enabling or assisting the resolution authority to exercise its functions under the Financial Institutions (Resolution)

是違反存款人或潛在存款人的利益或公眾利益的；(由 1991 年第 95 號第 40 條代替)

- (fa) 由金融管理專員向證監會披露關於 ——
- (i) 任何註冊機構進行某類受規管活動的資料；或
 - (ii) 任何認可機構作為中介人的有聯繫實體所進行的收取或持有中介人客戶資產的業務的資料；上述中介人、有聯繫實體及客戶資產分別為《證券及期貨條例》(第 571 章)附表 1 所指者；(由 2002 年第 6 號第 12 條增補)
- (g) 由金融管理專員向認可機構或前認可機構的核數師，或向前核數師披露資料，為使金融管理專員或協助金融管理專員根據本條例履行其職能；(由 1990 年第 43 號第 9 條代替。由 1991 年第 95 號第 40 條修訂)
- (gaa) 由金融管理專員向《存款保障計劃條例》(第 581 章)第 3 條所設立的香港存款保障委員會披露資料，以使該委員會能夠根據該條例行使其職能或協助該委員會如此行使其職能；(由 2004 年第 7 號第 55 條增補)
- (ga) 以下的資料披露 ——
- (i) 向根據《外匯基金條例》(第 66 章)第 5A(3) 條獲委任職位的人披露資料；及
 - (ii) 如該項披露使該人或會協助該人協助金融管理專員執行該條提述的任何職能；(由 1995 年第 49 號第 36 條增補)
- (h) 在符合第 (5D) 款的規定下，由金融管理專員在得到以下的人同意後披露資料 ——
- (i) 金融管理專員從該人取得或接獲資料的該人；及
 - (ii) 如該資料並非與該人有關的，則為與該資料有關的人；或 (由 1991 年第 95 號第 40 條增補)

Ordinance (Cap. 628); (*Added 23 of 2016 s. 210. Amended E.R. 2 of 2017*)

- (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—

21-13
第 155 章

第 XXI 部
第 120 條

- (i) 已在本條或第 121 條不禁止的情況下披露資料，或已因本條或第 121 條不禁止的目的而披露資料，以致公眾人士可以得到上述資料的該等披露資料。(由 1991 年第 95 號第 40 條增補)
- (5A) 就第 (5)(f) 款而言，**認可法定職位** (authorized statutory office) 指 ——
- (a) 根據《保險業條例》(第 41 章) 第 4AAA 條設立的保險業監管局；(由 2015 年第 12 號第 105 條代替)
- (b) 證監會；(由 1989 年第 10 號第 65 條代替。由 2002 年第 6 號第 12 條修訂；由 2006 年第 18 號第 78 條修訂)
- (c) 《強制性公積金計劃條例》(第 485 章) 第 6 條所設立的強制性公積金計劃管理局；或 (由 1989 年第 10 號第 65 條廢除。由 1998 年第 4 號第 7 條增補。由 2006 年第 18 號第 78 條修訂)
- (d) (由 1989 年第 10 號第 65 條廢除)
- (e) 由《財務匯報局條例》(第 588 章) 第 6(1) 條設立的財務匯報局。(由 2006 年第 18 號第 78 條增補)
- (由 1988 年第 68 號第 2 條增補。由 1998 年第 4 號第 7 條修訂)
- (5B) 立法會可藉決議修訂第 (5A) 款。(由 1988 年第 68 號第 2 條增補。由 1999 年第 68 號第 3 條修訂)
- (5C) 金融管理專員可就依據第 (5)(b)、(c)、(d)、(e)、(f)、(fa)、(gaa) 或 (ga) 款披露資料一事附加條件，並須就依據第 (5)(g) 款披露資料一事附加條件，即 —— (由 1995 年第 49 號第 36 條修訂；由 2002 年第 6 號第 12 條修訂；由 2004 年第 7 號第 55 條修訂)
- (a) 獲披露資料的人；或
- (b) 從 (a) 段提述的人處取得或接獲 (不論直接或間接) 資料的人，

Part XXI
Section 120

21-14
Cap. 155

- (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)

21-15
第 155 章

第 XXI 部
第 120 條

- 兩者均不得在無金融管理專員的同意下，向任何其他人士披露該等資料。*(由 1991 年第 95 號第 40 條增補)*
- (5D) 第 (5)(h) 款的施行不得規定金融管理專員在任何民事法律程序中或就任何民事法律程序，披露任何其依據該款可披露或已披露的資料。*(由 1991 年第 95 號第 40 條增補。由 1993 年第 94 號第 28 條修訂)*
- (6) 任何人 ——
- (a) 違反第 (1) 款；
 - (b) 協助、教唆、慫使或促致任何人違反第 (1) 款；或
 - (c) 明知依據第 (5) 款披露資料一事已附加第 (5C) 款所述的條件，而違反該條件，或協助、教唆、慫使或促致任何人違反該條件，*(由 1991 年第 95 號第 40 條增補)*
- 即屬犯罪 ——
- (i) 一經循公訴程序定罪，可處第 8 級罰款及監禁 2 年；或
 - (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。*(由 1997 年第 4 號第 27 條修訂)*
- (7) 第 (5)(a)、(e) 及 (g) 款適用於核准貨幣經紀及前核准貨幣經紀和就該等經紀而適用，一如其分別適用於認可機構及前認可機構和就該等機構而適用一樣，而本條例其他條文須據此解釋。*(由 1997 年第 4 號第 17 條增補)*
- (由 1990 年第 3 號第 46 條修訂；由 1992 年第 82 號第 20 條修訂)*

Part XXI
Section 120

21-16
Cap. 155

- (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; *(Repealed 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)*

21-17
第 155 章

第 XXI 部

Part XXI
Section 120

21-18
Cap. 155

- (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—

21-19
第 155 章

第 XXI 部
第 121 條

Part XXI
Section 121

21-20
Cap. 155

121. 披露與認可機構有關的資料

- (1) 在符合第 (3) 款的規定下，並儘管第 120 條另有規定，如符合以下情況，金融管理專員可向在香港以外任何地方的任何主管當局披露資料——
 - (a) 該主管當局在該地方行使的職能相當於——
 - (i) 金融管理專員的職能；或
 - (ii) 第 120(5A) 條所指的認可法定職位的職能；及
 - (b) 金融管理專員認為——
 - (i) 該主管當局受該地方足夠的保密條文所規限；及
 - (ii) 為符合存款人或潛在存款人的利益或公眾利益，如此披露資料是適宜或合宜的；或
 - (iii) 披露該等資料會使接獲資料者行使其職能或會協助接獲資料者行使其職能，且如此披露資料並不是違反存款人或潛在存款人的利益或公眾利益的。(由 1991 年第 95 號第 41 條代替)
- (2) 在符合第 (3) 款的規定下，並儘管第 120 條另有規定，如金融管理專員認為符合下述代表辦事處的客戶的利益，

- (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

21-21
第 155 章

第 XXI 部
第 121 條

可向任何在香港以外地方的適當的、獲承認的而又為金融管理專員認為受該地方足夠的保密條文所規限的銀行業監管當局，就在該地方成立為法團的銀行所維持經營的本地代表辦事處，或就金融管理專員認為該當局具有主要監管責任的本地代表辦事處，提供關於該本地代表辦事處事務的事宜的資料。*(由 1995 年第 49 號第 37 條修訂)*

- (2A) 在符合第 (3) 款的規定下，以及儘管第 120 條已有規定，如符合以下情況，金融管理專員可向香港以外任何地方的任何主管當局，披露資料——
- (a) 該當局在該地方行使的職能，與處置機制當局在香港的職能，大致相當；及
 - (b) 金融管理專員認為——
 - (i) 該當局受該地方足夠的保密條文所規限；及
 - (ii) 為使該當局能夠在該地方行使與處置機制當局在香港的職能大致相當的職能，或為協助該當局如此行使職能，該資料屬必要。*(由 2016 年第 23 號第 211 條增補)*
- (3) 金融管理專員——
- (a) 除 (b) 段另有規定外，可就依據本條作出的任何資料披露附加條件；
 - (b) 在依據本條作出的任何資料披露涉及認可機構或本地代表辦事處的任何個別客戶的事務的情況下，須就該項披露附加條件，
- 而可如此附加的條件為——
- (i) 屬資料披露對象的人；及
 - (ii) 直接或間接從第 (i) 段提述的人取得或接獲資料的人，均不得在無金融管理專員的同意下，向任何其他人士披露該等資料。*(由 1999 年第 42 號第 12 條代替)*
- (由 1992 年第 82 號第 25 條修訂)*

Part XXI
Section 121

21-22
Cap. 155

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) Subject to subsection (3) and despite section 120, the Monetary Authority may disclose information to an authority in a place outside Hong Kong if—
- (a) that authority exercises functions in that place broadly comparable to those of a resolution authority in Hong Kong; and
 - (b) in the opinion of the Monetary Authority—
 - (i) that authority is subject to adequate secrecy provisions in that place; and
 - (ii) the information is necessary to enable or assist that authority to exercise functions in that place broadly comparable to those of a resolution authority in Hong Kong. *(Added 23 of 2016 s. 211)*
- (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

122. 認可機構的清盤

- (1) 《公司(清盤及雜項條文)條例》中關於債權人自動清盤的條文，並不適用於認可機構。
- (2) 原訟法庭在收到財政司司長按照行政長官會同行政會議根據第 53(1)(iii) 條發出的指示而提出的呈請後，可——(由 1997 年第 362 號法律公告修訂；由 1999 年第 68 號第 3 條修訂)
 - (a) 根據《公司(清盤及雜項條文)條例》第 177 條指明的任何理由；或
 - (b) 在信納為符合公眾利益而應將某認可機構或前認可機構清盤的情況下，
 命令按照《公司(清盤及雜項條文)條例》中與公司清盤有關的條文，將該認可機構或前認可機構清盤。
- (3) 如在由原訟法庭將認可機構清盤的呈請提出前(不論該項呈請是否由財政司司長提出)，就該機構已根據第 52(1)(C) 條作出指示而該項指示在該項呈請提出前已一直持續生效，並就該項呈請有清盤令作出，則儘管《公司(清盤及雜項條文)條例》第 184(2) 條另有條文規定，就該條例第

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

170、179、182、183、266B、267A、269 及 274 條以及該條例第 271(1)(d)、(e)、(h)、(i)、(j)、(k)、(l) 及 (o) 條而言，由原訟法庭對該機構所作出的清盤須當作已在如此作出該項指示時開始。(由 1995 年第 49 號第 38 條代替。由 1997 年第 4 號第 18 條修訂；由 1997 年第 362 號法律公告修訂；由 2003 年第 14 號第 24 條修訂)

- (3A) 就認可機構在《修訂條例》的生效日期前作出(或容受作出)的任何事情而言，第(3)款適用，猶如在該款中提述《公司(清盤及雜項條文)條例》第 266B 條是提述《修訂前的公司(清盤及雜項條文)條例》第 266 條一樣。(由 2016 年第 14 號第 183 條增補)
- (3B) 就在《修訂條例》的生效日期前就認可機構的業務或財產設立的押記而言，第(3)款適用，猶如在該款中提述《公司(清盤及雜項條文)條例》第 267A 條是提述《修訂前的公司(清盤及雜項條文)條例》第 267 條一樣。(由 2016 年第 14 號第 183 條增補)
- (4) 對於認可機構的經理人在管理該機構的事務、業務及財產的過程中真誠行事所作出的，或該機構根據該經理人在該過程中真誠行事時發出的指示所作出的該機構的業務或財產的任何產權處置，《公司(清盤及雜項條文)條例》第 182 條並不使其失效。(由 1995 年第 49 號第 38 條代替)
- (5) 如財政司司長憑藉第 117(5)(f) 條而有權向原訟法庭提出呈請，則在以下情況下，原訟法庭可按照《公司(清盤及雜項條文)條例》中與公司清盤有關的條文而將接受存款公司或有限制牌照銀行或前接受存款公司或前有限制牌照銀行清盤——(由 1997 年第 362 號法律公告修訂；由 2012 年第 28 號第 912 及 920 條修訂)
- (a) 該接受存款公司或有限制牌照銀行未能向其存款人支付到期須支付的款項，或只能在不履行其義務的情況下支付該等款項；或
- (b) 接受存款公司或有限制牌照銀行的資產價值，較其債務額為少。(由 1990 年第 3 號第 47 條代替)

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

21-27
第 155 章

第 XXI 部
第 122 條

- (6) 如前接受存款公司或前有限牌照銀行在獲認可時曾就任何存款負有任何法律責任，而並不繼續負有該法律責任，則本條並不授權將其清盤。(由 1990 年第 3 號第 47 條修訂；由 1995 年第 49 號第 38 條修訂)
- (7) 如任何人提出呈請要求將認可機構清盤而該人並非財政司司長，則該人須將一份呈請書副本送達金融管理專員，金融管理專員有權就該項呈請陳詞，並傳召、訊問和盤問任何證人，以及在他認為適當的情況下支持或反對作出清盤令。(由 1999 年第 42 號第 13 條增補)
- (8) 在本條中——
- 《公司(清盤及雜項條文)條例》**(CWUMPO)指《公司(清盤及雜項條文)條例》(第 32 章)；
- 《修訂前的公司(清盤及雜項條文)條例》** (pre-amended CWUMPO)指在緊接《修訂條例》的生效日期前有效的《公司(清盤及雜項條文)條例》；
- 《修訂條例》**(Amendment Ordinance)指《2016 年公司(清盤及雜項條文)(修訂)條例》(2016 年第 14 號)。(由 2016 年第 14 號第 183 條增補)
- (由 1998 年第 25 號第 2 條修訂；由 2012 年第 28 號第 912 及 920 條修訂；由 2016 年第 14 號第 183 條修訂)

Part XXI
Section 122

21-28
Cap. 155

- 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

21-29
第 155 章

第 XXI 部
第 123 條

Part XXI
Section 123

21-30
Cap. 155

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. 董事、行政總裁、經理、受託人、僱員及代理人的罪行

任何認可機構的董事、行政總裁、經理、受託人、僱員或代理人意圖欺騙而 —— (*由 2001 年第 32 號第 24 條修訂*)

- (a) 在該機構的業務、事務、交易、狀況、資產或帳目的任何報告、便條、文件或報表內或任何紀錄簿冊內，故意作出或安排作出虛假記項；
- (b) 在該機構的業務、事務、交易、狀況、資產或帳目的任何報告、便條、文件或報表內或任何紀錄簿冊內，故意遺漏作出記項或故意安排遺漏作出記項；或
- (c) 將該機構的業務、事務、交易、狀況、資產或帳目的任何報告、便條、文件或報表內或任何紀錄簿冊內的記項，故意更改、摘錄、隱藏或銷毀，或故意安排將該等記項更改、摘錄、隱藏或銷毀，

即屬犯罪 ——

- (i) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (ii) 一經循簡易程序定罪，可處第 5 級罰款及監禁 2 年。

(*由 1997 年第 4 號第 27 條修訂*)

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. 禁止職員收取佣金

任何認可機構的任何董事或僱員，為自己或他的任何親屬的個人利益或益處而索取或收取、同意或協議收取任何禮物、佣金、薪酬、服務、酬金、金錢、財產或有價值的東西，以促使或盡力促使任何人獲得該機構的任何放款、貸款、財務擔保或信貸融通，或獲得該機構購買或貼現任何銀票、票據、支票、匯票或其他義務，或以容許任何人在該機構的任何帳戶作透支，即屬犯罪——

- (a) 一經循公訴程序定罪，可處第 6 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 2 年。

(由 1997 年第 4 號第 27 條修訂)

125. 搜查令及檢取

- (1) 如裁判官憑經宣誓而作的告發而信納有合理理由懷疑有人犯了本條例所訂的罪行，可發出手令，賦權任何警務人員進入和搜查手令內指明的任何處所。
- (2) 根據第 (1) 款獲發手令的警務人員，可——
 - (a) 將他獲手令賦權進入和搜查的任何處所的外門或內門破啟；
 - (b) 將他有合理理由相信是本條例所訂罪行的證據或包含該罪行的證據的任何物件檢查、檢取和移走；及
 - (c) 將妨礙他獲本款賦權作出的任何進入、搜查、檢查、檢取或移走的任何人，以武力移走。
- (3) 如有任何簿冊、帳目或其他文件從任何人處根據第 (2) 款被檢取和帶走，則就本條例所訂罪行的任何法律程序待

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

21-33
第 155 章

第 XXI 部
第 126 條

決的期間，該人有權取得該等簿冊、帳目或其他文件的副本或摘錄。

- (4) 任何人妨礙警務人員行使第 (2) 款授予他的任何權力，即屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。(由 1997 年第 4 號第 27 條修訂)

126. 董事等被檢控時的免責辯護

- (1) 除第 (2) 款另有規定外，在本條例所訂罪行的法律程序中，被檢控的人如證明他已採取合理預防措施，並已盡應盡的努力避免他本人或他控制下的任何人犯該罪行，即屬免責辯護。(由 1990 年第 43 號第 10 條代替。由 2001 年第 32 號第 21 條修訂)
- (2) 第 (1) 款不適用於第 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 或 125(4) 條所訂罪行。(由 2001 年第 32 號第 21 條代替)

126A. 提出投訴或告發的時間限制

- (1) 對於可公訴罪行以外的罪行，有關投訴或告發須於犯了該罪行後 3 年內的任何時間及在律政司司長獲悉其認為足以令提出檢控屬有理由的證據後的 6 個月內，向裁判

Part XXI
Section 126

21-34
Cap. 155

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

21-35
第 155 章

第 XXI 部
第 127 條

官提出，或向裁判法院中由裁判官為此而書面授權的人員提出。

- (2) 就第 (1) 款而言，由律政司司長就他獲悉第 (1) 款所提及證據的日期而發出的證明書，即為該事實的確證。

(由 1990 年第 43 號第 11 條增補。由 1997 年第 362 號法律公告修訂)

127. 彌償

- (1) 以下人士—— (由 1995 年第 49 號第 39 條修訂)
- (a) 任何公職人員；
 - (b) 根據《外匯基金條例》(第 66 章) 第 5A(3) 條獲委任以協助金融管理專員的任何人； (由 1993 年第 94 號第 29 條代替)
 - (c) 認可機構的顧問或該顧問根據第 53G(5) 條委任的任何人； (由 1995 年第 49 號第 39 條代替)
 - (d) 認可機構的經理人或該經理人根據第 53G(5) 條委任的任何人；或 (由 1995 年第 49 號第 39 條代替)
 - (e) 任何根據第 117(2) 條獲委任的人，
無須由於他在行使或其意是行使由本條例或根據本條例授予或委予的職能時真誠地辦理或遺漏辦理的任何事情，而承擔法律責任。
- (2) 任何認可機構的行政總裁、董事、經理或僱員，無須由於他在施行或其意是施行該機構的經理人向他發出的指示時真誠地辦理或遺漏辦理的任何事情，而承擔法律責任。 (由 1995 年第 49 號第 39 條增補)

Part XXI
Section 127

21-36
Cap. 155

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

21-37
第 155 章

第 XXI 部
第 128 條

Part XXI
Section 128

21-38
Cap. 155

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. (由 1991 年第 95 號第 44 條廢除)

128. (*Repealed 95 of 1991 s. 44*)

129. 違反本條例或由本條例廢除的任何條例的合約的有效性

129. **Validity of contract in contravention of this Ordinance or any Ordinance repealed by this Ordinance**

- (1) 除第 70B(4) 及 (5) 條另有規定外，在任何合約訂立時，如有違反本條例內或由本條例廢除的任何條例內的任何禁止事宜，則該項違反不得令該合約不能強制執行。(由 1987 年第 64 號第 27 條修訂；由 1991 年第 95 號第 45 條修訂)
- (2) 第 (1) 款須當作由 1976 年 4 月 1 日起已具有效力，但就本條例生效日期前已展開的任何法律程序而言，該款與本款一同予以理解時，並不具有效力。
- (3) 除第 70B(4) 及 (5) 條另有規定外，為免生疑問，現宣布在任何合約訂立時，如有違反本條例內或由本條例廢除的任何條例內的任何禁止事宜，則該項違反不得令該合約無效。(由 1991 年第 95 號第 45 條增補)
- (4) 在本條中，**合約** (contract) 包括本非合約的契據。(由 1991 年第 95 號第 45 條增補)
- (5) 本條的施行，並不損害第 53B(5) 或 (8)、53C(7) 或 (8) 或 53E(1)(ii) 條的施行。(由 1995 年第 49 號第 40 條增補)

- (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. (由 1995 年第 49 號第 41 條廢除)

130. (*Repealed 49 of 1995 s. 41*)

131. 費用、開支等的追討

131. **Recovery of fees, expenses, etc.**

21-39
第 155 章

第 XXI 部
第 131 條

- (1) 以下各項可由律政司司長提起訴訟，作為有關認可機構欠下政府的民事債項而追討 —— (由 1990 年第 43 號第 12 條修訂)
 - (a) 根據第 19、45、48、51 或 118F 條須支付的任何費用的款額；(由 1995 年第 49 號第 42 條代替。由 1997 年第 4 號第 19 條修訂)
 - (b) 任何依據根據第 53G(7) 條釐定而須由認可機構向下述人士支付的酬金及開支 ——
 - (i) 該機構的顧問或該顧問根據第 53G(5) 條委任的任何人；
 - (ii) 該機構的經理人或該經理人根據第 53G(5) 條委任的任何人；(由 1995 年第 49 號第 42 條代替)
 - (c) (由 1995 年第 49 號第 42 條廢除)
 - (d) 財政司司長根據第 55(3) 條命令須由認可機構支付的任何開支。(由 1992 年第 67 號第 10 條修訂)
 - (e) (由 1992 年第 67 號第 10 條廢除)
- (2) 財政司司長根據第 55(3) 條命令須由申請人支付的任何開支，可由律政司司長提起訴訟，作為申請人共同及各別欠下政府的民事債項而追討。
- (3) 在符合第 (5) 款的規定下，根據本條可由律政司司長提起訴訟而追討的任何款項，屬《公司(清盤及雜項條文)條例》(第 32 章)第 265(1)(d) 條及《破產條例》(第 6 章)第 38(1)(d) 條所指的欠下政府的債項。(由 1995 年第 49 號第 42 條代替。由 2012 年第 28 號第 912 及 920 條修訂)
- (4) 根據本條可予追討的費用、酬金、開支及款項須付予庫務署署長。(由 1992 年第 82 號第 21 條增補)
- (5) 第 (1)(b) 款內提述的由任何認可機構須支付的任何酬金及開支，在由原訟法庭作出的該機構的清盤中，具有根據《公司(清盤)規則》(第 32 章，附屬法例 H)對破產管理署署長招致的任何訟費、收費及開支所給予的相同優先

Part XXI
Section 131

21-40
Cap. 155

- (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*)

21-41
第 155 章

第 XXI 部
第 131A 條

次序。(由 1995 年第 49 號第 42 條增補。由 1998 年第 25 號第 2 條修訂)
(由 1997 年第 362 號法律公告修訂；由 1999 年第 68 號第 3 條修訂)

131A. 須付予外匯基金的費用

根據第 19、45、48、51、118F 或 131(4) 條付予庫務署署長的款項的其中任何部分，如關乎外匯基金在與履行本條例下的任何職能有關的方面或在其他方面與履行本條例下的任何職能有關而招致或相當可能招致的行政或其他費用，須由他付予外匯基金。

(由 1992 年第 82 號第 22 條增補。由 1995 年第 49 號第 43 條修訂；由 1997 年第 4 號第 20 條修訂)

132. 語文的使用

- (1) 認可機構備存的簿冊及帳目內的所有記項，須以中文或英文記錄，並須採用阿拉伯數字。(由 1995 年第 49 號第 44 條修訂)
- (2) 依據本條例任何條文須向金融管理專員送交的所有表格及資料，以及須向金融管理專員作出的任何申報表，須以中文或英文及阿拉伯數字編製；如任何該等表格、資料或申報表是譯本，須予以核證以令金融管理專員信納它是一份真實及正確的譯本。(由 1992 年第 82 號第 25 條修訂；由 1995 年第 49 號第 44 條修訂)

Part XXI
Section 131A

21-42
Cap. 155

- (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

21-43
第 155 章

第 XXI 部
第 132A 條

- (3) 任何認可機構違反第 (1) 或 (2) 款，其每名董事、每名行政總裁及每名經理均屬犯罪，一經循公訴程序定罪或循簡易程序定罪，可處第 5 級罰款，如屬持續的罪行，可就罪行持續期間，另加每日第 2 級罰款。(由 1997 年第 4 號第 27 條修訂；由 2001 年第 32 號第 24 條修訂)

132A. 上訴

- (1) 任何人 (不論如何描述) 因以下事宜感到受屈——
- (a) 金融管理專員根據第 16(1)(b)、25(1) 或 (2)、44(5)、46(5)、49(5)、51A(5)、52(1)(A)、(B) 或 (C) 或 (3A)、53G(7)、87A(5) 或 118C(1)(b) 條作出的決定；(由 1999 年第 42 號第 14 條修訂；由 2015 年第 18 號第 63 條修訂)
 - (b) 金融管理專員根據第 16(1)(a) 或 (5) 條附加於該人的認可的任何條件或根據第 118C(1)(a) 或 (4) 條附加於該人的核准證明書的任何條件；(由 2015 年第 18 號第 63 條修訂)
 - (c) 第 18(4)(c) 或 (5)、22(4)(c) 或 (5)、24(5)(c) 或 (6) 或 25(3)(c) 或 (4) 條所提述的附加於依據第 18(4)、22(4)、24(5) 或 25(3) 條 (視屬何情況而定) 給予該人的某項同意的任何條件；
 - (d) 金融管理專員拒絕根據第 44(1)、46(1)、49(1)、51A(2)、59B(3)、69(1) 或 87A(2)(a) 條批給批准；(由 1999 年第 42 號第 14 條修訂；由 2002 年第 6 號第 13 條修訂)
 - (e) 金融管理專員根據第 44(4)、46(4)、49(4)、51A(4) 或 87A(4) 條 (視屬何情況而定) 附加於根據第 44(1)、

Part XXI
Section 132A

21-44
Cap. 155

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

21-45
第 155 章第 XXI 部
第 132A 條

- 46(1)、49(1)、51A(2) 或 87A(2)(a) 條作出的批准的任何規限條件；(由 1999 年第 42 號第 14 條修訂)
- (ea) 根據第 59B(3) 條附加於根據該條作出的批准的任何規限條件；(由 2002 年第 6 號第 13 條增補)
- (f) 金融管理專員拒絕根據第 71(1) 或 73(1) 或 (1A) 條給予同意、根據第 71(2)(b) 條附加於根據第 71(1) 條給予的同意的條件、根據第 71(4) 條撤回根據第 71(1) 條給予的同意的條件或根據第 71(5) 條附加於根據第 71(1) 條給予的同意的條件或根據第 71(5) 條就任何該等條件作出的修訂；(由 2001 年第 32 號第 22 條代替)
- (fb) 金融管理專員拒絕根據第 97(1) 條給予同意，(由 2001 年第 32 號第 22 條增補。由 2012 年第 3 號第 15 條修訂)
- (g) (由 2012 年第 3 號第 15 條廢除)
- (h) (由 2012 年第 3 號第 15 條廢除)
- 可向行政長官會同行政會議上訴，反對該項決定、條件、拒絕、撤回、規定或更改，但即使已經或可根據本款提出上訴，該項決定、條件、拒絕、撤回、規定或更改(視屬何情況而定)仍即時生效。
- (2) 任何認可機構因其認可根據第 22(1) 條被提議撤銷而感到受屈，可向行政長官會同行政會議上訴，反對所提議的該項撤銷。
- (3) 任何人因金融管理專員決定向他送達——
- (a) 第 70 條所指的有條件同意通知書或反對通知書；
- (b) 第 70A 條所指的反對通知書，
- 而感到受屈，可向行政長官會同行政會議上訴，反對該項決定，但即使已經或可根據本款提出上訴，該項決定仍即時生效。
- (4) 任何認可機構因第 95(1) 條所指的通知書內的規定而感到受屈，可向財政司司長上訴，反對該項規定，但即使已

Part XXI
Section 132A21-46
Cap. 155

- 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—

21-47
第 155 章

第 XXI 部
第 132A 條

- 經或可根據本款提出上訴，該項規定仍即時生效。(由 1997 年第 362 號法律公告修訂)
- (5) 任何核准貨幣經紀因其核准根據第 118D(1) 條被提議撤銷而感到受屈，可向行政長官會同行政會議上訴，反對所提議的該項撤銷。
- (6) 任何人如因金融管理專員就他作出的指明決定感到受屈，可藉給予藉《證券及期貨條例》(第 571 章) 第 216 條設立的證券及期貨事務上訴審裁處書面通知，向該審裁處申請覆核該項決定。(由 2002 年第 6 號第 13 條增補)
- (7) 《證券及期貨條例》(第 571 章) 第 XI 部的條文適用於第 (6) 款所指的通知並就該通知而適用，猶如該等條文適用於該條例第 217(1) 條所指的通知並就該條所指的通知而適用一樣。(由 2002 年第 6 號第 13 條增補)
- (8) 一項指明決定 (第 (10) 款中**指明決定**的定義中的 (c) 段所述的指明決定除外) 的生效時間如下——
- (a) 如該項決定所關乎的人在《證券及期貨條例》(第 571 章) 第 217(3) 條指明的就該項決定提出覆核申請的 21 日限期屆滿前，通知金融管理專員他不會提出覆核申請，則該項決定在該人如此通知金融管理專員之時生效；
- (b) 除 (a) 段另有規定外，如該人沒有在《證券及期貨條例》(第 571 章) 第 217(3) 條指明的就該項決定提出覆核申請的 21 日限期內提出覆核申請，則該項決定在該限期屆滿之時生效；或
- (c) 如該人在《證券及期貨條例》(第 571 章) 第 217(3) 條指明的就該項決定提出覆核申請的 21 日限期內就該項決定提出覆核申請，而——
- (i) 由該條例第 216 條設立的證券及期貨事務上訴審裁處確認該項決定，則該項決定在獲確認之時生效；

Part XXI
Section 132A

21-48
Cap. 155

- (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—

- (ii) 該審裁處更改該項決定或以另一決定取代，則該項決定在如此被更改或取代之時，按該項更改或取代的條款而生效；或
 - (iii) 該人撤回該申請，則該項決定在該申請被撤回之時生效。(由 2002 年第 6 號第 13 條增補)
- (9) 不論第 (8) 款及本條例或其他條例的其他條文有任何規定，就一項指明決定而言，金融管理專員如認為就維護投資大眾的利益或公眾利益而言，指明如非因本款則該項決定本會生效的時間以外的另一時間作為該項指明決定的生效時間是適當的，他可在送達該項決定所關乎的人的通知中，指明該另一時間作為該項決定生效的時間，而在此情況下，該項決定在如此指明的時間生效。(由 2002 年第 6 號第 13 條增補)
- (10) 在本條中 ——
- 指明決定** (specified decision) 指金融管理專員的以下決定 ——
- (a) 載於第 58A(4) 條所指的送達有關的人的通知內的決定；
 - (b) 根據第 71C(1) 條拒絕給予同意的決定、依據第 71C(2)(b) 條附加條件於上述同意的決定、根據第 71C(4) 條撤回或暫時撤回上述同意的決定、依據第 71C(9) 條附加條件於上述同意的決定或依據第 71C(9) 條修訂任何已附加於上述同意的條件的決定；或
 - (c) 依據第 71E(3) 條附加條件於根據第 71E(1) 條所給予的臨時同意的決定或依據第 71E(3) 條修訂任何該等條件的決定。(由 2002 年第 6 號第 13 條增補)
- (由 1997 年第 4 號第 21 條增補。由 1999 年第 68 號第 3 條修訂)

- (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

21-51
第 155 章

第 XXI 部
第 132B 條

Part XXI
Section 132B

21-52
Cap. 155

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. 本條例所訂罪行的罰款等級

凡本條例就某罪行 (包括持續的罪行) 藉提述某級罰款而訂定罰款, 適用於該罪行的罰款即為附表 13 中就該級罰款而顯示的款額。

(由 1997 年第 4 號第 21 條增補)

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. 金融管理專員指明表格的權力

133. Power of Monetary Authority to specify forms

21-53
第 155 章

第 XXI 部
第 133 條

- (1) 在符合第 (2) 款的規定下，金融管理專員可指明根據本條例所規定的任何文件的表格須採用指明表格，並可按他認為適當指明為施行本條例所規定的其他文件的表格。
- (2) 金融管理專員在第 (1) 款下的權力，須受限於本條例內任何表格（不論指明表格或其他表格）須符合任何明訂規定的該項規定，但在金融管理專員認為他就該表格而行使該權力並不違反該規定的範圍內，該規定不得限制就該表格而行使該權力。
- (3) 為免生疑問，現宣布金融管理專員在第 (1) 款下的權力，可以下述方式予以行使——
 - (a) 使該款所提述的任何文件的指明表格內包括下述法定聲明——
 - (i) 由填寫該表格的人作出的聲明；及
 - (ii) 盡該人所知及所信有關該表格所載的詳細資料是否真實正確的聲明；
 - (b) 按金融管理專員認為適當，指明在該款中提述的文件的 2 種或多於 2 種表格，而無論該等表格是作為互相替代之用的，或是用以應付特別情況或特別個案的。
- (4) 根據本條指明的表格——
 - (a) 須按照表格中指明的指示及指令填寫；
 - (b) 須附有表格中指明的文件；及
 - (c) 如在填寫後，須向金融管理專員或任何其他人提交，則須按表格中指明的方式（如有的話）提交。
- (5) 在本條中，**文件** (document) 包括任何帳目、申請、通知及證明書。

(由 1995 年第 49 號第 45 條代替)

Part XXI
Section 133

21-54
Cap. 155

- (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

21-55
第 155 章

第 XXI 部
第 134 條

Part XXI
Section 134

21-56
Cap. 155

134. 通知的送達

- (1) 除第 (2) 款另有規定外，根據本條例須向認可機構送達或根據本條例可向認可機構送達的通知（不論如何描述），在無相反證據的情況下，如已——
 - (a) 留在；
 - (b) 藉郵遞送交；或
 - (c) 以專線電報、傳真發送或其他類似方法送交，該機構在香港的主要營業地點，須當作已送達。
- (2) 第 52(2)(b)(i)、53A(2)(b)(i)、53B(7)(b) 或 (8)、53F(3)(b)(i) 或 53G(3)(b) 或 (8)(b)(iii) 條提述的更改、通知、決議或釐定，而根據該等條文須送達或可送達在香港以外成立為法團的認可機構在香港以外的主要營業地點的，在無相反證據的情況下，如已——
 - (a) 給予或送達在該地點的該機構的屬《公司條例》(第 622 章) 第 2(1) 條所指的高級人員；
 - (b) 藉郵遞送交該地點；或
 - (c) 以專線電報、傳真發送或其他類似方法送交該地點，須當作已送達。
- (3) 第 (1) 款的施行不得限制《公司條例》(第 622 章) 第 827 條的概括性。
- (4) 儘管本條例的其他條文（包括第 (2) 款提述的任何該等條文）另有規定，第 (2) 款的施行不得限制《公司條例》(第 622 章) 第 803 條的概括性，而據此該款提述的更改、

- (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.

21-57
第 155 章

第 XXI 部
第 134A 條

通知、決議或釐定，可送達有關認可機構的屬該條例第 774(1) 條所界定的獲授權代表。

(由 1995 年第 49 號第 45 條代替。由 2012 年第 28 號第 912 及 920 條修訂)

134A. 金融管理專員對認可附加條件前須作諮詢等

- (1) 在行使根據第 16 條對認可機構的認可附加任何條件 (包括藉修訂已附加於該認可的條件而附加者) 的權力前，金融管理專員須作諮詢；如他提議將該條件附加於——
 - (a) 每間認可機構的認可，則須諮詢以下人士——
 - (i) 銀行業務諮詢委員會；
 - (ii) 接受存款公司諮詢委員會；
 - (iii) 藉《香港銀行公會條例》(第 364 章) 第 3 條成立為法團的香港銀行公會；及
 - (iv) 根據在當其時有效的《公司條例》(第 32 章) 成立為法團的 DTC 公會 (香港有限牌照銀行及接受存款公司公會)，包括其任何繼承者；(由 2012 年第 28 號第 912 及 920 條修訂)
 - (b) 每間屬銀行或屬於銀行類別的認可機構的認可，則須諮詢第 (a)(i) 及 (iii) 段提述的人或每間該等機構；
 - (c) 每間屬接受存款公司或有限牌照銀行或屬於接受存款公司或有限牌照銀行類別的認可機構的認可，則須諮詢 (a)(ii) 及 (iv) 段提述的人或每間該等機構；

Part XXI
Section 134A

21-58
Cap. 155

- (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

21-59
第 155 章

第 XXI 部
第 134B 條

- (d) 個別認可機構的認可，則須給予該機構在金融管理專員以書面指明的期限內陳詞的機會，而該期限在所有情況下均須屬合理的。
- (2) 為免生疑問，現宣布根據第(1)款金融管理專員就該款提述的事情諮詢該款所提述人士的規定，不得用作阻止金融管理專員就該事情諮詢他認為適當的其他人士。
- (由 1995 年第 49 號第 45 條增補)

134B. 金融管理專員對核准證明書附加條件前須作諮詢等

- (1) 在行使根據第 118C 條對核准貨幣經紀的核准證明書附加任何條件 (包括藉修訂已附加於該證明書的條件而附加者) 的權力前，金融管理專員須作諮詢；如他提議將該條件附加於——
- (a) 屬香港外匯及存款經紀公會成員的每名核准貨幣經紀的證明書，則須諮詢該公會；

Part XXI
Section 134B

21-60
Cap. 155

- 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—

21-61
第 155 章

第 XXI 部
第 135 條

- (b) 個別核准貨幣經紀的證明書，則須給予該經紀在金融管理專員指明的期限內陳詞的機會，而該期限在所有情況下均須屬合理的。
- (2) 為免生疑問，現宣布根據第(1)款金融管理專員就該款提述的事情諮詢該款所提述的人士的任何規定的施行，不得阻止金融管理專員就該事情諮詢他認為適當的其他人士。

(由 1997 年第 4 號第 22 條增補)

135. 修訂附表的權力

- (1) 行政長官會同行政會議可藉憲報公告修訂附表 1、7、8 或 15。(由 1995 年第 49 號第 46 條修訂；由 1999 年第 68 號第 3 條修訂；由 2005 年第 19 號第 7 條修訂)
- (2) 立法會可藉決議修訂附表 2 或 13。(由 1999 年第 68 號第 3 條修訂)
- (3) 財政司司長可藉憲報公告，修訂附表 5、9、11、12 或 14。(由 1991 年第 95 號第 48 條修訂；由 1995 年第 49 號第 46 條修訂；由 1997 年第 362 號法律公告修訂；由 1999 年第 42 號第 15 條修訂；由 2001 年第 32 號第 23 條修訂；由 2005 年第 19 號第 7 條修訂；由 2012 年第 3 號第 16 條修訂)
- (4) (由 1991 年第 95 號第 48 條廢除)

(由 1997 年第 4 號第 23 條修訂)

136. 律政司司長的同意

Part XXI
Section 135

21-62
Cap. 155

- (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

21-63
第 155 章

第 XXI 部
第 137 條

在沒有律政司司長書面同意下，不得就本條例所訂任何罪行提起檢控。

(由 1997 年第 362 號法律公告修訂)

137. (已將修訂編入)

137A. 《賭博條例》的條文的豁除

- (1) 除第 (2) 款另有規定外，《賭博條例》(第 148 章)不適用於由認可機構擬訂立或已經由認可機構訂立的任何交易。
- (2) 如某宗交易屬金融管理專員藉憲報公告指明為第 (1) 款不適用的交易，或屬於金融管理專員藉憲報公告指明為該款不適用的交易類別，則該款不適用於該宗交易。(由 1992 年第 82 號第 25 條修訂)

(由 1987 年第 64 號第 28 條增補)

137B. 訂明票據

- (1) 在本條例中——

訂明票據 (prescribed instrument) ——

- (a) 指以下票據——
 - (i) 附表 6 內指明的票據；及
 - (ii) 金融管理專員或就本定義而根據第 (3)(a) 款獲批准的人是持票人的票據，目的是方便對該票據交易的結算及交收服務；及
- (b) 包括任何下述權利或權益——
 - (i) 根據或就 (a) 段提述的票據而直接或間接產生的權利或權益，而不論該權利或權益可否由——

Part XXI
Section 137

21-64
Cap. 155

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

21-65
第 155 章

第 XXI 部
第 137B 條

- (A) 某人針對票據發出人；或
- (B) 另一人針對 (A) 分節提述的某人，而予以強制執行、申索或以其他方式提出；及
- (ii) 可以下述各項證明者 ——
 - (A) 書面文件；
 - (B) 以帳簿記項形式記錄的資料；
 - (C) 以非可閱的形式記錄 (無論以電腦或其他方式) 但能夠以可閱形式重現的資料；或
 - (D) (A)、(B) 及 (C) 分節的任何組合。
- (2) 凡任何訂明票據如非因本款即會是《證券及期貨條例》(第 571 章) 所指的證券，儘管該條例的條文另有規定，只要附表 6 內指明的有關票據並非該等證券，則該訂明票據須當作為並非該等證券。(由 2002 年第 5 號第 407 條修訂)
- (3) 金融管理專員可藉憲報公告 ——
 - (a) 就訂明票據的定義而批准任何人；
 - (b) 修訂附表 6。
- (4) 為免生疑問，現宣布根據第 (3)(a) 款發出的公告不屬附屬法例。

(由 1993 年第 94 號第 31 條增補)

Part XXI
Section 137B

21-66
Cap. 155

- (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**;

21-67
第 155 章

第 XXI 部

Part XXI
Section 137B

21-68
Cap. 155

(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)

第 XXII 部**過渡、保留及廢除條文****138. 釋義**

(1) 在本部中，除文意另有所指外——

“前《接受存款公司條例》(第 328 章，1983 年版)” (former Deposit-taking Companies Ordinance 1976 (Cap. 328, 1983 Ed.)) 指由本條例廢除的《1976 年接受存款公司條例》#；

“前接受存款公司諮詢委員會” (former Deposit-taking Companies Advisory Committee) 指由前《接受存款公司條例》第 4 條設立並在緊接本條例生效日期前所組成的接受存款公司諮詢委員會；

“前接受存款牌照” (former deposit-taking licence) 指根據前《接受存款公司條例》第 16B 條批給並在緊接本條例生效日期前生效的牌照；

“前專員” (former Commissioner) 指在緊接本條例生效日期前是前《銀行業條例》第 4 條所指的銀行監理專員的人，而就本部而言，凡在前《接受存款公司條例》內提述接受存款公司監理專員之處，須當作為提述該銀行監理專員；

“前註冊” (former registration) 指根據前《接受存款公司條例》第 10 條註冊並在緊接本條例生效日期前生效的註冊；

“前銀行” (former bank) 指在緊接本條例生效日期前持有前銀行牌照的銀行；

“前銀行牌照” (former banking licence) 指根據前《銀行業條例》第 7 或 42 條批給並在緊接本條例生效日期前生效的牌照；

“前《銀行業條例》(第 155 章，1983 年版)” (former Banking Ordinance (Cap. 155, 1983 Ed.)) 指由本條例廢除的《1964 年銀行業條例》*；

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

“前銀行業務諮詢委員會”(former Banking Advisory Committee)指由前《銀行業條例》第3條設立並在緊接本條例生效日期前所組成的銀行業務諮詢委員會。

編輯附註：

“《1976年接受存款公司條例》”乃“Deposit-taking Companies Ordinance 1976”之譯名。

* “《1964年銀行業條例》”乃“Banking Ordinance 1964”之譯名。

139. 前委員會的委任成員須繼續任職

- (1) 憑藉一項由前《銀行業條例》第3(2)條所訂的委任而作為前銀行業務諮詢委員會成員的任何成員，在本條例生效日期當日及自該日起，即當作為銀行業務諮詢委員會的成員，猶如在該生效日期當日已根據第4(2)條獲委任為銀行業務諮詢委員會成員而任期為在緊接該生效日期前作為前銀行業務諮詢委員會成員的剩餘任期一樣；為該目的及在該剩餘任期內，他如此獲委任為前銀行業務諮詢委員會成員的條款，即為他作為銀行業務諮詢委員會成員的條款。
- (2) 憑藉一項由前《接受存款公司條例》第5(1)(c)條所訂的委任而作為前接受存款公司諮詢委員會成員的任何成員，在本條例生效日期當日及自該日起，即當作為接受存款公司諮詢委員會的成員，猶如在該生效日期當日已根據第5(2)條獲委任為接受存款公司諮詢委員會成員而任期為在緊接該生效日期前作為前接受存款公司諮詢委員會成員的剩餘任期一樣；為該目的及在該剩餘任期內，他

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

22-5
第 155 章

第 XXII 部
第 140 條

如此獲委任為前接受存款公司諮詢委員會成員的條款，
即為他作為接受存款公司諮詢委員會成員的條款。

140. (由 1992 年第 82 號第 23 條廢除)

141. 獲授權及受僱的人士須繼續獲授權和受僱

任何人在緊接本條例生效日期前，根據前《銀行業條例》第 4A 條一般地或在任何個別情況下獲授權或受僱協助前專員根據前《銀行業條例》行使他的職能及職責，在本條例生效日期當日及自該日起，即當作以同樣身分獲授權或受僱協助專員根據本條例行使他的職能，猶如在該生效日期當日已根據第 8 條以同樣身分獲授權或受僱協助專員根據本條例行使他的職能而任期為在緊接該生效日期前根據前《銀行業條例》如此獲授權或受僱的剩餘任期一樣。

142. 牌照等的前申請當作為根據本條例提出的申請
凡在緊接本條例生效日期前——

PART XXII
Section 140

22-6
Cap. 155

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,

22-7
第 155 章

第 XXII 部
第 143 條

- (a) 有一項根據前《銀行業條例》第 6 條提出的前銀行牌照的申請，而總督會同行政局沒有就該申請根據前《銀行業條例》第 7 條批給或拒絕批給前銀行牌照；
- (b) 有一項根據前《接受存款公司條例》第 9 條提出的前註冊的申請，而專員沒有就該申請根據前《接受存款公司條例》第 10 條准予註冊或拒絕准予註冊；或
- (c) 有一項根據前《接受存款公司條例》第 16A 條提出的前接受存款牌照的申請，而財政司沒有就該申請根據前《接受存款公司條例》第 16B 條批給或拒絕批給前接受存款牌照，

則——

- (i) 如屬 (a) 段提述的申請，該申請即當作為根據第 15 條提出的銀行牌照的申請；
- (ii) 如屬 (b) 段提述的申請，該申請即當作為根據第 20 條提出的註冊的申請；及
- (iii) 如屬 (c) 段提述的申請，該申請即當作為根據第 24 條提出的接受存款牌照的申請，

而本條例的條文即據此適用。

143. 前牌照等當作為根據本條例批給的牌照等

PART XXII
Section 143

22-8
Cap. 155

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) 任何前銀行牌照在本條例生效日期當日及自該日起 ——
- (a) 如屬根據前《銀行業條例》第 7 條批給的前銀行牌照，即當作為根據第 16 條批給的銀行牌照；(由 1990 年第 43 號第 13 條修訂)
- (b) (由 1990 年第 43 號第 13 條廢除)
- 而本條例的條文即據此適用。
- (2) 任何前註冊在本條例生效日期當日及自該日起，即當作為第 21 條所訂的註冊，而本條例的條文即據此適用。
- (3) 任何前接受存款牌照在本條例生效日期當日及自該日起，即當作為根據第 25 條批給的接受存款牌照，而本條例的條文即據此適用。
- (4) 儘管前《接受存款公司條例》第 VII 部另有規定，任何在緊接本條例生效日期前根據該部暫停的前註冊或暫時吊銷的前接受存款牌照，在該生效日期當日及自該日起，在符合第 146 條的規定下，就第 (2) 及 (3) 款以及第 138 條內“前註冊”及“前接受存款牌照”的定義而言，即當作在緊接該生效日期前生效。

144. 某些費用的繳付日期

凡藉提述任何銀行、註冊接受存款公司或持牌接受存款公司領有牌照或註冊(視屬何情況而定)日期的周年日，或藉提述意思相同的文字而作出該銀行、註冊接受存款公司或持牌接受存款公司根據本條例須繳付附表 2 指明的任何費用的規定(不論“認可機構”一詞是否用於訂立該項規定)，而該銀行、註

- (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

冊接受存款公司或持牌接受存款公司所持有的銀行牌照、註冊或接受存款牌照（視屬何情況而定）是憑藉第 143 條而當作為銀行牌照、註冊或接受存款牌照（視屬何情況而定）的，則為繳付任何該等費用的目的，以及即使本條例另有任何其他規定，上文所提述的該銀行、註冊接受存款公司或持牌接受存款公司領有牌照或註冊日期的周年日，即為該銀行、註冊接受存款公司或持牌接受存款公司根據前《銀行業條例》或前《接受存款公司條例》（視屬何情況而定）領有牌照或註冊日期（視屬何情況而定）的周年日。

(由 1990 年第 43 號第 14 條修訂)

145. 附加在前牌照等的條件當作為根據本條例附加的條件

- (1) 凡根據前《銀行業條例》第 7(1)(b) 或 7A 條附加於前銀行牌照的任何條件在緊接本條例生效日期前是生效的，而在該生效日期當日及自該日起，該前銀行牌照是憑藉第 143 條而當作為銀行牌照的，則在該生效日期當日及自該日起，該條件即當作為附加於該銀行牌照的條件，猶如在該生效日期當日總督會同行政局已根據第 17 條將該條件附加於該銀行牌照一樣，而本條例的條文即據此適用。
- (2) 凡根據前《接受存款公司條例》第 16B(1)(a) 或 (3) 條附加於前接受存款牌照的任何條件在緊接本條例生效日期前是生效的，而在該生效日期當日及自該日起，該前接受存款牌照是憑藉第 143 條而當作為接受存款牌照的，則在該生效日期當日及自該日起，該條件即當作為附加於該接受存款牌照的條件，猶如在該生效日期當日財政司

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

已根據第 25(3) 條將該條件附加於該接受存款牌照一樣，而本條例的條文即據此適用。

- (3) 凡第 44(3) 條適用的任何本地分行根據前《銀行業條例》第 12A(1) 或 (3) 條或根據前《接受存款公司條例》第 16H(1) 或 (3) 條取得一項在緊接本條例生效日期前生效的批准，而根據前《銀行業條例》第 12A(4) 條或前《接受存款公司條例》第 16H(4) 條附加於該項批准的條件，在緊接該生效日期前是生效的，則在該生效日期當日及自該日起，該條件即當作根據第 44 條附加於該本地分行的批准，猶如在該生效日期當日專員已根據第 44(4) 條將該條件附加於該項批准一樣，而本條例的條文即據此適用。
- (4) 凡第 46(2) 條適用的任何本地代表辦事處根據前《銀行業條例》第 12C(1) 或 (2) 條取得一項在緊接本條例生效日期前生效的批准，而根據前《銀行業條例》第 12C(4) 條附加於該項批准的條件，在緊接該生效日期前是生效的，則在該生效日期當日及自該日起，該條件即當作根據第 46 條附加於該本地代表辦事處的批准，猶如在該生效日期當日專員已根據第 46(4) 條將該條件附加於該項批准一樣，而本條例的條文即據此適用。
- (5) 凡第 49(3) 條適用的任何海外分行或海外代表辦事處根據前《銀行業條例》第 12F(1) 或 (3) 條或前《接受存款公司條例》第 16J(1) 或 (3) 條取得一項在緊接本條例生效日期前生效的批准，而根據前《銀行業條例》第 12F(4) 條或前《接受存款公司條例》第 16J(4) 條附加於該項批准的條件，在緊接該生效日期前是生效的，則在該生效日期當日及自該日起，該條件即當作根據第 49 條附加於該海外分行或海外代表辦事處（視屬何情況而定）的批准，猶如在該生效日期當日專員已根據第 49(4) 條將該條件附加於該項批准一樣，而本條例的條文即據此適用。

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

22-15
第 155 章

第 XXII 部
第 146 條

PART XXII
Section 146

22-16
Cap. 155

146. 前註冊等的暫停當作為根據本條例作出的暫停

凡憑藉第 143 條在本條例生效日期當日及自該日起當作為註冊或接受存款牌照的任何前註冊或前接受存款牌照，在緊接該生效日期前，已根據前《接受存款公司條例》第 VII 部暫停或暫時吊銷，則在該生效日期及自該日起，該註冊或該接受存款牌照（視屬何情況而定）即以其在緊接該生效日期前暫停或暫時吊銷的剩餘暫停或暫時吊銷期內，當作以同樣方式根據第 VI 部暫停或暫時吊銷，猶如在該生效日期當日及在該剩餘期內第 VI 部所指的指定主管當局已暫停或暫時吊銷該註冊或該接受存款牌照（視屬何情況而定）一樣，而本條例的條文即據此適用。

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

147. 根據前《銀行業條例》第 IV 部所作的行動等當作為根據本條例第 X 部所作的行動

凡有任何作為、事宜或事情已根據前《銀行業條例》第 IV 部由專員、財政司或總督會同行政局對前銀行或就前銀行作出，而在本條例生效日期當日及自該日起，該前銀行持有的前銀行牌照是憑藉第 143 條而當作為銀行牌照的，則在該生效日期當日及自該日起（限於在如非因本條例的制定，該作為、事宜或事情會在該生效日期當日或自該日後仍有效力或作用或仍會施行的範圍內），該作為、事宜或事情即當作以同樣方式由專員、財政司或總督會同行政局（視屬何情況而定）根據第 X 部對持有該銀行牌照的銀行或就持有該銀行牌照的該銀行作出，猶如在該生效日期當日該作為、事宜或事情在該範圍內已由專員、財政司或總督會同行政局（視屬何情況而定）根據第 X 部對該銀行或就該銀行作出一樣，而本條例的條文即據此適用。

(由 1990 年第 3 號第 49 條修訂)

148. 與某些聯繫證明書有關的過渡條文

在緊接《1991 年銀行業（修訂）（第 2 號）條例》#(1991 年第 95 號)生效日期 * 前，藉第 148 條當作在任何時間均已根據第 81(2)條的但書 (c) 段被接受的聯繫證明書，在該日期當日及自該日期起，即當作在任何時間均已根據第 81(6)(b) 條被接受，而本條例的條文即據此適用。

(由 1991 年第 95 號第 49 條代替)

編輯附註：

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)

22-19
第 155 章

第 XXII 部
第 148A 條

* 生效日期：1991 年 8 月 1 日。

“《1991 年銀行業（修訂）（第 2 號）條例》” 乃 “Banking (Amendment) (No. 2) Ordinance 1991” 之譯名。

148A. (由 2018 年第 6 號第 23 條廢除)

149. 與藉《1990 年銀行業（修訂）條例》作出的修訂有關的過渡條文

(1) 在本條中 ——

“有關日期” (relevant day) 指有關條例的生效日期 *；

“有關條例” (relevant Ordinance) 指《1990 年銀行業（修訂）條例》
#(1990 年第 3 號)；

“持牌接受存款公司” (licensed deposit-taking company) 指在緊接有關日期前持有接受存款牌照的公司；

“接受存款牌照” (deposit-taking licence) 指 ——

(a) 根據或當作根據在有關日期前任何時間生效的第 25 條批給的；及

(b) 在緊接有關日期前生效的，
接受存款牌照。

(2) 凡在緊接有關日期前，有一項根據第 24 條提出的接受存款牌照的申請，而財政司沒有就該申請根據第 25 條批給或拒絕批給接受存款牌照，則在有關日期當日及自該日起，該申請即當作為根據第 24 條提出的有限制銀行牌照的申請，而本條例的條文即據此適用。

(3) 任何接受存款牌照在有關日期當日及自該日起，即當作為根據第 25 條批給的有限制銀行牌照，而本條例的條文即據此適用。

(4) 儘管在緊接有關日期前生效的第 VI 部另有規定，任何在緊接有關日期前根據該部暫時吊銷的接受存款牌照，在有關日期當日及自該日起，就第 (3) 款以及第 (1) 款內“接受存款牌照”的定義而言，即當作在緊接有關日期前生效。

PART XXII
Section 148A

22-20
Cap. 155

Editorial Note:

* Commencement date: 1 August 1991.

148A. (Repealed 6 of 2018 s. 23)

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

- (5) 凡根據第 25 條附加或當作附加於接受存款牌照的任何條件在緊接有關日期前是生效的，而在有關日期當日及自該日起，該接受存款牌照是憑藉第 (3) 款而當作為有限制銀行牌照的，則在有關日期當日及自該日起，該條件即當作為附加於該有限制銀行牌照的條件，猶如在有關日期當日財政司已根據第 25 條將該條件附加於該有限制銀行牌照一樣，而本條例的條文即據此適用。(由 1995 年第 49 號第 47 條修訂)
- (6) 凡憑藉第 (3) 款在有關日期當日及自該日起當作為有限制銀行牌照的任何接受存款牌照，在緊接有關日期前，已根據第 VI 部暫時吊銷，則在有關日期當日及自該日起，該有限制銀行牌照即以其在緊接有關日期前暫時吊銷的剩餘暫時吊銷期內，當作以同樣方式根據第 VI 部被暫時吊銷，猶如在有關日期當日及在該期間內，第 VI 部所指的指定當局已暫時吊銷該有限制銀行牌照一樣，而本條例的條文即據此適用。
- (7) 凡有任何作為、事宜或事情已根據或當作已根據在有關日期前任何時間生效的第 X 部由專員、財政司或總督會同行政局對持牌接受存款公司或就持牌接受存款公司作出，而在有關日期當日及自該日起，該公司持有的接受存款牌照是憑藉第 (3) 款而當作為有限制銀行牌照的，則在有關日期當日及自該日起(限於如非因有關條例的制定，該作為、事宜或事情會在有關日期當日或自該日後仍有效力或作用或仍會施行的範圍內)，該作為、事宜或事情即當作以同樣方式由專員、財政司或總督會同行政局(視屬何情況而定)根據第 X 部對持有該有限制銀行牌照的有限制牌照銀行或就持有該有限制銀行牌照的有限制牌照銀行作出，猶如在有關日期當日該作為、事宜或事情在該範圍內已由專員、財政司或總督會同行政局(視屬何情況而定)根據第 X 部對該有限制牌照銀行或就該有限制牌照銀行作出一樣，而本條例的條文即據此適用。

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

22-23
第 155 章

第 XXII 部
第 149 條

- (8) 在本部有任何其他條文在有關日期當日或在該日後有效力、有作用或正施行的範圍內，凡在該等條文內提述——
- (a) 接受存款牌照，即當作提述有限制銀行牌照；及
- (b) 持牌接受存款公司，即當作提述有限制牌照銀行，而本條例的條文即據此適用。
- (9)-(13) (由 1991 年第 95 號第 50 條廢除)
(由 1990 年第 3 號第 50 條代替)

編輯附註：

* 生效日期：1990 年 2 月 1 日。

“《1990 年銀行業(修訂)條例》”乃“Banking (Amendment) Ordinance 1990”之譯名。

PART XXII
Section 149

22-24
Cap. 155

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. 與藉《1991 年銀行業 (修訂) (第 2 號) 條例》作出的修訂有關的過渡條文

(1) 在本條中 ——

“有關日期” (relevant day) 指有關條例的生效日期 *；

“有關條例” (relevant Ordinance) 指《1991 年銀行業 (修訂) (第 2 號) 條例》(1991 年第 95 號)。

(2)-(3) (由 1999 年第 42 號第 16 條廢除)

(4) 凡在緊接有關日期前有一項根據第 70 或 72 條要求批准的申請，而專員沒有就該申請批給或拒絕批給該批准，則在有關日期當日及自該日起的任何時間，專員可批給或拒絕批給該批准，猶如有關條例從沒有制定一樣，而在有關日期當日或在該日後該批准的批給或拒絕批給，所具有的效力或作用或所施行的方式，須一如有關條例從沒有制定時，該批准的批給或拒絕批給會具有的效力或作用或會施行的方式。

(5) 凡在緊接有關日期前生效的第 70 或 72 條所適用的任何人，沒有在有關日期前根據該條就憑藉該條而適用於他的事宜申請批准，則在有關日期當日及自該日起，該條須就該事宜而適用於他，猶如有關條例從沒有制定一樣。

(6) 凡在緊接有關日期前有一項根據第 70 或 72 條批給的批准 (包括規限該批准的任何條件) 或拒絕批給批准，則在有關日期當日及自該日起，該批准 (包括規限該批准的任何條件) 或該批准的拒絕所具有的效力或作用或所施行的方式，須一如有關條例從沒有制定時，該批准或該批准的拒絕會繼續具有的效力或作用或會繼續施行的方式。

(7) 為免生疑問，現宣布凡第 (4)、(5) 或 (6) 款在有關日期當日及自該日起的任何時間就任何人而適用，該項適用不影響第 XIII 部的條文在有關日期當日及自該日起的任何時間就該人而適用。(由 1999 年第 42 號第 16 條修訂)

(8) 任何認可機構如 ——

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

- (a) 因沒有委任不少於一名該機構的候補行政總裁；及
- (b) 在緊接有關日期後的 6 個月屆滿前的任何時間，或金融管理專員為使第 71 條適用於該機構擬委任為候補行政總裁的任何人士而批准的延長期間內，(由 1992 年第 82 號第 25 條修訂)
- 違反第 74(1) 條，則第 74(2) 條就該項違反事宜並不適用 (包括在該期間或該延長期間 (視屬何情況而定) 屆滿之日或之後的任何時間)。
- (9) 第 81(2) 條所訂的認可機構所承擔的財務風險，不包括該條 (c) 段提述的任何項目的財務風險，直至根據第 81(3) 條就該項目在憲報刊登公告為止。
- [#](10) 任何認可機構在緊接有關日期後的一年屆滿前的任何時間，或於金融管理專員就任何個別情況而以書面批准的任何延長期間內，違反第 81(1)、83(1) 或 (2)(a)、87(1)、88(1) 或 90(1) 條 —— (由 1992 年第 82 號第 25 條修訂)
- (a) 除 (b) 段另有規定外，第 81(9)、83(7)、87(3)、88(6) 或 90(3) 條 (視屬何情況而定) 就該項違反事宜並不適用 (包括在該期間或該延長期間 (視屬何情況而定) 屆滿之日或之後的任何時間)；及
- (b) 該機構須在該條被違反的持續期間遵從該條，猶如該條的“capital base”等字由“paid-up capital and reserves”等字取代一樣，而據此第 81(9)、83(7)、87(3)、88(6) 或 90(3) 條 (視屬何情況而定) 須就該機構違反該條事宜予以適用，一如該條以該代入的字而適用於該機構。
- (11) 如任何人在緊接《1999 年銀行業 (修訂) 條例》(1999 年第 42 號) 第 16 條生效日期之前，完全或局部憑藉第 (2) 或 (3) 款而合法地作為某認可機構控權人，則在該生效日期當日或之後 ——
- (a) 該條例第 16 條廢除第 (2) 及 (3) 款一事，並不致使該人不再作為該認可機構控權人；

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*)

22-29
第 155 章

第 XXII 部
第 150 條

PART XXII
Section 150

22-30
Cap. 155

- (b) 第 (2) 及 (3) 款過往的實施，並不阻止將第 70 條所指的有條件同意通知書送達該認可機構控權人。(由 1999 年第 42 號第 16 條增補)
(由 1991 年第 95 號第 51 條增補)

編輯附註：

* 生效日期：1991 年 8 月 1 日。

《2018 年〈2018 年銀行業(修訂)條例〉(生效日期)公告》(2018 年第 102 號法律公告)(d) 段指定 2018 年 7 月 13 日為《2018 年銀行業(修訂)條例》(2018 年第 6 號)第 24 條，但限於在該條關乎廢除《銀行業條例》(第 155 章) (**《第 155 章》**) 第 150(10) 條 (以廢除對《第 155 章》的以下條文的提述為限) 的範圍內——

- (i) 第 87(1) 條；
 - (ii) 所有第 87(3) 條
 - (iii) 第 90(1) 條
 - (iv) 所有第 90(3) 條；
- 開始實施的日期。

- (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. 與《1992 年外匯基金 (修訂) 條例》# 有關的保留條文

- (1) 儘管本條例第 8 條被有關條例第 16 條廢除，凡在緊接有關條例生效日期 * 前，由於根據該已廢除的條文行使權力而使任何人獲授權或僱用，則該項權力的行使須繼續有效，並須視為已由金融管理專員所行使。
- (2) 第 (1) 款提述的廢除，不得解釋為影響在緊接有關條例生效日期前第 141 條所適用的授權或受僱。
- (3) 凡在緊接有關條例生效日期前——
 - (a) 有一項第 142 條當時適用的申請；
 - (b) 有任何第 145(3)、(4) 或 (5) 條當時適用的條件仍然生效；
 - (c) 第 147 條當時適用的作為、事宜或事情具有效力或作用或正施行；
 - (d) 有一項第 148A 條當時適用的批准；
 - (e) 第 149(7) 條當時適用的作為、事宜或事情具有效力或作用或正施行；或
 - (f) 有一項第 150(4) 條當時適用的申請，
 則在有關條例生效日期當日及自該日起，本條例中在 (a)、(b)、(c)、(d)、(e) 或 (f) 段方面屬有關條文者，就該等申請、條件、作為、事宜或事情或批准 (視何者為適當

Paragraph (d) of the Banking (Amendment) Ordinance 2018 (Commencement) Notice 2018 (L.N. 102 of 2018) appoints 13 July 2018 as the day on which section 24 of the Banking (Amendment) Ordinance 2018 (6 of 2018) in so far as it relates to the repeal of section 150(10) of the Banking Ordinance (Cap. 155) (**Cap. 155**) to the extent of the reference to the following provisions of Cap. 155—

- (i) section 87(1);
 - (ii) section 87(3) (wherever it appears);
 - (iii) section 90(1);
 - (iv) section 90(3) (wherever it appears);
- comes into operation.

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;

22-33
第 155 章

第 XXII 部
第 151 條

而定)而言,須猶如其內提述“Commissioner”之處已由“Monetary Authority”所取代一樣而作出解釋並具作用。

- (4) 儘管第 150(8) 及 (10) 條藉有關條例第 25(2) 條修訂,根據第 150(8) 或 (10) 條批給的任何延長期間在有關條例生效日期當日尚未屆滿者,須繼續計算,猶如該條並未如此修訂一樣。

- (5) 凡 ——

(a) 在有關條例生效日期當日或該日後,根據或依據任何成文法則而規定、賦權或授權金融管理專員作出的任何作為、事宜或事情,由並非金融管理專員的人在該生效日期前作出;及

(b) 在緊接該生效日期前,該作為、事宜或事情仍生效或存在,

該作為、事宜或事情在有關條例生效日期當日及自該日起,須繼續生效或(如適用的話)存在,猶如是已由金融管理專員作出的一樣。

- (6) 在本條中,“有關條例”(relevant Ordinance)指《1992 年外匯基金(修訂)條例》#(1992 年第 82 號)。

(由 1992 年第 82 號第 24 條增補)

編輯附註:

* 生效日期:1993 年 4 月 1 日。

“《1992 年外匯基金(修訂)條例》”乃“Exchange Fund (Amendment) Ordinance 1992”之譯名。

PART XXII
Section 151

22-34
Cap. 155

(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,

22-35
第 155 章

第 XXII 部
第 152 條

PART XXII
Section 152

22-36
Cap. 155

152. 與《1995 年銀行業 (修訂) 條例》# 有關的過渡條文

(1) 在本條中 ——

“有關日期” (relevant day) 指有關條例的生效日期 * ;

“有關條例” (relevant Ordinance) 指《1995 年銀行業 (修訂) 條例》
#(1995 年第 49 號) ;

“前有限制銀行牌照” (former restricted banking licence) 指 ——

(a) 根據或當作根據在有關日期前任何時間生效的第 25 條批給的；及

(b) 在緊接有關日期前生效的，
有限制銀行牌照；

“前註冊” (former registration) 指 ——

(a) 根據或當作根據在有關日期前任何時間生效的第 21 條准予的；及

(b) 在緊接有關日期前生效的註冊；

“前銀行牌照” (former banking licence) 指 ——

(a) 根據或當作根據在有關日期前任何時間生效的第 16 條批給的；及

(b) 在緊接有關日期前生效的銀行牌照。

(2) 凡在緊接有關日期前 ——

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).

22-37
第 155 章

第 XXII 部
第 152 條

- (a) 有一項根據第 15 條提出的銀行牌照的申請，而總督會同行政局沒有就該申請根據第 16 條批給或拒絕批給銀行牌照；
- (b) 有一項根據第 20 條提出的註冊為接受存款公司的申請，而金融管理專員沒有就該申請根據第 21 條准予註冊或拒絕准予註冊；或
- (c) 有一項根據第 24 條提出的有限制銀行牌照的申請，而財政司沒有就該申請根據第 25 條批給或拒絕批給有限制銀行牌照，

則在有關日期及自該日起，該申請即當作為根據第 15 條提出的認可申請 ——

- (i) (如屬 (a) 段的情況) 以經營銀行業務；
- (ii) (如屬 (b) 段的情況) 以作為接受存款公司經營接受存款業務；
- (iii) (如屬 (c) 段的情況) 以作為有限制牌照銀行經營接受存款業務，

而本條例的條文即據此適用。

- (3) 任何前銀行牌照、前註冊或前有限制銀行牌照，在有關日期當日及自該日起，即當作為 ——
 - (a) (如屬前銀行牌照) 根據第 16 條批給的銀行牌照；
 - (b) (如屬前註冊) 根據該條准予的註冊；
 - (c) (如屬前有限制銀行牌照) 根據該條批給的有限制銀行牌照，

而本條例的條文即據此適用。

- (4) 儘管在緊接有關日期前生效的第 VI 部另有規定，任何在緊接有關日期前根據該部被暫停或暫時吊銷的前註冊或前有限制銀行牌照，在有關日期當日及自該日起，即當作在緊接有關日期前已生效 ——
 - (a) 如屬前註冊，則是就第 (3) 款及第 (1) 款內“前註冊”的定義而言而生效的；

PART XXII
Section 152

22-38
Cap. 155

- (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;

22-39
第 155 章

第 XXII 部
第 152 條

PART XXII
Section 152

22-40
Cap. 155

- (b) 如屬前有限制銀行牌照，則是就第 (3) 款及第 (1) 款內“前有限制銀行牌照”的定義而言而生效的。
- (5) 凡 ——
- (a) 在緊接有關日期前，任何以下條件是生效的 ——
- (i) 根據第 16 或 17 條附加或當作附加於前銀行牌照者；
 - (ii) 根據第 21 或 22 條附加或當作附加於前註冊者；或
 - (iii) 根據第 25 條附加或當作附加於前有限制銀行牌照者；及
- (b) 在有關日期當日及自該日起，該前銀行牌照、前註冊或前有限制銀行牌照是憑藉第 (3) 款而當作為銀行牌照、註冊或有限制銀行牌照（視屬何情況而定）的，則在有關日期當日及自該日起，該條件即當作為附加於該銀行牌照、註冊或有限制銀行牌照（視屬何情況而定）的條件，猶如在有關日期當日金融管理專員已根據第 16 條將該條件附加於該銀行牌照、註冊或有限制銀行牌照（視屬何情況而定）一樣，儘管第 16(1)(a) 及 (5) 條採用的是“認可”一詞亦然，而本條例的條文即據此適用。
- (6) 凡憑藉第 (3) 款在有關日期當日及自該日起當作為註冊或有限制銀行牌照（視屬何情況而定）的任何前註冊或前有限制銀行牌照，在緊接有關日期前，已根據第 VI 部暫停或暫時吊銷，則在有關日期當日及自該日起，該註冊或有限制銀行牌照（視屬何情況而定）即以其在緊接有關日期前暫停或暫時吊銷的剩餘暫停或暫時吊銷期內，當作以同樣方式根據該部被暫停或暫時吊銷，猶如在有關日期當日及在該期間內，金融管理專員已根據該部暫停或暫時吊銷該註冊或有限制銀行牌照（視屬何情況而定），儘管該部採用的是“認可”一詞亦然，而本條例的條文即據此適用。
- (7) 凡 ——

- (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

- (a) 在緊接有關日期前，有一項根據第 VII 部提出將任何前銀行牌照、前註冊或前有限制銀行牌照從認可機構轉讓予另一人的申請，而該部所指的指定當局沒有就該申請批給或拒絕批給該轉讓；及
- (b) 在有關日期當日及自該日起，該前銀行牌照、前註冊或前有限制銀行牌照是憑藉第 (3) 款而當作為銀行牌照、註冊或有限制銀行牌照（視屬何情況而定）的，則在有關日期當日及自該日起，該申請即當作為根據第 VII 部向金融管理專員提出的作出該轉讓的申請，儘管第 VII 部採用的是“認可”一詞亦然，而本條例的條文即據此適用。
- (8) 凡 ——
- (a) 有任何作為、事宜或事情已根據或當作已根據在有關日期前任何時間生效的第 X 部由金融管理專員、財政司或總督會同行政局對認可機構或就認可機構作出；及
- (b) 在有關日期當日及自該日起，該認可機構持有的前銀行牌照、前註冊或前有限制銀行牌照是憑藉第 (3) 款而當作為銀行牌照、註冊或有限制銀行牌照（視屬何情況而定）的，則在有關日期當日及自該日起（限於在如非因有關條例的制定，該作為、事宜或事情會在該有關日期當日或自該日後仍有效力或作用或仍會施行的範圍內），該作為、事宜或事情即當作以同樣方式並在符合必需的變通下，由金融管理專員、財政司或總督會同行政局（視屬何情況而定）根據第 X 部對持有該銀行牌照、註冊或有限制銀行牌照（視屬何情況而定）或就持有該銀行牌照、註冊或有限制銀行牌照（視屬何情況而定）的銀行、接受存款公司或有限制牌照銀行（視屬何情況而定）作出，猶如在有關日期當日該作為、事宜或事情在該範圍內已由金融管理專員、財政司或總督會同行政局（視屬何情況而定）根據第 X 部對該銀行、接受存款公司或有限制牌照銀行或

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,

22-43
第 155 章

第 XXII 部
第 152 條

就該銀行、接受存款公司或有限制牌照銀行作出一樣，而本條例的條文即據此適用。

- (9) 在本部有任何其他條文在有關日期當日或在該日後有效力、有作用或正施行的範圍內，該等條文須為顧及本條的條文作必需的變通而理解、有效力或作用或予以施行（視屬何情況而定）。

(由 1995 年第 49 號第 48 條增補)

編輯附註：

* 生效日期：1995 年 11 月 15 日。

“《1995 年銀行業（修訂）條例》”乃“Banking (Amendment) Ordinance 1995”之譯名。

PART XXII
Section 152

22-44
Cap. 155

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.

22-45
第 155 章

第 XXII 部
第 153 條

PART XXII
Section 153

22-46
Cap. 155

153. 與《1997 年銀行業 (修訂) 條例》有關的過渡條文

(1) 在本條中 ——

“有關日期” (relevant day) 指《1997 年銀行業 (修訂) 條例》(1997 年第 4 號) 的生效日期；

“有關期限” (relevant period) 指緊接有關日期後的 3 個月期限。

(2)-(3) (由 2015 年第 18 號第 64 條廢除)

(4) 凡任何人 (如非有本條的規定) 本會因並非身為核准貨幣經紀但以貨幣經紀身分行事而被檢控犯第 118A(2) 條所訂的罪行 ——

(a) 有任何情況下，該人不得被如此檢控，直至 ——

(i) 有關期限屆滿為止；或

(ii) 金融管理專員應該人於有關期限屆滿前向其提出的申請而藉書面通知所容許的延長期限屆滿為止；

(b) 在該人於有關期限屆滿前根據第 118B 條提出核准的申請的情況下，該人不得被如此檢控，直至該人根據第 118C(1)(a) 條獲核准開始以貨幣經紀身分行事的日期為止；

(c) 在該人於有關期限屆滿前根據第 118B 條提出核准的申請而金融管理專員根據第 118C(1)(b) 條拒絕核准

(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

22-47
第 155 章

第 XXII 部
第 153 條

- 該人以貨幣經紀身分行事的情況下，該人不得被如此檢控，直至緊接該項拒絕後的 14 天期限屆滿為止；
- (d) 如 (c) 段適用，該人不得被如此檢控，直至金融管理專員應該人於該 14 天期限屆滿前向其提出的申請而藉書面通知所容許的延長期限屆滿為止。
- (5) 金融管理專員可藉向第 (4) 款適用的任何人送達書面通知，規定該人按照符合以下說明的條件以貨幣經紀身分行事——
- (a) 金融管理專員根據本條例能附加於任何核准貨幣經紀的核准證明書上的；及
- (b) 在該通知書中指明的。
- (6) 任何人違反根據第 (5) 款向其送達的通知書內所指明的規定，即屬犯罪；如該人為一間公司，則其每名董事及每名經理，均屬犯罪——(由 2015 年第 18 號第 64 條修訂)
- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (7) 為免生疑問，現宣布——
- (a) 根據第 132A 條提出的上訴不得影響本條的實施；
- (b) 凡任何人憑藉第 (4) 款的實施不須就某罪行負法律責任，他不得被檢控犯該罪行。(由 2015 年第 18 號第 64 條修訂)

(由 1997 年第 4 號第 24 條增補)

PART XXII
Section 153

22-48
Cap. 155

- 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—

22-49
第 155 章

第 XXII 部

PART XXII
Section 153

22-50
Cap. 155

- (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)

S1-1
第 155 章

附表 1
第 1 條

SCHEDULE 1
Section 1

S1-2
Cap. 155

附表 1

[第 2(1)、12(3)、14(1) 及
135(1) 條]

指明期間及指明款項

1. 3 個月。
2. 就第 14(1)(a) 條而言，款項是 \$100,000 或以任何其他貨幣計算的同等款額。
3. 就第 14(1)(b) 條而言，款項是 \$500,000 或以任何其他貨幣計算的同等款額。

(附表 1 由 1990 年第 3 號第 51 條代替)

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)

S2-1
第 155 章

附表 2

SCHEDULE 2

S2-2
Cap. 155

附表 2

[第 19、23、26、27、45、
48、51、109、118F、135(2)
及 144 條]
(由 1997 年第 4 號第 25 條修訂)

費用

	\$
1. 銀行牌照費 (第 19(1) 條) (由 1995 年第 49 號第 49 條代替)	474,340
1A. 銀行牌照續期費 (第 19(2) 條) (由 1995 年第 49 號第 49 條增補)	474,340
2. 註冊費 (第 19(1) 條)	113,020
3. 註冊續期費 (第 19(2) 條)	113,020
4. 有限制銀行牌照費 (第 19(1) 條)	384,270
5. 有限制銀行牌照續期費 (第 19(2) 條)	384,270
6. 查閱費 (第 20(5) 條)	10
7. 副本或摘錄費, 每頁 (第 20(5) 條)	5
8. 設立銀行的本地分行的費用, 有限制牌照銀行除外 (第 45(1) 條)	22,400
9. 維持經營銀行的本地分行的年費, 有限制牌照銀行除外 (第 45(1)、(2) 及 (3) 條) (由 2001 年第 32 號第 25 條修訂)	22,400
10. 設立有限制牌照銀行或接受存款公司的本地分行的費用 (第 45(1) 條)	19,110

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)	474,340
1A. Renewal of banking licence fee (section 19(2)) (Added 49 of 1995 s. 49)	474,340
2. Registration fee (section 19(1))	113,020
3. Renewal of registration fee (section 19(2))	113,020
4. Restricted banking licence fee (section 19(1))	384,270
5. Renewal of Restricted banking licence fee (section 19(2))	384,270
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))	22,400
9. Annual fee form 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)	22,400
10. Fee for the establishment of a local branch of a restricted licence bank or deposit-taking company (section 45(1))	19,110

S2-3
第 155 章

附表 2

SCHEDULE 2

S2-4
Cap. 155

11. 維持經營有限制牌照銀行或接受存款公司的本地分行的年費 (第 45(1)、(2) 及 (3) 條) (由 2001 年第 32 號第 25 條修訂).....	19,110
12. 設立本地代表辦事處的費用 (第 48(1) 條).....	22,400
13. 維持經營本地代表辦事處的年費 (第 48(1)、(2)、(3) 及 (4) 條) (由 2001 年第 32 號第 25 條修訂).....	22,400
14. 設立銀行的海外分行的費用, 有限制牌照銀行除外 (第 51(1) 條).....	44,800
15. 維持經營銀行的海外分行的年費, 有限制牌照銀行除外 (第 51(1) 及 (2) 條).....	44,800
16. 設立有限制牌照銀行或接受存款公司的海外分行的費用 (第 51(1) 條).....	38,400
17. 維持經營有限制牌照銀行或接受存款公司的海外分行的年費 (第 51(1) 及 (2) 條).....	38,400
18. 設立銀行的海外代表辦事處的費用, 有限制牌照銀行除外 (第 51(1) 條).....	11,200
19. 維持經營銀行的海外代表辦事處的年費, 有限制牌照銀行除外 (第 51(1) 及 (2) 條).....	11,200
20. 設立有限制牌照銀行或接受存款公司的海外代表辦事處的費用 (第 51(1) 條).....	19,110
21. 維持經營有限制牌照銀行或接受存款公司的海外代表辦事處的年費 (第 51(1) 及 (2) 條).....	19,110
22. 核准貨幣經紀的費用 (第 118F(1) 條) (由 1997 年第 4 號第 25 條增補).....	44,800
23. 核准貨幣經紀續期費 (第 118F(2) 條) (由 1997 年第 4 號第 25 條增補).....	44,800

(附表 2 由 1988 年第 26 號第 2 條代替。由 1989 年第 14 號第 2 條修訂；由 1990 年第 3 號第 52 條修訂；由 1990 年第 29 號第 2

11. Annual fee for maintaining a local branch of a restricted licence bank or deposit-taking company (section 45(1), (2) and (3)) (<i>Amended 32 of 2001 s. 25</i>).....	19,110
12. Fee for the establishment of a local representative office (section 48(1)).....	22,400
13. Annual fee for maintaining a local representative office (section 48(1), (2), (3) and (4)) (<i>Amended 32 of 2001 s. 25</i>).....	22,400
14. Fee for the establishment of an overseas branch of a bank other than a restricted licence bank (section 51(1)).....	44,800
15. Annual fee for maintaining an overseas branch of a bank other than a restricted licence bank (section 51(1) and (2))...	44,800
16. Fee for the establishment of an overseas branch of a restricted licence bank or deposit-taking company (section 51(1)).....	38,400
17. Annual fee for maintaining an overseas branch of a restricted licence bank or deposit-taking company (section 51(1) and (2)).....	38,400
18. Fee for the establishment of an overseas representative office of a bank other than a restricted licence bank (section 51(1)).....	11,200
19. Annual fee for maintaining an overseas representative office of a bank other than a restricted licence bank (section 51(1) and (2)).....	11,200
20. Fee for the establishment of an overseas representative office of a restricted licence bank or deposit-taking company (section 51(1)).....	19,110
21. Annual fee for maintaining an overseas representative office of a restricted licence bank or deposit-taking company (section 51(1) and (2)).....	19,110

S2-5

附表 2

第 155 章

條修訂；由 1990 年第 43 號第 15 條修訂；由 1991 年第 41 號第 2 條修訂；由 1995 年第 49 號第 49 條修訂)

SCHEDULE 2

S2-6

Cap. 155

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22. Approved money broker fee (section 118F(1)) (*Added 4 of 1997 s. 25*) 44,800
23. Renewal of approved money broker fee (section 118F(2)) (*Added 4 of 1997 s. 25*) 44,800
- (*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*)
-

S3-1
第 155 章

附表 3

Schedule 3

S3-2
Cap. 155

附表 3

(由 2005 年第 19 號第 7 條廢除)

Schedule 3

(Repealed 19 of 2005 s. 7)

S4-1
第 155 章

附表 4

Schedule 4

S4-2
Cap. 155

附表 4

(由 2012 年第 3 號第 17 條廢除)

Schedule 4

(Repealed 3 of 2012 s. 17)

附表 5[第 92(2)(c) 及 (7) 及 135(3)
條]

(由 2001 年第 32 號第 26 條修訂)

適用於訂明廣告的規定**1. 釋義**

(1) 在本附表中 ——

“全名”(full name)就一名人士而言，指該名人士經營業務時採用的姓名或名稱，如有不同並如該名人士是法人團體，則指該法人團體的名稱；

“負債”(liabilities)包括準備金，而該等準備金是並未從資產的價值中扣減的；

“接受存款人”(deposit-taker)就訂明廣告而言，指藉該廣告而邀請向某名人士作出存款的該名人士。

(2) 凡在本附表中提述就存款支付利息，包括提述就該存款而支付任何溢價，以及將利息記入該存款的貸方以構成本金的增益。

(3) 就本附表而言，如訂明廣告中載有的資料是意圖或可合理地推定為意圖直接或間接引致作出存款的，須視作猶如載有一項作出存款的邀請；凡提述一項作出存款的邀請，須據此解釋。

2. 警告

每項訂明廣告，須載有顯著的警告，意指接受存款人並非本條例所指的認可機構，並因此不受金融管理專員監管。

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

S5-3
第 155 章附表 5
第 3 條SCHEDULE 5
Section 2S5-4
Cap. 155

(由 1992 年第 82 號第 25 條修訂)

make a deposit, and references to an invitation to make a deposit shall be construed accordingly.

3. 訂明廣告的一般規定

每項訂明廣告，須述明——

- (a) 接受存款人的全名；
- (b) 接受存款人的主要營業地點所在的國家或地區，並如此描述；及
- (c) 如接受存款人是法人團體，其成立為法團的國家或地區，並如此描述，除非該國家或地區與 (b) 分節提述的相同。

4. 資產與負債

- (1) 每項訂明廣告，須述明接受存款人（如屬法人團體）的繳足資本及儲備款額，並如此描述，或接受存款人（如不是法人團體的人士）的所有資產減去負債而得出的款額，並如此描述。
- (2) 如訂明廣告載有接受存款人資產的款額的任何提述，則須述明該接受存款人的負債總額，並如此描述，該項述明不得不及該項提述顯著。
- (3) 如訂明廣告對於規定須述明的任何資產或繳足資本及儲備，述明超逾該廣告中指明的款額，或對於規定須述明的任何負債，述明並不超逾如此指明的款額，則須視為已遵從第 (1) 及 (2) 節的規定。
- (4) 訂明廣告不得載有除接受存款人以外任何人的資產或負債的提述。

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

S5-5
第 155 章

附表 5
第 5 條

SCHEDULE 5
Section 5

S5-6
Cap. 155

5. 存款保障安排

訂明廣告不得述明或默示所邀請的存款或該等存款的付還、或關於該等存款的利息或利息的支付，將會有擔保、保證、保險，或受任何其他形式的保障，除非該訂明廣告述明——

- (a) 保障的形式；
- (b) 保障的範圍；及
- (c) 有責任償付存款人任何申索的人士的全名，而該等申索是存款人憑藉授予保障的安排而提出的。

6. 利息

- (1) 本段適用於就所邀請的存款須支付的利息而指明利率的訂明廣告。
- (2) 本段適用的每項訂明廣告，須述明——
 - (a) 為賺得該利率而須存放的最低存款額（如有的話）；
 - (b) 不支付利息的期間（如有的話）；
 - (c) 為賺得該利率而必須由接受存款人保留一筆存款的最短期間（如有的話）；
 - (d) 就一筆賺得該利率的存款，要求付還時所必須給予的最短通知期（如有的話）；及
 - (e) 支付利息的相隔時間。
- (3) 如指明利率並非單利的年利率，該訂明廣告須述明計算利率時將採用的基礎。
- (4) 如指明利率於持有存款期間內可以更改，須於訂明廣告內述明。
- (5) 如利息不會或可能不會按指明利率全數支付，須在訂明廣告內述明，而該廣告須述明任何於支付利息

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.

S5-7
第 155 章附表 5
第 7 條SCHEDULE 5
Section 6S5-8
Cap. 155

前將會或可能會從利息中扣減的扣減項目的性質，款額或比率。

- (6) 如指明利率並非或可能並非就在發出訂明廣告當日的存款所須支付利息的利率，須在訂明廣告內述明；而廣告須述明已按指明利率支付利息的日期，該日期須在合理切實可行範圍內，盡量接近發出廣告的日期。
- (7) 如訂明廣告就某款額的存款所須支付的利息而指明超過一個利率，該廣告須就上述每個利率而載有第(2)至(6)節規定的資料。
- (8) 凡有不同利率適用於不同款額的存款，訂明廣告須就上述每個利率載有第(2)至(6)節規定的資料。

7. 貨幣

每項訂明廣告須述明作出存款時採用的貨幣。

8. 補充條文

- (1) 除第(2)節另有規定外，凡屬本附表規定包括在訂明廣告內的事宜，須以清楚可閱的形式顯示，如屬聲音廣播形式的廣告，則須口述清楚。
- (2) 如屬電視、展覽或電影片形式的訂明廣告，則本附表規定包括在該廣告內的事宜，須以清楚可閱的形式顯示或須口述清楚。

(附表 5 由 1991 年第 95 號第 53 條代替)

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.

S5-9
第 155 章

附表 5

SCHEDULE 5
Section 7S5-10
Cap. 155

- (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.

S5-11
第 155 章

附表 5

SCHEDULE 5
Section 8

S5-12
Cap. 155

- (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)

S6-1
第 155 章附表 6
第 1 條SCHEDULE 6
Section 1S6-2
Cap. 155**附表 6**

[第 137B 條]

指明票據

1. 任何存款證，即符合以下所述的文件 —— (由 1994 年第 120 號法律公告修訂)
 - (a) 存放在發證人或其他人處而與金錢 (不論屬何貨幣) 有關者；
 - (b) 承認有義務將一筆述明款額 (不論是否連同利息) 付給持證人者；及
 - (c) 憑該文件的交付而不論是否有背書，可將收取該筆述明款額 (不論是否連同利息) 的權利轉讓者。
2. 任何票據，而該票據證明有義務將一筆述明款額或可確定款額 (不論是否連同利息) 付給持票人或某人指明的人，並憑該票據的交付而不論該票據是否有背書，可將收取該筆述明款額或可確定款額 (不論是否連同利息) 的權利轉讓；但《匯票條例》(第 19 章) 第 3 條所指的匯票或《匯票條例》(第 19 章) 第 89 條所指的承付票除外。

(由 1994 年第 120 號法律公告增補)

(附表 6 由 1993 年第 94 號第 33 條增補)

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*)

S7-1
第 155 章附表 7
第 1 條Schedule 7
Section 1S7-2
Cap. 155**附表 7**[第 16(2) 及 (10)、17、29(2)
及 135(1) 條及附表 8]**認可的最低準則**

1. (1) 在本附表中 ——
足夠 (adequate) 一詞就管控制度而言，包括有效運作；
借方淨差額 (net debit balance) 就公司而言，指就該公司最近經審計的帳目而在損益表上所披露的累積虧損超逾累積利潤的數目，以及資產負債表上分別披露的其他儲備的數目，二者合計所得的數額；
控權人 (controller) 包括小股東控權人；
管控制度 (systems of control) 包括程序。
 - (2) 為計算本附表規定的公司繳足款股本，須從該繳足款股本中扣除任何借方淨差額。
 - (3) 為免生疑問，現宣布凡金融管理專員依據本附表條文而就任何事宜持有意見或信納任何事宜，他的該項意見或他如此信納一事（視屬何情況而定）本身對他並無約束力以使他 ——
 - (a) 繼續就該事宜持有該項意見或如此信納（視屬何情況而定），不論是在與該事宜直接或間接有關的公司獲認可（如有的話）之前、之時或之後（包括該公司正謀求不同的認可的情況）；或
 - (b) 對任何其他正在謀求或已獲得與該公司相同或不同的認可的公司直接或間接有關的任何類似事宜，持有任何類似的意見或類似地信納（視屬何情況而定）。

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

S7-3
第 155 章

附表 7
第 2 條

- (4) 在不損害第 (3) 節的一般性的原則下，凡屬以下情況，金融管理專員對於依據本附表他可信納的任何事宜，可視為自己已予以信納——
- (a) 該事宜直接或間接與一間在香港以外成立為法團的公司有關；
 - (b) 有關銀行業監管當局通知金融管理專員，表示它信納該事宜；及
 - (c) 金融管理專員對該監管當局進行監管的範圍與性質，予以信納。
- (5) 為免生疑問，現宣布在任何與第 (4) 節所提述的任何事宜直接或間接有關的公司獲認可（如有的話）之前、之時及之後，該節均有法律效力。
- (6) *（由 2012 年第 99 號法律公告廢除）*

（由 2005 年第 19 號第 7 條修訂）

2. 如公司是在香港以外成立為法團的，則該公司是——
- (a) 第 46(9) 條所界定的銀行；及
 - (b) 金融管理專員信納為受有關銀行業監管當局充分監管的銀行。
3. 金融管理專員信納自己知道公司每名控權人的身分。
4. 如公司是在香港成立為法團的，則金融管理專員信納每名現時或將會是該公司董事、控權人、行政總裁或主管人員的人士，均為擔任該名人士現時擔任或將會擔任的特定職位的適當的人。

（由 2002 年第 6 號第 14 條修訂）

Schedule 7
Section 2

S7-4
Cap. 155

- (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.

S7-5
第 155 章附表 7
第 5 條

5. 如公司是在香港以外成立為法團的，則金融管理專員信納每名現時或將會是——

- (a) 該公司在香港的業務的行政總裁或主管人員；(由 2002 年第 6 號第 14 條修訂)
- (b) 該公司成立為法團的地方的業務的董事、控權人或行政總裁，

的人士，均為擔任該名人士現時擔任或將會擔任的特定職位的適當的人。

5A. 金融管理專員信納公司現時備有，及如獲認可會繼續備有足夠的管控制度，以確保每名現時是或將會是該公司經理的人士均為擔任該名人士現時擔任或將會擔任的特定職位的適當的人選。

(由 2001 年第 32 號第 27 條增補)

6. 金融管理專員信納公司在目前並在獲得認可後亦會繼續有足夠的財政資源(不論是實際的或是或有的)，足以應付其業務運作的性質及規模，並在不損害上文的一般性的原則下——

- *(a) 如屬謀求認可在香港經營銀行業務的公司，其繳足款股本與其股份溢價帳(如有的話)結餘的總額不少於 \$300,000,000 或以任何其他核准貨幣計算的同等款額；(由 2001 年第 130 號法律公告修訂；由 2002 年第 63 號法律公告修訂；由 2012 年第 28 號第 912 及 920 條修訂)
- (b) 如屬謀求認可作為接受存款公司而經營接受存款業務的公司，其繳足款股本與其股份溢價帳(如有的話)結餘的總額不少於 \$25,000,000 或以任何其他核准貨幣計算的同等款額；(由 2001 年第 130 號法律公告修訂；由 2012 年第 28 號第 912 及 920 條修訂)

Schedule 7
Section 3S7-6
Cap. 155

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

S7-7
第 155 章附表 7
第 7 條Schedule 7
Section 7S7-8
Cap. 155

- (c) 如屬謀求認可作為有限制牌照銀行而經營接受存款業務的公司，其繳足款股本與其股份溢價帳（如有的話）結餘的總額不少於 \$100,000,000 或以任何其他核准貨幣計算的同等款額；（由 2001 年第 130 號法律公告修訂；由 2012 年第 28 號第 912 及 920 條修訂）
- (d) 如屬在香港成立為法團的公司，該公司如獲認可，會在獲得認可之時及之後，遵從根據第 97C(1) 條訂立並對該公司適用的規則。（由 1997 年第 431 號法律公告修訂；由 2005 年第 19 號第 7 條修訂；由 2012 年第 3 號第 18 條修訂）
- (e) （由 2005 年第 19 號第 7 條廢除）

7. 金融管理專員信納公司——

- (a) 目前維持，並且如獲認可會繼續維持足夠的流動性，以履行其將會到期或可能到期的義務；及（由 2012 年第 3 號第 18 條修訂）
- (b) 在不損害 (a) 分節的一般性的原則下，如獲認可，會在獲得認可之時及之後，遵從根據第 97H(1) 條訂立並對該公司適用的規則。（由 2012 年第 3 號第 18 條修訂）

8. 金融管理專員信納公司如獲認可，會在獲得認可之時及之後符合第 XV 部及根據該部訂立的規則的條文適用於該公司的條文。（由 2018 年第 6 號第 25 條修訂）

9. 金融管理專員信納公司現時維持，及如獲認可會繼續維持足夠的準備金，以應付其資產的折舊或減值（包括壞帳及呆帳），將會或可能須由該公司解除的法律責任，以及會出現或可能出現的虧損。

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—

S7-9
第 155 章附表 7
第 10 條Schedule 7
Section 8S7-10
Cap. 155

10. 金融管理專員信納公司現時備有，及如獲認可會繼續備有足夠的會計制度和足夠的管控制度。

11. 如公司是在香港成立為法團的，則金融管理專員信納該公司現時有，及如獲認可會繼續——

- (a) 就其事務狀況 (包括其利潤及虧損及其財政資源 (包括資本資源及流動性資源))；及 (由 2005 年第 19 號第 7 條修訂；由 2012 年第 3 號第 18 條修訂)
- (b) 就以下各項目——
 - (i) 第 60(11) 條所指的經審計的周年帳目；
 - (ii) 該等經審計的周年帳目的任何補充資料；
 - (iii) 《公司條例》(第 622 章) 第 388 條所指的董事報告書；及 (由 2012 年第 28 號第 912 及 920 條修訂)
 - (iv) 該機構的現金流動表，連同該現金流動表上的任何附註 (如該表並未構成該等經審計的周年帳目的部分)，

披露足夠的資料。

12. 金融管理專員信納公司的業務 (包括非銀行業務及非接受存款業務的任何業務) 現時並如獲認可會繼續—— (由 2002 年第 6 號第 14 條修訂)

- (a) 以持正和審慎的方式，以及適度的專業能力經營；及
- (b) 以無損或相當不可能會有損存款人或潛在存款人的利益的方式經營。

- (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, and the provisions of the rules made under that Part, applicable to it. (*Amended 6 of 2018 s. 25*)

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

S7-11
第 155 章

附表 7
第 13 條

13. 如謀求認可在香港經營銀行業務的公司屬在香港以外的地方成立為法團的公司，則為以下其中一項——

- (a) 金融管理專員認為，就謀求在該地方經營銀行業務的在香港成立為法團的銀行而言，有程度可以接受的互惠安排；或
- (b) 該地方是世界貿易組織成員，或是世界貿易組織成員的領域的某部分。

(由 2012 年第 99 號法律公告代替)

(附表 7 由 1995 年第 49 號第 52 條增補)

(格式變更——2012 年第 2 號編輯修訂紀錄)

編輯附註：

* 與《2002 年銀行業條例 (修訂附表 7) 公告》(2002 年第 63 號法律公告) 所作的修訂相關的過渡性條文見於該公告第 2 條。

Schedule 7
Section 12

S7-12
Cap. 155

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

S7-13
第 155 章

附表 7

Schedule 7
Section 13

S7-14
Cap. 155

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.

S8-1
第 155 章附表 8
第 1 條SCHEDULE 8
Section 1S8-2
Cap. 155**附表 8**

[第 22(1) 及 135(1) 條]

撤銷認可的理由

1. 在本附表中，“控權人”(controller) 包括小股東控權人。
- *2. 金融管理專員信納假若認可機構並未獲得認可而就第 15 條所指的、其現正經營的業務根據該條申請認可，第 16(2) 條會禁止金融管理專員如此認可該機構(但不包括附表 7 第 2(b) 及 13 段所指明的準則)。
3. 金融管理專員信納認可機構擬與或已與其債權人訂立債務重整協議或作出債務償還安排，或該機構已無力償債，或正在清盤或已經清盤，或以其他方式解散。
4. 認可機構已根據第 67 條向金融管理專員作出報告，表示它相當可能會無能力履行它的義務，或即將中止付款，或金融管理專員信納該機構已無能力履行它的義務或已中止付款。
5. 金融管理專員信納認可機構不論在獲得認可之前或之後，沒有依本條例的規定，將關於該機構的重要資料，以及關於任何相當可能影響其營業方法的情況的重要資料，向金融管理專員提供。

SCHEDULE 8

[ss. 22(1) & 135(1)]

**GROUND 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.

S8-3
第 155 章附表 8
第 7 條

6. 金融管理專員信納認可機構在獲得認可之前或之後向他所提供的資料，不論是否根據本條例的規定而提供的，在很大程度上是虛假、誤導或不準確的。
7. 金融管理專員信納認可機構已違反根據本條例第 16 條所附加於該機構的認可的條件。
8. 金融管理專員信納認可機構 ——
 - (a) (如屬銀行)已停止經營銀行業務；
 - (b) (如屬任何其他情形)已停止經營接受存款的業務。
9. 認可機構在用以組織公司的組織章程大綱及章程細則或其他文件所述明該機構的宗旨之中，不再包括以下宗旨 ——
 - (a) (如屬銀行)經營銀行業務；
 - (b) (如屬任何其他情形)經營接受存款的業務。
10. 認可機構獲金融管理專員書面告知它正違反第 19 條的規定後，仍沒有繳付該條規定它繳付的任何費用。
11. 認可機構獲金融管理專員書面告知它正違反第 60 條的規定後，仍沒有遵從該條中適用於它的規定。
12. 如屬接受存款公司或有限制牌照銀行的認可機構，該機構已違反第 14(1) 或 (3) 條的規定。

SCHEDULE 8
Section 5S8-4
Cap. 155

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;

S8-5
第 155 章附表 8
第 13 條SCHEDULE 8
Section 10S8-6
Cap. 155

13. 一名獲送達第 70 條所指的反對通知書，反對他成為認可機構的控權人的人，已經成為該機構的控權人。
14. 一名獲送達第 70 或 70A 條所指的反對通知書，反對他本身為認可機構的控權人的人，仍繼續作為該機構的控權人。
15. 某人在違反第 71 條的情況下成為或繼續是認可機構的行政總裁或董事。
- 15A. 某人在違反第 71C 條的情況下成為或繼續擔任認可機構的主管人員。
- (由 2002 年第 6 號第 15 條增補)
16. 認可機構違反第 74 條的規定。
17. 認可機構採取根據第 82(1) 條發出的通知書所指明的營業手法。
18. 金融管理專員信納認可機構如繼續獲得認可，其存款人或潛在存款人的利益會以任何其他方式受到威脅。
19. 認可機構以書面要求金融管理專員撤銷其認可，而金融管理專員信納如應此要求辦理，該機構的存款人的利益現時得到或會得到充分保障。

- (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.

S8-7
第 155 章附表 8
第 21 條SCHEDULE 8
Section 15AS8-8
Cap. 155

20. 金融管理專員信納認可機構採取的營業手法，相當可能有損香港作為國際金融中心的利益。

21. 認可機構沒有遵從《存款保障計劃條例》(第 581 章)中任何適用於該機構的規定。

(由 2004 年第 7 號第 55 條增補)
(附表 8 由 1995 年第 49 號第 52 條增補)

編輯附註：

* 本段的施行受《2002 年銀行業條例 (修訂附表 7) 公告》(2002 年第 63 號法律公告) 所影響，請參閱該公告第 2 條的過渡性條文。

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.

S8-9
第 155 章

附表 8

SCHEDULE 8
Section 21

S8-10
Cap. 155

(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.

S9-1
第 155 章

附表 9
第 1 條

SCHEDULE 9
Section 1

S9-2
Cap. 155

附表 9

[第 53C(1)(b) 及 135(3) 條]

認可機構的經理人的權力

1. 進行管有、收集與收取認可機構的財產，並為該目的而採取他認為合宜的法律程序的權力。
2. 為認可機構購入財產的權力。
3. 以公開拍賣或私人合約方式出售或處置認可機構的業務或財產的權力。
4. 籌集或借入款項，並為此以認可機構的業務或財產作為保證的權力。
5. 委任律師或會計師或其他具備專業資格的人士為認可機構行事的權力。
6. 就任何以下股份行使任何表決權的權力——
 - (a) 如屬在香港成立為法團的認可機構，該等股份為該機構所擁有者。
 - (b) 如屬在香港以外成立為法團的認可機構，該等股份為該機構在香港的主要營業地點的或任何本地分行或本地辦事處的資產。（由 2001 年第 32 號第 28 條修訂）
7. 以認可機構的名義及代認可機構提起訴訟或其他法律程序的權力，或以認可機構的名義及代認可機構在訴訟或其他法律程序中抗辯的權力。

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;

S9-3
第 155 章附表 9
第 8 條SCHEDULE 9
Section 7S9-4
Cap. 155

8. 以認可機構的名義及代認可機構給予擔保的權力。
9. 將任何影響認可機構的問題提交仲裁的權力。
10. 就認可機構的業務或財產投保與維持保險的權力。
11. 使用認可機構的印章的權力。
12. 以認可機構的名義及代認可機構作出所有作為與簽立任何契據、收據或其他文件，包括訂立、執行、轉讓或承受轉讓、更改或撤銷任何合約、協議或其他義務的權力。
13. 以認可機構的名義及代認可機構開出、承兌、開立與背書任何匯票或承付票的權力。
14. 委任任何代理人進行任何業務的權力，該等業務是他自己不能進行或由代理人進行更為方便者，以及僱用與開除僱員及向僱員發出指示的權力。
15. 作出為變現認可機構的財產所需作出的任何事情（包括進行工程）的權力。
16. 作出執行其職責及行使其職權所需或所附帶的付款的權力。
17. 經營認可機構業務的權力。
18. 批出認可機構財產的租契或租賃或接受其退回的權力，以及獲取任何認可機構業務所需或利便認可機構業務的財產的租契或租賃的權力。
19. 代認可機構作出任何債務償還安排或債務妥協的權力。

- (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.

S9-5
第 155 章附表 9
第 20 條

20. 催繳認可機構的未催繳股本的權力。
21. 在認可機構的債務人破產、無力償債、財產被暫押或清盤時有要求順序攤還與作出申索以及接受攤還債款的權力，以及對為任何該類人士的債權人作出的信託契據給予同意的權力。
22. 更改認可機構業務辦事處地點的權力。
23. 作出行使本附表指明權力的一切其他附帶事情的權力。
(附表 9 由 1995 年第 49 號第 52 條增補)

SCHEDULE 9
Section 14S9-6
Cap. 155

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.

S9-7
第 155 章

附表 9

SCHEDULE 9
Section 22

S9-8
Cap. 155

-
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)

S10-1
第 155 章

附表 10

Schedule 10

S10-2
Cap. 155

附表 10

(由 1999 年第 42 號第 18 條廢除)

Schedule 10

(Repealed 42 of 1999 s. 18)

S11-1
第 155 章附表 11
第 1 條SCHEDULE 11
Section 1S11-2
Cap. 155**附表 11**[第 118C(2) 及 (7) 及 135(3)
條]**核准為貨幣經紀的最低準則**

1. (1) 在本附表中 ——
 “足夠”(adequate) 就管控制度而言，包括有效運作；
 “借方淨差額”(net debit balance) 就公司而言，指就該公司最近經審計的帳目而在損益表上所披露的累積虧損超逾累積利潤的數目，以及資產負債表上分別披露的其他儲備的數目，二者合計所得的數額；
 “控權人”(controller) 包括小股東控權人；
 “管控制度”(systems of control) 包括程序。
- (2) 為計算本附表規定的公司繳足款股本，須從該繳足款股本中扣除任何借方淨差額。
- (3) 為免生疑問，現宣布凡金融管理專員依據本附表條文而就任何事宜持有意見或信納任何事宜，他的該項意見或他如此信納一事(視屬何情況而定)本身對他並無約束力以使他 ——
 - (a) 繼續就該事宜持有該項意見或如此信納(視屬何情況而定)，不論是在與該事宜直接或間接有關的公司獲核准(如有的話)之前、之時或之後；或
 - (b) 對任何其他正在謀求或已獲與該公司相同或不同的核准的公司直接或間接有關的任何類似的事宜，持有任何類似的意見或類似地信納(視屬何情況而定)。
- (4) 在不損害第(3)節的一般性的原則下，凡屬以下情況，金融管理專員對於依據本附表他可信納的任何事宜，可視自己為已予以信納 ——

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

S11-3
第 155 章附表 11
第 2 條SCHEDULE 11
Section 2S11-4
Cap. 155

- (a) 該事宜直接或間接與一間在香港以外成立為法團的公司有關；
 - (b) 有關貨幣經紀業監管當局通知金融管理專員，表示它信納該事宜；及
 - (c) 金融管理專員對該監管當局進行監管的範圍與性質，予以信納。
- (5) 為免生疑問，現宣布在任何與第 (4) 節所提述的任何事宜直接或間接有關的公司獲核准 (如有的話) 之前、之時及之後，該節均有法律效力。

(由 2005 年第 19 號第 7 條修訂)

2. 金融管理專員信納自己知道公司每名控權人的身分。
3. 如公司是在香港成立為法團的，則金融管理專員信納每名現時或將會是該公司董事、控權人或行政總裁的人士，均為擔任該名人士現時擔任或將會擔任的特定職位的適當的人。
4. 如公司是在香港以外成立為法團的，則金融管理專員信納每名現時或將會是 ——
- (a) 該公司在香港的業務的行政總裁的人士；
 - (b) 在該公司成立為法團的地方的業務的董事、控權人或行政總裁的人士，
- 均為擔任該名人士現時擔任或將會擔任的特定職位的適當的人。
5. 金融管理專員信納公司在目前有並在獲得核准後亦會繼續有足夠的財政資源 (不論是實際的或是或有的)，足以應付其業

- (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.

S11-5
第 155 章附表 11
第 6 條

務運作的性質及規模，並在不損害上文的一般性的原則下，其繳足股本與其股份溢價帳（如有的話）結餘的總額不少於 \$5,000,000 或以任何其他核准貨幣計算的同等款額。

（由 2001 年第 137 號法律公告修訂；由 2012 年第 28 號第 912 及 920 條修訂）

6. 金融管理專員信納公司現時備有並在獲得核准後亦會繼續備有足夠的會計制度和足夠的管控制度。

7. 金融管理專員信納公司的業務現時以並在獲得核准後亦會繼續以持正和審慎的方式以及適度的專業能力經營。

（附表 11 由 1997 年第 4 號第 26 條增補）

SCHEDULE 11
Section 4S11-6
Cap. 155

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)

S12-1
第 155 章附表 12
第 1 條SCHEDULE 12
Section 1S12-2
Cap. 155**附表 12**

[第 118D(1)(a) 及 135(3) 條]

撤銷貨幣經紀核准的理由

1. 金融管理專員信納假若核准貨幣經紀並未獲得核准而根據第 118B 條申請核准，第 118C(2) 條會禁止金融管理專員核准該經紀。
2. 金融管理專員信納核准貨幣經紀不論在獲得核准之前或之後，沒有依本條例的規定，將關於該經紀的重要資料，以及關於任何相當可能影響其營業方法的情況的重要資料，向金融管理專員提供。
3. 金融管理專員信納核准貨幣經紀在獲得核准之前或之後向金融管理專員所提供的資料，不論是否依據本條例的規定而提供的，在很大程度上是虛假、具誤導性或不準確的。
4. 金融管理專員信納核准貨幣經紀已違反根據第 118C 條附加於其核准證明書的條件。
5. 金融管理專員信納核准貨幣經紀已停止以貨幣經紀身分行事。
6. 核准貨幣經紀獲金融管理專員書面告知它正違反第 118F 條的規定後，仍沒有繳付該條規定他繳付的任何費用。

SCHEDULE 12

[ss. 118D(1)(a) & 135(3)]

**GROUND 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.

S12-3
第 155 章附表 12
第 7 條

7. 核准貨幣經紀以書面要求金融管理專員撤銷其核准。
8. 金融管理專員信納核准貨幣經紀採取的營業手法，相當可能會有損香港作為國際金融中心的利益。
(由 1997 年第 4 號第 26 條增補)
-

SCHEDULE 12
Section 5S12-4
Cap. 155

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)

S13-1
第 155 章

附表 13

SCHEDULE 13

S13-2
Cap. 155**附表 13**

[第 132B 及 135(2) 條]

罪行的罰款等級

第 1 級	\$4,000
第 2 級	\$10,000
第 3 級	\$20,000
第 4 級	\$50,000
第 5 級	\$100,000
第 6 級	\$200,000
第 7 級	\$400,000
第 8 級	\$1,000,000
第 9 級	\$2,000,000

(由 1997 年第 4 號第 26 條增補)

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)

附表 14

[第 2、72B 及 135(3) 條]

為經理的定義而指明的認可機構事務或業務

1. 在本附表內——

公司銀行業務 (corporate banking) 就任何認可機構而言，指該機構向任何公司提供的銀行或其他財務服務，但如任何該等服務屬該機構的零售銀行業務的部分，則不包括在內；

私人銀行業務 (private banking) 就任何認可機構而言，指該機構向其認為屬具有高資產淨值額的個人提供的銀行或其他財務服務，但如任何該等服務屬該機構的零售銀行業務的部分，則不包括在內；

財政管理 (treasury) 就任何認可機構而言，指該機構對其流動性及融資的管理，以及買賣外幣、證券或其他財務工具；
(由 2012 年第 3 號第 19 條修訂)

國際銀行業務 (international banking) 就任何在香港成立為法團的認可機構而言，指透過該機構在香港以外的辦事處或附屬公司提供的銀行或其他財務服務；

零售銀行業務 (retail banking) 就任何認可機構而言，指該機構向個人、商號、合夥、並非法團的業務或公司提供的銀行或其他財務服務；

銀行或其他財務服務 (banking or other financial services) 包括接受存款、提供付款及匯款服務、發出信用咭、扣帳咭或儲值支付工具、提供買賣外幣、證券或其他財務工具的設施、提供財務意見及招致本條例第 81(2) 條所提述的財務風險；
(由 2015 年第 18 號第 65 條修訂)

機構銀行業務 (institutional banking) 就任何認可機構而言，指該機構向其他認可機構、在香港以外成立為法團但不屬

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;

S14-3
第 155 章附表 14
第 2 條

認可機構的銀行或其他財務機構提供的銀行及其他財務服務。

2. 認可機構進行的屬以下類別的業務或相等於以下類別的業務——
 - (a) 零售銀行業務；
 - (b) 私人銀行業務；
 - (c) 公司銀行業務；
 - (d) 國際銀行業務；
 - (e) 機構銀行業務；
 - (f) 財政管理；或
 - (g) 任何對該機構而言是重要的業務。
3. 維持認可機構的帳目或會計制度。
4. 維持認可機構的管控制度，包括旨在管理該機構的風險的制度。
5. 維持認可機構的管控制度，以防止該機構牽涉入清洗黑錢活動。
6. 發展、運作和維持認可機構的電腦系統。
7. 就認可機構的事務或業務進行內部審核或審查。

Schedule 14
Section 2S14-4
Cap. 155

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.

S14-5
第 155 章附表 14
第 8 條Schedule 14
Section 4S14-6
Cap. 155

8. 確保認可機構遵守適用於它的法律、規例或指示。
 (附表 14 由 2001 年第 32 號第 29 條增補)
 (格式變更——2013 年第 1 號編輯修訂紀錄)
-

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)
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S15-1
第 155 章附表 15
第 1 條Schedule 15
Section 1S15-2
Cap. 155**附表 15**[第 101A、101E、101I 及
135 條]**Schedule 15**

[ss. 101A, 101E, 101I & 135]

關於銀行業覆核審裁處的條文 ***1. 釋義**

在本附表中 ——

主席 (Chairman) 指覆核審裁處主席；

成員 (member) 指覆核審裁處成員；

雙方 (parties) 就向覆核審裁處提出的覆核金融管理專員的決定的申請而言，指提出該申請的人及金融管理專員。

2. 主席的任期

- (1) 主席的任期不得超過 3 年。
- (2) 獲委任為主席的人在其任期或再度委任的任期屆滿後，可獲再度委任。
- (3) 獲委任為主席的人可藉給予行政長官書面通知而辭職，辭職通知在該通知指明的日期生效，如該通知並無指明生效日期，則在行政長官接獲該通知的日期生效。
- (4) 如行政長官信納獲委任為主席的人 ——
 - (a) 已破產；
 - (b) 因身體上或精神上的疾病而喪失履行職務能力；
 - (c) 因其他理由不能夠或不適宜執行主席的職能；或

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 not exceed 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—

S15-3
第 155 章附表 15
第 3 條

- (d) 根據本條例第 101A(2) 條已不再合資格獲委任為主席，
則行政長官可藉於憲報刊登的公告撤銷該人作為主席的委任；而該項撤銷一經作出，主席的職位即告出缺。

3. 成員的任期

- (1) 成員的任期不得超過 3 年。
- (2) 成員在其任期或再度委任的任期屆滿後，可獲再度委任。
- (3) 成員可藉給予行政長官書面通知而辭職，辭職通知在該通知指明的日期生效，如該通知並無指明生效日期，則在行政長官接獲該通知的日期生效。
- (4) 如行政長官信納某成員——
 - (a) 已破產；
 - (b) 因身體上或精神上的疾病而喪失履行職務能力；
 - (c) 因其他理由不能夠或不適宜執行成員的職能；或
 - (d) 根據本條例第 101A(3) 條已不再合資格獲委任為成員，
 則行政長官可藉於憲報刊登的公告撤銷該成員的委任。

Schedule 15
Section 3S15-4
Cap. 155

- (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.

S15-5
第 155 章附表 15
第 4 條Schedule 15
Section 4S15-6
Cap. 155**4. 關乎主席及成員的進一步規定**

- (1) 如根據本條例第 101A 條獲委任為主席的人因生病、不在香港或任何其他因由而不能行使其職能，行政長官可委任一名根據該條合資格獲委任為主席的人，在首述的人因該等因由而不能行使主席的職能期間署理主席一職，以及以署理主席身分行使主席的所有職能。
- (2) 如根據本條例第 101A 條獲委任為成員的人因生病、不在香港或任何其他因由而不能參與覆核審裁處的程序，行政長官可委任一名根據該條合資格獲委任為成員的人，在首述的人因該等因由而不能參與覆核審裁處的程序期間署理成員一職，以及以署理成員身分參與該等程序。
- (3) 在擔任或署理主席或成員的職位的人的任期屆滿時，如覆核聆訊已經展開，但覆核尚未獲得裁定，則就該項覆核而言，該人可繼續以主席或成員（視屬何情況而定）身分行事，直至該項覆核已獲得裁定為止。
- (4) 如在覆核聆訊進行期間，擔任或署理主席或成員的職位的人有所變動——
 - (a) 在覆核的雙方同意下，則即使出現該項變動，該聆訊仍可繼續進行；或
 - (b) 如沒有該項同意，則該聆訊不得繼續進行，但可重新開始。

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

S15-7
第 155 章附表 15
第 5 條Schedule 15
Section 5S15-8
Cap. 155

- (b) in the absence of such consent, the hearing shall not continue but may begin anew.

5. 程序

- (1) 覆核審裁處須在主席認為為就覆核作出裁定而需要的時候召開聆訊。
- (2) 主席可在要求覆核某決定的申請提出之後的任何時間，向該項覆核的雙方發出關於以下事宜的指示——
 - (a) 雙方中的任何一方須遵從的程序事宜；及
 - (b) 遵從該等程序事宜的時限。
- (3) 覆核審裁處的聆訊的法定人數為主席加 2 名成員。
- (4) 在覆核審裁處的聆訊中——
 - (a) 主席須主持聆訊；及
 - (b) 每項有待覆核審裁處裁定的問題，須由主席及出席成員所投的過半數票數裁定，但法律問題則須由主席單獨裁定。
- (5) 本條例第 101C(3) 條賦予的陳詞權利可親自行使或——
 - (a) 就法團而言，透過其高級人員或僱員行使；
 - (b) 就金融管理專員而言，透過根據《外匯基金條例》(第 66 章) 第 5A(3) 條獲委任以協助金融管理專員的人行使，
 或透過律師或大律師行使，亦可在覆核審裁處許可下透過任何其他人行使。
- (6) 主席須擬備或安排擬備覆核審裁處任何聆訊的程序的紀錄，該紀錄須載有他認為適當的關乎該等程序的詳情。

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,

S15-9
第 155 章

附表 15
第 6 條

Schedule 15
Section 6

S15-10
Cap. 155

6. 特權及豁免權

除本條例另有規定外——

- (a) 覆核審裁處、其主席及其成員；及
- (b) 覆核的雙方及覆核所牽涉的任何證人、律師、大律師或其他人，

就該項覆核享有的特權及豁免權，與假若該項覆核是在原訟法庭席前進行的民事法律程序則他們便會享有的特權及豁免權相同。

(附表 15 由 2005 年第 19 號第 7 條增補)
(格式變更——2013 年第 1 號編輯修訂紀錄)

編輯附註：

* (由 2012 年第 3 號第 20 條修訂)

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)