

(2) Notice under subsection (1) shall be given—

- (a) if the person is a person to whom this Part applies at the commencement of this section, within one month after that date; or
- (b) in any other case, in or as part of the person's application for registration under this Ordinance.

(3) A notice under paragraph (a) of subsection (2) shall be given as provided in that paragraph notwithstanding that the person has ceased to be a person to whom this Part applies before the expiration of the appropriate time referred to in that paragraph.

(4) A person to whom this Part applies shall keep the register of his interests in securities at the place specified in the notice given under subsection (1) unless he gives a subsequent notice to the Commissioner in the form prescribed by regulations to the effect that the register is kept at some other place specified in the subsequent notice, in which case he shall keep the register—

- (a) where only one such subsequent notice has been given, at the other place specified in that notice; or
- (b) where more than one such subsequent notice has been given, at the other place specified in the later or latest of those notices.

(5) A person who ceases to be a person to whom this Part applies shall give notice in the form prescribed by regulations to the Commissioner of that fact within 14 days thereafter.

(6) A person who contravenes any provision of this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000.

Defences.

69. (1) It shall be a defence to a prosecution for contravening any provision of section 67(5) or section 68(6) if the defendant proves that the contravention was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence.

(2) For the purposes of this Part, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence relating to securities of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his employer's or principal's interest in the relevant securities, was aware at that time.

70. The Commissioner may require a person to whom this Part applies to produce for inspection the register required to be kept pursuant to section 67, and the Commissioner may make copies of or take extracts from the register.

Power of Commissioner to require certain information to be supplied to him.

71. The Commissioner may supply a copy of any such register, or a copy of an extract from it, to the Attorney General, who may, if he has reason to believe that an offence under this Ordinance may have been committed, deliver the copy to any person whom he thinks fit for the purposes of an investigation or a prosecution of the offence.

Power of Commissioner to supply copy of register.

## PART VIII

### TRADING IN SECURITIES

72. (1) A dealer shall not in Hong Kong communicate an offer to acquire or dispose of securities of a corporation unless—

Offers by dealers.

(a) the offer—

- (i) is written in the English or Chinese language; or
- (ii) if communicated verbally, is reduced to writing in the English or Chinese language and delivered to the person or persons to whom it was made not later than 24 hours after the verbal communication; and

(b) the offer—

- (i) specifies the name and address of the offeror and, if any person is making the offer on behalf of the offeror, the name and address of that person;
- (ii) contains a description of securities sufficient to identify them;
- (iii) specifies the terms of the offer (including where appropriate the amount of consideration proposed to be paid for securities acquired pursuant to the offer);
- (iv) where a dividend has been declared or recommended in respect of the securities, or it is anticipated that a dividend will be so declared or recommended before the transfer of the securities, states whether the securities are to be transferred with or without that dividend;

(v) specifies whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which that person will become liable to pay in respect of the contract note as a result of the transaction;

(vi) bears a date which is not more than 3 days before the date on which the offer is communicated;

(vii) if the offer relates to the acquisition of securities, satisfies the requirements of the First Schedule;

First Schedule.

(viii) if the offer relates to the disposal of securities, satisfies the requirements of the Second Schedule;

Second  
Schedule.

(ix) where a report of an expert in connexion with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent;

(c) the offer includes a translation, as the case requires, in the Chinese or English language of all the particulars required under paragraph (b), except where the Commissioner has previously agreed that the requirements of this paragraph may be dispensed with in any particular case.

(2) A document containing an offer to which subsection (1) relates which includes a statement purporting to be made by an expert shall not be communicated unless the expert has given and has not, before communication of a copy of the offer, withdrawn his written consent to the communication of the offer with the inclusion of the statement in the form and context in which it is included.

(3) Subject to subsection (5), any dealer who communicates an offer for the acquisition or disposal of securities without having complied with subsection (1) and subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000.

(4) Where any person has accepted an offer for the disposal or acquisition of securities under this section and the offer has been made without the requirements of subsection (1) and subsection (2) having been complied with, that person may, subject to the rights of any *bona fide* purchaser of the securities for value, rescind the acceptance, by notice in writing, within 28 days after the date of the discovery of the failure to comply or of the date when, with reasonable diligence, the failure to comply ought to have been discovered.

(5) Without prejudice to the provisions of section 3, this section does not apply to—

(a) any offer to dispose of securities of a corporation to persons who already hold securities of that corporation;

(b) any offer by a dealer if the offer is made to a person with whom, or on whose behalf, the dealer has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the offer; or

(c) any offer made to—

(i) a person whose business involves the acquisition or disposal or holding of securities; or

(ii) a solicitor or professional accountant; or

(iii) any other person who belongs to a class of persons prescribed in regulations for the purposes of this paragraph;

(d) any offer made by a stockbroker in the ordinary course of trading on the exchange.

(6) Where a dealer communicates an invitation which invites a person to acquire or dispose of any security held by that person in a corporation, then for the purposes of this section—

(a) that invitation is deemed to be an offer; and

(b) an offer to acquire or dispose of that security made by that person in response to the invitation is deemed to be an acceptance by that person of an offer to acquire or, as the case may be, an offer to dispose of the security,

and references in this section to “acceptance” shall be construed accordingly.

(7) An offer to acquire or dispose of a right to acquire or dispose of a security or an interest in a security is deemed to be an offer to acquire or dispose of a security; and a reference to a person who holds securities includes a reference to a person who holds a right to acquire a security or an interest in a security.

(8) For the purposes of this section “expert” includes an engineer, valuer, professional accountant, and solicitor, and any other person whose profession gives authority to a statement made by him.

(9) For the purposes of this section an offer to acquire or dispose of securities in consideration or part consideration for

other securities is deemed to be both an offer to acquire and an offer to dispose of securities.

Calls by  
registered  
dealers.

73. (1) Subject to subsection (3), a dealer shall not during, or as a consequence of, a call on any person, whether at his place of residence or his place of employment or otherwise, enter into any contract for the sale of securities unless he—

- (a) calls on the person at the invitation of that person; and
- (b) before entering into the contract provides the person with a written statement containing all the information which he would have been required to give to that person if the contract had been entered into as a result of an offer made under section 72.

(2) Any dealer who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 2 years.

(3) Subsection (1) does not apply to—

- (a) any contract for the sale of securities of a corporation with a person who already holds securities of that corporation;
- (b) any contract for the sale of securities by a dealer with a person with whom the dealer has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the date of the contract; or
- (c) any contract for the sale of securities with—
  - (i) a person whose business involves the acquisition or disposal or holding of securities;
  - (ii) a solicitor or professional accountant;
  - (iii) any other person who belongs to a class of persons prescribed in regulations for the purpose of this paragraph.

(4) Where any contract for the sale of securities is entered into in contravention of subsection (1), the purchaser may, subject to the rights of any *bona fide* purchaser of the securities for value, rescind the contract by giving notice in writing to the seller within 28 days after the date on which the contract was entered into.

(5) In this section “call” includes a visit in person and a communication by telephone.

74. (1) Subject to subsections (2) and (3), a person shall not, whether on his own behalf or otherwise and whether by appointment or otherwise, call from place to place— Hawking of securities.

(a) making or offering to make with any person—

- (i) an agreement for or with a view to having that other person purchase specific securities; or
- (ii) an agreement the purpose or pretended purpose of which is to secure a profit to that other person from the yield of specific securities or by reference to fluctuations in the value of specific securities; or

(b) inducing or attempting to induce any other person to enter into an agreement of the type referred to in subparagraph (i) or subparagraph (ii) of paragraph (a),

whether or not in calling from place to place he does any other act or thing.

(2) Subsection (1) does not apply to a person in so far as—

- (a) he calls at the place of another person who is a banker, solicitor, professional accountant, registered or exempt dealer, registered or exempt investment adviser or registered dealer's representative or registered investment representative; and
- (b) whether as principal or agent, he makes, or offers to make, with that other person an agreement referred to in subsection (1) or induces, or attempts to induce, that other person to enter into, such an agreement.

(3) Nothing in this section applies to securities or any class of securities which have been exempted by the Commission for the purposes of this section provided that any conditions subject to which the exemption was granted have been fulfilled.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

(5) If in any proceedings for an offence against subsection (4) it is proved that the accused did any of the acts mentioned in paragraph (a) or paragraph (b) of subsection (1) on two or more occasions within any period of 14 days, he shall, until the contrary is proved, be deemed to have been calling from place to place.

(6) In this section “to call” includes to visit in person and to communicate by telephone.

75. (1) Every dealer (including an exempt dealer) shall, in respect of every contract for the purchase, sale, or exchange of securities entered into by him in Hong Kong (whether as principal or agent), not later than end of the next trading day after the contract was entered into, make out a contract note which complies with subsection (2) and—

- (a) where the contract was entered into as agent, deliver the contract note to the person on whose behalf he entered into the contract; or
- (b) where the contract was entered into as principal, retain the contract note for himself.

(2) A contract note made out by a dealer under subsection (1) shall include—

- (a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he so carries on business;
- (b) where the dealer is acting as principal, a statement that he is so acting;
- (c) the name of the person (if any) to whom the dealer is required to give the contract note;
- (d) the date of the contract, and the date on which the contract note is made out;
- (e) the quantity and description of the securities that are being acquired or disposed of;
- (f) except in the case of an exchange, the price per unit of the securities;
- (g) the amount of consideration payable under the contract or, in the case of an exchange, particulars of the securities exchanged sufficient to identify them;
- (h) the rate or amount of commission (if any) payable in respect of the contract;
- (i) the amount of stamp duty (if any) payable in connexion with the contract and, where applicable, in respect of the transfer;
- (j) the date of settlement.

(3) Any dealer (including an exempt dealer) who completes a contract for the purchase, sale, or exchange of securities without having complied with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

76. (1) Except as provided in regulations, a dealer (including an exempt dealer) shall not transact in Hong Kong, or hold himself out as being prepared to transact in Hong Kong—

Dealers not to engage in option or forward trading.

- (a) any dealing whereby the dealer confers on any person an option to purchase from or sell to the dealer any securities listed on a stock exchange in Hong Kong; or
- (b) any dealing in any such securities which is completed later than the end of the next trading day after the dealing was entered into.

(2) Any dealer who contravenes subsection (1) shall, subject to subsection (3), be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

(3) It shall be a defence to any criminal proceedings brought under subsection (2) in respect of a dealing mentioned in paragraph (b) of subsection (1) for the accused to prove that he took all reasonable and practicable steps to secure completion of the transaction within the period permitted by that paragraph.

(4) A contract entered into in contravention of subsection (1) shall not be enforceable by either the dealer or the other contracting party.

77. (1) Subject to subsection (2), every dealer (including an exempt dealer) shall, on being requested to do so by any person on whose behalf he has transacted a dealing in securities—

Dealers to provide certain information etc. to client.

- (a) provide that person with a copy of the contract note relating to the dealing, and a copy of his account with the dealer; and
- (b) if the Commissioner on the application of the person so directs, make available for inspection by that person, at all reasonable times during the dealer's ordinary hours of business, the dealer's copy of the contract note and the person's account with the dealer.

(2) Subsection (1) does not require a dealer (including an exempt dealer) to—

- (a) provide, or keep available for inspection, a copy of any contract note which relates to a dealing transacted more than 2 years before the date of the request; or
- (b) provide a copy of, or keep available for inspection, any account which relates to a dealing transacted more than 6 years before the date of the request.

(3) Any such dealer may impose a charge not exceeding an amount prescribed by regulations for a copy of a document provided pursuant to subsection (1).

(4) Any dealer who, without reasonable excuse, fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000.

Certain representations prohibited.

**78.** (1) A registered person shall not in any communication, whether written or oral, represent or imply or knowingly permit to be represented or implied in any manner to a person that the abilities or qualifications of the registered person have in any respect been approved by the Hong Kong Government, the Commission or the Commissioner.

(2) A statement made to the effect that a person is registered under this Ordinance or is the holder of a certificate of registration is not a contravention of subsection (1).

(3) Any registered person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000.

Disclosure of certain interests.

**79.** (1) Where, in a circular or other written communication issued in Hong Kong by him to more than one person, a dealer or an investment adviser (including an exempt dealer or exempt investment adviser) makes a recommendation, whether expressly or by implication, with respect to any securities or any class of securities of a corporation, he shall include in the circular or other communication, in type not less bold and not less legible than that used in its text, a statement as to whether or not he has, at the date specified in the circular or communication pursuant to subsection (5), an interest in any of the securities of that corporation.

(2) Subsection (1) does not require in the case of a circular or other written communication issued by a stockbroker the inclusion of a statement in relation to an interest that consists of the right to charge commission as provided by the rules of the stock exchange of which he is a member on the sale or purchase of the securities or class of securities that are being recommended.

(3) For the purposes of subsection (1), a person who has entered into an underwriting agreement in respect of any securities shall be deemed to have a financial interest in the sale or purchase of those securities.

(4) Where an offer to the public of securities is not fully subscribed, a person who has subscribed for or taken up, or is

required to subscribe for or take up, any of those securities under an underwriting agreement shall not, during the period of 90 days after the close of the offer, make any offer or recommendation in respect of those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will be required to acquire, under an underwriting agreement as a result of the offer to the public not being fully subscribed.

(5) Every circular or other written communication to which this section relates shall be dated and shall contain on its face the name of the dealer or investment adviser who issued it.

(6) A dealer or investment adviser who issues a circular or communication to which this section relates shall retain a copy of it bearing his signature in such manner, and for such time or until the happening of such event, as may be prescribed by regulations.

(7) For the purposes of this section, a circular or other written communication shall be deemed to have been issued by the person whose name is contained on its face.

(8) In this section a reference to securities does not include a reference to the stock or debentures of, or bonds made available by, a government or a local government authority, or to securities guaranteed by a government or a local government authority.

(9) Without prejudice to the power to make regulations under section 146, regulations may be made under that section—

- (a) requiring the lodging with the Commissioner of copies of any circular or other written communication issued by a dealer or investment adviser; and
- (b) making provision for or with respect to the keeping of records of circulars or other similar written communications issued by a dealer or by an investment adviser.

(10) Any dealer or investment adviser, whether registered or exempted from registration, who—

- (a) issues a circular or other written communication in contravention of subsection (1) or subsection (5);
- (b) contravenes subsection (4); or
- (c) fails to retain a copy of a circular or other written communication as required by subsection (6),

shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

(11) An offence against subsection (10) is not committed by reason only that a circular or other written communication is issued to a person whose business involves the acquisition, disposal, or holding of securities.

Short selling prohibited.

**80.** (1) A person shall not sell securities at or through a stock exchange unless, at the time he sells them—

- (a) he has or, where he is selling as agent, his principal has; or
- (b) he reasonably and honestly believes that he has or, where he is selling as agent, that his principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser of them.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

(3) For the purposes of subsection (1)—

- (a) a person shall be deemed to be selling securities if he—
  - (i) purports to sell the securities;
  - (ii) offers to sell the securities;
  - (iii) holds himself out as entitled to sell the securities; or
  - (iv) instructs a dealer to sell the securities;
- (b) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in a purchaser of them; and
- (c) a right of a person to vest securities in a purchaser thereof shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of some other person to secure the repayment of money.

(4) Subsection (1) does not apply to or in relation to—

- (a) a person acting in good faith in the reasonable and honest belief that he has a right, title, or interest to or

in securities that he purports to sell, offers for sale, or holds himself out as capable of selling;

- (b) a dealer acting in good faith for or on behalf of some other person in the reasonable and honest belief that such other person has a right, title, or interest to or in securities that he purports to sell, offers for sale, or holds himself out as capable of selling;
- (c) a sale of securities by a stockbroker acting as principal when he acts as an odd lot specialist in accordance with the rules of the stock exchange of which he is a member, being a sale made solely for the purpose of—
  - (i) accepting an offer to purchase an odd lot of securities; or
  - (ii) disposing of a parcel of securities that is less than one board lot of securities, by means of the sale of one board lot of those securities; or
- (d) a sale of securities falling within a class of transaction prescribed by regulations for the purposes of this paragraph.

**81.** (1) Where securities that are not the property of a dealer (including an exempt dealer) and for which the dealer, or any nominee controlled by the dealer, is accountable are held for safe custody in Hong Kong, the dealer shall, subject to subsection (2), either cause the securities—

Disposition of security documents.

- (a) (not being bearer securities) to be registered as soon as practicable in the name of the person to whom the dealer or nominee is accountable or in the name of the dealer's nominee; or
- (b) to be deposited in safe custody in a designated account with the dealer's bankers or with any other institution which provides facilities for the safe custody of documents to the satisfaction of the Commissioner.

(2) The Commissioner may, on the application of a dealer in writing, exempt the dealer from the provisions of subsection (1), but in granting the exemption may impose such conditions as he thinks fit.

(3) No dealer shall, without the authority in writing of the person to whom he is accountable, deposit any securities of which the dealer is not the owner as security for loans or advances made to the dealer.

(4) An authority conferred under subsection (3) shall specify the period for which it is current, but shall not in any event, subject to subsection (5), remain in force for a period of more than 12 months.

(5) An authority conferred under subsection (3) may be renewed in writing for one or more further periods not exceeding 12 months at any one time.

(6) Any dealer who, without lawful authority or reasonable excuse, contravenes subsection (1) or subsection (3) shall be guilty of an offence.

(7) Any person guilty of an offence under subsection (6) shall be liable on conviction—

- (a) in the case of a contravention of subsection (1), to a fine of \$2,000; and
- (b) in the case of a contravention of subsection (3), to a fine of \$20,000 and to imprisonment for 2 years.

## PART IX

### ACCOUNTS AND AUDIT

Application and interpretation of Part IX.

**82.** (1) This Part applies to the business of a registered dealer and every reference to the term "dealer" shall be construed accordingly.

(2) In this Part, unless the context otherwise requires, any reference to the books, accounts, records, securities, trust accounts, or business of, or in relation to, a dealer who carries on business in partnership shall be read and construed as a reference to the books, accounts, records, securities, trust accounts, or business (as the case requires) of or in relation to the partnership.

(3) The Governor in Council may, by order published in the *Gazette*, apply all or any of the provisions of this Part, with or without modifications, to registered investment advisers.

Accounts to be kept by dealers.

**83.** (1) A dealer shall—

- (a) cause to be kept such accounting and other records as will sufficiently explain the transactions, and reflect the financial position, of the business of dealing in securities carried on by him, and will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

- (b) cause those records to be kept in such a manner as will enable them to be conveniently and properly audited.

(2) The records referred to in subsection (1) shall be kept—

- (a) in writing in the English language; or
- (b) in such a manner as to enable them to be readily accessible and readily converted into written form in the English language.

(3) Without affecting the generality of subsection (1), a dealer shall cause records to be kept—

- (a) in sufficient detail to show particulars of—
  - (i) all money received and paid by the dealer, including money paid to, and disbursed from, a trust account;
  - (ii) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;

- (iii) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid by the dealer;

- (iv) all the assets and liabilities (including contingent liabilities) of the dealer;

- (v) all securities that are the property of the dealer, showing by whom the security documents are held and, where they are held by some other person, whether or not they are held as security against loans or advances;

- (vi) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the security documents are held distinguishing those which they are held for safe custody, and those which are deposited with a third party as security for loans or advances made to the dealer; and

- (vii) all underwriting and sub-underwriting transactions entered into by the dealer; and

- (b) containing copies of acknowledgements of the receipt of securities received by the dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

(4) Without prejudice to subsection (3), a dealer shall keep records in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of—

- (a) clients of the dealer, excluding, where the dealer carries on business in partnership, the partners of the firm;
- (b) the dealer himself, or, where the dealer carries on business in partnership, the partners of the firm;
- (c) other dealers carrying on business in Hong Kong;
- (d) dealers outside Hong Kong; and
- (e) employees of the dealer.

(5) A dealer shall retain—

- (a) for a period of not less than 6 years, the records referred to in subsection (1); and
- (b) for a period of not less than 2 years—
  - (i) each contract note received by him or made out to himself as principal; and
  - (ii) a copy of each contract note made out by him as agent.

(6) An entry in the accounting and other records of a dealer kept in accordance with this section shall be deemed to have been made by, or with the authority of, the dealer.

(7) Where matter that is intended to be used in connexion with the keeping of a record referred to in this section is recorded or stored by means of a mechanical device, an electronic device, or any other device in an illegible form, a person who wilfully—

- (a) records or stores in that device matter that he knows to be false or misleading in a material particular;
- (b) destroys, removes, or falsifies matter that is recorded or stored in that device; or
- (c) fails to record or store matter in that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter,

shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

(8) For the purposes of this section, a record required to be kept by a dealer may be kept either by making entries in a bound book or by recording the relevant matters in any other manner.

(9) Where a record required by this section to be kept is not kept by making entries in a bound book but by some other means, the dealer shall take reasonable precautions for guarding against falsification and for facilitating discovery of any falsification.

(10) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in securities that is carried on by him.

**84.** (1) A dealer shall establish and keep at a licensed bank one or more trust accounts designated or evidenced as such into which he shall pay—

- (a) all amounts (less brokerage and other proper charges) which are received for or on account of any person (other than a stockbroker) from the sale of securities, except those amounts paid to that person or in accordance with his directions within 4 bank trading days after their receipt;
- (b) all amounts (less any brokerage and other proper charges) which are received from or on account of any person (other than a stockbroker) for the purchase of securities, except those amounts attributable to the purchase of securities which are delivered to the dealer within 4 bank trading days after receipt of the amounts; and
- (c) subject to any agreement to the contrary, all amounts derived by way of interest from the retention in a trust account of any amount mentioned in paragraph (a) or paragraph (b).

(2) All amounts required to be paid into a trust account under subsection (1) shall be retained there by the dealer until they are paid to the person on whose behalf they are being held or in accordance with his directions or, as the case may be, until they are required to complete payment in respect of the purchase of securities on behalf of any such person.

(3) Money required by this section to be paid into a trust account shall be so paid within 4 bank trading days after it is received by the dealer.

Certain money received by dealer to be paid into a trust account.

(4) All sums derived by way of interest from the payment of money by a dealer into a trust account under this section shall, subject to any agreement to the contrary, belong to the person to whom the dealer is accountable.

(5) No amount other than an amount referred to in paragraph (a) or (b) of subsection (1) shall be paid into a trust account.

(6) Every dealer shall keep records of—

- (a) all amounts paid into a trust account kept by him, specifying the persons on whose behalf the amounts are held and the dates on which they were paid into the account;
- (b) all withdrawals from the trust account, the dates of those withdrawals, and the names of the persons on whose behalf the withdrawals are made; and
- (c) such other particulars (if any) as may be prescribed by regulations.

(7) A person who—

- (a) without reasonable excuse, contravenes any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000; or
- (b) with intent to defraud, contravenes any provision of this section shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$50,000 and to imprisonment for 5 years.

**85.** (1) Except as otherwise provided in this Part, money held in a trust account shall not be available for payment of the debts of a dealer or be liable to be paid or taken in execution under the order or process of any court of competent jurisdiction.

(2) Any payment made in contravention of subsection (1) shall be void *ab initio*, and no person to whom the money is paid shall obtain any title to it.

**86.** Nothing in this Part shall be construed as taking away or affecting any lawful claim or lien which any person has in respect of any money held in a trust account or in respect of any money received for the purchase of securities or from the sale of securities before the money is paid into a trust account.

**87.** (1) A dealer shall appoint an auditor to audit his accounts (including all trust accounts required to be kept by the

Money in trust account not available for payment of debts, etc.

Claims and liens not affected.

Dealer to appoint auditor.

dealer under section 84) and, where for any reason the auditor ceases to act for the dealer, the dealer shall, as soon as practicable thereafter, appoint another auditor to replace him.

(2) A person is not eligible for appointment under subsection (1) if—

- (a) he is a servant of the dealer or is in the employment of any such servant;
- (b) where the dealer is a partnership, he is a member of the partnership or in the employment of any such member;
- (c) where the dealer is a corporation, he is an officer of the corporation or is in the employment of any such officer; or
- (d) he belongs to any other class of persons prescribed in regulations for the purposes of this paragraph.

**88.** (1) A dealer shall, in respect of the financial year beginning before and ending after—

- (a) the day on which this section commences; or
- (b) the day on which the dealer commences to carry on business as a dealer,

whichever is the later day, and in respect of each subsequent financial year, prepare a true and fair profit and loss account and a balance sheet made up to the last day of the financial year and cause those documents to be lodged with the Commissioner not later than the 31st day of July next following the end of the financial year, together with an auditor's report containing the information prescribed by regulations.

(2) Notwithstanding subsection (1), the period within which the documents referred to in subsection (1) are required to be lodged may be extended by the Commissioner for a period not exceeding one month, where an application for the extension is made by the dealer and the Commissioner is satisfied there are special reasons for requiring the extension.

(3) An extension under subsection (2) may be allowed subject to such conditions, if any, as the Commissioner thinks fit to impose.

(4) Any dealer who fails to lodge the documents required by this section with the Commissioner within the time allowed by or under this section shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

Dealer to lodge auditor's report.

Auditor to send report directly to Commissioner in certain cases.

**89.** If, during the performance of his duties as auditor for a dealer, an auditor—

- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the dealer to a material extent; or
- (b) discovers evidence of a contravention by the dealer of section 81, section 83, or section 84,

he shall, as soon as practicable thereafter, send to the Commissioner and to the dealer a report in writing of the matter or, as the case may be, concerning the contravention.

Power of Commissioner to appoint auditor.

**90.** (1) Where—

- (a) a dealer has failed to lodge an auditor's report under section 88; or
- (b) the Commissioner has received a report under section 89,

the Commissioner may, if he is satisfied that it is in the interests of the dealer concerned, the dealer's clients, or the general public, to do so, appoint in writing an auditor to examine, audit, and report, either generally or in relation to any matter, on the books, accounts, and records of, and securities held by, the dealer.

(2) Where the Commissioner is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by him under this section should be borne by the dealer concerned or the stock exchange of which he is a member, he may, by order in writing, direct the dealer or stock exchange to pay a specified amount, being the whole or part of those costs and expenses, within the time and in the manner specified.

(3) Where a dealer or stock exchange has failed to comply with an order of the Commissioner under subsection (2), the amount specified in the order may be sued for and recovered by the Commissioner as a debt in any court of competent jurisdiction.

Power of Commissioner to appoint an auditor on the application of a client.

**91.** (1) On receipt of an application in writing from a person who alleges that a dealer has failed to account to him in respect of any money or securities held or received by that dealer for him or on his behalf, the Commissioner may, after first giving the dealer an opportunity to give an explanation of the failure, appoint in writing an auditor to examine, audit, and report, either generally or in relation to any particular matter, on the books, accounts, and records of, and securities held by, that dealer.

(2) Every application under subsection (1) shall state—

- (a) particulars of the circumstances under which the dealer received the money or securities in respect of which he is alleged to have failed to account;
- (b) particulars of that money or those securities and of the transactions of the applicant and the dealer relating thereto; and
- (c) such other particulars as may be prescribed by regulations.

(3) Every statement in any such application shall be verified by statutory declaration made by the applicant and shall, if made in good faith and without malice, be privileged.

(4) The Commissioner shall not appoint an auditor under subsection (1) unless he is satisfied—

- (a) that the applicant has good reason for making the application; and
- (b) that it is in the interests of the dealer or the applicant or the public generally that the books, accounts, and records of, and securities held by, the dealer should be examined, audited, and reported on.

**92.** An auditor appointed under section 90 or section 91 shall, on the conclusion of the examination and audit in respect of which he was appointed, make a report thereon to the Commissioner.

Auditor to report to Commissioner.

**93.** An auditor appointed by the Commissioner to examine and audit the books, accounts, and records of, and securities held by, a dealer may for the purpose of carrying out the examination and audit—

Powers of auditors.

- (a) examine on oath the dealer concerned and, where the dealer carries on business in partnership or is a corporation, any of the members of the partnership or, as the case may be, any director of the corporation and any of the dealer's servant and agents and any other auditor appointed under this Ordinance in relation to those books, accounts, records, and securities;
- (b) employ such persons as he considers necessary; and
- (c) by instrument in writing under his hand, authorize any person employed by him to do, in relation to the examination and audit, any act or thing that he could do

himself as an auditor, except to examine any person on oath or to exercise any other powers conferred by this paragraph.

Right of auditors and employees to communicate certain matters.

94. Except for the purpose of carrying into effect the provisions of this Ordinance or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 90 or section 91 and an employee of any such auditor shall not divulge any information which may come to his knowledge in the course of performing his duties as an auditor or employee under section 90 or section 91, as the case may be, to any person other than—

- (a) the Commission;
- (b) the Commissioner;
- (c) the Financial Secretary or any person approved or designated by the Financial Secretary; and
- (d) in the case of an employee, the auditor by whom he is employed.

Books, accounts, and records to be produced on demand.

95. (1) On request by an auditor appointed under this Part or a person who produces a written authority in that behalf under section 93(c)—

- (a) a dealer and, where the dealer is a corporation or carries on business in partnership, the directors of the corporation or the other members of the partnership, and the dealer's servants and agents, shall produce any books, accounts, and records of any securities held by the dealer relating to the dealer's business; and
- (b) an auditor appointed by a dealer shall produce any books, accounts, and records held by him relating to the business of the dealer.

(2) A dealer and, where the dealer is a corporation or carries on business in partnership, the directors of the corporation or the other members of the partnership, as the case may be, and the dealer's servants and agents and any auditor appointed by the dealer shall answer all questions relevant to an examination and audit which are put to him by an auditor appointed under this Part or a person who produces a written authority in that behalf given under section 93(c).

(3) Any person mentioned in subsection (1) who, without reasonable excuse, fails to comply with any request made to

him under that subsection, or any person mentioned in subsection (2) who, without reasonable excuse, refuses or fails to answer any question put to him under that subsection, shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 2 years.

96. (1) Any person who, with intent to prevent, delay, or obstruct the carrying out of any examination and audit under this Part—

- (a) destroys, conceals or alters any book, account, record or document relating to the business of a dealer; or
- (b) sends or attempts to send, or conspires with any other person to send, out of Hong Kong any such book, account, record, or document, or any property of any description belonging to or in the disposition of or under the control of a dealer,

shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

(2) If, in a prosecution for an offence under subsection (1), it is proved that the person charged—

- (a) destroyed, concealed, or altered any book, account, record, or document mentioned in that subsection; or
- (b) sent or attempted to send, or conspired to send, out of Hong Kong any such book, account, record, or document or any property mentioned in paragraph (b) of that subsection,

the onus of proving that in so doing he did not act with intent to prevent, delay, or obstruct the carrying out of an examination and audit under this Part shall lie on him.

(3) Any person who, with intent to prevent, delay, or obstruct the carrying out of an examination and audit under this Part, leaves, or attempts to leave, Hong Kong shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

97. Nothing in this Part shall prevent the committee of a stock exchange from imposing on members of the exchange any further obligations or requirements which the committee thinks necessary with respect to—

- (a) the audit of accounts;
- (b) the information to be given in reports by auditors; or
- (c) the keeping of accounts, books, and records.

Offence to destroy, conceal, or alter records or send records or other property outside Hong Kong.

Right of committee to impose obligations etc., on members of exchange not affected by this Part.

## PART X

## COMPENSATION FUND

Interpretation.

98. (1) In this Part, unless the context otherwise requires—

“Committee” means the Securities Commission Compensation Fund Committee established under section 100(1);

“compensation fund” means the fund established under section 99;

“default”, in relation to the failure of a stockbroker, or a member firm or corporate member of a stock exchange, to perform a legal obligation, means a default arising from—

- (a) the bankruptcy or insolvency of the stockbroker or member firm or, as the case may be, the winding up or insolvency of the corporate member;
- (b) any breach of trust committed by the stockbroker, member firm, or corporate member; or
- (c) any defalcation, fraud, or misfeasance committed by the stockbroker, member firm, or corporate member of any servant employed by that stockbroker, member firm, or corporate member;

“legal obligation” includes an obligation arising under a contract or quasi-contract or under a trust (including a constructive trust);

“stockbroking business” includes any trust carried on in conjunction with, or as an adjunct to, a stockbroking business, and also includes the retention of securities whether for safe-keeping or otherwise, and whether for specific consideration or otherwise.

(2) A reference in this Part to a claimant or person making a claim includes, in the event of his death, insolvency, or other disability, a reference to his personal representative or any other person having authority to administer his estate.

Establishment of compensation fund.

99. The Commission shall establish and maintain a compensation fund, to be known as the Stock Exchanges Compensation Fund, for the purposes set out in this Part.

Securities Commission Compensation Fund Committee.

100. (1) There shall be a committee, to be known as the Securities Commission Compensation Fund Committee, which shall be responsible, subject to this section, for the administration of the compensation fund.

(2) The Committee shall consist of five persons appointed by the Commission, of whom at least two shall be members of the Commission and two shall be persons nominated by the Council of the Federation.

(3) The Commission shall nominate one of the members of the Committee who is also a member of the Commission to be chairman of the Committee.

(4) The Committee shall exercise on behalf of the Commission such of the powers, duties, and functions of the Commission under this Part as may from time to time be delegated to the Committee by the Commission; but the Commission may not delegate its power of delegation under this section or its powers under section 110.

(5) Any power, duty, or function delegated under this section may be exercised by members forming a majority of the Committee as if by this Part that power, duty, or function had been conferred on a majority of the members of the Committee.

(6) Any delegation under this section may at any time be varied or revoked.

(7) The Commission may at any time remove any member of the Committee appointed by it under this section and may fill any vacancy in the Committee however arising.

(8) Subject to any direction of the Commission, the Committee may regulate its procedure in such manner as it thinks fit.

101. (1) The compensation fund shall consist of—

- (a) all money paid to or deposited with the Commission by stock exchanges in accordance with the provisions of this Part;
- (b) all money recovered under any guarantee entered into under this Part;
- (c) all money recovered by or on behalf of the Commission by the exercise of any right of action conferred by this Part;
- (d) all money borrowed under subsection (2);
- (e) all other money lawfully paid into the fund.

Money constituting the compensation fund.

(2) The Commission may from time to time borrow for the purposes of the compensation fund from any lender and may charge any investments acquired under section 105 by way of

security for any such loan; but the aggregate sum owing at any one time in respect of any such loans shall not exceed \$1,000,000.

Money to be kept in bank account.

**102.** The Commission shall open at one or more licensed banks a separate bank account or separate bank accounts and shall, pending its application in accordance with this Part, pay into or transfer to that account or those accounts all money forming part of the compensation fund.

Accounts of fund.

**103.** (1) The Commission shall keep proper accounts of the compensation fund, and shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare a revenue and expenditure account, and a balance sheet made up to the last day of that year.

(2) The Commission shall appoint an auditor to audit the compensation fund.

(3) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each balance sheet and revenue and expenditure account prepared under subsection (1) and shall submit the report to the Commission.

(4) Not later than the 31st day of July in each year the Commission shall cause a copy of the audited balance sheet, revenue and expenditure account, and the auditor's report to be sent to the Council of the Federation and to each stock exchange.

Stock exchanges to make deposits in respect of members.

**104.** (1) Every stock exchange shall, subject to the provisions of this Part, deposit with the Commission and keep deposited in respect of each stockbroker belonging to that exchange—

- (a) a sum of \$25,000 payable in cash; and
- (b) a guarantee, in such form and complying with such conditions as may be prescribed by rules, given by a licensed bank guaranteeing the payment to the compensation fund, on the demand of the Commission, of the sum of \$25,000.

(2) The amount and, subject to subsection (3), the guarantee referred to in subsection (1) shall be deposited—

- (a) in respect of every stockbroker who is a member of a stock exchange at the date of commencement of this Part, not later than one month after that date; and

- (b) in respect of every stockbroker who is admitted as a member of a stock exchange after the commencement of this Part, not later than one month after the date on which he is admitted to membership of the exchange.

(3) The Commission may, if it is satisfied that a stock exchange is operating a system whereby the obligations of any stockbroker belonging to that exchange will be met or substantially met in the event of his failing to fulfil those obligations or any of them, exempt the exchange from compliance with depositing the guarantee required under subsection (1)(b).

(4) Any amount due under this section may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction.

**105.** (1) The Commission may invest any money which forms part of the compensation fund and is not immediately required for any other purposes provided for by this Part either—

- (a) on fixed deposit with a licensed bank; or
- (b) in securities in which trustees are authorized by law to invest trust funds.

(2) As soon as practicable after the end of each financial year, the Commission shall ascertain the total amount of interest (if any) derived from the investment of money under subsection (1) in respect of that financial year and shall then, after deducting an appropriate amount to meet the expenses incurred or involved in the administration of the compensation fund, apportion the balance of the interest between the contributing stock exchanges in proportion to the amounts that they have contributed to the fund and pay to each exchange its portion of that balance.

**106.** (1) Where a stock exchange has deposited a sum of money or a guarantee with the Commission under section 104 in respect of a stockbroker and that stockbroker dies or otherwise ceases to be a member of the stock exchange, the Commission shall, unless the money or guarantee is required to satisfy any claims or liabilities arising before the stockbroker died or otherwise ceased to be a member of the exchange, within 6 months after the death of the stockbroker or his ceasing to be a member of the exchange, deliver to the exchange the sum or guarantee deposited in respect of the stockbroker.

Balance of sums in bank account may be invested.

Repayment of deposits in certain cases.

(2) If—

- (a) any money or guarantee has been delivered to a stock exchange pursuant to subsection (1); and
- (b) the exchange obtained the guarantee by means of a direct levy imposed on the stockbroker in respect of whom the money or guarantee was deposited,

the exchange shall, if that stockbroker has satisfied all financial obligations due from him to the exchange and is otherwise in good standing with the exchange and is not bankrupt or insolvent, deliver the money or guarantee to him or, if he has died, to his personal representative.

Replenish-  
ment of  
fund in  
certain cases.

**107.** (1) Subject to subsection (4), if at any time resort has to be made to any money or guarantee deposited under section 104 in order to satisfy any claim made against the compensation fund in relation to a stockbroker, or to a member firm or corporate member of a stock exchange, the exchange to which the stockbroker, member firm, or corporate member belongs, or belonged at the time of the default giving rise to the claim, shall, on being required to do so by the Commission, replenish the fund by depositing with the Commission an amount that is equal to that paid in connexion with the satisfaction of the claim, including any legal and other expenses paid or incurred in relation to the claim.

(2) Subject to subsections (3) and (4), if any stock exchange, whether because of insolvency or any other reason, is unable to deposit the amount required under subsection (1), each remaining stock exchange shall, if required to do so by the Commission, replenish the compensation fund by depositing in respect of each stockbroker belonging to the exchange a sum equal to that proportion which the amount not deposited in accordance with subsection (1) bears to the total number of stockbrokers belonging to the remaining exchanges.

(3) A stock exchange may not be required, pursuant to subsection (2), to deposit any sum or sums representing an amount exceeding \$50,000 in respect of each stockbroker belonging to the exchange; and if on one or more occasions a stock exchange has, pursuant to that subsection, deposited a sum or sums representing that amount, the exchange shall not be liable to deposit further sums under that subsection.

(4) The Commission may not require a stock exchange—

- (a) to make a deposit under subsection (1) in respect of any payment made to satisfy a claim under this Part unless it has first exhausted all relevant rights of action and other legal remedies, conferred by section 118, against the stockbroker, member firm, or corporate member in relation to whom or to which the claim arose; or
- (b) to make a deposit under subsection (2) unless it has first exhausted all relevant rights of action and other legal remedies against the stock exchange that is primarily liable by virtue of subsection (1).

(5) Any amount required to be deposited under this section may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction.

**108.** (1) Subject to this Part, there shall from time to time be paid out of the compensation fund as required and in the following order—

Payments  
out of the  
fund.

- (a) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the Council of the Federation or the Commission of the rights, powers, and authorities vested in them by this Part in relation to the fund;
- (b) the expenses incurred or involved in the administration of the fund;
- (c) the amounts of all claims, including costs, allowed by the Council of the Federation or established against the Federation under this Part; and
- (d) all other money payable out of the fund in accordance with this Part.

(2) If at any time the money deposited in the compensation fund is insufficient for any payment under subsection (1), the Commission may require the guarantor under any guarantee deposited with it under section 104(1) to pay to the Commission all or any part of the sum guaranteed, in which event the guarantor shall pay the amount so required.

(3) Any amount required to be paid under subsection (2) may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction.

109. (1) Where any person claims that—

- (a) a stockbroker, or a member firm or corporate member of a stock exchange, has, by reason of a default committed in the course of or in connexion with the stockbroking business of that stockbroker, member firm, or corporate member, failed to perform a legal obligation owed to that person in relation to any money, securities, or other property to which that person is entitled or in which he has a beneficial interest (whether existing or contingent); and
- (b) because of that failure, that person has sustained pecuniary loss,

he shall be entitled, subject to this Part, to claim compensation from the compensation fund.

(2) Subsection (1) does not entitle any stockbroker, or any member firm or corporate member of a stock exchange, to make a claim against the compensation fund.

(3) Except as otherwise provided in this Part, the total amount that may be paid under this Part to all persons who suffer loss through any default mentioned in subsection (1) shall not in any event exceed \$1,000,000 in respect of each stockbroker concerned in or connected with the default; but for the purposes of this subsection any amount paid from the compensation fund shall, to the extent that the fund is subsequently reimbursed in respect of any such payment (not being a deposit made under section 107), be disregarded.

(4) A person shall not have a claim against the compensation fund in respect of a default committed before the commencement of this Part.

(5) Subject to this Part, the amount which any claimant is entitled to claim as compensation from the compensation fund is the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and incidental to the making and proving of his claim) less the amount or value of money or other benefits received or receivable by him in reduction of the loss from any source other than the compensation fund.

(6) In addition to any compensation payable under this Part, interest shall be payable out of the compensation fund on the amount of the compensation, less any amount attributable to costs and disbursements, at such rate as may be determined by the Commission from time to time, which shall be calculated from the

day on which the default was committed and continue until the day on which the claim is satisfied.

(7) For the purposes of this section—

- (a) “stockbroker” includes a person who has been, but, at the time of any default mentioned in subsection (1), had ceased to be, a member of a stock exchange if, at the time when the claimant entered into the transaction or course of dealing giving rise to the claim, the claimant had reasonable grounds for believing that person to be a member of the exchange;
- (b) “member firm” includes a firm which has been, but, at the time of any default mentioned in subsection (1), had ceased to be, a member firm of a stock exchange if, at the time at which the claimant entered into the transaction or course of dealing giving rise to the claim, the person claiming compensation had reasonable grounds for believing that firm to be a member firm of a stock exchange;
- (c) “corporate member” includes a corporation which has been, but, at the time of any default mentioned in subsection (1), had ceased to be, a corporate member of a stock exchange if, at the time when the claimant entered into the transaction or other course of dealing giving rise to the claim, the claimant had reasonable grounds for believing that corporation to be a corporate member of a stock exchange.

110. (1) If, after consultation with the Council of the Federation and after taking into account all ascertained or contingent liabilities of the compensation fund, the Commission considers that the assets of the fund so permit, it may by notice published in the *Gazette* increase the total amount which may be claimed from the fund under section 109; and from the date of that publication, until the notice is revoked or varied, the amount specified in the notice shall be the maximum amount that may be claimed under that section.

(2) A notice under subsection (1) may be varied or revoked by the Commission by notice published in the *Gazette*.

111. (1) Notwithstanding anything to the contrary in this Part, where all persons submitting claims under section 109 have been fully compensated in accordance with the provisions of this Part for the loss sustained by them as a result of the failure of

Powers of  
Commission  
to increase  
payments  
made in  
respect of  
claims.

Rights of  
innocent  
partner etc.  
in relation  
to the fund.

a partner of a member firm or a director of a corporate member to perform a legal obligation, any other partner of that firm who has made payment to any person in compensation for loss sustained by him as a result of that failure or, where a corporate member or director of a corporate member has made such a payment, that corporate member, or director, shall be subrogated to the extent of that payment to all the rights and remedies of that person against the compensation fund if the Council of the Federation considers, having regard to all the circumstances, that he—

- (a) was in no way party to the default which resulted in the failure to perform that obligation; and
- (b) acted honestly and reasonably in the matter.

(2) If any partner of the firm, or any corporate member or director of a corporate member, is aggrieved by the decision of the Council of the Federation under subsection (1), he or it may, within 28 days after receipt of notice of the decision, appeal to the Commission against the decision.

(3) An appellant shall, on the same day as lodging a notice of appeal with the Commission, lodge a copy of the notice with the Council of the Federation.

(4) The Commission shall inquire into and decide on the appeal and, if the Commission considers having regard to all the circumstances that the appellant—

- (a) was in no way a party to the default in question; and
- (b) acted honestly and reasonably in the matter.

it may direct that the appellant shall, to the extent of any payment made by him, be subrogated to all the rights and remedies in relation to the compensation fund of the person to whom he or it has made payment in compensation.

**112.** (1) The Council of the Federation may cause to be published in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after publication of the notice, on or before which claims for compensation from the compensation fund may be made in relation to the person specified in the notice.

(2) Where any person wishes to claim compensation under this Part, he shall lodge his claim in writing with the Council of the Federation—

- (a) if a notice under subsection (1) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after the claimant became aware of the default giving rise to the claim.

(3) Any claim which is not made within the time limited by subsection (2) shall, unless the Council of the Federation otherwise determines, be barred.

(4) An action for damages shall not lie against the Federation or against any member or employee of the Federation or against any member of the Council of the Federation by reason of any notice published for the purposes of this section in good faith and without malice.

**113.** (1) Where the Council of the Federation is satisfied that a claim made under section 109 is a proper claim, it shall, subject to this Part, make a determination allowing the claim.

(2) If the Council is not satisfied as to the propriety of a claim under section 109, it shall make a determination disallowing the claim or, if it is satisfied only as to the propriety of part of such a claim, it shall make a determination allowing the claim as to that part.

(3) Where the Council of the Federation makes a determination under subsection (1) or subsection (2), it shall forthwith serve notice of its determination in writing on the claimant or on his solicitor and deliver a copy of the notice to the Commission.

(4) If the Council of the Federation disallows or only partially allows a claim against the compensation fund, the determination of the Council shall specify the reasons for the disallowance or, as the case may be, partial allowance.

(5) If, in the case of any particular claim, after taking into account all ascertained and contingent liabilities of the compensation fund, the Council of the Federation considers that the assets of the fund so permit, it may, with the prior approval of the Commission, allow in respect of a claim which is in excess of the total amount limited by or under section 109 such additional sum in or towards the compensation of the claimant as it thinks fit.

(6) The receipt of a copy of a notice under subsection (3) notifying the allowance or partial allowance of a claim is sufficient authority for the Commission to pay to the claimant the amount allowed under this section.

Power of the Council of Federation in respect of claims.

Notice calling for claims against the fund.

Council of Federation may require production of securities, etc.

**114.** (1) The Council of the Federation may at any time require any person to produce any securities, documents, or statements of evidence necessary—

- (a) in order to substantiate any claim made against the compensation fund; or
- (b) for the purpose either of exercising its rights against a stockbroker, or against a member firm or corporate member of a stock exchange, or against any other person concerned; or
- (c) for the purpose of enabling criminal proceedings to be brought against any person in respect of a default, being a default which is or involves the commission of a criminal offence.

(2) Where any claimant required to produce any securities, documents, or statements of evidence under subsection (1) fails to produce them the Council of the Federation may, if it is satisfied that securities, documents, or statements are in the possession of, or available to, the claimant, refuse to allow the claimant's claim until such time as he produces them.

Court proceedings to establish a claim against the fund.

**115.** (1) Subject to subsection (2), a person whose claim has been disallowed, or only partially allowed, under section 113 may, at any time after the service under that section of the notice notifying the disallowance or partial allowance, commence proceedings against the Federation to establish his claim against the compensation fund.

(2) Except with leave of the Court, no proceedings against the Federation in respect of a claim which has been disallowed, or only partially allowed, under section 113 may be commenced after the expiration of 3 months after the service of the notice under subsection (3) of that section.

(3) Any proceedings brought against the Federation to establish a claim against the compensation fund shall be by action as for a debt due from the Federation.

Supplementary provisions relating to proceedings brought under section 115.

**116.** In any proceedings brought under section 115,—

- (a) all defences that would have been available to the person or persons in relation to whom the claim arose shall be available to the Federation;
- (b) all questions as to costs shall be in the discretion of the Court; and

- (c) evidence which would be admissible against the stockbroker or any other person by whom it is alleged a default was committed is admissible to prove the commission of the default, notwithstanding that the stockbroker or other person is not the defendant in or a party to those proceedings.

**117.** Where, in any proceedings brought against the Federation to establish a claim against the compensation fund, the Court is satisfied that the default on which the claim is founded was actually committed and that the claimant otherwise has a valid claim, the Court shall by order—

Form of court order establishing claim.

- (a) allow the amount of the claim or such part of the claim as it thinks proper;
- (b) declare the fact and date of the default and the amount allowed under paragraph (a); and
- (c) direct the Commission to pay to the claimant the amount declared under paragraph (b).

**118.** On the Commission making any payment out of the compensation fund in respect of any claim under this Part,—

Subrogation of the Commission to rights, etc., of claimant on payment from fund.

- (a) the Commission shall be subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss sustained by him by reason of the default on which the claim was based; and
- (b) the claimant shall have no right under bankruptcy or legal proceedings or otherwise to receive in respect of the loss any sum out of the assets of the stockbroker, member firm, or corporate member concerned, or where the loss was caused by the defalcation, fraud, or misfeasance of a servant of a stockbroker, member firm, or corporate member, the assets of that servant, until the Commission has been reimbursed the full amount of its payment.

**119.** No money or other property belonging to the Commission or to the Federation or to a stock exchange, other than the compensation fund, shall be available for the payment of any claim under this Part, whether the claim is allowed by the Council of the Federation or is made the subject of an order of the Court or otherwise.

Payment of claims only from the fund.

Provision where fund is insufficient to meet claims or where claims exceed total amount payable.

120. (1) Where the amount at credit in the compensation fund is insufficient to enable the payment of the whole amount of all claims against it which have been allowed or in respect of which orders have been made, then the amount at credit shall, subject to subsection (2), be apportioned between the claimants in such manner as the Council of the Federation or, as the case may be, the Court thinks equitable; and any such claim, so far as it remains unpaid, shall be charged against further receipts of the fund and paid out of the fund when there is again money available in the fund.

(2) Where the aggregate of all claims against the compensation fund which have been allowed, or in respect of which orders of the Court have been made, in relation to the default giving rise to the claims exceeds the total amount which may be paid under this Part in respect of the stockbroker or stockbrokers concerned in the default, that total amount shall be apportioned between the claimants in such manner as the Council of the Federation or, as the case may be, the Court thinks equitable; and, on payment out of the fund of that total amount in accordance with that apportionment—

- (a) all such claims and any order of the Court relating to them; and
- (b) all other claims which may subsequently arise or be made in connexion with the default,

shall be absolutely discharged.

121. In the event of a stock exchange being wound up under the Companies Ordinance, the Commission may, in its absolute discretion, after the satisfaction of all outstanding liabilities against the compensation fund, pay to the liquidator of the exchange the whole or any part of the amounts contributed by the exchange under this Part, together with any income accrued in respect thereof; and on any such payment being made those amounts shall form part of the assets of the exchange and be available to the liquidator for distribution in accordance with the Companies Ordinance.

## PART XI

### INSPECTIONS AND INVESTIGATIONS

#### *Inspections*

Inspection of books, etc. of registered persons and others.

122. (1) For the purpose of ascertaining whether a person who is, or at any time has been, a registered dealer, an exempt dealer, a registered investment adviser, or a registered representative is complying or has complied with the provisions of this

Ordinance that are applicable to him in that capacity, and, in the case of a person who is or was a registered person, the conditions' or restrictions (if any) subject to which his certificate of registration was issued, the Commissioner may inspect and make copies of or take extracts from any—

- (a) register or document required by this Ordinance, or, in the case of a person who is or was registered under this Ordinance, by the conditions and restrictions to which the certificate is or has been subject, to be kept by that person; and
- (b) banker's books, and the books of any dealer or exempt dealer, in so far as they relate to the business carried on by the first-mentioned person in his capacity as a registered dealer, an exempt dealer, a registered investment adviser, or a registered representative.

(2) For the purpose of enabling the Commissioner to exercise his powers under subsection (1) the Commissioner may require any person whom he has reason to believe to be in possession of any register, document, or books mentioned in that subsection to produce to him that register or document or, as the case may be, those books.

(3) The Commissioner shall not, except for the purposes of this Ordinance or in the course of criminal proceedings, make a record of, or disclose to another person, any information that he acquires by reason of the making of an inspection under this section.

(4) If the Commissioner contravenes subsection (3), he shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000.

(5) It is not a contravention of subsection (3) to communicate information to the holder of a prescribed office.

(6) In this section, "prescribed office" means a public office that is prescribed by regulations for the purposes of this section.

123. (1) The Commissioner may require—

- (a) a registered dealer;
- (b) an exempt dealer;
- (c) an authorized trustee company registered under Part VIII of the Trustee Ordinance; or

Books, etc. to be produced on demand of Commissioner.

(Cap. 29.)

- (d) a person whom the Commissioner reasonably believes to have bought or sold securities as trustee or nominee for another person,

to disclose to him, in relation to any purchase or sale of securities, the name of the person from or to or through whom or on whose behalf the securities were bought or sold and the nature of the instructions given to a person referred to in paragraphs (a) to (d) in respect of the purchase or sale.

(2) Any person who contravenes any requirement made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 and to imprisonment for 3 months.

Investigation of certain matters.

**124.** Where the Commissioner has reason to suspect that a person has contravened a provision of this Ordinance or has been guilty of fraud or of an offence against any other law with respect to trading or dealing in securities, the Commissioner may make such investigation as he thinks expedient for the due administration of this Ordinance.

Seizure of documents and articles believed to relate to a contravention of Part VIII or Part XII.

**125.** (1) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that, at premises that are specified in the information, a person is in possession of any document or article which relates to an offence alleged to have been committed against Part VIII or Part XII, the magistrate may grant a warrant empowering the Commissioner or any police officer—

- (a) to enter the premises, if necessary by force, at any time within one month from the date of the warrant; and  
(b) to search for, seize, and remove any document or article which the Commissioner or police officer has reasonable grounds for believing to be evidence of the alleged offence.

(2) Any document or article seized under subsection (1) may be retained for a period of 6 months from the date of seizure or, if within that period any proceedings in respect of an offence against Part VIII or Part XII are commenced and the document or article is relevant to those proceedings, until the conclusion of those proceedings.

(3) Notwithstanding subsection (2), a document or article seized under subsection (1) may be retained for a period longer than 6 months if the person entitled to it is not in Hong Kong

or his whereabouts are unknown; and if that person subsequently returns to Hong Kong or his whereabouts subsequently become known and, within 14 days of that return or the discovery of his whereabouts, any proceedings in respect of an offence against Part VIII or Part XII are commenced against him, and the document or article is relevant to those proceedings, the document or article may be retained until the conclusion of those proceedings.

(4) A person from whom a document has been seized under subsection (1) shall, unless the document is already the subject of an order made under subsection (5), be entitled at all reasonable times to inspect and to take copies of or extracts from the document.

(5) Where any person is convicted of an offence against Part VIII or Part XII, the court may make an order authorizing the destruction, or the disposal in any other specified manner, of any documents or articles produced to the court which are shown to its satisfaction to be connected with the commission of the offence; but an order under this subsection may not authorize the destruction or disposal of a document or article before the conclusion of the proceedings to which the order relates.

(6) Subject to subsections (2) to (5), section 102 of the Criminal Procedure Ordinance (which makes provision for the disposal of property connected with offences) shall apply to property which has come into the possession of the Commissioner under this section in the same way as it applies to property which has come into the possession of the police.

(Cap. 221.)

### Investigations

**126.** In sections 127 to 134, unless the context otherwise requires—

“inspector” means an inspector appointed under section 127(1);

“investigation” means an investigation made under section 127 by an inspector;

“prescribed person” means a person suspected or believed by an inspector, on reasonable grounds, to be capable of giving information concerning any matter to be investigated by the inspector.

Interpretation for the purposes of sections 127 to 134.

127. (1) Where it appears to the Commission that—

- (a) it is desirable for the protection of the public, or of holders of securities; or
- (b) it is in the public interest because fraud or misfeasance or other misconduct by a person who has dealt in securities or given investment advice is alleged,

to appoint an inspector to investigate any matters concerning dealing in securities or the giving of investment advice, the Commission may, by instrument in writing, appoint a person as an inspector to investigate those matters and to report on them in such manner as the Commission directs.

(2) The Commission shall, in an instrument appointing an inspector, specify full particulars of the appointment including—

- (a) the matters into which the investigation is to be made; and
- (b) the terms and conditions of the appointment including terms and conditions relating to remuneration.

(3) An inspector may require a prescribed person by notice in the form prescribed by regulations given in the manner as prescribed—

- (a) to produce to the inspector such documents relating to a matter with which his investigation is concerned as are in the custody or under the control of that person;
- (b) to give to the inspector all reasonable assistance in connexion with the investigation; and

(c) to appear before the inspector for examination on oath, and may administer the oath referred to in paragraph (c).

(4) Where documents are produced to an inspector under this section the inspector may take possession of them for such period as he considers necessary for the purposes of his investigation, and during that period he shall permit a person who would be entitled to inspect any one or more of those documents if they were not in the possession of the inspector to inspect at all reasonable times such of them as that person would be so entitled to inspect.

(5) A prescribed person—

- (a) shall comply with a requirement of an inspector under subsection (3);

(b) shall not knowingly furnish to the inspector, whether on examination in pursuance of such requirement or otherwise, information that is false or misleading in a material particular; or

(c) when appearing before an inspector for examination in pursuance of such a requirement, shall take an oath in accordance with the requirement.

(6) Any person who, without reasonable excuse, contravenes any of the provisions of subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

(7) A solicitor or counsel acting for a prescribed person—

- (a) may attend an examination of that person; and
- (b) may, to the extent that the inspector permits—
  - (i) address the inspector; and
  - (ii) examine that person,

in relation to matters in respect of which the inspector has questioned that person.

(8) A prescribed person is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where that person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (6) or in relation to a charge of perjury in respect of the answer.

(9) A person who complies with the requirement of an inspector under subsection (3) shall not incur any liability to any person by reason only of that compliance.

(10) A person required to attend for examination under this section is entitled to such allowances and expenses as may be prescribed by regulations.

(11) Where a prescribed person fails to comply with a requirement of an inspector under subsection (3), the inspector may, unless that person proves that he had a lawful authority for his failure, certify the failure by writing under his hand to the Court.

(12) Where an inspector gives a certificate under subsection (11), the Court may inquire into the case and—

- (a) order the prescribed person to whom the certificate relates to comply with the requirement of the inspector within such period as is fixed by the Court; or
- (b) if the Court is satisfied that that person failed without lawful authority to comply with the requirement of the inspector, punish him in the same manner as if he had been guilty of contempt of court.

Notes of  
examination.

128. (1) An inspector may cause notes of an examination made by him under this Part to be recorded in writing and be read to or by the person examined and may require that person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in any legal proceedings against that person.

(2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him in writing.

(3) Notes made under this section that relate to a question the answer to which a person has claimed might tend to incriminate him shall not be used as evidence in criminal proceedings other than proceedings under section 127(6) or in relation to a charge of perjury in respect of the answer.

(4) Nothing in this section affects or limits the admissibility of other written evidence or of oral evidence.

(5) The Commission may give a copy of notes made under this section to a solicitor or counsel who satisfies the Commission that he is acting for a person who is conducting or is, in good faith, contemplating legal proceedings in respect of matters required to be investigated by the inspector, being affairs investigated by an inspector under this Part.

(6) A solicitor or counsel to whom a copy of notes is given under subsection (5) shall not use the notes except in connexion with the institution or preparation of, and in the course of, legal proceedings and shall not disclose for any other purpose the notes or any part of the contents of them to any person.

(7) Any solicitor or counsel who contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000.

(8) Where a report is made under section 130 any notes recorded under this section relating to that report shall be furnished with the report.

129. (1) An inspector may by instrument in writing—

- (a) delegate all or any of his powers or functions under this Part except this power of delegation, the power to administer an oath, and the power to examine on oath; and
- (b) vary or revoke a delegation given by him.

(2) A power or function delegated by an inspector may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(3) A delegate shall, at the request of a prescribed person, produce the instrument of delegation for inspection.

(4) A delegation under this section by an inspector of a power or function does not prevent the exercise of the power or the performance of the function by the inspector.

130. (1) On completion of an investigation under section 127, the inspector shall report his findings to the Commission and shall deliver a copy of the report to the Attorney General.

(2) Subject to subsection (3), the Commission shall give a copy of the inspector's report to the prescribed person whose affairs were investigated by the inspector.

(3) Subject to subsection (4), the Commission shall not give a report to a prescribed person if the Attorney General believes that legal proceedings that have been, or that in its opinion might be, instituted might be prejudiced by the report.

(4) The court before which legal proceedings are brought against a prescribed person for or in respect of matters dealt with in a report under this section may order that a copy of the report be given to that person.

(5) The Commission may, if it 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 printed and published.

(6) If, from a report under this section, it appears to the Attorney General that an offence may have been committed by a person and that a prosecution ought to be instituted, the Attorney General shall cause a prosecution to be instituted.

(7) Where it appears to the Attorney General that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of a prosecution in accordance with

Delegation  
of powers,  
etc., by  
inspector.

Report of  
inspector.

subsection (6), require a prescribed person to give all assistance in connexion with prosecution that he is reasonably able to give.

(8) If from a report under this section it appears to the Commission or to the Attorney General that proceedings ought in the public interest to be brought by a prescribed person for the recovery of damages in respect of fraud, misfeasance, or other misconduct in connexion with the affairs of the prescribed person or for the recovery of property of the prescribed person, either the Commission or the Attorney General may cause proceedings to be instituted accordingly in the name of the prescribed person.

Privileged  
communications.

**131.** (1) An inspector shall not require disclosure by a solicitor or counsel of any privileged communication, whether oral or written, made to or by him in that capacity, except as regards the name and address of his client.

(Cap. 112.)

(2) Nothing in sections 127 to 130 shall be construed as affecting section 4 of the Inland Revenue Ordinance.

Cost of in-  
vestigation.

**132.** (1) Subject to this section, the expenses of and incidental to an investigation by an inspector (including the expenses incurred and payable by the Commission in any proceedings brought by it in the name of a prescribed person) shall be paid out of money provided by the Legislative Council.

(2) An application referred to in subsection (3) may be made to a court by or on behalf of—

- (a) the Commission or the Attorney General in the course of proceedings in that court instituted in the name of a prescribed person under section 130(8); or
- (b) the Attorney General on, or within 14 days after, a conviction by the court in proceedings certified by the Attorney General, for the purposes of the application, to have been instituted as a result of an investigation by an inspector;

and the court may make such order with respect to the application and its subject matter as it thinks fit.

(3) The application that may be made under subsection (2) is an application for one or more of the following orders—

- (a) that a specified person pay the whole, or a specified part of, the expenses of and incidental to, the investigation that led to the proceedings;

(b) where expenses have been paid under subsection (1), that a specified person reimburse the Commission to the extent of the payment;

(c) that a specified person reimburse the Commission in respect of the remuneration of any person employed by the Commission in connexion with the investigation.

(4) If no proceedings under section 130(6) are commenced against a prescribed person, or, where the prescribed person is a corporation, against any director of the corporation, within 6 months after the completion of an investigation by an inspector, the prescribed person may apply to a court for an order for the payment of costs incurred by him in connexion with the investigation; and the court may, if it finds that the investigation was not warranted, order the Commission to pay to the prescribed person such sum, not exceeding the amount of costs actually incurred by the prescribed person in respect of the investigation, as it thinks just.

(5) A copy of an application made under subsection (4) shall be served on the Commission and the Commission shall be entitled to be heard at the proceedings to determine the application.

**133.** (1) A person who—

- (a) conceals, destroys, mutilates, or alters a document relating to a matter which is the subject of an investigation by an inspector;
- (b) sends, causes to be sent, or conspires with another person to send, out of Hong Kong any such document; or
- (c) being a prescribed person to whom notice has been given under section 127(3), leaves Hong Kong,

Concealing,  
etc., of  
books relat-  
ing to  
securities.

shall be guilty of an offence and shall be liable on conviction to a fine of \$20,000 and to imprisonment for 2 years.

(2) It shall be a defence to a prosecution under subsection (1) to prove that the person charged did not act with intent to defeat the purposes of section 127 or to delay or obstruct the carrying out of an investigation under that section.

**134.** (1) Where an investigation is being made under section 127 and it appears to the Commission that facts concerning securities to which the investigation relates cannot be ascertained because a prescribed person referred to in that section has failed or refused to comply with a requirement of an inspector under

Commission  
may make  
certain  
orders.

that section, the Commission may, by order published in the *Gazette*, make one or more of the following orders—

- (a) an order restraining a specified person from disposing of any interest in specified securities;
- (b) an order restraining a specified person from acquiring specified securities;
- (c) an order restraining the exercise of any voting or other rights attached to specified securities;
- (d) an order directing a person who is registered as the holder of securities in respect of which an order under this section is in force to give notice in writing of that order to any person whom he knows to be entitled to exercise a right to vote attached to those shares;
- (e) an order directing a company not to make payment, except in the course of a winding up by the Court, of any sum due from the company in respect of specified securities;
- (f) an order directing a company not to register the transfer or transmission of specified securities;
- (g) an order directing a company not to issue shares to a person who holds shares in the company by reason of his holding those shares nor in pursuance of an offer made to such a person by reason of his holding those shares.

(2) A copy of an order under subsection (1) and of any order by which it is revoked or altered shall be served—

- (a) where it relates to specified securities, on the authority or body that issued them or made them available or, where the securities are rights or options, on the authority or body against whom the right is, or would be enforceable, or which issued or made available the securities to which the option relates; and
- (b) where it relates to a corporation, on the corporation.

(3) A person aggrieved by an order under subsection (1) may apply to the Court for revocation of the order and the Court may, if it is satisfied that it is reasonable to do so, revoke the order and any order by which it has been altered or varied.

(4) Any person who contravenes an order under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

(5) Without prejudice to the powers of the Attorney General in relation to the prosecution of criminal offences, a prosecution under this section shall not be instituted except with the consent in writing of the Commission.

## PART XII

### PREVENTION OF IMPROPER TRADING PRACTICES

#### *Offences*

**135.** (1) A person shall not intentionally create or cause to be created, or do anything with the intention of creating—

False markets and trading.

- (a) a false or misleading appearance of active trading in any securities on any stock market in Hong Kong; or
- (b) a false market in respect of any securities on any such stock market.

(2) For the purposes of subsection (1)(b), a false market is created in relation to securities when the market price of those securities is raised or depressed or pegged or stabilized by means of—

- (a) sales and purchases transacted by persons acting in collaboration with each other for the purpose of securing a market price for those securities that is not justified either by the assets of the corporation which issued the securities or by the profits (including anticipated profits) of the corporation;
- (b) any act which has the effect of preventing or inhibiting the free negotiation of market prices for the purchase or sale of the securities; or
- (c) the employment of any fictitious transaction or device or any other form of deception or contrivance.

(3) A person shall not with the intention of depressing, raising, or causing fluctuations in the market price of any securities effect any purchase or sale of any such securities which involves no change in the beneficial ownership of those securities.

(4) A purchase or sale of securities involves no change in beneficial ownership within the meaning of subsection (1) if a person who held an interest in the securities before the purchase or sale, or a person associated with him in relation to those

securities, holds an interest in the securities after the purchase or sale.

(5) A person shall not circulate or disseminate, or authorize or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities will or is likely to rise or fall because of the market operations of one or more persons which, to his knowledge, are conducted in contravention of subsection (1).

Employment of fraudulent or deceptive devices etc.

**136.** A person shall not, directly or indirectly, in connexion with any transaction with any other person involving the purchase, sale, or exchange of securities—

- (a) employ any device, scheme, or artifice to defraud that other person; or
- (b) engage in any act, practice, or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person.

Restrictions on fixing, etc. prices for securities.

**137.** A person shall not, either alone or with one or more other persons, effect any series of transactions for the purchase or sale of securities, or the purchase and sale, of any securities for the purpose of pegging or stabilizing the price of securities of that class in contravention of any regulations made for the purposes of this section.

False or misleading statements about securities.

**138.** A person shall not, directly or indirectly, for the purposes of inducing the sale of the securities of any corporation, make with respect to those securities, or with respect to the operations or the past or future performance of the corporation—

- (a) any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading with respect to any material fact and which he knows or has reasonable ground to believe to be false or misleading; or
- (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which he knows or has reasonable grounds for knowing is rendered false or misleading by reason of the omission of that fact.

Offences and penalty in relation to sections 135 to 138.

**139.** Any person who contravenes any of the provisions of section 135, section 136, section 137, or section 138 shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$50,000 and to imprisonment for 2 years.

**140.** (1) Where a person, through his association with a corporation, has knowledge of specific information relating to the operations or the securities of the corporation and that information has not been generally made available, whether by public announcement, circular, or otherwise, but, if it had been, might reasonably be expected to have materially affected the market price of the securities of the corporation, he shall not—

Insider trading.

- (a) deal directly or indirectly in those securities in Hong Kong if by so doing he gains an advantage, whether by making a profit or avoiding a loss, for himself or for another person; or
- (b) disclose that information to another person for the purpose of enabling that other person to use the information to deal in Hong Kong directly or indirectly in those securities and thereby gain an advantage, whether by making a profit or avoiding a loss, for himself or for another person.

(2) Where a person, through his association with a corporation, has knowledge of specific information relating to the operations or securities of any other corporation which—

- (a) has not been generally made available, whether by public announcement, circular, or otherwise, but, if it had been, might reasonably be expected to have materially affected the market price of those securities; and
- (b) relates to any transaction (whether executory or anticipated) involving both of those corporations or involving one of them and the securities of the other,

he shall not deal in those securities in Hong Kong if by so doing he gains an advantage, whether by making a profit or avoiding a loss, for himself or another person, nor shall he disclose that information to another person for the purpose of enabling that other person to use the information to deal in Hong Kong directly or indirectly in those securities and thereby gain an advantage, whether by making a profit or avoiding a loss, for that other person or another.

(3) Where a person obtains, whether directly or indirectly, knowledge of specific information relating to the operations or securities of a corporation from or through a person whom he knows, or has reasonable grounds for believing, to have an association with the corporation and that information has not been generally made available, whether by public announcement, or

otherwise, but, if it had been, might reasonably be expected to have materially affected the market price of the securities of the corporation, the first-mentioned person shall not deal directly or indirectly in those securities in Hong Kong if by so doing he gains an advantage, whether by making a profit or avoiding a loss, for himself or another person.

(4) Where subsection (1), subsection (2), or subsection (3), has been contravened and an advantage referred to in either of those subsections is gained from a dealing in securities to which the contravention relates, a person who gained the advantage shall, whether or not a person has been prosecuted for or convicted in respect of the contravention, be—

- (a) liable to any other person for the amount of any loss incurred by that other person by reason of the gaining of the advantage; and
- (b) liable to the corporation which issued those securities for any profit accrued to the first-mentioned person as a result of the gaining of that advantage.

(5) Where a loss or profit referred to in subsection (4) is incurred by reason of an advantage gained from a dealing in securities, the amount of the loss or profit is the difference between—

- (a) the price at which the dealing was effected; and
- (b) the price at which, in the opinion of the court before which it is sought to recover the amount of the loss or profit, the dealing would have been effected at the time when it was effected if the specific information used to gain that advantage had been generally known at that time.

(6) For the purposes of subsection (4)(b), a profit shall be deemed not to have accrued where the price referred to in subsection (5)(b) is lower than the price referred to in subsection (5)(a).

(7) The Commissioner may, if he considers it to be in the public interest to do so, bring an action in the name of and for the benefit of the corporation or other person for recovery of a loss or profit referred to in subsection (4).

(8) An action to recover a loss or profit referred to in subsection (4) may not be brought after—

- (a) the expiration of the period of 2 years following the dealing in securities to which the action relates; or
- (b) the expiration of the period of 12 months following the discovery of the relevant facts by the person who suffered the loss or seeks to recover the profit,

whichever first occurs.

(9) For the purposes of subsections (1) to (3), a person is associated with a corporation—

- (a) if, in the case of a corporation, he is—
  - (i) a director or secretary or former director or secretary;
  - (ii) an officer who is or has been concerned in the management; or
  - (iii) an employee,

of the corporation or a corporation deemed by section 4 to be related to it;

- (b) if he acts, or has acted, in the capacity of banker, solicitor, auditor, consultant, or professional adviser, or in any other capacity (whether similar to any of the foregoing capacities or not), for or to the corporation;
- (c) if he has a beneficial interest in any shares in the corporation and the aggregate of the nominal amounts of those shares is not less than one-tenth of the aggregate of the nominal amounts of all the issued shares of the corporation;
- (d) where the person who has such an association with a corporation as is referred to in paragraph (b) or paragraph (c) is a corporation, if he is a director, manager, or secretary of the corporation; or
- (e) if he is an employee of a person to whom paragraph (b) relates.

(10) Subject to subsection (11), any person who contravenes subsection (1), subsection (2), or subsection (3) shall be guilty of an offence, and shall be liable on conviction on indictment to a fine of \$50,000 and to imprisonment for 2 years.

(11) This section does not prohibit a person from dealing in any securities if—

- (a) his sole purpose is the acquisition of qualification shares required by him as a director or intending director of a corporation;

- (b) he enters into the dealing as agent for another person and has neither selected nor advised on the selection of the securities to which the dealing relates;
  - (c) he enters into the dealing in good faith in the performance of an underwriting agreement with respect to the securities to which the dealing relates;
  - (d) he enters into the dealing in good faith in the exercise of his functions as trustee of a pension fund established wholly or primarily for the benefit of employees of the corporation to whose securities the dealing relates or of a corporation deemed by section 4 to be a related corporation; or
  - (e) he enters into the dealing in good faith in the exercise of his functions as a personal representative, liquidator, receiver, or trustee in bankruptcy.
- (12) No dealing shall be void or voidable by reason only that it was entered into in contravention of this section.

#### *Action in Tort*

**141.** (1) A person who contravenes section 135, section 136, section 137, or section 138 shall, in addition to any liability under section 139, be liable to pay compensation by way of damages to any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the contravention.

(2) An action may be brought under subsection (1) in respect of a contravention referred to in that subsection notwithstanding that no person has been charged or convicted under section 139 in respect of the contravention.

(3) Nothing in this section limits or diminishes any liability which any person may incur under the common law.

### PART XIII

#### MISCELLANEOUS PROVISIONS

- 142.** (1) A person who is not a stockbroker shall not—
- (a) take or use the title "stockbroker"; or
  - (b) take or use, or have attached to or exhibited at any place, any title that resembles the title "stockbroker"

Restriction on use of title "stockbroker", "underwriter", etc.

or so closely resembles that title as to be calculated to deceive.

(2) A person who is not an underwriter shall not—

- (a) take or use the title "underwriter"; or
- (b) take or use, or have attached to or exhibited at any place, any title that resembles the title "underwriter" or so closely resembles that title as to be calculated to deceive.

(3) Any person who contravenes subsection (1) or subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

(4) A person who is a member of a stock exchange outside Hong Kong does not contravene subsection (1) by reason only of—

- (a) taking or using the title "stockbroker"; or
- (b) taking or using, or having attached to or exhibited at any place in Hong Kong, any title that resembles the title "stockbroker",

if in any such case the name of the stock exchange and the place at which it is located is quoted in conjunction with the title "stockbroker".

(5) A person who carries on a business as an insurance underwriter does not contravene subsection (2) by reason only that he takes or uses the title "underwriter" in circumstances that make it clear that he is not holding himself out as being an underwriter within the meaning of section 2.

**143.** (1) No investment adviser shall enter into an investment advisory contract with any person in Hong Kong (in this section referred to as his client), or extend or renew any such contract, or in any way perform any such investment advisory contract entered into, extended, or renewed after the commencement of this section, if the contract—

Investment advisory contracts.

- (a) provides for remuneration to be paid by the client to the investment adviser on the basis of a share of capital gains of the funds or any part of the funds of the client;
- (b) does not include a provision to the effect that an assignment of the contract by the investment adviser shall be made only with the consent of the client; or

(c) does not include a provision to the effect that the investment adviser—

(i) if a firm, will notify the client of any change in the partner of the firm; or

(ii) if a corporation, will notify the client of any change in the directors of the corporation, within a reasonable time after the change.

(2) Subsection (1)(a) does not—

(a) prohibit an investment advisory contract which provides for remuneration based on the total value of a fund averaged over a definite period, or on definite dates, or taken on a definite date; or

(b) apply to an investment advisory contract with the manager or other representative of a unit trust or mutual fund corporation authorized by the Commission for the purposes of this Ordinance, or a company carrying on business as an investment company and registered under the Companies Ordinance, which contract provides for remuneration based on the asset value of the trust, corporation, or company under management averaged over a specified period and increasing and decreasing proportionately in accordance with the performance of the trust, corporation, or company over a specified period in relation either to—

(i) the investment record of an appropriate index of securities; or

(ii) such other measure of investment performance as the Commission may specify in writing on the application of either party to a contract or intended contract.

(3) For the purposes of subsection (1)(b) and (c), "investment advisory contract" means a contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of a client, not being a unit trust or mutual fund corporation authorized by the Commission for the purposes of this Ordinance, or a company carrying on business as an investment company and registered under the Companies Ordinance.

(4) Any investment adviser who knowingly enters into any contract in contravention of any of the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000.

(Cap. 32.)

(5) Any contract entered into in contravention of any of the provisions of subsection (1) shall, notwithstanding anything in the contract, be voidable at the option of the client.

144. (1) Where, on the application of the Commissioner, it appears to the Court that a person has contravened this Ordinance or any conditions of registration thereunder, or is about to do an act with respect to dealing in securities that, if done, would be such a contravention, the Court may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders—

Court may make certain orders.

(a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities specified in the order;

(b) in relation to a registered dealer, an order appointing a person to administer the property of the dealer;

(c) an order declaring a contract relating to securities to be void or voidable;

(d) 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; or

(e) any ancillary order which it considers necessary in consequence of the making of an order under paragraphs (a) to (d).

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

(3) The Court may, before making an order under subsection (1), direct that notice of the application 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.

(4) The Court may reverse, vary, or discharge an order made by it under this section or suspend the operation of such an order.

145. Any person who—

(a) obstructs the Commissioner or any other public officer or any person in the exercise or performance of any power, authority, duty, or function under this Ordinance; or

Miscellaneous offences.

- (b) fails to produce any document that the Commissioner or a person authorized by the Commissioner has, pursuant to any provision of this Ordinance, required that person to produce for inspection by the Commissioner or the person so authorized,

shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 and to imprisonment for 3 months.

Regulations.

**146.** (1) The Governor in Council may, after consultation with the Commission, make regulations for all or any of the following matters—

- (a) the conduct of business by registered dealers, registered investment advisers, registered dealers' representatives, and registered investment representatives;
- (b) matters incidental to the registration of dealers, investment advisers, dealers' representatives, and investment representatives under this Ordinance;
- (c) the class of persons in relation to whom, and the manner and circumstances in which, registered dealers and registered dealers' representatives may deal in securities;
- (d) the class of persons in relation to whom, and the manner and circumstances in which, registered investment advisers and registered investment representatives may carry on business as investment advisers or as investment representatives, as the case may be;
- (e) prescribing the amount of deposit required to be made for the purposes of section 52, and providing for the application of deposits under subsections (3) and (4) of that section;
- (f) requiring dealers and registered investment advisers to exhibit their certificates of registration at their places of business;
- (g) prescribing the information to be notified for the purposes of section 63(1)(b);
- (h) prescribing the particulars to be recorded in relation to registered dealers, registered investment advisers, registered dealers' representatives, and registered investment representatives, under section 64;
- (i) empowering the Commissioner to correct any errors in any register kept under this Ordinance;

- (j) empowering the Commissioner, on payment of the prescribed fee (if any), to issue duplicate certificates of registration in the event of loss or destruction of the original certificate or of any duplicate certificate;
- (k) prescribing the manner, time, or circumstances for retaining copies of circulars for the purposes of section 79(5);
- (l) prescribing the particulars to be recorded in relation to accounts kept under section 84;
- (m) prescribing the information to be contained in auditor's reports required to be lodged under section 88;
- (n) providing for the remuneration of an auditor appointed under section 89, and for the costs of an audit carried out under that section;
- (o) prescribing forms for the purposes of this Ordinance, and prescribing the manner in which applications are to be made for registration under Part VI;
- (p) prescribing fees and charges to be paid in respect of any matter or thing required for the purposes of this Ordinance;
- (q) prescribing public offices for the purposes of sections 19 and 122;
- (r) prescribing the procedure for the holding of investigations under Part XI, and providing for the reception of evidence, whether written or oral, and for the summoning and examination of witnesses, during the course of such an investigation;
- (s) prescribing anything which is to be or may be prescribed by regulations.

(2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties therefor not exceeding a fine of \$2,000 and imprisonment for 3 months.

(3) Except as otherwise provided in this Ordinance, regulations made under this section may be of general or special application.

(4) Regulations made under this section may provide that, subject to such terms and conditions as may be prescribed thereby, the provisions of Parts VI to IX, or such of them as are specified in the regulations—

(a) shall not have effect in relation to any specified person or to any person who is a member of a specified class of persons—

(i) who is or may be a dealer or investment adviser by reason only of his doing anything that is incidental to another business;

(ii) who does not deal in securities for or on behalf of any other person; or

(iii) who is a dealer or investment adviser by reason only of his entering into any specified transaction or class of transactions;

(b) shall not have effect in relation to a representative of any such person, or a member of any such class of persons, as is referred to in paragraph (a);

(c) shall have effect in relation to any such person or member, or a representative of any such person or member, to such extent as is prescribed; or

(d) shall not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons.

147. (1) Where an offence under this Ordinance committed by a corporation is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the corporation, or any person who was purporting to act in any such capacity, he, as well as the corporation, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Subject to subsection (3), for the purposes of this section, a person is deemed to be a director of a corporation if he occupies the position of a director by whatever name he may be called or is a person in accordance with whose directions or instructions the directors of the corporation or any of them act.

(3) A person shall not, by reason only that the directors of a corporation act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

Liability of directors, etc.

148. Without prejudice to the provisions of any other enactment relating to the prosecution of criminal offences and without prejudice to the powers of the Attorney General in relation to the prosecution of such offences, the Commissioner may institute proceedings in respect of any offence against this Ordinance that is punishable on summary conviction.

Commissioner may prosecute certain offences against the Ordinance.

149. The Governor in Council may, by order published in the *Gazette*, amend—

(a) the First and Second Schedules; and

(b) any amount or sum specified in Part X.

Amendment of Schedules and certain specified amounts.

150. (1) The Stock Exchanges Control Ordinance 1973 is repealed.

Repeal and amendments. (20 of 1973.) (Cap. 32.)

(2) Section 2(1) of the Companies Ordinance is amended by deleting the definition of "recognized stock exchange", and substituting the following—

"recognized stock exchange" means a stock exchange approved or deemed to have been approved under section 25 of the Securities Ordinance 1974;".

(3) Section 344 of the Companies Ordinance is repealed.

(4) Section 34(5)(b) of the Estate Duty Ordinance is amended by deleting the words "the Hong Kong Stock Exchange" and substituting the following—

(Cap. 111.)

"a stock exchange approved or deemed to have been approved under section 25 of the Securities Ordinance 1974".

(5) Section 3 of the Stamp Ordinance is amended by deleting the definition of "recognized stock exchange", and substituting the following—

(Cap. 117.)

"recognized stock exchange" means a stock exchange approved or deemed to have been approved under section 25 of the Securities Ordinance 1974".

#### FIRST SCHEDULE

[ss. 72 & 149.]

#### REQUIREMENT TO BE SATISFIED IN RELATION TO OFFERS TO ACQUIRE SECURITIES

1. If the securities to be acquired are currently listed or quoted on a stock exchange (including a foreign stock exchange), the offer shall, subject to paragraph 2,—

(a) state this fact and specify the exchange or exchanges on which the securities are currently listed or quoted;

- (b) specify the last price paid in respect of the securities on the latest practicable date before the date of the offer;
  - (c) specify the last price paid in respect of the securities on the last trading day of each of the 6 months immediately preceding the date of the offer;
  - (d) specify the highest and the lowest prices paid in respect of the securities during the period of 6 months immediately preceding the date of the offer;
  - (e) where the offer has been the subject of a public announcement, whether in a newspaper or in any other form of news medium or otherwise, specify the last price paid in respect of the securities on the last trading day before the public announcement, or, if the securities were not dealt in on that day, on the last trading day on which they were dealt in.
2. If the securities proposed to be acquired are not listed or quoted on a stock exchange (including a foreign stock exchange), the offer shall contain—
- (a) any information that the offeror may have as to the number and nominal value of those securities that have been sold in Hong Kong during the period of 6 months immediately preceding the date of the offer and the prices yielded by those sales, or, where the offeror has no such information, a statement to that effect; and
  - (b) particulars of any restriction in the constitution of the corporation which issued the securities on the right to transfer the securities which has the effect of requiring the offerees, before transferring securities held by them in the corporation, to offer those securities for purchase to members of the corporation or to any other person, and, where there is any such restriction, the arrangements (if any) being made to enable the securities to be transferred in pursuance of the offer.
3. Where the securities proposed to be acquired are those of a corporation incorporated outside Hong Kong and any holders of those securities reside in Hong Kong, and those securities are listed or quoted on a stock exchange of the country or territory in which the corporation is incorporated, the offer shall state this fact and specify the stock exchange on which they are listed or quoted.
4. The offer shall contain, in a prominent position in printing not smaller than eight point Times, a notice in the following form—

**"IMPORTANT**

If you are in doubt as to any aspect of this offer, you should consult a stockbroker or other registered dealer in securities, a bank manager, solicitor, professional accountant, or other professional adviser."

SECOND SCHEDULE

[ss. 72 & 149.]

REQUIREMENTS TO BE SATISFIED IN RELATION TO  
OFFERS TO DISPOSE OF SECURITIES

1. If the securities offered are currently listed or quoted on a stock exchange (including a foreign stock exchange) and will be uniform in all respects with the securities so currently listed or quoted, the offer shall—
- (a) state that fact and specify the exchange on which those securities, or the securities with which they will be uniform, are currently listed or quoted;
  - (b) specify the last price paid in respect of the securities on the latest practicable date before the date of the offer;
  - (c) specify the last price paid in respect of the securities on the last trading day of each of the 6 months immediately preceding the date of the offer;
  - (d) specify the highest and the lowest prices paid in respect of the securities during the period of 6 months immediately preceding the date of the offer;
  - (e) where the offer has been the subject of a public announcement, whether in a newspaper or in any other form of news medium or otherwise, specify the last price paid on the last trading day before the public announcement, or, if the securities were not dealt in on that day, on the last trading day on which they were dealt in.
2. Where the securities offered are those of a corporation incorporated outside Hong Kong and—
- (a) are listed or quoted on a stock exchange in the country or territory where the corporation was incorporated; or
  - (b) are yet to be issued but will be in all respects uniform with the securities already so listed or quoted,
- the offer shall specify that fact and the name of the stock exchange on which those securities, or the securities with which they will be uniform, are so listed or quoted.
3. The offer shall, in the case of securities of a corporation which are not listed or quoted on a stock exchange (including a foreign stock exchange), or which are not uniform in all respects with securities so listed or quoted,—
- (a) give particulars of any restriction in the corporation's constitution which has the effect of requiring a holder of the corporation's securities to offer them for purchase to members of the corporation or any other person before transferring them in pursuance of the offer;
  - (b) except where the offer is accompanied by a document which conforms with Part II or Part XII of the Companies Ordinance in relation to the corporation whose securities are the subject of the offer, contain the particulars specified in paragraph 4 of this Schedule or be accompanied by a statement in writing containing those particulars.

4. (1) The particulars referred to in paragraph 3(b) are as follows—
- (a) (i) the year in which, and the country or territory in which, the issuing corporation was incorporated;
- (ii) the address of its registered or principal office in Hong Kong; and
- (iii) where the issuing corporation is incorporated outside Hong Kong, the address of its registered or principal office in the country or territory in which it was incorporated or is resident;
- (b) (i) the authorized capital of the issuing corporation;
- (ii) the amount of the authorized capital of the corporation that has been issued and is outstanding at the date specified as being the close of the 5 financial years of the corporation immediately preceding the date of the offer;
- (iii) the classes of shares into which that capital is divided;
- (iv) the rights of each class of shareholder in respect of capital, dividends and voting; and
- (v) the number and total nominal value respectively of shares issued for cash and shares issued as fully or partly paid up for a consideration other than cash;
- (c) (i) the number and total nominal value of shares issued since the close of the last financial year of the issuing corporation;
- (ii) the classes (if any) into which the shares are divided and the rights of each class of shareholder in respect of capital, dividends and voting;
- (iii) the number and total nominal value respectively of shares issued as fully or partly paid up for cash or as fully or partly paid up for a consideration other than cash, or both;
- (iv) the number of redeemable preference shares (if any) redeemed and the amounts repaid in respect of the shares so redeemed; and
- (v) particulars of any reduction of capital lawfully authorized in respect of the corporation;
- (d) particulars of any reorganization of the capital of the issuing corporation during each of its 2 financial years preceding the date of the offer;
- (e) (i) the amount of the net profit or loss of the issuing corporation (before taking into account any form of tax calculated by reference to the amount of profits of the corporation);
- (ii) the rate *per cent* of dividends paid by the issuing corporation and the amount distributed by way of dividends on each class of shares during each of the 5 financial years immediately preceding the offer; and
- (iii) where no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (f) the total amount of any debentures issued by the issuing corporation and outstanding not more than 28 days before the date of the

- offer, and the total amount of mortgage debts, loans, or charges due from the corporation not more than 28 days before that date, together with the rate of interest payable in respect of them;
- (g) the names and addresses of the directors of the issuing corporation;
- (h) the number, description, and nominal value of the securities of the issuing corporation held by or on behalf of each of its directors or, if a director does not hold any such securities and no securities are held on his behalf, a statement to that effect; and
- (i) whether or not the securities offered are, or, in the case of securities to be issued, will be, fully paid up, and, if not, to what extent they are or will be paid up, and, if the issuing corporation has fixed a date and amount for payment of outstanding calls, the date and amount of each such call.
- (2) If any of the particulars required by sub-paragraph (1) are not available by reason of the issuing corporation not having carried on business for a sufficient length of time, or for any other reason, the offer shall state that fact; and if the issuing corporation is one incorporated in Hong Kong in respect of which those particulars are not available in the returns of the corporation filed with the Registrar of Companies, the offer shall also state that fact.
5. If the securities offered are yet to be issued, the offer shall—
- (a) state—
- (i) whether or not the issue requires the authority of a resolution of the issuing corporation;
- (ii) the first dividend in which the securities will participate; and
- (iii) whether or not there has been, to the knowledge of the offeror, any material change in the financial position of the issuing corporation since the date of the balance sheet and profit and loss account of the corporation for the financial year preceding the date of the offer and, if so, particulars of the change;
- (b) be accompanied by copies of the balance sheet and profit and loss account of the corporation (if any) made up to the end of the last financial year of the corporation preceding the date of the offer;
- (c) be accompanied by copies of the memorandum and articles of association or other document constituting or defining the constitution of the issuing corporation unless the offer specifies—
- (i) a place in Hong Kong at which copies of those documents may be inspected by offerees; and
- (ii) the times at which they may be inspected;
- (d) in the case of securities which will be uniform in all respects with previously issued securities of the issuing corporation that are not currently listed on a stock exchange, give any information that the offeror may have as to the number and nominal value of those securities which have been sold during the period of 6 months preceding the date of the offer, and the prices yielded

from the sales or, if the offeror has no such information, state that fact;

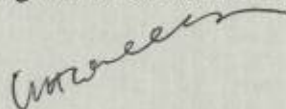
- (e) in the case of securities which will not be uniform in all respects with securities previously issued by the issuing corporation, state—
- (i) the respects in which the securities will differ from the previously issued securities;
  - (ii) whether or not any voting rights will attach to the securities and, if so, the limitations (if any) on those rights; and
  - (iii) whether or not application for permission to have the securities listed or quoted has been or will be made to a stock exchange (including a foreign stock exchange) and, if such an application has been made, the name of the stock exchange applied to.

6. The offer shall contain in a prominent position, in printing not smaller than eight point Times, a provision in the following form—

*"IMPORTANT*

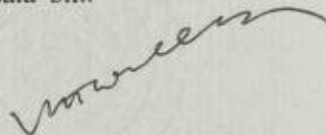
If you are in doubt as to any aspect of this offer, you should consult a stockbroker or other registered dealer in securities, a bank manager, solicitor, professional accountant, or other professional adviser."

Passed by the Hong Kong Legislative Council this 13th day of February, 1974.



*Clerk to the Legislative Council.*

*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*



*Clerk to the Legislative Council.*



I assent.

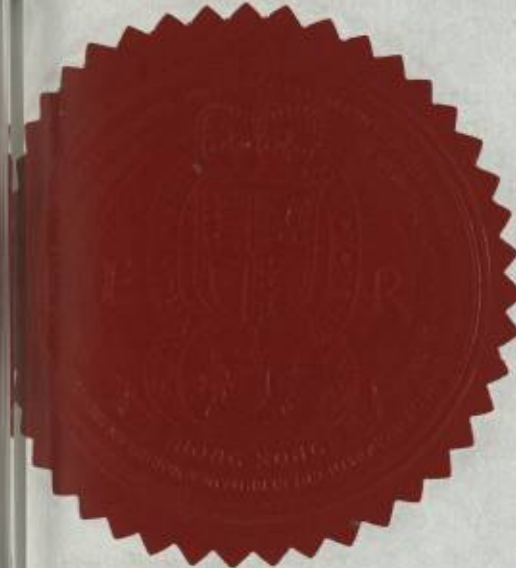
*M. N. S. S.*  
Governor.

20th February, 1974.

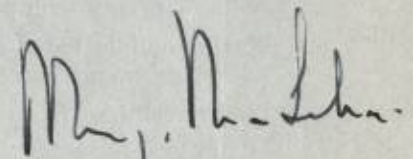
An Ordinance to provide for the protection of investors in securities and other property.

**HONG KONG**

No. 13 of 1974



I assent.

  
Governor.

20th February, 1974.

An Ordinance to provide for the protection of investors in securities and other property.

[ ]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Protection of Investors Ordinance 1974 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*. Short title and commencement.

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

"Commission" means the Securities Commission established under the Securities Ordinance 1974; (12 of 1974.)

"Commissioner" means the Commissioner for Securities appointed under the Securities Ordinance 1974;

"corporation" has the same meaning as in the Companies Ordinance; (Cap. 32.)

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

"issue", in relation to an advertisement, invitation, or document, includes publish, circulate, distribute, or disseminate the advertisement, invitation, or document; and also includes causing the advertisement, invitation, or document to be issued;

[*cf.* 1958, c. 45, s. 13(1)(6).]

"investment arrangements", in relation to property other than securities, means arrangements the purpose or effect, or pretended purpose or effect, of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or otherwise) to participate in or receive—

- (a) profits or income alleged to arise or to be likely to arise from the acquisition, holding, management, or disposal of the property or any part of the property; or
- (b) sums to be paid or alleged to be likely to be paid out of any such profits or income;

"invitation" includes an offer, and also includes an invitation made by means of a telephone call or personal visit;

"securities" has the same meaning as in the Securities Ordinance 1974.

(2) For the purposes of this Ordinance—

(a) "advertisement" includes every form of advertising, whether notified or published—

- (i) in a newspaper, magazine, journal, or other periodical publication;
  - (ii) by the display of posters or notices;
  - (iii) by means of circulars, brochures, pamphlets, or handbills;
  - (iv) by an exhibition of photographs or cinematograph films; or
  - (v) by way of sound broadcasting or television,
- and references to the issue of an advertisement shall be construed accordingly;

(b) "document" includes a circular, brochure, pamphlet, poster, handbill, prospectus, and any other document which is directed at or likely to be read by the public; and also includes any newspaper, magazine, journal, or other periodical publication;

(c) an advertisement 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;

- (d) an advertisement, invitation, or document which consists of or contains information likely to lead, directly or indirectly, to the doing by members of the public of any act mentioned in paragraphs (a) and (b) of section 3(1) shall be treated as being an advertisement, invitation, or document which is or contains an advertisement or invitation to the public to do that act;
- (e) an advertisement, invitation, or document issued by one person on behalf of another shall be treated as an advertisement, invitation, or a document, as the case may be, issued by that other person.

### Offences

3. (1) Any person who, by any fraudulent or reckless misrepresentation, induces another person—

(a) to enter into or offer to enter into any agreement—

(i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or

(ii) the purpose or effect, or pretended purpose or effect, of which is to secure to any of the parties to the agreement a profit from the yield of securities or by reference to fluctuations in the value of securities or property other than securities; or

(b) to take part in or offer to take part in any investment arrangements in respect of property other than securities, shall be guilty of an offence.

(2) For the purposes of subsection (1) "fraudulent or reckless misrepresentation" means—

(a) any statement—

(i) which to the knowledge of its maker was false, misleading, or deceptive; or

(ii) which is 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;

(iii) which was made recklessly;

Offence fraudulently or recklessly to induce persons to invest money.

[*cf.* 1958, c. 45, s. 13.]

## (c) any forecast—

(i) which to the knowledge of the maker of the forecast was not justified on the 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;

- (d) any statement or forecast from which the maker of the statement intentionally or recklessly omitted a material fact, with the result that the statement was thereby rendered untrue, misleading, or deceptive, or, as the case may, the forecast was thereby not capable of being justified or was thereby rendered misleading or deceptive.

(3) Any person who is guilty of an offence against this section shall be liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years.

## 4. (1) Subject to subsections (2) and (3), no person shall—

- (a) issue, or have in his possession for the purposes of issue, any advertisement or invitation which to his knowledge is or contains an invitation to the public to do any of the acts referred to in paragraphs (a) and (b) of section 3(1); or

- (b) issue, or have in his possession for the purposes of issue, any document which to his knowledge contains an advertisement or invitation to the public to do any of those acts.

## (2) Subsection (1) does not apply in relation to—

- (a) the issue of a prospectus which complies with or is exempt from compliance with Part II of the Companies Ordinance or, in the case of a company incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance;

- (b) the issue of a document relating to securities of a body corporate incorporated in Hong Kong that is not a company registered under the Companies Ordinance, being a document which—

(i) would, if the body corporate were a registered company, be a prospectus to which section 38 of the Companies Ordinance applies, or would apply if not

Offence to issue advertisements and documents relating to investments in certain cases.

[*cf.* 1958, c. 45, s. 14(1)-(6).]

(Cap. 32.)

excluded by subsection (5)(b) of that section or by section 38A of that Ordinance; and

(ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the body corporate were a company incorporated outside Hong Kong and the document were a prospectus issued by that company;

- (c) the issue of a form of application for shares or debentures of a company, together with—

(i) a prospectus which complies with or is exempt from compliance with Part II of the Companies Ordinance or, in the case of a company incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or

(Cap. 32.)

(ii) in the case of a body corporate incorporated in Hong Kong which is not a registered company, a document containing the matters specified in paragraph (b)(ii);

- (d) the issue of a form of application for the securities of a company in connexion with an invitation made in good faith to a person to enter into an underwriting agreement with respect to those securities;

- (e) the issue of a prospectus which has been approved by the Commissioner in relation to a mutual fund corporation or unit trust authorized by the Commission under the Securities Ordinance 1974;

(12 of 1974.)

- (f) the issue of a form of application for the shares of a mutual fund corporation or the units of a unit trust, being a mutual fund corporation or unit trust which has been authorized by the Commission, together with a prospectus approved by the Commissioner; or

- (g) the issue of any advertisements, invitations, or documents (being advertisements, invitations, or documents to which this section relates) which is required or authorized by or under any other Ordinance, or has been authorized by the Commission before issue.

(3) This section does not prohibit the issue or possession of any advertisement, invitation, or document by reason only—

- (a) that it is or contains an advertisement or invitation to which this section relates made—

(i) with respect to securities, by or on behalf of a dealer or investment adviser who is registered under the

Securities Ordinance 1974 or who is a dealer exempted from registration under that Ordinance;

(ii) by or on behalf of a corporation to holders of securities or creditors of, or servants or agents employed by, that corporation, or a corporation which is deemed to be related to that corporation by virtue of section 4 of the Securities Ordinance 1974, in respect of securities of that corporation or that related corporation;

(iii) by or on behalf of the manager or trustee of a unit trust authorized by the Commission pursuant to the Securities Ordinance 1974 to holders of units, or creditors, of the trust, or to servants or agents employed by that manager or trustee;

(iv) by or on behalf of the Government in respect of securities issued by it;

(v) by or on behalf of a credit union in respect of shares in the union;

(vi) by or on behalf of a person acting as trustee of a trust (not being a unit trust) to beneficiaries under the trust; or

(vii) with respect to securities intended to be disposed of to persons outside Hong Kong or to be disposed of in Hong Kong only to persons whose business involves the acquisition, disposal, or holding of securities, whether as principal or as agent; or

(b) that it is or contains an advertisement or invitation which a person who is engaged in the business of buying and selling property other than securities (either as principal or as agent) may make or give in the ordinary course of that business; but nothing in this paragraph authorizes any person to do anything pursuant to or for the purpose of any investment arrangements in respect of any such property.

(4) Subject to the provisions of this section, any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 3 years.

(5) A person shall not be taken to contravene this section by reason only that he—

(a) issues, or has in his possession for the purposes of issue, to purchasers copies of any newspaper, journal, magazine, or other periodical publication of general and

regular circulation, which contain an invitation to which this section relates; or

(b) issues advertisements which are or contain, or issues or has in his possession for the purposes of issue documents which contain, invitations to which this section relates to persons who are dealers or investment advisers registered under the Securities Ordinance 1974 or who are exempted from registration under that Ordinance. (12 of 1974.)

(6) For the purposes of any proceedings under this section, an advertisement, invitation, or document which is or contains an advertisement or invitation to enter into or offer to enter into any agreement referred to in section 3(1) with a person specified in the advertisement, invitation, or document shall, subject to subsection (5), be presumed, unless he proves to the contrary, to have been issued by him.

(7) For the purposes of subsection (2)(g), the Commission may in authorizing the issue of any advertisement, invitation, or document impose such conditions as it thinks fit.

5. (1) A person shall not—

(a) issue, or have in his possession for the purposes of issue, any advertisement in which to his knowledge a person other than an investment adviser registered under the Securities Ordinance 1974 holds himself out as being prepared—

(i) to give investment advice in return for remuneration; or

(ii) to undertake for remuneration the management of investors' portfolios of securities; or

(b) issue or have in his possession for the purposes of issue any document which to his knowledge contains such an advertisement.

(2) Any person who contravenes subsection (1) shall be guilty of an offence, and shall be liable on conviction to a fine of \$10,000.

(3) A person shall not be taken to contravene this section by reason only that he—

(a) issues, or has in his possession for the purposes of issue, to purchasers copies of any newspaper, journal, magazine, or other periodical publication of general and

Offence to  
issue adver-  
tisement  
relating  
to an  
investment  
manage-  
ment busi-  
ness unless  
registered.  
(12 of 1974.)

regular circulation, which contain an advertisement to which this section relates; or

- (b) issues advertisements which are or contain, or issues or has in his possession for the purposes of issue documents which contain, invitations to which this section relates to persons who are dealers or investment advisers registered under the Securities Ordinance 1974 or who are exempted from registration under that Ordinance.

(4) For the purposes of any proceedings under this section, an advertisement or document in which a person named in the advertisement or document holds himself out as being prepared—

- (a) to give investment advice in return for remuneration; or  
(b) to undertake for remuneration the management of investors' portfolios of securities,

shall, subject to subsection (3), be presumed, unless he proves to the contrary, to have been issued by him.

6. (1) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that, at premises that are specified in the information, a person is in possession of any document which relates to an offence alleged to have been committed against this Ordinance, the magistrate may grant a warrant empowering the Commissioner or any police officer—

- (a) to enter the premises, if necessary by force, at any time within one month from the date of the warrant; and  
(b) to search for, seize and remove, any document found on the premises which the Commissioner or, as the case may be, the police officer has reasonable grounds for believing to have been involved in or connected with the alleged offence.

(2) Any document seized under subsection (1) may be retained for a period of 6 months or, if within that period any proceedings in respect of an offence against this Ordinance are commenced and the document is relevant to those proceedings, until the conclusion of those proceedings.

(3) Notwithstanding subsection (2), a document seized under subsection (1) may be retained for a period longer than 6 months if the person entitled to it is not in Hong Kong or his whereabouts are unknown; and if—

- (a) that person subsequently returns to Hong Kong or his whereabouts subsequently become known; and

- (b) within 14 days of his return or the discovery of his whereabouts, any proceedings in respect of an offence against this Ordinance are commenced, and the document is relevant to those proceedings,

the document may be retained until the conclusion of those proceedings.

(4) The person to whom a document seized under subsection (1) belongs shall, unless the document is the subject of an order under subsection (5), be entitled at all reasonable times to take copies of or extracts from it.

(5) Where any person is convicted of an offence against this Ordinance, the court dealing with the case may make an order authorizing the destruction, or the disposal in any other specified manner, of any documents produced to the court which are shown to its satisfaction to be involved in or connected with the commission of the offence; but an order under this subsection may not authorize the destruction or disposal of a document before the conclusion of the proceedings to which the order relates.

(6) Subject to subsections (2), (3), (4) and (5), section 102 of the Criminal Procedure Ordinance (which makes provision for the disposal of property connected with offences) shall apply to property which has come into the possession of the Commissioner or the police under this section in the same way as it applies to property which has come into the possession of the police in the circumstances mentioned in that section. (Cap. 221.)

(7) any person who—

- (a) obstructs the exercise of any right of entry or search conferred by virtue of a warrant under this section; or  
(b) obstructs the exercise of any right so conferred to seize any document,

shall be guilty of an offence and liable on conviction to a fine of \$5,000 and to imprisonment for 6 months.

7. (1) Where an offence against this Ordinance committed by a company or other body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the company or body corporate or any person who was purporting to act in any such capacity, he, as well as the company or body, shall be guilty

Liability of directors, etc.  
[cf. 1963, c. 16, s. 22.]

of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Subject to subsection (3), for the purposes of this section, a person is deemed to be a director of a company or other body corporate if he occupies the position of a director by whatever name called, or is a person in accordance with whose directions or instructions the directors of the company or other body corporate or any of them act.

(3) A person shall not, by reason only that the directors of a company or other body corporate act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

#### *Action in Tort*

Liability in tort for inducing persons to invest money in certain cases.

8. (1) Any person who, by any fraudulent, reckless, or negligent misrepresentation, induces another person—

(a) to enter into any agreement—

(i) for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or

(ii) the purpose or effect, or pretended purpose or effect, of which is to secure to any of the parties to the agreement a profit from the yield or securities or by reference to fluctuations in the value of securities or property other than securities; or

(b) to take part in any investment arrangements in respect of property other than securities,

shall be liable to pay compensation to that other person for any pecuniary loss that he has sustained by reason of his reliance on the misrepresentation.

(2) For the purposes of subsection (1) "fraudulent, reckless, or negligent misrepresentation" means—

(a) any statement—

(i) which to the knowledge of its maker was false, misleading, or deceptive;

(ii) which is false, misleading, or deceptive and was made recklessly; or

(iii) which is false, misleading, or deceptive and was made without reasonable care having been taken to ensure its accuracy;

(b) any promise—

(i) which the maker of the promise had no intention of fulfilling;

(ii) which, to the knowledge of the maker of the promise, was not capable of being fulfilled;

(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 facts known to him at the time when he made it;

(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 of the statement intentionally, recklessly, or negligently omitted a material fact of which he had knowledge or ought to have had knowledge, with the result that the statement was thereby rendered untrue, misleading, or deceptive, or, as the case may be, the forecast was thereby not capable of being justified or was thereby rendered misleading or deceptive.

(3) For the purposes of this section—

(a) where any statement, forecast, or promise to which this section relates was made by a company or other body corporate, every person who was a director of the company or body corporate at the time when the statement, forecast, or promise was made shall, in the absence of evidence to the contrary, be taken to have caused or authorized it to be made; and

(b) a person is deemed to be a director of a company or other body corporate if he occupies the position of director by whatever name he may be called, or is a person in accordance with whose directions or instructions the directors of the company or other body or any of them act; but a person shall not, by reason only that the directors of a company or other body corporate act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(4) Nothing in this section limits or diminishes any liability which any person may incur under the common law.

(5) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance applies.

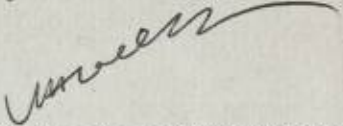
(6) An action may be brought under this section whether or not a person has been charged with or convicted of an offence under this Ordinance.

*Miscellaneous Provision*

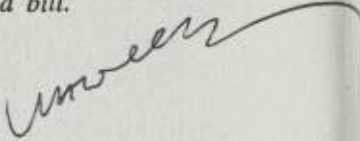
Amendment  
of Theft  
Ordinance.  
(Cap. 210.)

9. Section 21(1) of the Theft Ordinance is amended by deleting the words "or with intent to induce persons to become members or creditors thereof by deceiving them about its affairs,".

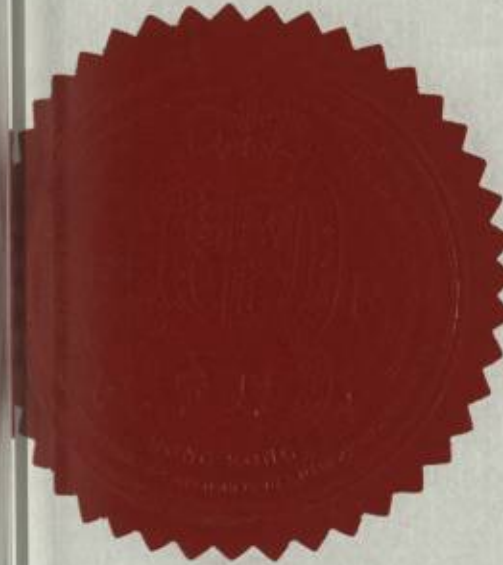
Passed by the Hong Kong Legislative Council this 13th day of February, 1974.

  
Clerk to the Legislative Council.

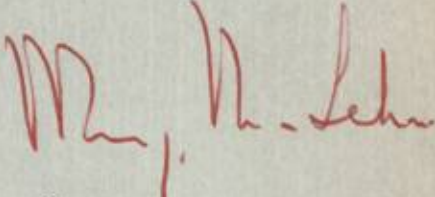
*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*

  
Clerk to the Legislative Council.

No. 14 OF 1974



I assent.

  
Governor.

—(Cap. 32.)

to which section 40 of the Companies Ordinance applies.

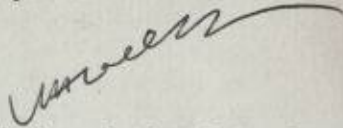
(6) An action may be brought under this section whether or not a person has been charged with or convicted of an offence under this Ordinance.

*Miscellaneous Provision*

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(Cap. 210.)

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Passed by the Hong Kong Legislative Council this 13th day of February, 1974.

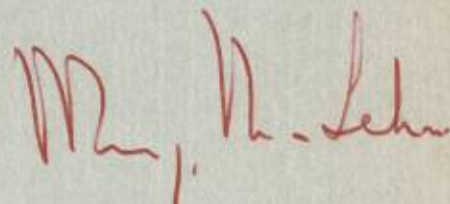
  
Clerk to the Legislative Council.

**HONG KONG**

No. 14 OF 1974



I assent.

  
Governor.

14th March, 1974.

An Ordinance to provide for the establishment of the Mass Transit Railway Provisional Authority and for connected matters.

[15th March, 1974]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Mass Transit Railway Provisional Authority Ordinance 1974. Short title.

2. In this Ordinance unless the context otherwise requires— Interpretation.  
"Provisional Authority" means the Mass Transit Railway Provisional Authority established by section 3.

3. (1) There is hereby established the Mass Transit Railway Provisional Authority which shall consist of the Financial Secretary, who shall be chairman, and such other persons as the Governor may appoint. Establishment of Provisional Authority.

(2) A member of the Provisional Authority may at any time resign his office by notice in writing addressed to the Financial Secretary.

(3) The Provisional Authority shall have power to regulate its own procedure.

(4) The chairman of the Provisional Authority shall preside at meetings of the Provisional Authority and in his absence such member shall preside as the members present select.

Incorporation.

4. The Mass Transit Railway Provisional Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of holding and disposing of all kinds of property, of suing and being sued and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

Powers and duties of the Provisional Authority.

5. Subject to section 8, the Provisional Authority shall do all such things as are necessary or advantageous and proper in the planning and establishment of a mass transit railway in Hong Kong for the conveyance of passengers and may in particular for those purposes—

- (a) appoint on such terms and conditions as it thinks fit such staff (including officers designate of the proposed Mass Transit Railway Corporation) as the Provisional Authority considers necessary for the initial stages of the establishment of the railway;
- (b) enter into arrangements with persons, firms or agencies for the supply of services or facilities;
- (c) enter into arrangements with public utility undertakings for the alteration and diversion of apparatus belonging to or maintained by such an undertaking;
- (d) make use of the personnel, facilities and services of any department of the Government to any extent not incompatible, in the opinion of the Financial Secretary, with the administration of such department;
- (e) delegate to any member of the Provisional Authority, to the extent provided in the resolution of delegation, any of the powers conferred by paragraph (a) or (c).

6. The resources of the Provisional Authority shall consist of— Resources of the Provisional Authority.

- (a) such sums as may be available in the Mass Transit Fund established by resolution of the Legislative Council;
- (b) such sums as, with the approval of the Financial Secretary, the Provisional Authority may borrow by way of bank overdraft; and
- (c) such credits as may be extended to the Provisional Authority in respect of goods purchased from outside Hong Kong.

7. (1) The Provisional Authority shall keep, under the general direction of the Accountant General, proper accounts and other records and shall prepare in respect of each financial year a statement of accounts which, after audit and report by the Director of Audit, shall be furnished to the Governor. Accounts and statements.

(2) The Financial Secretary shall without delay lay a copy of every such statement and report on the table of the Legislative Council.

8. (1) The Governor may give such directions as he thinks fit, either generally or in any particular case, with respect to the exercise or performance by the Provisional Authority of any power or duty under this Ordinance. Power of the Governor to give directions.

(2) The Provisional Authority and every public officer shall in the exercise or performance of any power or duty under this Ordinance, comply with any directions given by the Governor under subsection (1).

9. Section 20(2) of the Companies Ordinance is amended as follows— Amendment of Companies Ordinance. (Cap. 32.)

- (a) by deleting the full stop at the end of paragraph (f) and substituting the following—

“; or”; and

- (b) by adding after paragraph (f) the following—

“(g) contains the words “*Mass Transit*”, “*Underground Railway*”, or other words likely in the opinion of the Registrar to suggest connexion with the proposed Mass Transit Railway.”.

Passed by the Hong Kong Legislative Council this 14th day of March, 1974.

*W. Wilson*

*Clerk to the Legislative Council.*

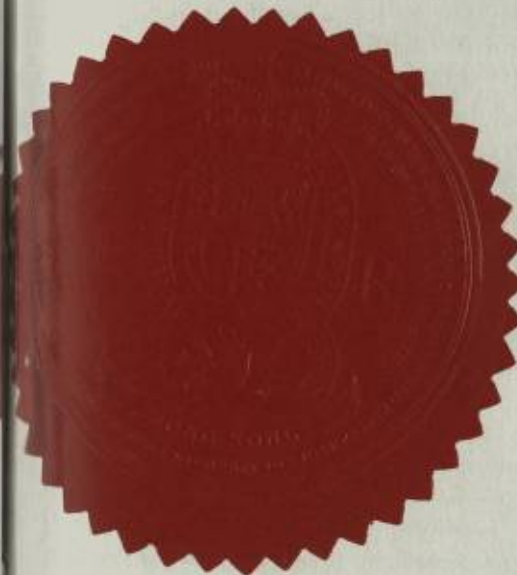
*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*

*W. Wilson*

*Clerk to the Legislative Council.*

**HONG KONG**

No. 15 OF 1974



I assent.

*Governor.*

*28th March, 1974.*

An Ordinance to apply a sum not exceeding five thousand seven hundred and forty-six million, seven hundred and eighty-five thousand dollars to the Public Service for the financial year ending the 31st day of March 1975.

[29th March, 1974]

WHEREAS the expenditure required for the service of this Colony Preamble. for the financial year ending on the 31st day of March 1975, has been estimated at the sum of five thousand seven hundred and forty-six million, seven hundred and eighty-five thousand dollars:

NOW, THEREFORE, BE IT ENACTED by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

1. This Ordinance may be cited as the Appropriation Short title Ordinance 1974.

Appropriation from the general revenues and other funds.

Schedule.

2. A sum not exceeding five thousand seven hundred and forty-six million, seven hundred and eighty-five thousand dollars shall be and the same is hereby charged upon the general revenues and other funds of the Colony for the service of the financial year commencing on the 1st day of April 1974, and ending on the 31st day of March 1975, and the said sum so charged may be expended in the manner expressed in the Schedule.

SCHEDULE

[s. 2]

<i>Number of vote</i>	<i>Head of Expenditure</i>	<i>Amount of vote</i>
		\$
21.	His Excellency the Governor's Establishment .....	1,504,000
22.	Agriculture and Fisheries Department .....	33,762,000
23.	Audit Department .....	3,647,000
24.	Census and Statistics Department .....	7,009,000
25.	Civil Aviation Department .....	26,969,000
26.	Colonial Secretariat .....	39,001,000
27.	Colonial Secretariat: London Office .....	5,323,000
28.	Commerce and Industry Department .....	36,755,000
29.	Defence: Auxiliary Fire Service .....	118,000
30.	Defence: Auxiliary Medical Service .....	2,255,000
31.	Defence: Civil Aid Services .....	4,643,000
32.	Defence: Essential Services Corps and Directorate of Manpower .....	314,000
33.	Defence: Miscellaneous Measures .....	95,924,000
34.	Defence: Royal Hong Kong Auxiliary Air Force .....	3,073,000
35.	Defence: Royal Hong Kong Regiment (The Volunteers) .....	3,525,000
36.	Education Department .....	173,285,000
37.	Fire Services Department .....	68,215,000
38.	Government Supplies Department .....	18,702,000
39.	Home Affairs Department .....	12,870,000
40.	Housing Department .....	223,017,000
41.	Immigration Department .....	22,210,000
42.	Information Services Department .....	11,585,000
43.	Inland Revenue Department .....	26,925,000
44.	Judiciary .....	20,680,000
45.	Kowloon-Canton Railway .....	39,886,000
46.	Labour Department: Labour Division .....	12,807,000
47.	Labour Department: Mines Division .....	4,610,000

<i>Number of vote</i>	<i>Head of Expenditure</i>	<i>Amount of vote</i>
		\$
48.	Legal Department .....	7,968,000
49.	Legal Aid Department .....	5,639,000
50.	Marine Department .....	56,892,000
51.	Medical and Health Department .....	312,733,000
52.	Miscellaneous Services .....	308,275,000
53.	New Territories Administration .....	35,879,000
54.	Office of Unofficial Members of Executive and Legislative Councils .....	971,000
55.	Pensions .....	122,962,000
56.	Police: Royal Hong Kong Police Force .....	326,880,000
57.	Police: Royal Hong Kong Auxiliary Police Force .....	30,302,000
58.	Post Office .....	141,121,000
59.	Printing Department .....	24,358,000
60.	Prisons Department .....	50,566,000
61.	Public Debt .....	7,167,000
62.	Public Services Commission .....	367,000
63.	Public Works Department: Headquarters .....	8,381,000
64.	Public Works Department: Building Development .....	49,828,000
65.	Public Works Department: Engineering Development .....	115,268,000
66.	Public Works Department: Lands and Survey .....	21,562,000
67.	Public Works Department: New Territories Development .....	3,736,000
68.	Public Works Department: Water Supplies .....	49,740,000
69.	Public Works Recurrent .....	235,347,000
70.	Public Works Non-recurrent: Headquarters .....	187,612,000
71.	Public Works Non-recurrent: Buildings .....	253,386,000
72.	Public Works Non-recurrent: Engineering .....	579,410,000
73.	Public Works Non-recurrent: Waterworks .....	387,837,000
74.	Radio Hong Kong .....	11,114,000
75.	Rating and Valuation Department .....	8,545,000
76.	Registrar General's Department .....	9,091,000
77.	Registration of Persons Department .....	4,093,000
78.	Registry of Trade Unions .....	490,000
79.	Royal Observatory .....	7,698,000
80.	Social Welfare Department .....	154,856,000
81.	Subventions: Education .....	684,113,000
82.	Subventions: Medical .....	165,690,000
83.	Subventions: Miscellaneous .....	51,043,000

<i>Number of vote</i>	<i>Head of Expenditure</i>	<i>Amount of vote</i>
		\$
84.	Subventions: Social Welfare .....	37,100,000
85.	Transport Department .....	7,771,000
86.	Treasury .....	10,589,000
87.	Universities and Polytechnic .....	164,590,000
88.	Urban Services Department (for Urban Council) .....	169,189,000
89.	Urban Services Department: New Territories Region .....	38,012,000
	<b>TOTAL</b> .....	<b>5,746,785,000</b>

Passed by the Hong Kong Legislative Council this 27th day of March, 1974.

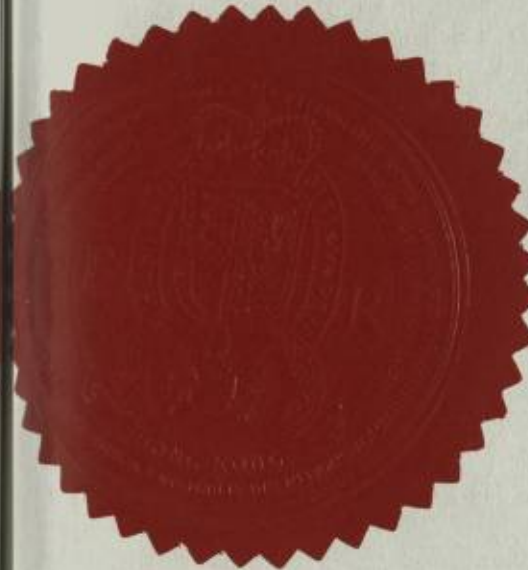
*[Signature]*  
Clerk to the Legislative Council.

*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*

*[Signature]*  
Clerk to the Legislative Council.

## HONG KONG

No. 16 OF 1974



I assent.

*[Signature]*  
Governor.

28th March, 1974.

An Ordinance to amend the Inland Revenue Ordinance.

[29th March, 1974]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. (1) This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 1974.

Short title and commencement of section 3.

(2) Section 3 shall be deemed to have had effect as from the 1st April 1973.

2. Section 5 of the principal Ordinance is amended, in subsection (1), by deleting paragraph (a) of the proviso and substituting the following—

Amendment of section 5. (Cap. 112.)

“(Cap. 7.) (a) where, by virtue of Part I of the Landlord and Tenant (Consolidation) Ordinance the rent of any

buildings is, on the first day of any year of assessment, restricted by reference to the rent recoverable on or before the 25th December 1941, property tax shall be charged at one-half the standard rate on the rateable value of such buildings contained in the valuation lists which came into effect on the 1st April 1973 and were kept in force by section 56(1) of the Rating Ordinance 1973, less an allowance for repairs and outgoings of twenty *per cent* of that rateable value.”.

(11 of 1973.)

Amendment  
of section 7.

3. Section 7 of the principal Ordinance is amended by deleting “shall, in respect of each entire month during which the land or buildings or land and buildings were unoccupied, be reduced by one twenty-fourth of the total tax which would have been payable in respect thereof if the same had been occupied for the whole of that year of assessment” and substituting the following—

“shall be reduced proportionately”.

Passed by the Hong Kong Legislative Council this 27th day of March, 1974.

*W. W. W. W.*  
Clerk to the Legislative Council.

*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*

*W. W. W. W.*  
Clerk to the Legislative Council.

**HONG KONG**

No. 17 OF 1974



I assent.

*M. J. M. Lehn*  
Governor.

28th March, 1974.

An Ordinance to amend the Quarantine and Prevention of Disease Ordinance.

[29th March, 1974]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Quarantine and Prevention of Disease (Amendment) Ordinance 1974. Short title.

2. Section 2 of the principal Ordinance is amended in subsection (1) by deleting the definition of “infectious disease” and substituting the following—  
Amendment of section 2. (Cap. 141.)

““infectious disease” means any disease specified in the First Schedule;”.

Amendment  
of sections  
4 and 5.

3. Sections 4 and 5 of the principal Ordinance are amended by deleting "Schedule" wherever it occurs and substituting in each place the following—

"Second Schedule".

Amendment  
of section  
41.

4. Section 41 of the principal Ordinance is amended by inserting after "agents of the vessel" the following—

"or the aircraft".

Amendment  
of sections  
53 and 54.

5. Sections 53 and 54 of the principal Ordinance are amended by deleting "Schedule" wherever it occurs and substituting in each place the following—

"Second Schedule".

Addition  
of new  
section 72.

6. The principal Ordinance is amended by adding, after section 71, the following new section—

"Amendment of Schedules. 72. The Director may by order in the *Gazette* amend the First and Second Schedules."

Addition  
of new  
Schedule.

7. The principal Ordinance is amended by adding, after section 72, the following new Schedule—

"FIRST SCHEDULE

[ss. 2 & 72.]

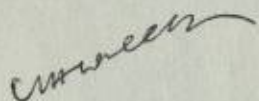
INFECTIOUS DISEASES

1. Acute poliomyelitis (infantile paralysis).
2. Cerebro-spinal meningitis.
3. Chickenpox.
4. Cholera.
5. Diphtheria.
6. Dysentery.
7. Enteric.
8. Food poisoning (excluding dysentery and enteric).
9. Leprosy.
10. Malaria.
11. Measles.
12. Ophthalmia neonatorum.
13. Plague.
14. Puerperal fever.
15. Rabies.
16. Relapsing fever.

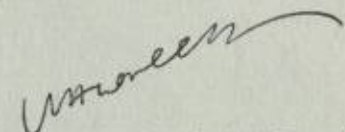
17. Scarlet fever.
18. Smallpox.
19. Tuberculosis.
20. Typhus.
21. Viral hepatitis.
22. Whooping cough.
23. Yellow fever."

8. The Schedule to the principal Ordinance is amended by being renumbered as the Second Schedule. Amendment  
of the  
Schedule.

Passed by the Hong Kong Legislative Council this 27th day of March, 1974.

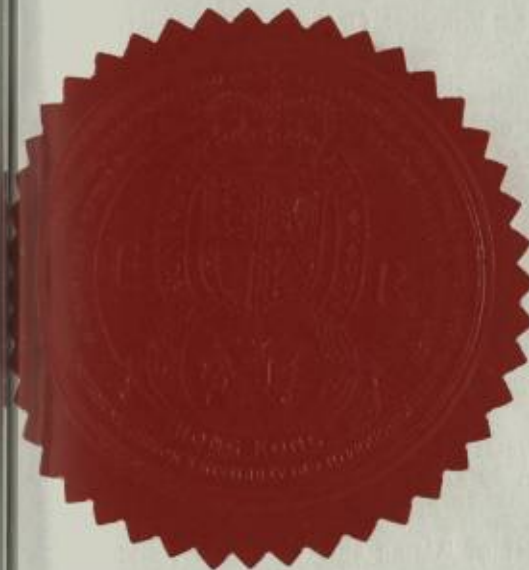
  
Clerk to the Legislative Council.

*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*

  
Clerk to the Legislative Council.

**HONG KONG**

No. 18 OF 1974



I assent.

*Governor.*

*28th March, 1974.*

An Ordinance to amend the Landlord and Tenant (Consolidation) Ordinance.

[1st April, 1974]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1974 and shall come into operation on 1st April 1974.

Short title  
and com-  
mencement.

2. Section 18 of the principal Ordinance is amended in subsections (2), (3) and (4) by deleting "Secretary for Home Affairs" wherever it appears and substituting in each place the following—

Amendment  
of section  
18.  
(Cap. 7.)

"Commissioner of Rating and Valuation".