

- (b) a corporation or firm that is a dealer is ordered to be wound up or dissolved by or under the supervision of a court, the Commissioner shall transfer the deposit paid by or in respect of such corporation or firm under section 31 to the liquidator of the corporation or firm; or
- (c) the Commissioner has reason to believe that any person has sustained pecuniary loss because of a default committed in the course of or in connexion with the commodity futures trading business of a dealer, by the dealer or any director, partner or employee, as the case may be, accredited to the dealer, the Commissioner may forfeit all or any part of the deposit paid by or in respect of the dealer under section 31.

(2) Where a deposit is transferred to a trustee in bankruptcy under subsection (1)(a), or liquidator under subsection (1)(b), such deposit shall be applied by the trustee or liquidator, as the case may be, in accordance with regulations made under this Ordinance for the purposes of this subsection.

(3) In the event of a deposit or any part of a deposit being forfeited under subsection (1)(c), the deposit or part thereof so forfeited shall be applied by the Commissioner in accordance with regulations made under this Ordinance for the purposes of this subsection.

(4) Where any deposit is transferred or forfeited under subsection (1), the Commissioner shall notify in writing the person who paid the deposit of such transfer or forfeiture.

(5) Except as provided in this section or under regulations made under this Ordinance, no person may withdraw or transfer any deposit paid under section 31.

(6) The Commissioner shall open one or more accounts at a licensed bank into which he shall pay all deposits paid under section 31, and shall then ascertain what proportion of such deposits ought, in his opinion, to be retained in the account or accounts to enable liabilities under subsection (1), or such other liabilities as may be prescribed by regulations, to be satisfied.

(7) After ascertaining the amount of a deposit required to be retained under subsection (6), the Commissioner shall cause the balance of the deposit to be invested in such manner as the Financial Secretary may direct.

(8) Where the Financial Secretary has given a direction under subsection (7), he shall, as soon as practicable after the end of each financial year, by notice in the *Gazette*,—

- (a) declare a rate of interest to be paid for that financial year in respect of each deposit paid under section 31;
- (b) specify the manner and time of payment of that interest; and
- (c) specify an amount to be charged for management expenses incurred by the Commissioner in administering the deposit under this Ordinance.

(9) As soon as practicable after the publication of a notice under subsection (8), the Commissioner shall, after deducting an appropriate amount chargeable in respect of management expenses, pay to each person who has paid the deposit under section 31, or to that person's duly authorized agent or personal representative, the appropriate amount of interest due in respect of that deposit for the financial year in question.

(10) A document evidencing the investment of money under subsection (7) may be kept in the office of the Commissioner or deposited for safe keeping with a licensed bank.

(11) If any person who has paid a deposit under section 31, or in respect of whom such deposit was paid, ceases to be registered as a dealer and the deposit has not been or is not required to be disposed of under subsection (1), the person who paid the deposit, or his duly authorized agent or personal representative, may apply to the Commissioner for the deposit to be released to him.

(12) On making an application under subsection (11), the applicant shall—

- (a) satisfy the Commissioner by a statutory declaration—
- (i) that he knows of no other person who has made or is entitled to make a claim in respect of the deposit;
- (ii) if he is not the person who paid the deposit, that he is entitled to give a good discharge for the deposit and state the circumstances in which he is so entitled; and
- (b) provide the Commissioner with such information as will satisfy him that an advertisement in a form approved by him has been published once in an English language newspaper, and once in a Chinese language newspaper, circulating in Hong Kong.

(13) The Commissioner, on being so satisfied, shall cause the deposit to be released to the applicant.

(14) Subsection (1) shall not apply where the bankruptcy, winding up or dissolution, or default, as the case may be, occurs prior to the commencement of this section.

(15) The Commissioner shall keep proper accounts of all sums deposited under section 31, 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.

(16) The Commissioner shall appoint an auditor who shall annually audit the accounts kept under subsection (15) and shall audit and prepare an auditor's report in respect of each balance sheet and revenue and expenditure account prepared under subsection (15) and shall submit the report to the Commissioner.

(17) Not later than 4 months after the end of each financial year the Commissioner shall cause a copy of the audited balance sheet, revenue and expenditure account, and the auditor's report to be sent to the Financial Secretary.

34. (1) Subject to subsection (3), the Commissioner shall on application made to him by a registered person in the prescribed manner not later than 1 month before the day on which his registration, if not renewed, would expire and on payment of the prescribed fee, renew the registration of that person.

Renewal of
registration.

(2) The Commissioner may require an applicant under subsection (1) to supply him with any further information that he considers necessary to deal with the application.

(3) The Commissioner may refuse to renew the registration of a registered person under subsection (1)—

- (a) on any ground on which the Commissioner may refuse to register under section 32;
- (b) on any ground on which the Commissioner may revoke the registration of such person under section 35 or 36; or

- (c) on the ground of failure by such person to comply with subsection (1) or with any requirement of the Commissioner under subsection (2).
- (4) The Commissioner shall issue to a registered person whose registration is renewed under subsection (1) an appropriate certificate of registration which shall—
- (a) be valid for a period of 12 months beginning with the day of the expiry of the certificate of registration held by the registered person at the time of his application for renewal; and
- (b) be subject to such conditions as the Commissioner thinks fit.
- (5) Nothing in this section shall be construed as preventing a renewal of the registration of a registered person that has been renewed from being further renewed under this section.
- (6) The Commissioner shall not refuse to renew the registration of a registered person under subsection (3) without first giving such person an opportunity of being heard.
- (7) Where the Commissioner refuses to renew the registration of a registered person under subsection (3), he shall notify such person in writing to that effect stating the reasons for the refusal.

Revocation of registration.

35. (1) The registration of a registered person is deemed to be revoked, in the case of—
- (a) an individual, if the individual dies;
- (b) a corporation, if the corporation is wound up;
- (c) a firm, if the partnership is dissolved.
- (2) The Commissioner may revoke the registration of a registered person—
- (a) in the case of a registered person who is an individual—
- (i) on any ground on which the Commissioner may refuse to register under section 32(1)(a);
- (ii) if a levy of execution in respect of him has not been satisfied;
- (iii) if he ceases to carry on the business for which he was registered; or
- (iv) if, in the case of a representative, the registration of the dealer or commodity trading adviser, in relation to whom the certificate of registration of the representative was granted, is revoked;
- (b) in the case of a registered person that is a corporation—
- (i) on any ground on which the Commissioner may refuse to register under section 32(1)(b);
- (ii) if it is being or will be wound up;
- (iii) if a levy of execution in respect of it has not been satisfied;
- (iv) if it has entered into any composition or scheme of arrangement with its creditors; or
- (v) if it ceases to carry on the business for which it was registered; or

- (c) in the case of a registered person that is a firm—
- (i) on any ground on which the Commissioner may refuse to register under section 32(1)(c);
- (ii) if the partnership is being or will be dissolved;
- (iii) if a levy of execution in respect of it has not been satisfied;
- (iv) if it has entered into any composition or scheme of arrangement with its creditors; or
- (v) if it ceases to carry on the business for which it was registered.
- (3) The Commissioner may revoke the registration of a registered person at the request of such person.
- (4) The Commissioner shall not revoke the registration of a registered person under subsection (2) without first giving such person an opportunity of being heard.
- (5) Where the Commissioner revokes the registration of a registered person under subsection (2) he shall notify such person in writing to that effect stating the reasons for the revocation and specifying the date on which the revocation shall take effect.

36. (1) The Commissioner may inquire into any allegation—

- (a) that a registered person—
- (i) is or has been guilty of any misconduct; or
- (ii) is no longer a fit and proper person to continue to remain registered by reason of any other circumstances which have led, or are likely to lead, to the improper conduct of business by him or to reflect discredit on the method of conducting his business; or
- (b) that, in the case of a registered person that is a corporation or firm, a director, partner or employee accredited to the corporation or firm, as the case may be, who is a registered person—
- (i) is or has been guilty of any misconduct; or
- (ii) is no longer a fit and proper person to continue to remain registered by reason of any other circumstances which have led, or are likely to lead, to the improper conduct of business by him or to reflect discredit on the method of conducting his business.
- (2) If after inquiring into an allegation under subsection (1) against a registered person, the Commissioner is of the opinion that the allegation is proved, he may if he thinks fit—
- (a) revoke the registration of the person;
- (b) suspend the registration of the person for such time, or until the happening of such event, as the Commissioner may determine; or
- (c) reprimand the person.
- (3) The Commissioner shall, at the hearing of an inquiry into an allegation under subsection (1) against a registered person, give the person an opportunity of being heard.
- (4) Where the Commissioner revokes or suspends the registration of a registered person, or reprimands a registered person, under subsection (2) he shall notify the person, and the corporation or firm (if any) to which he is accredited, in writing to that effect stating the reasons therefor, and, in the case of a revocation or suspension of registration, specifying the date on which the revocation or suspension shall take effect.

Powers of Commissioner in cases of misconduct, etc.

- (5) For the purposes of this section "misconduct" means—
- any failure to comply with the requirements of this Ordinance or of any regulations made under this Ordinance with respect to dealers, commodity trading advisers, dealers' representatives or commodity trading advisers' representatives, as the case may be;
 - any failure to observe the terms and conditions of a certificate of registration;
 - any act or omission relating to the conduct of business of a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative, as the case may be, which is or is likely to be prejudicial to the public interest.

Effect of
revocation or
suspension
of registration.

37. (1) A person whose registration is revoked under section 35 or revoked or suspended under section 36 shall, for the purposes of section 26, 27, 28 or 29, as the case may be, be deemed not to be registered.

(2) A revocation or suspension of the registration of a person does not operate so as to—

- avoid or affect any agreement, transaction or arrangement relating to the trading in commodity futures contracts entered into by such person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the registration; or
- affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(3) A person whose registration is revoked under section 35 (other than paragraph (a)(iii) or (iv), paragraph (b)(ii) or (v) or paragraph (c)(ii) or (v) of subsection (2) of that section) or 36 may not apply to be registered under this Part, whether as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative, until the expiration of at least 12 months from the date of revocation.

38. (1) Where—

- the Commissioner refuses to register an applicant under section 31 or 32;
- a deposit is transferred or forfeited by the Commissioner under section 33;
- the Commissioner refuses to renew the registration of a registered person under section 34;
- a certificate of registration is issued by the Commissioner under section 30(2) or 34(4) subject to conditions;
- the registration of a registered person is revoked by the Commissioner under section 35; or
- the registration of a registered person is revoked or suspended, or a registered person is reprimanded, by the Commissioner under section 36,

any person who is aggrieved by the decision of the Commissioner may, within 1 month after he is notified of the decision, appeal to the Disciplinary Committee in accordance with any rules made under section 74.

(2) After considering any representations submitted and evidence produced by or on behalf of the appellant and the Commissioner, the Disciplinary Committee may confirm, reverse or vary the decision of the Commissioner which is the subject matter of the appeal.

Appeals to
the Disciplinary
Committee
against
refusal of
applications,
etc.

39. (1) An appeal shall lie to the High Court against any decision of the Disciplinary Committee in an appeal under section 38 by any person who is aggrieved by the decision of the Disciplinary Committee; and the High Court may confirm, reverse or vary the decision of the Disciplinary Committee and give such other directions as it thinks just and equitable.

Appeals to
the court
from decisions
of the
Disciplinary
Committee.

(2) The decision of the High Court on an appeal under subsection (1) shall be final.

40. (1) Any person who for the purpose of obtaining registration or renewal of registration under this Part, whether for himself or for any other person, makes any representation, whether in writing, orally or otherwise, which he knows to be false or misleading as to a material particular shall be guilty of an offence, and shall be liable on conviction upon indictment to a fine of \$20,000 and to imprisonment for 2 years.

False
representations
in obtaining
registration.

(2) For the purposes of subsection (1), "representation" means a representation or statement—

- of a matter of fact, either present or past;
- about a future event; or
- about an existing intention, opinion, belief, knowledge or other state of mind.

(3) Proceedings in respect of an offence under this section may be brought at any time within 6 months of the discovery of the offence.

41. (1) Every dealer, commodity trading adviser, dealer's representative and commodity trading adviser's representative shall forthwith notify the Commissioner in the prescribed form of any change which, while his certificate of registration is in force, may occur—

Information
to be
provided by
registered
persons.

- in the address in Hong Kong at which he carries on the business as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative;
- in the business name or the name of the corporation or firm; or
- in any information supplied in or in connexion with his application for registration or renewal of registration,

as the case may be.

(2) Every dealer, commodity trading adviser, dealer's representative and commodity trading adviser's representative shall forthwith, on ceasing to carry on business in Hong Kong as a dealer, commodity trading adviser, dealer's representative or commodity trading adviser's representative, as the case may be, notify the Commissioner in the prescribed form of that fact.

(3) If, at any time while a corporation or firm is registered as a dealer or commodity trading adviser, any director, partner or employee of the corporation or firm becomes or ceases to be accredited to the corporation or firm, as the case may be, the corporation or firm shall within 7 days after that event notify the Commissioner in the prescribed form of the name and address of that director, partner or employee and such other particulars as may be specified in the form.

(4) If a dealer's representative or commodity trading adviser's representative becomes or ceases to be the representative of the dealer or commodity trading adviser in respect of whom he was registered, that representative and the dealer or commodity trading adviser, as the case may be, shall within 7 days after that event notify the Commissioner in the prescribed form of the fact.

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

Commissioner to keep registers of registered persons.

42. (1) The Commissioner shall establish and maintain at his office—

- (a) a register of dealers in which shall be entered the name of every dealer and such other particulars as may be prescribed by regulations in relation to dealers;
- (b) a register of commodity trading advisers in which shall be entered the name of every commodity trading adviser and such other particulars as may be prescribed by regulations in relation to commodity trading advisers;
- (c) a register of dealers' representatives in which shall be entered the name of every dealer's representative and such other particulars as may be prescribed by regulations in relation to dealers' representatives; and
- (d) a register of commodity trading advisers' representatives in which shall be entered the name of every commodity trading adviser's representative and such other particulars as may be prescribed by regulations in relation to commodity trading advisers' representatives.

(2) The registers kept under this section and all applications made by registered persons for registration or renewal of registration shall, during such hours as may be prescribed and on payment of any prescribed fee, be open to inspection by members of the public.

(3) A copy of any extract of or entry in any register kept under this section, purporting to be certified by the Commissioner, shall be admissible as evidence in any legal proceedings, whether under this Ordinance or otherwise.

Publication of names of registered dealers, etc.

43. (1) The Commissioner shall cause to be published in the *Gazette*, in such manner as he thinks fit, the names and addresses of all registered persons.

(2) The information required to be published under subsection (1) shall be published at least once in each year.

(3) If the Commissioner at any time amends any register kept by him under this Part by adding or removing the name of any person, he shall cause particulars of the amendment to be published in the *Gazette* within one month after making the amendment.

PART V

ACCOUNTS AND AUDIT

Interpretation.

44. In this Part, unless the context otherwise requires—

“client” means a person on whose account a dealer carries on any trading in commodity futures contracts as an agent;

“dealer” does not include a director, partner or employee of a corporation or firm, as the case may be, who is accredited to the corporation or firm as a dealer.

45. (1) A dealer shall—

Accounts to be kept by dealers.

(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 trading in commodity futures contracts 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 prejudice to the generality of subsection (1), a dealer shall cause records to be kept—

(a) in sufficient detail to show particulars of—

(i) all amounts received and paid by the dealer, including amounts paid to and disbursed from a segregated account;

(ii) all purchases and sales of futures contracts made by the dealer, and the charges and credits arising from them; and

(b) in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of—

(i) the clients of the dealer; and

(ii) the dealer himself.

(4) A dealer shall retain—

(a) for a period of not less than 7 years, the records kept in accordance with this section; and

(b) for a period of not less than 2 years—

(i) a copy of each futures contract made out by him as agent of a client; and

(ii) each futures contract received by him or made out to himself as principal.

(5) Records required to be kept by a dealer by this section may be kept either by making entries in a bound book or by recording or storing the relevant matters in any other manner, and anything so entered, recorded or stored shall be deemed to have been effected by, or with the authority of, the dealer.

(6) Where a record required to be kept by this section 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.

(7) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record in accordance with this section by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business, other than the business of trading in commodity futures contracts, that is carried on by him.

(8) Any dealer who, without reasonable excuse, contravenes this section shall be guilty of an offence and shall be liable on conviction upon indictment to a fine of \$10,000 and to imprisonment for 6 months.

(9) If, in any records kept in accordance with this section, a person wilfully—

- (a) enters, records or stores, or causes to be entered, recorded or stored, in any manner whatsoever any matter that he knows to be false or misleading in a material particular;
- (b) destroys, removes or falsifies, or causes to be destroyed, removed or falsified, any matter that is entered, recorded or stored; or
- (c) fails to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter,

he shall be guilty of an offence and shall be liable on conviction upon indictment to a fine of \$20,000 and to imprisonment for 1 year.

Monies to be paid into segregated accounts, (G of 1976.)

46. (1) A dealer shall establish and keep with an organization approved by the Commissioner for the purposes of this subsection, a deposit-taking company registered under the Deposit-taking Companies Ordinance 1976 or a licensed bank, one or more segregated accounts into which he shall pay, within 4 bank trading days after their receipt, all amounts (less brokerage and other proper charges relating to the requirements of a clearing house or other clearing organization) which are received from, or for the account of, any client in respect of the purchase or sale of futures contracts, except those amounts paid to that client, or in accordance with his directions, not being directions for the payment into an account of the dealer which is not a segregated account.

(2) All amounts required to be paid into a segregated account under subsection (1) shall be retained there by the dealer until they are paid to the client 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 futures contracts on behalf of such client.

(3) All amounts required to be paid into a segregated account under subsection (1) shall be so paid within 4 bank trading days after they are received by the dealer.

(4) No amount other than an amount referred to in subsection (1) shall be paid into a segregated account.

(5) Every dealer shall keep records of—

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

(6) Any dealer who—

- (a) without reasonable excuse, contravenes this section shall be guilty of an offence and shall be liable on conviction upon indictment to a fine of \$10,000 and to imprisonment for 6 months.
- (b) with intent to defraud, contravenes this section shall be guilty of an offence and shall be liable on conviction upon indictment to a fine of \$50,000 and to imprisonment for 5 years.

47. (1) Except as otherwise provided in this Part, money held in a segregated 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.

Monies in segregated accounts not available for payment of debts, etc.

(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.

48. 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 segregated account or in respect of any money received for the purchase of futures contracts or from the sale of futures contracts before the money is paid into a segregated account.

Claims and liens on segregated accounts not affected.

49. (1) A dealer shall appoint an auditor to audit his accounts (including all segregated accounts required to be kept by the dealer under section 46), 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.

Dealers to appoint auditors.

(2) An auditor is not eligible for appointment under subsection (1) if—

- (a) where the dealer is an individual, he is an employee of the dealer or is in the employment of any employee of the dealer;
- (b) where the dealer is a corporation, he is a director or employee of the corporation or is in the employment of any director or employee of the corporation; or
- (c) where the dealer is a firm, he is a partner or employee of the firm or is in the employment of any partner or employee of the firm.

50. (1) A dealer shall—

- (a) in respect of the financial year beginning before and ending after the day on which this section comes into operation, or the day on which the dealer commences to carry on business as a dealer, whichever is the later day; and
- (b) in respect of each subsequent financial year,

Dealers to lodge annual accounts, etc.

prepare a true and fair profit and loss account and a balance sheet made up to the last day of the financial year and lodge the account and balance sheet with the Commissioner within 4 months (or such extension thereof permitted by the Commissioner under subsection (2)) next following the end of the financial year, together with an auditor's report on the account and balance sheet.

(2) Where an application for the extension of the period of 4 months specified in subsection (1) is made by a dealer to the Commissioner and the Commissioner is satisfied that there are special reasons for requiring the extension, the Commissioner may extend that period by 1 month subject to such conditions (if any) as the Commissioner thinks fit to impose.

(3) Any dealer who fails to comply with subsection (1) or with any condition imposed under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

51. 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

Reports by auditor to the Commissioner in certain cases.

- (b) discovers evidence of a contravention by the dealer of section 45 or 46,

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, the contravention.

52. (1) Where—

- (a) a dealer fails to lodge an auditor's report under section 50; or
(b) the Commissioner receives a report under section 51,

the Commissioner may, if he is satisfied that it is in the interests of the dealer, dealer's clients, or general public, to do so, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books, accounts and records of 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 subsection (1) should be borne by the dealer, the Commissioner may, by order in writing, direct the dealer to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.

(3) Where a dealer fails to comply with an order under subsection (2), the amount specified in the order may be sued for and recovered by the Commissioner as a debt in a court.

53. (1) On receipt of an application in writing from a client who alleges that a dealer has failed to account to him in respect of any money held or received, or any futures contract bought or sold, by the 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 and audit, either generally or in relation to any particular matter, the books, accounts and records of that dealer.

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

- (a) the particulars of the circumstances in respect of which the dealer is alleged to have failed to account;
(b) the particulars of the moneys and the dealings in futures contracts in respect of which the failure has occurred; and
(c) such other particulars as the Commissioner may require.

(3) The statements in an application under subsection (1) shall be verified by a 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 that—

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

(5) 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 subsection (1) should be borne by the dealer or applicant, the Commissioner may, by order in writing, direct the dealer or applicant to pay a specified amount, being the whole or part of such costs and expenses, within the time and in the manner specified.

Power of
Commissioner
to appoint
auditor.

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

(6) Where a dealer or applicant fails to comply with an order under subsection (5), the amount specified in the order may be sued for and recovered by the Commissioner as a debt in a court.

54. An auditor appointed under section 52 or 53 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 the
Commissioner.

55. (1) An auditor appointed under section 52 or 53 to examine and audit the books, accounts and records of a dealer may for the purpose of carrying out the examination and audit—

Powers of
auditors
appointed
by the
Commissioner.

- (a) examine on oath the dealer and, where the dealer is a corporation or firm, any director of the corporation or partner of the firm, as the case may be, and any of the dealer's employees and agents and any other auditor appointed under this Ordinance in relation to those books, accounts and records;
(b) require the dealer and, where the dealer is a corporation or firm, any director of the corporation or partner of the firm, as the case may be, and the dealer's employees and agents, to produce any books, accounts and records held by or on behalf of the dealer relating to his business;
(c) require an auditor appointed by the dealer to produce any books, accounts and records held by him relating to the business of the dealer;
(d) require the Clearing House to produce any books, accounts and records kept by it relating to the business of the dealer;
(e) require the Clearing House to provide any information in its possession relating to the business of the dealer;
(f) employ such persons as he considers necessary to assist him to carry out the examination and audit; and
(g) 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 the examination of any person on oath, under this subsection.

(2) Any person who, without reasonable excuse, refuses or fails to answer any question put to him, or fails to comply with any request made to him, by an auditor appointed under section 52 or 53 or person authorized under subsection (1)(g) 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) If the Clearing House, without reasonable excuse, fails to comply with any request made to it by an auditor appointed under section 52 or 53 or person authorized under subsection (1)(g), the Clearing House shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000.

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

Offence to
destroy,
alter, etc.
records.

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

shall be guilty of an offence and shall be liable on conviction upon indictment 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 or record mentioned in paragraph (a) of that subsection; or
- (b) sent or conspired to send out of Hong Kong any such book, account or record, 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 Hong Kong shall be guilty of an offence and shall be liable on conviction upon indictment to a fine of \$50,000 and to imprisonment for 2 years.

57. Except as may be necessary for the carrying into effect of 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 52 or 53 or any employee of such auditor shall not divulge any information which may come to his knowledge in the course of performing his duties as such auditor or employee, 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.

58. Nothing in this Part shall prevent the Exchange Company or Commissioner from imposing on dealers any further obligations or requirements which it or he 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.

PART VI

TRADING PRACTICES

59. (1) The Commission may, by rule, establish and fix limits on the amount of trading which may be done, or positions which may be held, by any person under futures contracts in respect of a specified commodity on, or subject to the rules of, the relevant commodity market.

(2) Nothing in subsection (1) shall be construed as prohibiting the Commission from fixing different trading or position limits for different specified commodities, commodity markets or delivery months or from exempting certain transactions specified in the rule.

60. Where under section 59 the Commission has established any limits, no person shall—

- (a) directly or indirectly, buy or sell or agree to buy or sell, under futures contracts for such specified commodity on, or subject to the rules of, the commodity market to which the rule applies,

any amount of such specified commodity during any one business day in excess of any trading limit fixed for one business day or other stated period by the Commission; or

- (b) directly or indirectly hold or control a net long or net short position in such specified commodity for future delivery on, or subject to the rules of, the relevant commodity market in excess of any position limit fixed by the Commission for or with respect to such specified commodity.

61. No person shall transact on or through any commodity market, or hold himself out as being prepared to transact on or through any commodity market, any dealing which confers on any person an option to purchase or sell any commodity, except as provided in the rules of the commodity market.

Dealing in options prohibited.

62. (1) No person shall intentionally create or cause to be created, or do anything with the intention of creating a false or misleading appearance of active trading in any commodity on any commodity market.

False trading etc.

(2) No person shall 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 futures contract 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).

63. No person shall, directly or indirectly, in connexion with any transaction with any other person involving the purchase or sale of a futures contract—

Employment of fraudulent or deceptive devices etc.

- (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.

64. No person shall, directly or indirectly, for the purposes of inducing the purchase or sale of a futures contract, make—

False or misleading statements.

- (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 grounds for believing is 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 believing is rendered false or misleading by reason of the omission of that fact.

65. (1) Any person who contravenes section 60 or 61 shall be guilty of an offence and shall be liable on conviction upon indictment to a fine of \$10,000 and to imprisonment for 6 months.

Offences.

(2) Any person who contravenes section 62, 63 or 64 shall be guilty of an offence and shall be liable on conviction upon indictment to a fine of \$100,000 and to imprisonment for 5 years.

PART VII

COMMODITIES TRADING COMMISSION DISCIPLINARY COMMITTEE

66. (1) Where the appointment of a Disciplinary Committee is necessary for the purpose of considering any appeal under this Ordinance, the Commission shall, and where it appears to the Commission to be desirable that any allegation should be inquired into by a Disciplinary Committee, the Commission may, appoint a Disciplinary Committee of the Commission for that purpose.

Appointment of the Disciplinary Committee.

Restriction on auditor's and employee's right to communicate certain matters.

Exchange Company may impose additional obligations on members.

Fixing of trading and position limits.

Offence to exceed limits.

(2) The Disciplinary Committee shall consist of 5 members, who shall be appointed by the Commission and of whom—

- (a) 1 shall be the member of the Commission who is qualified in law, or if there is more than 1 such member, 1 of those members;
- (b) 2 shall be other members of the Commission (other than the Commissioner); and
- (c) 2 shall be such other persons (not being members of the Commission) as the Commission thinks fit.

(3) The member of the Disciplinary Committee referred to in subsection (2)(a) shall be the chairman of the Disciplinary Committee.

(4) A quorum of the Disciplinary Committee shall be 4 members.

(5) At any meeting of the Disciplinary Committee, the chairman shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(6) All questions before any meeting of the Disciplinary Committee shall be decided by a majority of the valid votes recorded thereon. A question shall in the first instance be decided by a show of hands, but any member of the Disciplinary Committee may require a ballot to be held to determine the question.

(7) Subject to subsections (4), (5) and (6) and to any rules made under section 74, the procedure at meetings of the Disciplinary Committee shall be determined by the Disciplinary Committee.

67. (1) A Disciplinary Committee appointed for that purpose may inquire into any allegation made by the Commission, the Commissioner or any other person, that—

- (a) the Exchange Company;
- (b) the management committee;
- (c) any member of the management committee; or
- (d) the Clearing House,

has been guilty of any misconduct.

(2) If, after inquiring into an allegation of misconduct under subsection (1), the Disciplinary Committee is of the opinion that the allegation is proved it may, subject to subsection (4), do one or more of the following things—

- (a) report its findings to the Commission and recommend the exercise of any of the powers conferred on it by section 20;
- (b) disqualify any member of the management committee from holding office as such either permanently or for such period as it may specify;
- (c) impose on the Exchange Company or Clearing House a fine of \$10,000;
- (d) reprimand the management committee or any member thereof.

(3) The Disciplinary Committee shall—

- (a) at the hearing of any inquiry into an allegation of misconduct under subsection (1); and
- (b) before doing any of the things specified in subsection (2),

give the body against which, or the person against whom, the allegation of misconduct is made or any action is to be taken an opportunity of being heard and the body or person may be represented by a barrister or solicitor.

Disciplinary Committee to inquire into allegations of misconduct.

(4) Where the Exchange Company, management committee or any member thereof, or Clearing House has been proceeded against before a court in respect of an offence arising out of any misconduct, the Disciplinary Committee shall not impose a fine under subsection (2)(c) in respect of that misconduct.

(5) For the purposes of this section, "misconduct" means—

- (a) any failure to comply with the requirements of, or any direction given under, this Ordinance;
- (b) any wilful contravention of the constitution of the Exchange Company or Clearing House;
- (c) any wilful contravention of the rules of the Exchange Company or commodity market or the rules of the Clearing House;
- (d) any failure by the Exchange Company or by the management committee to enforce compliance by shareholders with the rules of the Exchange Company;
- (e) any act or omission relating to the operation of the commodity exchange or any commodity market which is likely to be prejudicial to the public interest.

68. After the hearing of any inquiry under section 67 or appeal under this Ordinance, the Disciplinary Committee may make such order as to the payment of costs as it considers just.

Costs.

69. (1) Where the Disciplinary Committee—

Appeals.

(a) under section 67(2)—

- (i) disqualifies any member of the management committee from holding office;
- (ii) imposes a fine on the Exchange Company or Clearing House; or
- (iii) reprimands the management committee or any member thereof; or

(b) under section 68, makes an order for the payment of cost,

the person or body aggrieved by the decision or order of the Disciplinary Committee may appeal to the High Court against the decision or order, and the High Court may confirm, vary or reverse the decision or order and give such other directions as it thinks just and equitable.

(2) The decision of the High Court on an appeal under subsection (1) shall be final.

70. Any sum ordered by the Disciplinary Committee to be paid by way of—

Recovery of penalties and costs.

- (a) fine under section 67(2)(c); or
- (b) costs under section 68,

shall be deemed to be a debt due from the person ordered to pay it to the person to whom it is ordered to be paid and shall be recoverable accordingly in a court.

71. (1) The Disciplinary Committee may, by notice in writing signed by the chairman of the Disciplinary Committee and served on any person to whom it is addressed, require the person to attend and give evidence before it at the hearing of any inquiry under section 67 or appeal to it under this Ordinance, and to produce all books, accounts, records and

Evidence at hearing of inquiry, etc.

documents in that person's custody or under his control relating to the subject-matter of the inquiry or appeal, as the case may be.

(2) At the hearing of an inquiry under section 67 or appeal to it under this Ordinance, the Disciplinary Committee may—

- (a) receive such evidence as it considers relevant to the inquiry or appeal, whether or not it would be admissible in a court; and
- (b) require evidence to be given on oath (either orally or in writing) and books, accounts, records or documents to be produced.

(3) For the purposes of subsection (2), the chairman of the Disciplinary Committee may administer an oath.

(4) Any person who, without lawful authority or reasonable excuse, refuses or fails—

- (a) to attend and give evidence when required to do so by the Disciplinary Committee;
- (b) to answer truly and fully questions put to him by a member of the Disciplinary Committee; or
- (c) to produce any book, account, record or document which he has been required to produce,

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

72. The Disciplinary Committee and any witness, barrister or solicitor appearing before the Disciplinary Committee shall, in respect of inquiries and appeals heard under this Ordinance, have the same privileges and immunities as are accorded to a court and persons appearing before it in legal proceedings.

73. (1) Every witness giving evidence or attending to give evidence at a hearing of any inquiry under section 67 or appeal under this Ordinance shall be entitled in the discretion of the Disciplinary Committee to such sum for his expenses and loss of time as the Disciplinary Committee may determine.

(2) Subject to any order made by the Disciplinary Committee as to the payment of costs or expenses, all witnesses' expenses under subsection (1) shall be paid out of moneys provided by the Legislative Council.

74. Subject to this Part, the Commission may make rules in respect of the hearing and determination by the Disciplinary Committee of inquiries under section 67 and appeals to the Disciplinary Committee under this Ordinance.

75. (1) Every decision of the Disciplinary Committee shall be in writing signed by the chairman of the Disciplinary Committee and shall contain a statement of the reasons for the decision.

(2) Every document purporting to contain a decision of the Disciplinary Committee and to be signed by the chairman of the Disciplinary Committee shall, until the contrary is proved, be deemed to be a decision of the Disciplinary Committee duly made.

Immunity of
Disciplinary
Committee,
witnesses, etc.

Witnesses'
expenses.

Rules of
procedure.

Decisions of
Disciplinary
Committee.

PART VIII COMPENSATION FUND

76. (1) In this Part, unless the context otherwise requires—
"Committee" means the Compensation Fund Committee established under section 78(1).

Interpretation.

(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.

77. The Commission shall establish and maintain a compensation fund, to be known as the compensation fund, for the purposes set out in this Part.

Establishment
of compensa-
tion fund.

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

Compensation
Fund
Committee.

(2) The Committee shall consist of 5 members who shall be appointed by the Commission and of whom at least 2 shall be members of the Commission and at least 2 shall be shareholders.

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

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

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

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

Money
constituting
the compensa-
tion fund.

(2) The Commission may borrow for the purposes of the compensation fund from any lender and may charge any investments acquired under section 83 by way of security for any such loan; but the aggregate sum owing at any one time in respect of such loans shall not exceed \$1,000,000.

80. The Commission shall open at one or more licensed banks a separate bank account or accounts and shall, pending their application in accordance with this Part, pay into or transfer to such bank account or accounts all amounts forming part of the compensation fund.

Money to be
kept in bank
account.

81. (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 Ordinance comes into operation, 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 the financial year.

Accounts of
compensation
fund.

(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 revenue and expenditure account and balance sheet prepared under subsection (1) and shall submit the report to the Commission.

(4) Not later than 4 months after the end of each financial year the Commission shall cause a copy of the audited revenue and expenditure account and balance sheet to be sent to the Exchange Company together with the auditor's report.

82. (1) The Exchange Company shall deposit and keep deposited with the Commission in respect of each shareholder—

- (a) an amount of \$25,000 in cash; and
- (b) a bank guarantee in the amount of \$25,000 in a form acceptable to the Commission, or a further amount of \$25,000 in cash.

(2) Any amount due from the Exchange Company under this section may be sued for and recovered by the Commission as a debt in a court.

83. (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—

- (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 notify the Exchange Company—

- (a) the rate of interest to be paid for that financial year in respect of each deposit paid in cash under section 82(1)(a); and
- (b) the amount to be charged for management expenses incurred in the administration of the compensation fund, and the Commission shall pay the Exchange Company the interest accrued after deducting the management expenses.

(3) A fixed deposit receipt or other document evidencing the investment of money under subsection (1) may be kept in the office of the Commission or deposited for safe keeping with a licensed bank.

84. Where the Exchange Company has made a deposit under section 82 in respect of a shareholder and the shareholder ceases to be a shareholder, the Commission shall, unless the deposit or any part thereof is required to satisfy any claim or liability arising before the date on which the shareholder ceases to be a shareholder, within 6 months after such date refund to the Exchange Company the deposit paid in cash or such part thereof as is not so required and return to it the bank guarantee.

85. (1) Subject to subsections (2) and (3), if at any time resort has to be made to any deposit paid in cash under section 82(1)(a) in order to satisfy any claim against the compensation fund in relation to a shareholder, the Exchange Company shall, on being required to do so by the Commission, replenish the compensation 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 incurred in relation to the claim by recourse to the bank guarantee deposited under section 82(1)(b).

Exchange Company to make deposits in respect of shareholders.

Investment of money in compensation fund.

Repayment of deposits in certain cases.

Replenishment of compensation fund in certain cases.

(2) The maximum liability of the Exchange Company to the compensation fund shall not in any event exceed the cash payment of \$50,000 in respect of each shareholder.

(3) The Commission shall not require the Exchange Company to make a deposit under subsection (1) unless it has first exhausted all relevant rights of action and other legal remedies, conferred by section 95, against the shareholder in relation to whom the claim arose.

(4) Any amount due from the Exchange Company under this section may be sued for and recovered by the Commission as a debt in a court.

86. Subject to this Part, there shall be paid out of the compensation fund as required and in the following order—

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

87. (1) Subject to subsection (6), where a person sustains pecuniary loss because of a default committed in the course of or in connexion with the commodity futures trading business of a shareholder by the shareholder or by any director, partner or employee, as the case may be, of the shareholder in respect of any money, futures contract or other property—

- (a) which was entrusted to or received by the shareholder or any director, partner or employee of the shareholder, for or on behalf of that person; and
- (b) to which that person is entitled or in which he has a beneficial interest (whether existing or contingent),

he shall be entitled, subject to this Part, to claim compensation from the compensation fund for such pecuniary loss.

(2) Subsection (1) does not entitle any shareholder to make a claim against the compensation fund.

(3) Except as otherwise provided in this Part, the total amount of compensation that may be paid to any person under subsection (1) shall not in any event exceed \$1,000,000 in respect of each shareholder; but for the purposes of this subsection any amount paid from the compensation fund shall, to the extent that the compensation fund is subsequently reimbursed in respect of any such payment (not being a deposit made under section 85), be disregarded.

(4) Subject to this Part, the amount of compensation which any person is entitled to claim from the compensation fund is the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proving of his claim) less any 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.

(5) In addition to any compensation payable under this Part, interest shall be payable out of the compensation fund on the amount of the

Payment out of the compensation fund.

Claims against the compensation fund.

compensation, less any amount attributable to costs and disbursements, at such rate as may be determined by the Commission, which shall be calculated from the day on which the default was committed and continue until the day on which the claim is satisfied.

(6) Subsection (1) shall not apply where the default occurs prior to the commencement of this section.

Rights of innocent directors, etc. in relation to the compensation fund.

88. (1) Notwithstanding anything to the contrary in this Part, where all persons submitting claims for compensation under this Part have been fully compensated in accordance with the provisions of this Part for the pecuniary loss sustained by them as a result of the default by a director, partner or employee of a shareholder, the shareholder or any other director, partner or employee of the shareholder, who has paid the compensation to any claimant shall be subrogated to the extent of that payment to all the rights and remedies of that claimant against the compensation fund if the Exchange Company considers, having regard to all the circumstances, that he—

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

(2) The Exchange Company shall notify in writing the shareholder or director, partner or employee of the shareholder referred to in subsection (1) the decision made by it under that subsection.

(3) If a shareholder or any director, partner or employee of a shareholder is aggrieved by the decision of the Exchange Company under subsection (1), he may, within 28 days after receipt of notice of the decision, appeal to the Commission against the decision.

(4) An appellant shall, on the same day as lodging a notice of appeal with the Commission, lodge a copy of the notice with the Exchange Company.

(5) The Commission shall inquire into and decide on the appeal and, if the Commission considers that having regard to all the circumstances, 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 be subrogated to the extent of any payment made by him to all the rights and remedies against the compensation fund of the person to whom he has paid the compensation.

Notice calling for claims against the compensation fund.

89. (1) The Exchange Company 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 Exchange Company—

- (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 3 months after the claimant became aware of the default giving rise to the claim.

(3) Any claim which is not lodged within the time limited by subsection (2) shall, unless the Exchange Company otherwise determines, be barred.

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

90. (1) Where the Exchange Company is satisfied that a claim for compensation under this Part is a proper claim, it shall, subject to this Part, make a determination allowing the claim.

Power of the Exchange Company in respect of claims.

(2) If the Exchange Company is not satisfied as to the propriety of a claim for compensation under this Part, it shall make a determination disallowing the claim or, if it is satisfied as to the propriety of a part of such a claim, it shall make a determination allowing the claim as to that part.

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

(4) If the Exchange Company disallows, or allows partially, a claim under subsection (2), the determination of the Exchange Company shall specify the reasons for the disallowance or partial allowance, as the case may be.

(5) 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.

91. (1) The Exchange Company may require any person to produce any futures contracts, documents or statements of evidence necessary—

Exchange Company may require production of documents, etc.

- (a) in order to substantiate any claim for compensation under this Part;
- (b) for the purpose of exercising its rights against any shareholder or against any other person; 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 futures contracts, documents or statements of evidence under subsection (1) fails to produce them the Exchange Company may, if it is satisfied that the futures contracts, documents or statements of evidence are in the possession of, or available to, the claimant, refuse to allow the claimant's claim until such time as he produces them.

92. (1) Subject to subsection (2), a person whose claim for compensation under this Part has been disallowed or partially allowed under section 90 may commence proceedings in a court against the Exchange Company to establish his claim.

Court proceedings to establish a claim against the compensation fund.

(2) Except with the leave of the court, no proceedings against the Exchange Company under subsection (1) may be commenced after the expiration of 3 months after the service of the notice under section 90(3).

(3) Proceedings brought against the Exchange Company to establish a claim for compensation under this Part shall be by action as for a debt due from the Exchange Company.

Supplementary provisions relating to court proceedings.

93. In any proceedings brought under section 92—

- (a) all defences that are available to the person or persons in relation to whom the claim arose shall be available to the Exchange Company;
- (b) all questions as to costs shall be in the discretion of the court; and
- (c) evidence which is admissible against the shareholder or against any other person by whom it is alleged a default was committed is admissible to prove the commission of the default, notwithstanding that the shareholder or other person is not the defendant in or a party to those proceedings.

Court order establishing the claim.

94. Where, in any proceedings brought under section 92, a 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—

- (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).

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

95. On the Commission making any payment out of the compensation fund in respect of any claim for compensation under this Part—

- (a) the Commission shall be subrogated to the extent of that payment to all the rights and remedies of the claimant in respect of the pecuniary loss sustained by him by reason of the default on which the claim was based; and
- (b) the claimant shall have no right under any bankruptcy or legal proceedings or otherwise to receive in respect of the pecuniary loss any sum out of the assets of the shareholder concerned, or where the pecuniary loss was caused by the default of a director, partner or employee of a shareholder, the assets of that director, partner or employee, until the Commission has been reimbursed the full amount of the payment made by it out of the compensation fund.

Payment of claims from the compensation fund only.

96. No money or other property belonging to the Commission or the Exchange Company, other than the compensation fund, shall be available for the payment of any claim for compensation under this Part, whether the claim is allowed by the Exchange Company or is made the subject of a court order or otherwise.

Provision where the compensation fund is insufficient to meet claims.

97. (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 court orders have been made, under this Part then the amount at credit shall, subject to subsection (2), be apportioned between the claimants in such manner as the Exchange Company or, as the case may be, the court thinks equitable; and any such claim shall, so far as it remains unpaid, be charged against further receipts of the compensation fund and paid out of the compensation fund when there is again money available in the compensation fund.

(2) Where the aggregate of all claims for compensation which have been allowed, or in respect of which court orders have been made, under this Part in respect of the default giving rise to the claims exceeds the

total amount which may be paid under this Part in respect of any shareholder concerned in the default, that total amount shall be apportioned between the claimants in such manner as the Exchange Company or, as the case may be, the court thinks equitable; and, on payment out of the compensation 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 for compensation which may subsequently arise or be made in connexion with the default,

shall be absolutely discharged.

98. In the event of the Exchange Company 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 Company the whole or any part of the amounts deposited in cash by the Exchange Company 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 Company and be available to the liquidator for distribution in accordance with the Companies Ordinance.

Power of Commission to return deposits on winding up of the Exchange Company. (Cap. 32.)

PART IX

MISCELLANEOUS PROVISIONS

99. An appeal to the High Court under this Ordinance shall be made within such time and in such manner, and shall be heard in accordance with such procedure, as may be prescribed by rules of court made under the Supreme Court Ordinance.

Procedure on appeal.

(Cap. 4.)

100. (1) Where the management committee becomes aware of any matter which adversely affects or is likely to adversely affect the ability of a shareholder to meet his legal obligations as a dealer, the management committee shall report the matter to the Commissioner in writing as soon as practicable after it becomes aware of the matter.

Report of certain matters regarding shareholders.

(2) Where the membership of a shareholder is suspended, or a shareholder is expelled from membership, by the Exchange Company, the management committee shall report the matter to the Commissioner in writing within 3 trading days after such suspension or expulsion, as the case may be.

101. Every dealer, other than a director, partner or employee of a corporation or firm who is accredited to the corporation or firm as a dealer, shall notify the Commissioner in writing of—

Notification by dealers of their financial year.

- (a) the period of the financial year adopted by him and of the date on which it ends; and
- (b) any changes in the period of the financial year or the date on which it ends.

102. The Exchange Company shall furnish promptly to the Commission copies of all rules of a commodity market made or issued and all proposed changes to such rules,

Supply of copies of rules to the Commission.

Production of records, etc., by the Exchange Company, etc.

103. (1) The Exchange Company, Clearing House, Guarantee Corporation and a dealer shall—

- (a) produce any books, accounts and records kept by it or him in connexion with or for the purposes of its or his business or in respect of any trading in commodity futures contracts; and
- (b) provide any other information relating to its or his business or any trading in commodity futures contracts,

as the Commission may require.

(2) If the Exchange Company, Clearing House, Guarantee Corporation or any dealer, without reasonable excuse, fails to comply with any requirement under subsection (1), the Exchange Company, Clearing House, Guarantee Corporation or dealer, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000.

Godown operators to keep records.

104. An operator of a godown registered under the rules of the Exchange Company shall make such reports and keep such records, and permit inspection of such records and the godown, as the Commission may require.

Amendment of rules on direction by the Commission.

105. The Commission may in writing direct the Exchange Company to amend the rules of the Exchange Company or the rules of a commodity market, as the case may be, if, after making the appropriate request to the Exchange Company to effect the required amendments on its own behalf, the Commission determines that the amendments have not been effected.

Prohibition of use of title "commodity exchange", etc.

106. (1) No person at any time more than six months after the commencement of this section, other than the Exchange Company in respect of the Commodity Exchange, shall—

- (a) take or use the title "commodity exchange" or "Hong Kong Commodity Exchange Limited"; or
- (b) take or use, or have attached to or exhibited at any place, any title which resembles either title specified in paragraph (a) or so closely resembles either such title as to be calculated to deceive.

(2) A person who is not a dealer shall not—

- (a) take or use the title or description "commodity dealer"; or
- (b) take or use, or have attached to or exhibited at any place, any title or description that resembles the title specified in paragraph (a) or so closely resembles such title as to be calculated to deceive.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and, in the case of a continuing offence, to a further fine of \$5,000 for each day during which the offence continues.

Commodity trading advisory contracts.

107. (1) No commodity trading adviser shall enter into a commodity trading advisory contract with any person (in this section referred to as his client), or extend or renew any such contract, or in any way perform any such commodity trading advisory contract entered into, extended or renewed after the commencement of this section, if the contract—

- (a) provides for remuneration to be paid by the client to the commodity trading 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 commodity trading adviser shall be made only with the consent of the client; or

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

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

(ii) if a firm, will notify the client of any change in the partners of the firm,

within a reasonable time after the change.

(2) Subsection (1)(a) does not prohibit a commodity trading 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.

(3) For the purposes of this section, "commodity trading advisory contract" means a contract or agreement whereby a person agrees to act as a commodity trading adviser or to manage any commodity trading or trading account of a client, not being a company carrying on business as a commodity trading company and registered as such under the Companies Ordinance. (Cap. 32.)

(4) Any commodity trading adviser who knowingly enters into any contract in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000.

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

108. 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

(b) without reasonable excuse, fails to produce any books, accounts, records or documents 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 \$20,000 and to imprisonment for 6 months.

109. (1) The Governor in Council may, after consultation with the Commission, make regulations for the better carrying out of the purposes and provisions of this Ordinance, and in particular and without prejudice to the generality of the foregoing, for all or any of the following matters—

(a) the applications for registration, or renewal of registration, of dealers, commodity trading advisers, dealers' representatives and commodity trading advisers' representatives, and matters incidental to such registration or renewal of registration;

(b) prescribing the fees to be paid for registration, or renewal of registration, of dealers, commodity trading advisers, dealers' representatives and commodity trading advisers' representatives;

(c) prescribing the appropriate standards with respect to the qualifications, experience and training of applicants for registration

Obstruction.

Regulations.

as dealers, commodity trading advisers, dealers' representatives and commodity trading advisers' representatives;

- (d) providing for the examination of applicants for registration as dealers, commodity trading advisers, dealers' representatives and commodity trading advisers' representatives, and for the fees to be paid for such examinations;
- (e) providing for the exemption of such applicants from taking examinations subject to such terms and conditions as may be prescribed;
- (f) prescribing the particulars to be recorded in registers kept under this Ordinance and the inspection of such registers;
- (g) empowering the Commissioner to correct any errors in any register kept under this Ordinance;
- (h) 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 certificates of registration or duplicate certificates of registration;
- (i) requiring dealers and commodity trading advisers to exhibit their certificates or registration at their places of business;
- (j) providing for the application of deposits made by or in respect of dealers;
- (k) prescribing the particulars to be recorded in, or in respect of, accounts kept by dealers under this Ordinance;
- (l) prescribing the particulars to be recorded in the profit and loss accounts and balance sheets and the information to be contained in auditor's reports required to be lodged under this Ordinance on the annual accounts of dealers;
- (m) providing for the remuneration of an auditor appointed under this Ordinance, and for the costs of an audit carried out under this Ordinance;
- (n) prescribing any forms for the purposes of this Ordinance;
- (o) 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.

Offence by corporations.

110. (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 or employee 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.

111. Where any corporation operates or undertakes the operation of the Clearing House, all duties and obligations imposed by this Ordinance upon, and all penalties that apply under this Ordinance to, the Clearing House, are imposed upon and apply to the corporation and for this purpose references in this Ordinance to the Clearing House shall be deemed to be references to the corporation.

Liability of corporation operating Clearing House.

112. For the purposes of this Ordinance an act, omission or failure of any employee, agent or other person acting for or on behalf of any individual, corporation or firm within the scope of his office or employment shall be deemed to be the act, omission or failure of such individual, corporation or firm, as well as of such employee, agent or other person.

Liability of principal for act of agent.

113. (1) Subject to subsection (4), any dealer or dealer's representative who makes or offers to make a futures contract, whether on his own behalf or otherwise, with two or more individuals, or with a single individual knowing or having reason to believe that the individual is acting on behalf or for the benefit of two or more individuals, shall be guilty of an offence and shall be liable on conviction to a fine of \$25,000 and to imprisonment for 1 year.

Provision against syndicated trading.

(2) Subject to subsection (4), any person who invites or offers to arrange for—

- (a) any individual to participate in a futures contract in which two or more other individuals also participate or are likely to participate; or
- (b) any individual to make a futures contract knowing or having reasonable cause to believe that the individual will do so on behalf or for the benefit of two or more other individuals,

shall be guilty of an offence and shall be liable on conviction to a fine of \$25,000 and to imprisonment for 1 year.

(3) For the purposes of subsections (1) and (2)—

- (a) an individual who makes a futures contract acts for the benefit of every individual who shares in the profit or loss on the contract; and
- (b) an individual participates in a futures contract if he shares in the profit or loss on the contract.

(4) The Commission may by order published in the *Gazette* exempt any person or contract or class or description of person or contract from subsections (1) and (2).

114. 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.

Prosecution of offences.

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

- (a) the First Schedule and the Second Schedule; and
- (b) any sum specified in section 31(1), 82(1) or 85(2).

Amendment of Schedule and sum specified in sections 31, 82 and 85. (Cap. 82.)

Consequential
amendments.
(Cap. 82.)

116. The Commodity Exchange (Prohibition) Ordinance is amended in section 3—

- (a) by deleting the full stop at the end of paragraph (d) and substituting a semicolon; and
(b) by inserting a new paragraph as follows—

“(59 of 1976.) (e) the Commodity Exchange established under the Commodities Trading Ordinance 1976.”.

FIRST SCHEDULE [s. 2.]

SPECIFIED COMMODITIES

1. Cotton.
2. Sugar.

SECOND SCHEDULE [s. 31.]

EXCHANGES

Chicago Board of Trade
Chicago Mercantile Exchange
Commodity Exchange, Inc.
London Baltic Exchange
London Commodity Exchange
London Metal Exchange
New York Cocoa Exchange
New York Coffee and Sugar Exchange, Inc.
New York Cotton Exchange, Inc.
New York Mercantile Exchange
New York Produce Exchange, Inc.
Paris White Sugar Market
Sydney Futures Exchange, Ltd.
Tokyo Fibre Commodity Exchange
Tokyo Grain Exchange
Tokyo Rubber Exchange
Tokyo Sugar Exchange
Winnipeg Commodities Exchange

Passed by the Hong Kong Legislative Council this 4th day of August, 1976.

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.

Wm. W. Letcher
Governor

5th August 1876

HONG KONG

No. 60 of 1976



I assent.

M. M. Lehn
Governor

5th August, 1976.

An Ordinance to provide for the registration and preservation of copies of books first printed, produced or published in Hong Kong.

[]

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 Books Registration Ordinance 1976 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires— Interpretation.
"book" includes—

- (a) every volume, part or division of a volume;
- (b) every magazine, journal, annual report, or other similar kind of periodical publication; and
- (c) every pamphlet, sheet of music, map, chart, table or plan which is separately printed or produced,

but does not include any book specified in the Schedule; Schedule.

"Director" means the Director of Urban Services;

"new book" means a book which—

- (a) after the commencement of this Ordinance is either—
- (i) printed or produced for the first time in Hong Kong; or
 - (ii) published for the first time in Hong Kong, regardless of where it was originally printed or produced; or
- (b) is a photographic copy photographically copied in Hong Kong for the first time after the commencement of this Ordinance from a book printed, produced or published outside Hong Kong;

"publisher" means—

- (a) in the case of a book published in Hong Kong, the publisher thereof or his agent in Hong Kong;
- (b) in the case of a book printed or produced in, but not published in, Hong Kong, the agent in Hong Kong of the publisher or, in the absence of an agent, the person primarily responsible for the printing or production of the book;
- (c) in the case of a photographic copy of a book, the agent in Hong Kong of the publisher or, in the absence of an agent, the person in Hong Kong primarily responsible for the photographic copying of the book.

3. (1) The publisher of a new book shall, within 1 month after the book is published, printed, produced or otherwise made in Hong Kong, deliver to the Director free of charge 5 copies of the book, together with all maps, prints or other engravings belonging thereto, properly bound, sewed or stitched and produced on the best paper on which the book and any map, print or other engraving thereto is printed or produced.

(2) The publisher of the book shall, within such period after delivery of copies of the book as the Director may specify, forward to the Director in writing such particulars of the book as the Director may require to enable him to register the book in accordance with section 5.

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

4. After receipt of the copies of a new book delivered to him under section 3, the Director shall—

- (a) register the particulars of the book in accordance with section 5; and
- (b) send 1 copy of the book to—
 - (i) the British Library Board, London; and
 - (ii) the City Hall Library, Hong Kong or such other library as he may approve; and
- (c) give the remaining copies of the book to any public cultural or educational body as he may select or otherwise dispose of them in such other manner as he thinks fit.

5. (1) The Director shall maintain a register of every new book delivered to him under section 3.

(2) The register shall be in such form and contain such particulars of each book to be registered as the Director thinks fit.

Delivery to Director of copies of every new book.

Registration and disposal of copies of new books.

Register of books published, printed or produced in Hong Kong.

6. The Governor may by order published in the *Gazette* amend the Schedule. Amendment of Schedule.

7. The Books Registration Ordinance is repealed. Repeal. (Cap. 142.)

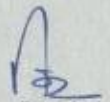
SCHEDULE

[ss. 2 and 6.]

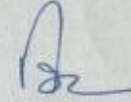
Books not required for registration

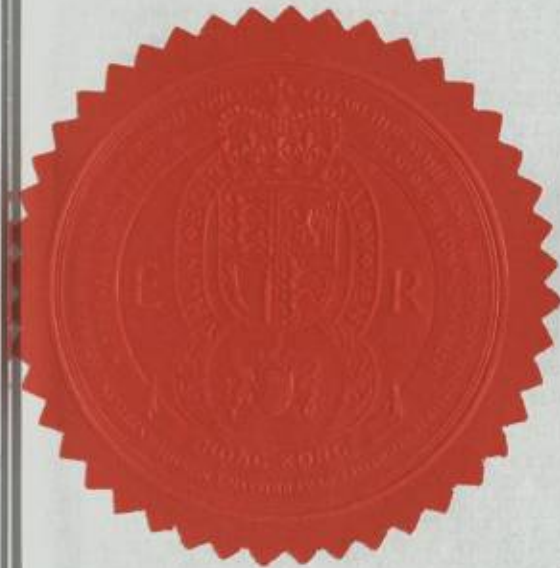
1. A newspaper which issues its editions not less than 4 times a week.
2. Any book which will not be made available to the public at large.
3. A publication which consists solely of a price list, sale catalogue, trade circular or trade advertisement.

Passed by the Hong Kong Legislative Council this 4th day of August, 1976.


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. M. Schum

Governor.

5th August, 1976.

HONG KONG

No. 61 OF 1976



I assent.

M. S. Li
Governor.

5th August, 1976.

An Ordinance to amend the Public Health and Urban Services Ordinance.

[6th August, 1976]

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 Public Health and Urban Services (Amendment) (No. 3) Ordinance 1976. Short title and commencement.

(2) Section 2 shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

2. Section 12 of the principal Ordinance is amended in subsection (1) by— Amendment of section 12. (Cap. 132.)

(a) substituting a semicolon for the full stop at the end of paragraph (g); and

(b) inserting after paragraph (g) the following new paragraph—

“(h) the emission of noise from any ventilating system, or any part thereof, in such a manner or at such a level as to be a nuisance.”

3. The principal Ordinance is amended by adding after section 51 the following new section— Addition of new section 51A.

"Adulteration
of meat.

51A. (1) No person shall, by injection or any other means, introduce or cause the introduction of any water or other liquid into the tissues of the carcass, meat or offal of any animal, bird or reptile sold for human consumption or offered, exposed or intended for sale for human consumption.

(2) No person shall sell for human consumption or offer or expose for sale or have in his possession for the purpose of sale for human consumption, any carcass, meat or offal of any animal, bird or reptile into the tissues of which there has been introduced by injection or any other means anything specified in subsection (1).

(3) No person shall have in his possession whilst on, or bring onto or permit to be brought onto, any premises in which any carcass, meat or offal of any animal, bird or reptile intended for human consumption is kept or stored or is sold or is offered or exposed for sale, any instrument designed or adapted for the introduction into the tissues of the carcass, meat or offal of any animal, bird or reptile of anything specified in subsection (1).

(4) Any person who contravenes any of the provisions of subsection (1), (2) or (3) shall be guilty of an offence.

(5) Where—

(a) any offence is committed under subsection (4); or

(b) any instrument specified in subsection (3) is found,

on any premises on which there is carried on any business in the course of which the carcass, meat or offal of any animal, bird or reptile intended for human consumption is kept or stored or is sold or is offered or exposed for sale, then, in addition to any other person who may be guilty of an offence under subsection (4), and whether or not any other person is convicted for such offence, the person who carries on such business and the manager of the business shall each be guilty of an offence whether or not the persons last mentioned were aware of the commission of an offence under subsection (4) or of the presence of any instrument specified in subsection (3) on those premises.

(6) Any public officer authorized in writing in that behalf by the Authority may seize and remove any instrument specified in subsection (3) which is found on any premises specified in that subsection or in the possession of any person on the premises who is employed on the premises either by the owner of the premises or by the person carrying on the business on the premises of keeping, storing or selling or offering or exposing for sale the carcass, meat or offal of any animal, bird or reptile intended for human consumption.

(7) Subject to subsection (8), any instrument seized under subsection (6) may be destroyed or otherwise disposed of as the Authority thinks fit on the expiration of 7 days after the seizure.

(8) If any person considers himself aggrieved by the seizure of any instrument under subsection (6) he may, within 3 days of the seizure, appeal to the court and on an appeal being so made the court may, after hearing the appellant and the Authority, order the instrument to be forfeited or otherwise dealt with as it thinks fit."

4. The Third Schedule to the principal Ordinance is amended by inserting, after the item relating to section 49, the following—

"51A(6) and (7)	Urban Council	Director of Urban Services".	Amendment of Third Schedule.
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5. The Sixth Schedule to the principal Ordinance is amended by inserting, after the item relating to section 51(5), the following—

"51A(4) or (5)	Urban Council	Director of Urban Services".	Amendment of Sixth Schedule.
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6. The Ninth Schedule to the principal Ordinance is amended by inserting, after the item relating to section 51(5), the following—

"51A(4) or (5)	\$2,000 fine and 3 months imprisonment	—	"	Amendment of Ninth Schedule.
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7. The Ordinance specified in the Schedule is amended in the manner specified therein.

SCHEDULE

[s. 7.]

<i>Ordinance</i>	<i>Amendment</i>	
Food Business (New Territories) Regulations	Regulation 26 is revoked.	(Cap. 132, sub. leg.)
	Regulation 35(1)(a) is amended by deleting "26,".	

Passed by the Hong Kong Legislative Council this 4th day of August, 1976.


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. J. [Signature]
Governor.

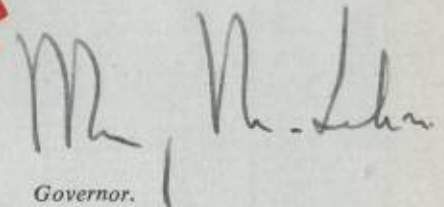
5th August, 1976.

HONG KONG

No. 62 OF 1976



I assent.


Governor.

5th August, 1976.

An Ordinance to amend the Securities Ordinance.

[6th August, 1976]

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 Securities (Amendment) Short title. Ordinance 1976.

2. Section 2(1) of the principal Ordinance is amended—

Amendment of
section 2,
(Cap. 333.)

(a) by inserting in the definition of "dealer", after "or not", the following—

"and, in the case of a corporation which is a dealer, includes any director of the corporation who actively participates in, or is in any way directly responsible for the supervision of, the corporation's business of dealing in securities";

(b) by deleting the definition of "dealer's representative" and substituting the following—

"dealer's representative" means a person in the employment of, or acting for or by arrangement with, a dealer, not being an exempt dealer, who performs for that dealer any of the functions of a dealer (other than work ordinarily performed by an accountant, clerk, or cashier)

whether his remuneration is by way of salary, wages, commission, or otherwise, but, in the case of a corporation which is a dealer, does not include a director of the corporation;";

- (c) in the definition of "dealing in securities" by—
- (i) deleting "or" at the end of paragraph (b); and
 - (ii) deleting paragraph (c);
- (d) by inserting, after the definition of "defalcation", the following new definition—
- (Cap. 32.) "director" has the same meaning as in section 2 of the Companies Ordinance;";
- (e) by inserting, after the definition of "exempt dealer", the following new definition—
- "exempt investment adviser" means a person declared under section 61 to be an exempt investment adviser for the purposes of this Ordinance;";
- (f) by deleting the definition of "financial year" and substituting the following—
- "financial year" means—
- (a) in the case of a dealer, the period notified by him under section 87A or permitted by the Commissioner under that section;
 - (b) in any other case, a period of 12 months ending on the 31st March in any calendar year;";
- (g) by deleting the definitions of "investment adviser" and "investment representative" and substituting the following—
- "investment adviser" means any person who—
- (a) for direct remuneration carries on a business of advising other persons concerning securities;
 - (b) for direct remuneration as part of a regular business issues analyses or reports concerning securities; or
 - (c) for direct remuneration pursuant to a contract or arrangement with a client, undertakes on behalf of the client the management of a portfolio of securities, including the arranging of purchases, sales, or exchanges of securities through a dealer or exempt dealer,
- and, in the case of a corporation which is an investment adviser, includes any director of the corporation who actively participates in, or is in any way directly responsible for the supervision of, the corporation's business as an investment adviser; but does not include—
- (i) a licensed bank;
 - (ii) a solicitor or professional accountant whose carrying on business as an investment adviser is wholly incidental to the practice of his profession;
 - (iii) the proprietor or publisher of, or any contributor to, a *bona fide* newspaper, magazine, journal, or other periodical publication that is generally available to the public, otherwise than on subscription, who, only in that *bona fide* newspaper, magazine,

journal, or periodical publication, advises other persons concerning securities, or issues analyses or reports concerning securities, not being the proprietor or publisher of, or a contributor to, a newspaper, journal, magazine, or other periodical publication whose principal or only object is to advise others concerning securities or to issue analyses or reports concerning securities;

- (iv) a dealer or exempt dealer to the extent that his giving of investment advice is incidental to his carrying on business as a dealer or exempt dealer;
- (v) a trustee company registered under Part VIII of the Trustee Ordinance;
- (vi) an exempt investment adviser;
- "investment representative" means a person in the employment of, or acting for or by arrangement with, an investment adviser, not being an exempt investment adviser, who performs for that investment adviser any of the functions of an investment adviser (other than work ordinarily performed by an accountant, clerk or cashier) whether his remuneration is by way of salary, wages, commission, or otherwise, but, in the case of a corporation which is an investment adviser, does not include a director of the corporation;";
- (h) by inserting, after the definition of "investment representative", the following new definition—
- "issue" includes distribute and circulate;"; and
- (i) in the definition of "securities"—
- (i) by deleting "loans" and substituting the following—
"loan stocks";
 - (ii) by inserting, after sub-paragraph (iii), the following—
"(iv) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance and any promissory note within the meaning of section 89 thereof;
 - (v) any debenture that specifically provides that it is not negotiable or transferable;";
- (Cap. 19.)

3. Section 4(3) of the principal Ordinance is amended by deleting "to make such an appointment" and substituting the following—
- Amendment of section 4.
- "to appoint or remove a director".
4. Section 5(7)(b) of the principal Ordinance is amended—
- Amendment of section 5.
- (a) by deleting "section 79," and substituting the following—
"sections 67 and 79,"; and
- (b) by inserting, after "nominee for", the following—
", or as an employee of,".
5. Section 14(1) of the principal Ordinance is amended—
- Amendment of section 14.
- (a) in paragraph (b) by deleting "may" and substituting the following—
"shall";

(b) by inserting after paragraph (f) the following new paragraphs—

“(fa) requiring the chairman of a stock exchange committee who has become aware of any matter which adversely affects, or is likely to adversely affect, the ability of any member of the exchange to meet his obligations as a dealer, to make a report concerning the matter to the Commission as soon as practicable after becoming aware of the matter;

(fb) requiring a stock exchange which expels, or suspends the membership of, any of its members, or requests any of its members to resign his membership, to notify the Commission of that fact within 3 trading days after the expulsion, suspension or making of the request, as the case may be, and, in addition, to cause the expulsion, suspension or request to be notified to the public in such manner and within such period as may be prescribed in the rules;”.

Amendment of section 18.

6. Section 18(2) of the principal Ordinance is amended by deleting “(including fines and fees)” and substituting the following—

“, other than deposits made under Part VI or X,”.

Amendment of section 25.

7. Section 25 of the principal Ordinance is amended in subsection (3)(c)—

(a) by deleting sub-paragraph (viii) and substituting the following—

“(viii) a corporation, unless at least one of its directors or, in the case of a corporation having only one director, that director, actively participates in, or is directly responsible for the supervision of, the corporation's business of dealing in securities, and unless each of the directors of the corporation who actively participates in, or is in any way directly responsible for the supervision of, the corporation's business of dealing in securities is a member of the applicant company or of another company which is approved as a stock exchange under subsection (2);” and

(b) by deleting sub-paragraphs (xii) and (xiii) and substituting the following—

“(xii) a firm, unless at least one of its partners actively participates in, or is directly responsible for the supervision of, the firm's business of dealing in securities, and unless each of the partners of the firm who actively participates in, or is in any way directly responsible for the supervision of, the firm's business of dealing in securities is a member of the applicant company or of another company which is approved as a stock exchange under subsection (2);

(Cap. 37.)

(xiii) a limited partnership registered under the Limited Partnerships Ordinance, unless at least one of its partners actively participates in, or is directly responsible for the supervision of, the partnership's business of dealing in securities, and unless each of the partners of the partnership who actively participates in, or is in any way directly responsible for the supervision of, the partnership's business of dealing in securities is a general partner and is a member of the applicant company or of another company which is approved as a stock exchange under subsection (2); and

(xiv) a person who is in partnership with another person who carries on a business of dealing in securities but is not a member of the applicant company or of another company which is approved as a stock exchange under subsection (2);”.

8. Section 32 of the principal Ordinance is amended—

Amendment of section 32.

(a) in subsection (2), by inserting, after “the members”, the following—

“of the committee”;

(b) in subsection (6), by inserting, after “who is a member”, the following—

“of the committee”; and

(c) in subsection (9), by inserting, after paragraph (b), the following new paragraph—

“(ba) has been convicted of an offence, whether in Hong Kong or elsewhere, involving fraud or dishonesty or has been convicted of any offence in respect of which he is sentenced to a term of imprisonment;”.

9. Section 48 of the principal Ordinance is amended—

Amendment of section 48.

(a) by inserting, after subsection (1), the following new subsection—

“(1A) A corporation shall not carry on a business in Hong Kong of dealing in securities, or hold itself out as carrying on such a business, unless at least one of the directors of the corporation, or, in the case of a corporation having only one director, that director, actively participates in, or is directly responsible for the supervision of, the corporation's business of dealing in securities and is registered as a dealer under this Part.”; and

(b) in subsection (2), by inserting, after “subsection (1)”, the following—

“or (1A)”.

10. Section 49 of the principal Ordinance is amended—

Amendment of section 49.

(a) by inserting, after subsection (1), the following new subsection—

“(1A) A corporation shall not in Hong Kong act as an investment adviser, or hold itself out to be an investment adviser, unless at least one of the directors of the corporation, or, in the case of a corporation having only one director, that director, actively participates in, or is directly responsible for the supervision of, the corporation's business as an investment adviser and is registered as an investment adviser under this Part.”; and

(b) in subsection (2), by inserting, after “subsection (1)”, the following—

“or (1A)”.

11. Section 51(1) of the principal Ordinance is amended by deleting “sections 52” and substituting the following—

Amendment of section 51.

“sections 51A, 52”.

Addition of
new section
51A.

12. The principal Ordinance is amended by adding, after section 51, the following new section—

"Private
company to
have at
least one
director."
(Cap. 32.)

51A. Where an applicant is a corporation and is a private company within the meaning of the Companies Ordinance, the Commissioner shall not register the applicant as a dealer or as an investment adviser unless the corporation has at least one director thereof."

Amendment of
section 52.

13. Section 52 of the principal Ordinance is amended—

(a) by inserting, after subsection (1), the following new subsection—

"(1A) Subject to subsection (6), where an applicant is a corporation the Commissioner shall not register the corporation as a dealer unless there has been deposited with the Commissioner in respect of each director of the corporation who actively participates in, or is in any way directly responsible for, the corporation's business of dealing in securities in Hong Kong such amount as is prescribed in regulations.";

(b) in subsections (5), (6), (9)(a), (10) and (11) by deleting "subsection (1)" and substituting the following—

"this section";

(c) in subsection (6) by deleting paragraph (a) and substituting the following—

"(a) a dealer who carries on a business of dealing in securities only in the capacity of a stockbroker;" and

(d) by inserting, after subsection (8), the following new subsection—

"(8A) Any document relating to the investment of money under subsection (8) may be kept in the office of the Commissioner or deposited by him for safe keeping with a licensed bank."

Addition of
new section
52A.

14. The principal Ordinance is amended by adding, after section 52, the following new section—

"Accounts
of sums
deposited
under section
52."

52A. (1) The Commissioner shall keep proper accounts of all sums deposited under section 52, 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 Commissioner shall appoint an auditor who shall audit the accounts kept under subsection (1) 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 Commissioner.

(3) Not later than the 31st July in each year the Commissioner shall cause a copy of the audited balance sheet, revenue and expenditure account and the auditor's report to be sent to the Financial Secretary."

15. Section 53(1)(b) of the principal Ordinance is amended by inserting, after sub-paragraph (iii), the following new sub-paragraph—

Amendment of
section 53.

"(iiiia) where the application is for registration as a dealer, no director of the applicant is, or is in the opinion of the Commissioner likely to be, registered as a dealer, or where the application is for registration as an investment adviser, no director of the applicant is, or is in the opinion of the Commissioner likely to be, registered as an investment adviser;"

16. Section 55 of the principal Ordinance is amended by deleting subsection (5) and substituting the following—

Amendment of
section 55.

"(5) Every decision of the Commissioner revoking or suspending the registration of a registered person shall be notified to that person in writing and shall include a statement of the reasons on which it is based and take effect from the date on which it is notified to that person or such later date as is specified in the notice."

17. Section 56 of the principal Ordinance is amended by deleting subsection (4) and substituting the following—

Amendment of
section 56.

"(4) Every decision of the Commissioner imposing a penalty under subsection (2) on a person shall be notified to that person in writing and shall include a statement of the reasons on which it is based and take effect from the date on which it is notified to him, or such later date as is specified in the notice, notwithstanding that an appeal against the decision may be made under section 58 or that the time limited for the making of such an appeal has not expired."

18. Section 61(1)(a) of the principal Ordinance is amended by deleting "only to a person" and substituting the following—

Amendment of
section 61.

"mainly to persons".

19. Section 68 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

Amendment of
section 68.

"(1) A person to whom this Part applies shall notify in writing to the Commissioner the place at which he keeps or intends to keep the register of his interests in securities."

20. Section 72 of the principal Ordinance is amended—

Amendment of
section 72.

(a) by deleting subsection (4) and substituting the following—

"(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 in a material particular, 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 14 days after the date of the acceptance;"

(b) in subsection (5)(b), by deleting "or" where it last appears; and

(c) by inserting in subsection (5)(c), after "paragraph;", the following—

"or".

Amendment of section 74.

21. Section 74 of the principal Ordinance is amended by deleting subsection (2) and substituting the following—

“(2) Subsection (1) does not apply to—

(a) a person in so far as—

(i) 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

(ii) 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; or

(b) any other person calling from place to place who belongs to a class of persons prescribed in regulations for the purpose of this subsection.”.

Amendment of section 81.

22. Section 81 of the principal Ordinance is amended by deleting subsection (3) and substituting the following—

“(3) No dealer shall, without the specific 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 or lend or otherwise part with the possession of any such securities for any purpose.”.

Amendment of section 82.

23. Section 82 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

“(1) This Part applies to the business of a registered dealer, other than a registered dealer who is a director of a corporation when acting for or on behalf of the corporation in its business of dealing in securities; and every reference in this Part to the term “dealer” shall be construed accordingly.”.

Amendment of section 83.

24. Section 83 of the principal Ordinance is amended—

(a) in subsection (3)(a)(vi), by deleting “as security for loans or advances made to the dealer” and substituting the following—

“whether as security for loans or advances made to the dealer or any related corporation or for any other purpose”;

(b) in subsection (3)(b), by deleting “from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered” and substituting the following—

“from or on behalf of clients, clearly identifying in respect of each receipt of securities the client and the securities”;

(c) in subsection (4), by deleting paragraphs (a) to (e) and substituting the following—

“(a) clients of the dealer; and

(b) the dealer himself.”.

Addition of new section 87A.

25. The principal Ordinance is amended by adding, after section 87, the following new section—

“Dealer's financial year.

87A. (1) A dealer shall—

(a) within 1 month after the date on which this section commences; or

(b) if he is not registered at that date, within 1 month after the issue to him of a certificate of registration under section 51,

notify the Commissioner in writing of the date on which his financial year ends.

(2) On application in writing by a dealer, the Commissioner may, subject to such conditions as he thinks fit, grant permission to the dealer to alter his financial year.

(3) Except with the written permission of the Commissioner, the period of a dealer's financial year shall not exceed 12 months.

(4) Nothing in this section shall prejudice the operation of section 122 of the Companies Ordinance.”.

26. Section 88(1) of the principal Ordinance is amended by deleting “the 31st day of July next following” and substituting the following—
“4 months after”.

Amendment of section 88.

27. Section 98(1) of the principal Ordinance is amended by deleting the definition of “stockbroking business” and substituting the following—

Amendment of section 98.

““stockbroking business” means—

(a) a stockbroker's business of dealing in securities listed or quoted on a stock exchange;

(b) the administration of any trust, or the carrying on of the business of any company, in conjunction with, or as an adjunct to, a stockbroking business; and

(c) the retention of securities whether for safe-keeping or otherwise, and whether for specific consideration or otherwise.”.

28. Section 105 of the principal Ordinance is amended—

Amendment of section 105.

(a) by deleting subsection (2) and substituting the following—

“(2) As soon as practicable after the end of each financial year, the Commission shall notify the contributing stock exchanges in writing of—

(a) the rate of interest to be paid for that financial year in respect of each sum deposited under section 104(1)(a);

(b) the manner and time of payment of that interest; and

(c) the amount to be charged to meet the expenses incurred or involved in the administration of the compensation fund.”; and

(b) by adding, after subsection (2), the following new subsection—

“(3) Any fixed deposit receipts or documents relating to the investment of money in securities under subsection (1) may be kept in the office of the Commission or deposited by the Commission for safe-keeping with a licensed bank.”.

29. Section 109 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

Amendment of section 109.

“(1) Where in consequence of any act done in the course of or in connexion with the stockbroking business of a stockbroker, or a member firm or corporate member of a stock exchange, a person has a cause of action against that stockbroker, member firm or corporate

member in relation to any money, securities or other property entrusted to or received by the stockbroker, member firm or corporate member or any person employed by the stockbroker, member firm or corporate member, that person shall be entitled, subject to this part, to claim compensation from the compensation fund in respect of any pecuniary loss suffered by him."

Amendment of section 123.

30. Section 123(1) of the principal Ordinance is amended by—

- (a) deleting "or sold" in both places where it occurs and substituting the following—
 " , sold or otherwise disposed of"; and
- (b) deleting "or sale" in both places where it occurs and substituting the following—
 " , sale or other disposition".

Amendment of section 124.

31. Section 124 of the principal Ordinance is amended by deleting "guilty of fraud" and substituting the following—

"guilty of a breach of trust, defalcation, fraud, or misfeasance".

Amendment of section 127.

32. Section 127 of the principal Ordinance is amended by deleting subsection (1) and substituting the following—

"(1) Where it appears to the Commission that it is desirable for the protection of the public or of the holders of securities to appoint an inspector to investigate—

- (a) any alleged breach of trust, defalcation, fraud, or misfeasance; or
- (b) any matter 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 the allegation or matter and to report on it in such manner as the Commission directs."

Amendment of section 130.

33. Section 130(8) of the principal Ordinance is amended by deleting "fraud, misfeasance, or other misconduct" and substituting the following—

"a breach of trust, defalcation, fraud, or misfeasance".

Amendment of section 146.

34. Section 146(1) of the principal Ordinance is amended by—

- (a) deleting paragraph (m) and substituting the following—
 "(m) prescribing the particulars to be recorded in relation to the profit and loss account and balance sheet and the information to be contained in the auditor's report required to be lodged under section 88;" and
- (b) deleting paragraph (n).

Amendment of First and Second Schedules.

35. The First Schedule and the Second Schedule to the principal Ordinance are amended, respectively, in paragraph 1 thereof—

- (a) by deleting sub-paragraph (b) and substituting the following—
 "(b) specify the last recorded price paid in respect of the securities at a stock exchange where they are listed, or, in the case of a foreign stock exchange, listed or quoted, on the latest practicable date during the period of 3 months immediately preceding the date of the offer;" and

- (b) in sub-paragraph (e) by deleting "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" and substituting the following—

"during the period of 3 months immediately preceding the public announcement, or, if the securities were not dealt in during that period, this should be stated".

Passed by the Hong Kong Legislative Council this 4th day of August, 1976.

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. Srinivasan

Governor.

5th August, 1976.

An Ordinance to restrict the importation, exportation and possession of certain animals and plants, and parts of such animals and plants, and to provide for matters connected therewith.

[6th August, 1976]

HONG KONG

No. 63 OF 1976



I assent.

M. M. Leh
Governor.

5th August, 1976.

An Ordinance to restrict the importation, exportation and possession of certain animals and plants, and parts of such animals and plants, and to provide for matters connected therewith.

[6th August, 1976]

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 Animals and Plants (Protection of Endangered Species) Ordinance 1976. Short title.

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

"animal" means any form of animal life whether alive or dead;

"authorized officer" means a—

(a) member of the Preventive Service; or

(b) public officer authorized by the Director under section 3.

"Director" means the Director of Agriculture and Fisheries, the Deputy Director of Agriculture and Fisheries or an Assistant Director of Agriculture and Fisheries;

"export" means to take, or cause to be taken, out of Hong Kong otherwise than in transit;

"import" means to bring, or cause to be brought, into Hong Kong otherwise than in transit;

"member of the Preventive Service" means a person holding an office specified in the First Schedule to the Preventive Service Ordinance; (Cap. 342.)

"plant" means a live or dead plant and any readily recognizable part or derivative of a plant;

First Schedule. "scheduled animal" means an animal specified in the second column of the First Schedule;

Second Schedule. "scheduled animal part" means a readily recognizable part or derivative specified in the third column, of an animal specified in relation to that part or derivative in the first column, of the Second Schedule;

Third Schedule. "scheduled plant" means a plant specified in the second column of the Third Schedule and any readily recognizable part or derivative of such a plant;

"scheduled species" means a scheduled animal, a scheduled animal part or a scheduled plant.

(2) For the purposes of this Ordinance, a scheduled species shall be deemed to be in transit if it is brought into Hong Kong solely for the purpose of taking it out of Hong Kong and—

- (a) remains at all times in or on the vessel, aircraft, train or vehicle in or on which it is brought into Hong Kong;
- (b) is removed from the vessel, aircraft, train or vehicle in which it was brought into Hong Kong and either returned to the same vessel, aircraft, train or vehicle or transferred directly to another vessel, aircraft, train or vehicle before being despatched to a place outside Hong Kong, and is kept under the control of the Director or an authorized officer while being so removed, returned or transferred; or
- (c) is removed from the vessel, aircraft, train or vehicle in which it was brought into Hong Kong and kept under the control of the Director or an authorized officer for a period not exceeding 7 days pending despatch to a place outside Hong Kong.

Appointment of authorized officers.

3. The Director may in writing authorize any public officer to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance.

Restriction on import of scheduled species.

4. (1) Subject to section 18, no person shall, except under and in accordance with a licence issued under section 7(1), on his own behalf or on behalf of any other person, import any scheduled species.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 and in the case of a second or subsequent offence shall be liable to a fine of \$10,000 and to imprisonment for 6 months.

Restriction on export of scheduled species.

5. (1) Subject to section 18, no person shall, except under and in accordance with a licence issued under section 7(1), on his own behalf or on behalf of any other person, export any scheduled species.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 and in the case of a second or subsequent offence shall be liable to a fine of \$10,000 and to imprisonment for 6 months.

Restriction on possession of scheduled species.

6. (1) Subject to section 18, no person shall, except under and in accordance with a licence issued under section 7(1), have in his possession or under his control any scheduled species.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 and in the case of a second or subsequent offence shall be liable to a fine of \$10,000 and to imprisonment for 6 months.

7. (1) The Director may, on application made to him in the specified form and on payment of the fee prescribed in the Fourth Schedule, issue a licence to import, export or possess scheduled species. Issue and renewal of licences. Fourth Schedule.

(2) A licence issued under subsection (1) shall—

- (a) be in the specified form;
- (b) specify the name and address of the holder of the licence;
- (c) specify the quantity and description of the scheduled species;
- (d) specify the conditions, if any, subject to which it is issued; and
- (e) in the case of a licence authorizing the import or export of any scheduled species, also specify the period within which the importation or exportation shall be effected.

(3) The Director may, on application to him and payment of the fee prescribed in the Fourth Schedule, renew a licence to possess a scheduled species, extend the period within which importation or exportation of any scheduled species is required to be effected, or otherwise vary a licence issued under subsection (1). Fourth Schedule.

8. (1) The Director may at any time cancel a licence issued under section 7(1) if— Cancellation of licence.

- (a) any condition of the licence is contravened; or
- (b) the Director is satisfied that the licence was issued as a result of a false representation of any fact or unlawful act of the applicant.

(2) Where the Director cancels a licence under subsection (1), he shall forthwith notify the holder of the licence and shall state the reason therefor.

(3) Where the Director has notified the holder of a licence under subsection (2) of the cancellation of his licence, the holder of the licence shall forthwith surrender the licence to the Director.

(4) Any holder of a licence who without reasonable excuse fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000.

9. (1) An authorized officer may require any person who has in his possession or under his control any scheduled species for which a licence under section 7(1) is required to produce the licence in respect of the scheduled species. Production of licence.

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

10. (1) If the Director has reason to suspect that any animal, animal part or plant that is being or has been imported is a scheduled species, he may require any person who has the animal, animal part or plant in his possession or under his control to declare its scientific name. Power to require information.

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

11. (1) For the purposes of this Ordinance, an authorized officer may— Powers of search, etc.

- (a) stop, board and search any vessel (other than a ship of war), aircraft (other than a military aircraft), train or vehicle if he has reason to suspect that there is therein any scheduled species

which is being or has been imported in contravention of section 4; and

- (b) stop and search any person, and search the property of any person, if he has reason to suspect that such person has in his possession any scheduled species in respect of which a contravention of section 4, 5 or 6 is being or has been committed.

(2) If it is shown to the satisfaction of a magistrate on information on oath in writing that there is in any place or premises any scheduled species liable to seizure, the magistrate may by warrant authorize any authorized officer to enter the place or premises, by force if necessary, and search the place or premises named in the warrant.

(3) An authorized officer entering any place or premises under subsection (2) may take with him such persons as may be necessary, and on leaving any unoccupied place or premises which he has entered shall leave such place or premises as effectually secured against trespassers as he found them to be at the time of entry.

(4) Every warrant issued under subsection (2) shall continue in force until the purpose for which the entry is necessary has been satisfied.

(5) An authorized officer may seize, remove and detain at the owner's risk—

- (a) any scheduled species liable to seizure;
- (b) any receptacle in which the scheduled species which is seized is contained, together with any handling or other device used for or in connexion with such scheduled species;
- (c) any food or drink accompanying an animal which is seized and, in the case of any food or drink so seized which is perishable, the Director or authorized officer may cause the same to be sold or otherwise disposed of forthwith;
- (d) any thing which appears to him to be or to contain evidence that an offence under section 4, 5 or 6 has been committed.
- (6) For the purposes of this section, an animal, animal part or plant is liable to seizure—
- (a) if an authorized officer has reason to suspect that it is a scheduled species which—
- (i) is being or has been imported in contravention of section 4; or
- (ii) is being or is to be exported in contravention of section 5; or
- (iii) is possessed by or under the control of any person in contravention of section 6; or
- (b) on failure of a person, without reasonable excuse, to comply with a requirement under section 10(1).

Obstruction.

12. Any person who obstructs an authorized officer exercising any power under section 11 shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000 and to imprisonment for 6 months.

Forfeiture.

13. (1) Upon the conviction of any person for an offence under section 4, 5 or 6, the scheduled species in respect of which the offence was committed and any other thing seized under section 11(5)(b) or (c) shall, without further order, be forfeited to the Crown.

(2) Where a person who is prosecuted for an offence under section 4, 5 or 6 is acquitted, the court may order the scheduled species in respect of which the prosecution was brought, and any other thing seized under section 11(5)(b) or (c)—

(a) to be released to the person from whom it or they were seized or to the owner thereof; or

(b) to be forfeited to the Crown.

(3) Where a person is prosecuted for an offence under section 10, the court may, whether or not the defendant is convicted, order the animal, animal part or plant in respect of which the prosecution was brought—

(a) to be released to the person from whom it was seized or to the owner thereof; or

(b) to be forfeited to the Crown.

(4) Any animal, animal part or thing which is forfeited to the Crown shall be disposed of in such manner as the Director thinks fit.

14. (1) The Governor may establish an Advisory Committee consisting of such members as he may appoint.

Advisory Committee.

(2) The Advisory Committee shall advise the Director upon any question which he may refer to it in connexion with the administration of this Ordinance.

15. The Director may specify any forms for the purposes of this Ordinance.

Director to specify forms.

16. (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 Director or an authorized officer, of any powers or duties under this Ordinance.

Director and authorized officers to be subject to the Governor's directions.

(2) The Director and every authorized 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).

17. (1) Any person aggrieved by a decision of the Director under this Ordinance relating to—

Appeals to the Governor.

(a) the issue of a licence or any condition specified in a licence by the Director;

(b) the refusal to issue a licence; or

(c) the cancellation of a licence,

may, within 21 days after the date when he was informed of the decision or within such further period as the Governor may allow in any particular case, appeal by way of petition to the Governor.

(2) The Governor may on such appeal confirm, vary or reverse a decision of the Director.

(3) The decision of the Governor on such appeal shall be final.

18. The Governor may, by order published in the *Gazette*, exempt from sections 4, 5 and 6 any person or scheduled species or group or description of persons or scheduled species generally or for any purpose or by reference to any circumstances.

Exemptions.

19. (1) The Governor in Council may, by order published in the *Gazette*, amend any Schedule.

Power to amend the Schedules.

(2) Where at the commencement of an order amending the First, Second or Third Schedule any person has in his possession or under his control any scheduled species in respect of which, prior to the commence-

ment, there was under section 6 no requirement for a licence, that section shall come into operation in respect of such scheduled species with effect from a date which is 3 months after the commencement of the order.

Repeal.
(Cap. 187.)

20. (1) The Animals and Birds (Restriction of Importation and Possession) Ordinance is repealed.

(Cap. 187,
sub. leg.)

(2) The Animals and Birds (Restriction of Importation and Possession) (Fees) Regulations are revoked.

Transitional
provision.
(Cap. 187.)

21. (1) An import licence, and a licence to possess a scheduled animal (as defined in section 2 of this Ordinance) granted in either case under section 5(1) of the repealed Animals and Birds (Restriction of Importation and Possession) Ordinance and which is in force at the commencement of this Ordinance shall be deemed, for the purposes of this Ordinance, to have been issued under section 7(1), and in the case of such a licence to possess a scheduled animal shall expire on the first anniversary of the commencement of this Ordinance.

(2) Where at the commencement of this Ordinance any person has in his possession or control a scheduled animal or scheduled animal part in respect of which, prior to its commencement, there was no requirement for a licence under section 4 of the repealed Animals and Birds (Restriction of Importation and Possession) Ordinance, or a scheduled plant, section 6 shall come into operation in respect of that scheduled animal, scheduled animal part or scheduled plant with effect from a date which is 3 months after the commencement of this Ordinance.

FIRST SCHEDULE

[s. 2.]

SCHEDULED ANIMALS

In this Schedule, species of a genus means all the species of that genus

MAMMALIA

*(Common name for
information only)*

MARSUPIALIA

Macropodidae	Macropus parma	White-throated Wallaby
	Onychogalea frenata	Bridles Nail-tail Wallaby
	Onychogalea lunata	Crescent Nail-tail Wallaby
	Lagorchestes hirsutus	Western Hare-wallaby
	Lagostrophus fasciatus	Banded Hare-wallaby
	Caloprymnus campestris	Desert Rat-kangaroo
	Bettongia penicillata	Bush-tailed Rat-kangaroo
	Bettongia lesueur	Lesueur's Rat-kangaroo
	Bettongia tropica	Northern Rat-kangaroo
	Dendrolagus inustus	Tree Kangaroo
	Dendrolagus ursinus	
Phalangeridae	Wyulda squamicaudata	Scaly-tailed Possum
Burramyidae	Burramys parvus	Pigmy Possum
Vombatidae	Lasiiorhinus gillespiei	Gillespie's Hairy-nosed Wombat

*(Common name for
information only)*

Peramelidae	Perameles bougainville	Western Barred-bandicoot
	Chaeropus ecaudatus	Pig-footed Bandicoot
	Macrotis lagotis	Rabbit Bandicoot
	Macrotis leucura	Dwarf Bandicoot
Dasyuridae	Planigale tenuirostris	Southern Planigale
	Planigale subtilissima	Kimberley Planigale
	Sminthopsis psammophila	Narrow-footed Sminthopsis
	Sminthopsis longicaudata	Long-tailed Sminthopsis
	Antechinomys laniger	Eastern Jerboa
	Myrmecobius fasciatus	Marsupial Rusty Numbat
Thylacinidae	Thylacinus cynocephalus	Thylacine
INSECTIVORA		
Erinaceidae	Erinaceus frontalis	Southern African Hedgehog
PRIMATES		
Lemuridae	Lemur species	Lemur species
	Lepilemur species	Weasel Lemur species
	Haplemur species	Gentle Lemur species
	Allocebus species	Dwarf Lemur species
	Cheirogaleus species	
	Mirocebus species	Mouse Lemur
	Phaner species	
Lorisidae	Nycticebus coucang	Slow Loris
	Loris tardigradus	Slender Loris
Indriidae	Indri species	Indris
	Propithecus species	Sifaka
	Avahi species	Avahi
Daubentoniidae	Daubentonia madagascariensis	Aye-Aye
Callithricidae	Leontopithecus (Leontideus) species	Tamarin
	Callimico goeldii	Goeldi's Tamarin
Cebidae	Saimiri oerstedii	Squirrel Monkey
	Chiropotes albinasus	White-nosed Saki
	Cacajao species	Uakari
	Alouatta palliata (villosa)	Panamanian Howler
	Ateles geoffroyi	Spider Monkey
	Brachyteles arachnoides	Woolly Spider Monkey
	Cebus capucinus	Capuchin Monkey
Cercopithecidae	Cercocebus galeritus	Tana River Mangabey
	Macaca silenus	Lion-tailed Macaque
	Colobus badius	Red Colobus
	Rhinopithecus roxellanae	Snub-nosed Monkey
	Presbytis geei	Golden Langur
	Presbytis pileatus	Grey Langur
	Presbytis entellus	Long-tailed Langur
	Nasalis larvatus	Proboscis Monkey

<i>(Common name for information only)</i>		
	Simias concolor	Pig-tailed Langur
	Pygathrix nemaeus	Douc Langur
	Macaca sylvanus	Barbary Ape
	Colobus verus	Olive Colobus
	Presbytis johnii	John's Langur
Hylobatidae	Hylobates species	Gibbon species
	Symphalangus syndactylus	Siamang
Pongidae	Pongo pygmaeus	Orang-utan
	Gorilla gorilla	Gorilla
	Pan paniscus	Pygmy Chimpanzee
	Pan troglodytes	Chimpanzee
EDENTATA		
Dasypodidae	Priodontes giganteus (=maximus)	Giant Armadillo
Myrmecophagidae	Myrmecophaga tridactyla	Giant Anteater
	Tamandua tetradactyla	Tamandua
Bradypodidae	Bradypus boliviensis	Sloth
PHOLIDOTA		
Manidae	Manis temmincki	Pangolin
	Manis crassicaudata	Indian Pangolin
	Manis pentadactyla	Chinese Pangolin
	Manis javanica	Malayan Pangolin
LAGOMORPHA		
Leporidae	Romerolagus diazi	Volcano Rabbit
	Caprolagus hispidus	Hispid Hare
	Nesolagus netscheri	Sumatran Hare
RODENTIA		
Heteromyidae	Dipodomys phillipsii	Kangaroo Rat
Sciuridae	Cynomys mexicanus	Mexican Prairie Dog
	Ratufa species	Giant Squirrels
	Lariscus hosei	Four-shaped Palm Squirrel
Castoridae	Castor fiber	Mongolian Beaver
	Castor canadensis	American Beaver
Muridae	Zyomys pedunculatus	Thick-tailed Rat
	Leporillus conditor	Australian Stick-nest Rat
	Pseudomys novaehollandiae	Australian Rock-field Mouse
	Pseudomys praeconis	Desert False Rat
	Pseudomys shortridgei	Heath False Rat
	Pseudomys fumeus	Australian Forest Fieldmouse
	Pseudomys occidentalis	Occidental False Rat
	Pseudomys fieldi	Field False Rat
	Notomys aquilo	Australian Kangaroo Rat
	Xeromys myoides	False Water Rat

<i>(Common name for information only)</i>		
Chinchillidae	Chinchilla brevicaudata	Chinchilla
Cricetidae	Ondatra zibethicus	Newfoundland Musk Rat
CETACEA		
Platanistidae	Platanista gangetica	Susu or Ganges Dolphin
Eschrichtidae	Eschrichtius robustus (glaucus)	Black Right Whale
Balaenopteridae	Balaenoptera musculus	Blue Whale
	Megaptera novaeangliae	Hymback Whale
Balaenidae	Balaena mysticetus	Greenland Right Whale
	Eubalaena species	Right Whales
CARNIVORA		
Canidae	Vulpes velox	Northern Kit Fox
	Canis lupus	Grey or Timber Wolf
	Chrysocyon brachyurus	Maned Wolf
	Cuon alpinus	Red Dog or Dhole
Viverridae	Prionodon pardicolor	Spotted Linsang
	Prionodon linsang	Banded Linsang
	Cynogale bennetti	
	Helogale derbianus	Dwarf Mongoose
Ursidae	Ursus americanus	Glacier Bear
	Ursus arctos	Brown Bear
	Ursus (Thalarchos) maritimus	Polar Bear
	Helarctos malayanus	Malay Sun-bear, Honey Bear, Malay Bear, Bruang
Mustelidae	Mustela nigripes	Black-footed Ferret
	Lutra longicaudis (platensis/ annectens)	La Platta Otter
	Lutra felina	Marine Otter
	Lutra provocax	Southern River Otter
	Pteronura brasiliensis	Giant Otter
	Aonyx microdon	American Clawless Otter
	Enhydra lutris	Southern Sea Otter
	Martes americana	American Marten
Procyonidae	Ailurus fulgens	Cat Bear, Fox Cat, Fire Fox, Himalayan Raccoon, Red Panda
		Giant Panda
Hyaenidae	Ailuropoda melanoleuca	
	Hyaena brunnea	Brown Hyena
Felidae	Felis planiceps	Flat-headed Cat
	Felis nigripes	Black-footed Cat
	Felis concolor	Cougar
	Felis temmincki	Golden Cat
	Felis bengalensis	Leopard Cat
	Felis marmorata	Marbled Cat
	Felis jacobita	Southern Gato Andina
		Margay
	Felis yagouarundi	Jagovrundi
	Felis colocolo	

(Common name for
information only)

	Felis serval	Serval
	Felis lynx	Lynx
	Felis wiedii	Margay Cat
	Felis pardalis	Ocelot
	Felis tigrina	Tiger Cat
	Felis (=Caracal) caracal	Caracal
	Neofelis nebulosa	Clouded Leopard
	Panthera tigris	Tiger
	Panthera pardus	Leopard
	Panthera uncia	Snow Leopard
	Panthera onca	Jaguar
	Acinonyx jubatus	Cheetah
	Panthera leo(persica)	Indian Lion
	Felis (Lynx) rufa	
PINNIPEDIA		
Phocidae	Monachus species	Monk Seal
	Mirounga angustirostris	Northern Elephant Seal
	Mirounga australis	Elephant Seal
	Mirounga leonina	Southern Elephant Seal
Otariidae	Arctocephalus australis	South American Fur Seal
	Arctocephalus galapagoensis	Galopagus Fur Seal
	Arctocephalus philippii	Juan Fernandez Fur Seal
	Arctocephalus townsendi	Guadabure Fur Seal
TUBULI-DENTATA		
Orycteropidae	Orycteropus afer	Aardvark
PROBOSCIDEA		
Elephantidae	Elephas maximus	Asian Elephant
SIRENIA		
Dugongidae	Dugong dugon	Dugong
Trichechidae	Trichechus manatus	West Indian Manatee
	Trichechus inunguis	Amazonian Manatee
	Trichechus senegalensis	West African Manatee
PERISSODA-CTYLIA		
Equidae	Equus przewalskii	Przewalski's Horse
	Equus hemionus	Wild Ass
	Equus zebra	Zebra
Tapiridae	Tapirus pinchaque	Mountain Tapir
	Tapirus bairdii	Central American Tapir
	Tapirus indicus	Malayan Tapir
	Tapirus terrestris	Brazilian Tapir

(Common name for
information only)

Rhinocerotidae	Rhinoceros unicornis	Great Indian Rhinoceros
	Rhinoceros sondaicus	Javan Rhinoceros
	Didermocerus sumatrensis	Sumatran Rhinoceros
	Ceratotherium simum	Northern Square-lipped Rhinoceros
	Diceros bicornis	Black Rhinoceros
ARTIODA-CTYLA		
Hippopotamidae	Choeropus liberiensis	Pygmy Hippopotamus
Suidae	Sus salvanus	Pygmy Hog
	Babyrousa babyrussa	Borneo Wild Pig
Camelidae	Vicugna vicugna	Vicuna
	Camelus bactrianus	Bactrian Camel
Cervidae	Moschus moschiferus	Musk Deer
	Axis (Hyelaphus) porcinus	Hog Deer
	Axis (Hyelaphus) calamianensis	Caleman Axis Deer
	Axis (Hyelaphus) kuhlii	Kuhl's Deer
	Cervus duvauceli	Swamp Deer
	Cervus eldi	Brow-antlered Deer
	Cervus elaphus	Red Deer
	Hippocamelus bisulcus	South Andean Guemal
	Hippocamelus antiensis	North Andean Guemal
	Blastoceros dichotomus	Marsh Deer
	Ozotoceros bezoarticus	Pampas Deer
	Pudu pudu	Chilean Pudu
	Pudu mephistophiles	Pudu
Antilocapridae	Antilocapra americana	Pronghorn
Bovidae	Bubalus (Anoa) mindorensis	Tamarau
	Bubalus (Anoa) depressicornis	Lowland Anoa
	Bubalus (Anoa) quarlesi	Mountain Anoa
	Bos gaurus	Seladang
	Bos (grunniens) mutus	Wild Yak
	Novibos (Bos) sauveli	Kouprey
	Bison bison	Wood Bison
	Kobus leche	Black Lechwe
	Hippotragus niger	Giant Sable Antelope
	Oryx leucoryx	Arabian Oryx
	Damaliscus dorcas	Bontebok
	Saiga tatarica	
	Nemorhaedus goral	Goral
	Capricornis sumatraensis	Sumatran Serow
	Rupicapra rupicapra	Chamois
	Capra falconeri	Straight-horned Markhor
	Ovis orientalis	Cyprian Mouflon
	Ovis vignei	Urial
	Cephalophus monticola	Blue Duiker
	Oryx (tao) dammah	Scimitar Oryx
	Addax nasomaculatus	Addax, Screw-horn Antelope

		(Common name for information only)
	Pantholops hodgsoni	Chiru or Tibetan Antelope
	Ovis ammon	Argali or Marco Polo Sheep
	Ovis canadensis	Bighorn Sheep
AVES		
SPHENISCIFORMES		
Spheniscidae	Spheniscus demersus	Jackass Penguin
RHEIFORMES		
Rheidae	Rhea americana Pterocnemia pennata	Common Rhea Darwin's Rhea
TINAMIFORMES		
Tinamidae	Tinamus solitarius Rhynchotus rufescens	South American Tinamou Red Winged Tinamou
PODICIPEDIFORMES		
Podicipedidae	Podilymbus gigas	Atitlan Grebe
PROCELLARIIFORMES		
Diomedidae	Diomedea albatrus	Short-tailed Albatross
PELECANIFORMES		
Sulidae	Sula abbotti	Abbott's Booby
Pelecanidae	Pelecanus crispus	Dalmatian Pelican
Fregatidae	Fregata andrewsi	Andrew's Frigate Bird
CICONIIFORMES		
Ciconiidae (Storks)	Ciconia ciconia Ciconia nigra	White Stork Black Stork
Threskiornithidae	Geronticus calvus Platalea leucorodia Nipponia nippon	Bald Ibis Spoonbill Japanese Crested Ibis
Phoenicopteridae	Phoenicopterus ruber Phoenicoparrus andinus Phoenicoparrus jamesi	Chilean Flamingo Andean Flamingo James's Flamingo
Plataleidae	Thaumatibis gigantea	Giant Ibis

		(Common name for information only)
ANSERIFORMES		
Anatidae	Anas aucklandica Anas oustaleti Anas laysanensis Anas diazi Anas bernieri Cairina scutulata Rhodonessa caryophyllacea Branta canadensis Branta sandvicensis Branta ruficollis Dendrocygna arborea Sarkidiornis melanotos Anser albifrons gambelli Cygnus bewickii Cygnus melancoryphus Coscoroba coscoroba	Flightless Teal Oustalet's Duck Laysan Duck Mexican Duck Madagascar Teal White-winged Wood Duck Pink-headed Duck Canada Goose Hawaiian Goose or Nene Red-breasted Goose Cuban whistling Duck Comb Duck Tule Goose Bewick's Swan Black Necked Swan Coscoroba Swan
FALCONIFORMES		
	All species of all genera	Eagles, hawks, falcons, and vultures and other birds of prey
GALLIFORMES		
Megapodiidae	Macrocephalon maleo Megapodius freycinet	Maleo Common Scrubfowl
Cracida	Crax blumenbachii Pipile pipile Pipile jacutinga Mitu mitu Oreophasis derbianus	Red billed Curassow White-headed Curassow Black-fronted Piping Guan Great Razor-billed Curassow Horned Guan
Tetraonidae	Tympanuchus cupido	Prairie Chicken
Phasianidae	Colinus virginianus Tragopan blythii Tragopan caboti Tragopan melanocephalus Lophophorus sclateri Lophophorus lhuysii Lophophorus impejanus Crossoptilon mantchuricum Crossoptilon crossoptilon Lophura swinhoii Lophura imperialis Lophura edwardsii Syrmaticus ellioti Syrmaticus humiae Syrmaticus mikado Polyplectron emphanum Polyplectron malacense	Masked Bobwhite Blyth's Tragopan Cabot's Tragopan Western Tragopan Sclater's Monal Chinese Monal Brown-eared Pheasant White-eared Pheasant Swinhoe's Pheasant Imperial Pheasant Edwards' Pheasant Elliot's Pheasant Hume's Pheasant Mikado Pheasant Palawan Peacock Pheasant Malay Peacock Pheasant

(Common name for
information only)

	<i>Polyplectron germaini</i>	Germain's Peacock Pheasant
	<i>Polyplectron bicalcaratum</i>	Grey Peacock Pheasant
	<i>Tetraogallus tibetanus</i>	Tibetan Snowcock
	<i>Tetraogallus caspius</i>	Caspian Snowcock
	<i>Cyrtonyx montezumae</i>	Harlequin Quail
	<i>Francolinus ochropectus</i>	Tadsoura Francolin
	<i>Francolinus swierstrai</i>	Swierstra's Francolin
	<i>Catreus wallichii</i>	Cheer Pheasant
	<i>Gallus sonneratii</i>	Grey Jungle Fowl
	<i>Argusianus argus</i>	Great Argus Fowl
	<i>Ithaginus cruentus</i>	Blood Pheasant
GRUIFORMES		
Gruidae	<i>Grus japonensis</i>	Japanese Crane
	<i>Grus leucogeranus</i>	Siberian White Crane
	<i>Grus americana</i>	Whooping Crane
	<i>Grus canadensis</i>	Sandhill Crane
	<i>Grus nigricollis</i>	Black-necked Crane
	<i>Grus vipio</i>	White-naped Crane
	<i>Grus monacha</i>	Hooded Crane
	<i>Balearica regulorum</i>	Crowned Crane
Rallidae	<i>Tricholimnas sylvestris</i>	Lord Howe Wood Rail
	<i>Gallirallus australis</i>	Weka
Rhynochetidae	<i>Rhynochetos jubatus</i>	Kagu
Otididae	<i>Eupodotis bengalensis</i>	Bengal Bustard
	<i>Chlamydotis undulata</i>	Houbara Bustard
	<i>Choriotis nigriceps</i>	Great Indian Bustard
	<i>Otis tarda</i>	Great Bustard
CHARADRIIFORMES		
Scolopacidae	<i>Numenius borealis</i>	Eskimo Curlew
	<i>Tringa guttifer</i>	Armstrong's Sandpiper
	<i>Numenius tenuirostris</i>	Slender-billed Curlew
	<i>Numenius minutus</i>	Little Whimbrel
Laridae	<i>Larus relictus</i>	Mongolian Gull
	<i>Larus brunneicephalus</i>	Brown-headed Gull
COLUMBIFORMES		
Columbidae	<i>Ducula mindorensis</i>	Mindoro Imperial Pigeon
	<i>Gallicolumba luzonica</i>	Luzon Bleeding-heart Pigeon
	<i>Goura cristata</i>	Blue Crowned Pigeon
	<i>Goura scheepmakeri</i>	Maroon Breasted Crowned Pigeon
	<i>Goura victoria</i>	Victoria Crowned Pigeon
	<i>Caloenas nicobarica</i>	Nicobar Pigeon

(Common name for
information only)**PSITTACIFORMES**

Psittacidae

Strigops habroptilus
*Rhynchopsitta pachyrhyncha**Amazona leucocephala*
Amazona vittata
Amazona guildingii
Amazona versicolor
Amazona imperialis
*Amazona rhodocorytha**Amazona petrei*
*Amazona vinacea**Pyrrhura cruentata*
Anodorhynchus glaucus
Anodorhynchus leari
Cyanopsitta spixii
Pionopsitta pileata
Aratinga guaruba
Psittacula krameri echo
Psephotus pulcherrimus
Psephotus chrysopterygius
Neophema chrysogaster
Neophema splendida
Cyanoramphus malherbi
Cyanoramphus unicolor
Cyanoramphus novaezelandiae
*Cyanoramphus auriceps**Geopsittacus occidentalis**Psittacus erithacus princeps*
Coracopsis nigra
Prosopcia personata
Eunymphicus cornutus
Poicephalus robustus
Tanygnathus luzoniensis
*Probsciger aterrimus***APODIFORMES**

Trochilidae

*Ramphodon dohrnii***TROGONIFORMES**

Trogonidae

*Pharomachrus mocinno***CUCULIFORMES**

Musophagidae

Turaco corythaix
*Gallirex porphyreolophus*Kakapo or Owl Parrot
Eastern Thick-billed Parrot
Bahamas Parrot
Puerto Rico Parrot
St. Vincent ParrotImperial Parrot
Red-topped Amazon Parrot
Petrei's Parrot
Vinous-breasted Amazon ParrotGlaucous Macaw
Indigo Macaw
Little Blue Macaw
Red-capped Parrot
Golden Parakeet
Mauritius Parakeet
Beautiful Parakeet
Gold-shouldered Parrot
Orange-bellied Parakeet
Splendid Parakeet
Orange-fronted Parakeet
Artipodes Parakeet
Norfolk Island ParakeetRed-fronted New Zealand Parakeet
S.E. Australian Ground ParrotPrinceps Grey Parrot
Lesser Vasa Parrot
Masked Musk Parakeet
Horned Parakeet
Brown-necked Parrot

Palm Cockatoo

Red-billed Hummingbird

Quetzal

		<i>(Common name for information only)</i>
STRIGI-FORMES		
Strigidae	All species of all genera	Owls
CORACII-FORMES		
Bucerotidae	Rhinoplax vigil Buceros rhinoceros Buceros bicornis Buceros hydrocorax Aceros narcondami	Helmeted Hornbill Rhinoceros Hornbill Great Hornbill Calao Hornbill
PICIFORMES		
Picidae	Dryocopus javensis Campephilus imperialis Picus squamatus	Tristram's Woodpecker Imperial Woodpecker Woodpecker
PASSERI-FORMES		
Cotingidae	Continga maculata Xipholena atro-purpurea Rupicola rupicola Rupicola peruviana	Banded Cotinga White-winged Cotinga Guianan Cock-of-the-rock Andean Cock-of-the-rock
Pittidae	Pitta kochi Pitta brachyura	Koch's Pitta Blue-winged Pitta
Hirundinidae	Pseudochelidon sirintarae	White-eyed River Martin
Atrichornithidae	Atrichornis clamosa	Noisy Scrub-bird
Muscicapidae	Picathartes gymnocephalus Picathartes oreas Psophodes nigrogularis Amytornis goyderi Dasyornis brachypterus Dasyornis broadbenti Muscicapa ruecki	White-necked Rock-Fowl Grey-necked Rock-Fowl Western Whipbird Eyrean Grass Wren Western Bristlebird Western Rufous Bristlebird Rueck's Blue Flycatcher
Sturnidae	Leucopsar rothschildi	Bali or Rothschild's Starling
Meliphagidae	Meliphaga cassidix	Helmeted Honey-eater
Zosteropidae	Zosterops albogularis	White-chested White-eye
Fringillidae	Spinus cucullatus Spinus yarrellii	Red Siskin Finch
Paradisaeidae	All species of all genera	Birds of Paradise
AMPHIBIA		
URODELA		
Cryptobranchidae	Andrias (Megalobatrachus) davidianus	Giant Salamander

		<i>(Common name for information only)</i>
Ambystomidae	Ambystoma mexicanum Ambystoma dumerillii Ambystoma lermaensis	Axolotl Lake Putsucaro Salamander Lake Lerma Salamander
SALIENTIA		
Bufonidae	Bufo superciliaris Bufo periglenes Nectophrynoides species Bufo retiformis	Toad Toad Live-bearer Toads Sonoran Green Toad
Atelopodidae	Atelopus varius	Tree Frog, Golden Frog
REPTILIA		
CROCODYLIA		
Alligatoridae	Alligator mississippiensis Alligator sinensis Melanosuchus niger Caiman crocodilus Caiman latirostris Paleosuchus palpebrosus Paleosuchus trigonatus	American Alligator Chinese Alligator Black Caiman Caiman Broad-nosed Caiman Dwarf Caiman Smooth-fronted Caiman
Crocodylidae	Tomistoma schlegelii Osteolaemus tetraspis Crocodylus cataphractus Crocodylus siamensis Crocodylus palustris Crocodylus novaeguineae Crocodylus intermedius Crocodylus rhombifer Crocodylus moreletii Crocodylus niloticus Crocodylus johnsoni Crocodylus porosus Crocodylus acutus	False Gaviel Dwarf Crocodile Sharp-nosed Crocodile Siamese Crocodile Mugger Mindoro Crocodile Orinoco Crocodile Cuban Crocodile Guatemala Crocodile Nile Crocodile Australian Fresh Water Crocodile Estuarine Crocodile American Crocodile
Gavialidae	Gavialis gangeticus	Ganges Gavial
TESTUDINATA		
Emydidae	Batagur baska Geoclemmys (Damonina) hamiltonii Geoemyda (Nicoria) tricarinata Kachuga tecta Morenia ocellata Terrapene coahuila Clemmys muhlenbergi	Batagur Black Pond Turtle Terrestrial Turtle Indian Roofed Turtle Burmese Yellow Turtle Box Turtle Bog Turtle
Testudinidae	Chersine species Geochelone species Gopherus species	Dessert Tortoise Gopher Tortoise

		(Common name for information only)
	Homopus species	
	Kinixys species	
	Malacochersus species	Pancake Tortoise
	Pyxis species	Spider Tortoise
	Testudo species	Land Tortoises
Chelonidae	Eretmochelys imbricata	Hawksbill Sea Turtle
	Lepidochelys kempii	Atlantic Ridley Turtle
	Caretta caretta	Loggerheaded Turtle
	Chelonia mydas	Green Turtle
	Chelonia depressa	Flat-backed Green Turtle
	Lepidochelys olivacea	Pacific Ridley Turtle
Trionychidae	Lissemys punctata	India Soft-shelled Turtle
	Trionyx ater	Mexico Soft-shelled Turtle
	Trionyx nigricans	Eastern Soft-shelled Turtle
	Trionyx gangeticus	Ganges Soft-shelled Turtle
	Trionyx hurum	Lower Ganges Soft-shelled Turtle
Dermochelidae	Dermochelys coriacea	Leathery Turtle
Chelidae	Pseudemydura umbrina	Snake-necked Turtle
Pelomedusidae	Podocnemis species	Hidden-necked Turtle
LACERTILIA		
Varanidae	Varanus species	Monitors
Teiidae	Cnemidophorus hyperythrus	Orange-throated Whiptail
Iguanidae	Conolophus pallidus	Barrington Island Iguana
	Conolophus subscristatus	Galapagos Island Iguana
	Amblyrhynchus cristatus	Galapagos Marine Iguana
	Phrynosoma coronatum	San Diego Horned Lizard
Helodermatidae	Heloderma suspectum	Gila Monster
	Heloderma horridum	Beaded Lizard
RHYNCHOCEPHALIA		
Sphenodontidae	Sphenodon punctatus	Tautara
SERPENTES		
Boidae	Epicrates inornatus	Puerto Rican Boa
	Epicrates subflavus	Jamaica Boa
	Epicrates cenchrus	
	Eunectes notaeus	Southern Anaconda
	Constrictor constrictor	King Python
	Python species	Pythons
Colubridae	Cyclagras gigas	
	Pseudoboa cloelia	
	Elachistodon westermanni	Indian Egg-eating Snake
	Thamnophis elegans	Mountain Garter Snake

		(Common name for information only)
PISCES		
ACIPENSERIFORMES		
Acipenseridae	Acipenser brevirostrum	Shortnose Sturgeon
	Acipenser fulvescens	Lake Sturgeon
	Acipenser oxyrinchus	Atlantic Sturgeon
	Acipenser sturio	Common Sturgeon
OSTEOGLOSSIFORMES		
Osteoglossidae	Scleropages formosus	Asiatic Bony Tongue
	Arapaima gigas	Arapaima
SALMONIFORMES		
Salmonidae	Coregonus alpenae	Longjaw Cisco
	Stenodus leucichthys	Inconnu
	Salmo chrysogaster	Mexican Golden Trout
CYPRINIFORMES		
Catostomidae	Chasmistes cujus	Cui-ui
Cyprinidae	Plagopterus argentissimus	Woundfin
	Probarbus jullieni	Ikan Temoleh
	Ptychocheilus lucius	Colorado Squawfish
SILURIFORMES		
Schilbeidae	Pangasianodon gigas	Giant Catfish
PERICIFORMES		
Percidae	Stizostedion vitreum	Blue Walleye
ATHERINIFORMES		
Cyprinodontidae	Cynolebias constanciae	} Annual Killifish
	Cynolebias marmoratus	
	Cynolebias minimus	
	Cynolebias opalescens	
	Cynolebias splendens	
Poeciliidae	Xiphophorus couchianus	Monterrey Platyfish
COELACANTHIFORMES		
Coelacanthidae	Latimeria chalumnae	Coelacanth
CERATODIFORMES		
Ceratodidae	Neoceratodus forsteri	Australian Lungfish

		<i>Common name for information only</i>	<i>Parts and Derivatives</i>
Ursidae	Ursus (Thalartos) maritimus	Polar Bear	Head, skull and skin
CETACEA			
Eschrichtidae	Eschrichtius robustus (glaucus)	Black Right Whale	Whalebone
Balaenopteridae	Balaenoptera musculus Megaptera novaeangliae	Blue Whale Humpback Whale	Whalebone Whalebone
Balaenidae	Balaena mysticetus Eubalaena species	Greenland Right Whale Right Whales	Whalebone Whalebone
PROBOSCIDEA			
Elephantidae	Elephas maximus	Asian Elephant	Head
PERISSODACTYLA			
Rhinocerotidae	Rhinoceros species	Rhinoceros	Head and horn
ARTIODACTYLA			
Camelidae	Vicugna vicugna	Vicuna	Skin and hair
Cervidae	Moschus moschiferus	Musk Deer	Musk
AVES			
CORACIIFORMES			
Bucerotidae	Rhinoplax vigil	Helmeted Hornbill	Casque
PASSERIFORMES			
Paradisaeidae	All species of all genera	Birds of Paradise	Plumage and skin
REPTILIA			
TESTUDINATA			
Cheloniidae	All species of all genera	Sea Turtles	All unworked shell and scales
MOLLUSCA			
STYLOMMA- TOPHORA			
Camaenidae	Papustyla (=Papuina) pulcherrima	Emerald Green Snail	Shell

THIRD SCHEDULE

[s. 2.]

SCHEDULED PLANTS

The following species, excluding cultivated species or cultivars—

APOCYNACEAE	Pachypodium species
ARACEAE	Alocasia sanderriana Alocasia zebrina

(Common name for information only)

		<i>(Common name for information only)</i>
ARALIACEAE	Panax quinquefolium	American Ginseng
ARAUCARIACEAE	Araucaria araucana	Chile Pine or Monkey Puzzle
CACTACEAE	Cactaceae species Rhipsalis species	
CARYOCARACEAE	Caryocar costaricense	
CARYOPHYLLI- ACEAE	Gymnocarpus przewalskii Melandrium mongolicum Silene mongolica Stellaria pulvinata	
COMPOSITAE	Saussurea lappa	
CUPRESSACEAE	Pilgerodendron uviferum	Alerce
CYATHEACEAE	Cyathea (Hemitella) capensis Cyathea dredgei Cyathea mexicana Cyathea (Alsophila) salvinii	Common Tree Fern Forest Tree Fern
CYCADACEAE	Encephalartos species Microcycas calocoma Stangeria eriopus	Kafirbread Corcho Microcycas Strange Fernycad
DIOSCOREACEAE	Dioscorea deltoidea	
EUPHORBIACEAE	Euphorbia species	
FAGACEAE	Quercus copeyensis	
GENTIANACEAE	Prepusa hookeriana	
HUMIRIACEAE	Vantanea barbourii	
JUGLANDACEAE	Engelhardtia pterocarpa	
LEGUMINOSAE	Ammopiptanthus mongolicum Cynometra hemitomophylla Platymiscium pleiostachyum Thermopsis mongolica	
LILIACEAE	Aloe species	
MELASTOMATA- TACEAE	Lavoisiera itambana	
MELIACEAE	Guarea longipetiola Swietenia humilis Tachigalia versicolor	Mexican Mahogany

		<i>(Common name for information only)</i>
MORACEAE	Batocarpus costaricensis	
ORCHIDACEAE	All species of all genera	Orchids
PALMAE	Arenga ipot Phoenix hanceana Zalacca clemensiana	
PINACEAE	Abies guatamalensis Abies nebrodensis	
PODOCARPACEAE	Podocarpus costalis Podocarpus parlatoresi	
PORTULACACEAE	Anacampseros species	
PRIMULACEAE	Cyclamen species	
PROTEACEAE	Orothamnus zeyheri Protea odorata	
RUBIACEAE	Balmea stormae	
SAXIFRAGACEAE (GROSSULARIA- CEAE)	Ribes sardoum	
SOLANACEAE	Solanum sylvestris	
STERCULIACEAE	Basiloxylon excelsum	
TAXACEAE	Fitzroya cupressoides	
ULMACEAE	Celtis aetnensis	
VERBENACEAE	Caryopteris mongolica	
WELWITSCHIACEAE	Welwitschia bainesii	
ZINGIBERACEAE	Hedychium philippinense	
ZYGOPHYLLACEAE	Guaiacum sanctum	Hollywood Lignumvitae

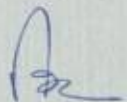
FOURTH SCHEDULE

[s. 7.]

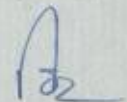
	FEES	\$
1. Fee for each licence to import issued under section 7(1)—		
(a) for each animal, other than a bird		260
(b) for one or more birds of the same species		260
(c) for animal parts		10
(d) for one or more plants or plant parts or derivatives of the same species		10
2. Fee for each licence to export issued under section 7(1)—		
(a) for each animal other than a bird		10
(b) for one or more birds of the same species		10

	\$
(c) for animal parts	10
(d) for one or more plants or plant parts or derivatives of the same species	10
3. Fee for each licence to possess issued under section 7(1)—	
(a) for each animal other than a bird	65
(b) for one or more birds of the same species	65
(c) for animal part	10
(d) for plants, plant parts or plant derivatives	10
4. Fee for renewal, extension or variation of a licence—	
(a) for importation or possession of an animal	65
(b) for any other purpose	10

Passed by the Hong Kong Legislative Council this 4th day of August 1976.


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.

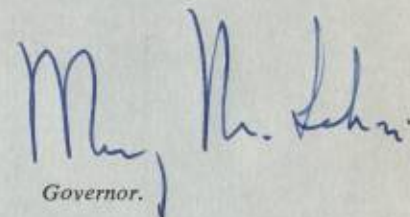
M. W. Lehman
Governor.

HONG KONG

No. 64 OF 1976



I assent.


Governor.

28th October, 1976.

An Ordinance to amend the Industrial Training (Construction Industry) Ordinance.

[29th October, 1976]

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 Industrial Training (Construction Industry) (Amendment) Ordinance 1976. Short title.

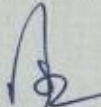
2. Section 24 of the principal Ordinance is amended by inserting, after subsection (1), the following new subsection— Amendment of section 24. (Cap. 317.)

“(1A) Subsection (1) shall not apply in respect of any construction works the estimated value of which would render those works not liable to the levy as a result of a resolution under section 22.”.

3. Section 25 of the principal Ordinance is amended by inserting, after subsection (2), the following new subsection— Amendment of section 25.

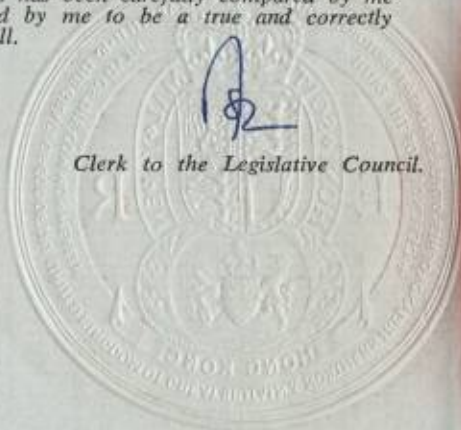
“(2A) Subsections (1) and (2) shall not apply in respect of any construction works which are not liable to the levy as a result of a resolution under section 22.”.

Passed by the Hong Kong Legislative Council this 28th day of October, 1976.



Clerk to the Legislative Council.

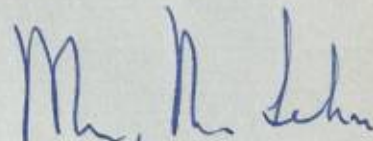
This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



Clerk to the Legislative Council.



I assent.

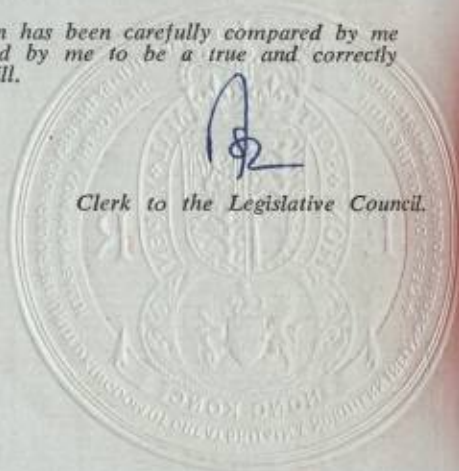


Governor.

28th October 1976

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. 65 OF 1976



I assent.

Governor.

28th October, 1976.

An Ordinance to amend the Bankruptcy Ordinance.

[]

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 Bankruptcy (Amendment) (No. 2) Ordinance 1976 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*. Short title and commencement.
2. Section 6(1) of the principal Ordinance is amended in paragraph (a) by deleting "five hundred dollars" and substituting the following—
"more than five thousand dollars". Amendment of section 6. (Cap. 6.)
3. Section 18(1) of the principal Ordinance is amended by deleting "he shall make out and submit" and substituting the following—
"he shall, unless the court otherwise orders, make out and submit". Amendment of section 18.
4. Section 43(b) of the principal Ordinance is amended by deleting "three hundred dollars" and substituting the following—
"three thousand dollars". Amendment of section 43.

Addition of
section 128A.

5. The principal Ordinance is amended by adding after section 128 the following new section—

"Deposit of
surplus cash
balances.

128A. (1) Whenever the cash balance standing to the credit of—

- (a) the Bankruptcy Estates Account referred to in section 128; or
- (b) any account operated by the Official Receiver under section 91,

is in excess of the amount which, in the opinion of the Official Receiver, is required for the time being to answer demands in respect of debtors' estates, the Official Receiver may deposit the whole or any part of that excess with the bank in which the account is kept.

(2) The Official Receiver shall on or after the 31st day of March in each year transfer to the general revenue any interest paid in respect of deposits under subsection (1)."

Passed by the Hong Kong Legislative Council this 28th day of October, 1976.

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.

Governor.

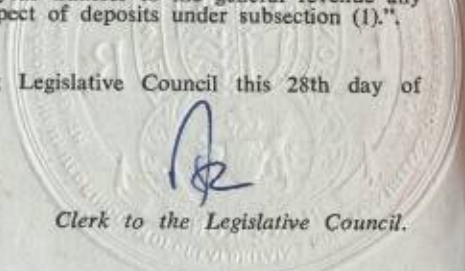
section 128; or

(b) any account operated by the Official Receiver under section 91,

is in excess of the amount which, in the opinion of the Official Receiver, is required for the time being to answer demands in respect of debtors' estates, the Official Receiver may deposit the whole or any part of that excess with the bank in which the account is kept.

(2) The Official Receiver shall on or after the 31st day of March in each year transfer to the general revenue any interest paid in respect of deposits under subsection (1)."

Passed by the Hong Kong Legislative Council this 28th day of October, 1976.



[Handwritten 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.

HONG KONG

No. 66 OF 1976



I assent.

[Handwritten signature]

Governor.

28th October, 1976.

An Ordinance to amend the District Court Ordinance.

[29th October, 1976]

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 District Court (Amendment) Short title. (No. 2) Ordinance 1976.

2. Section 5(1)(b) of the principal Ordinance is amended—

Amendment of section 5. (Cap. 336.)

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

“; or”;

(b) by inserting, after sub-paragraph (vii), the following new sub-paragraph—

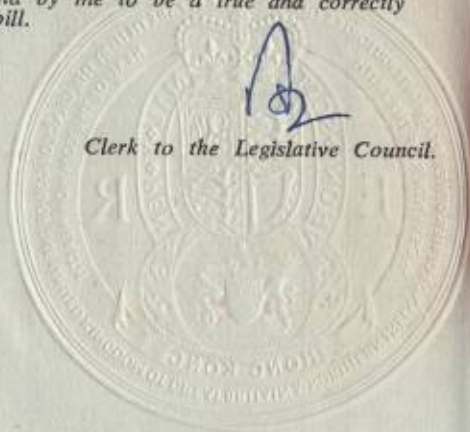
“(viii) been a Director, Deputy Director or Assistant Director of Legal Aid appointed in accordance with section 3 of the Legal Aid Ordinance.”

(Cap. 91.)

Passed by the Hong Kong Legislative Council this 28th day of October, 1976.

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.

Governor.

28th October, 1976.

182
Clerk to the Legislative Council.

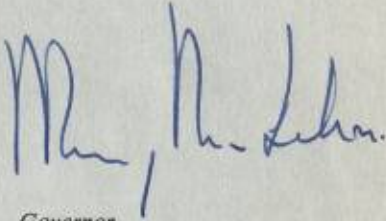
This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

HONG KONG

No. 67 of 1976

I assent.


Governor.

28th October, 1976.

An Ordinance to amend the Limitation Ordinance.

[1st February, 1977]

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 Limitation (Amendment) Ordinance 1976 and shall come into operation on the 1st February 1977. Short title and commencement.
2. Section 2(1) of the principal Ordinance is amended by deleting the definition "personal injuries" and substituting the following— Amendment of section 2(1). (Cap. 347.)
"personal injuries" includes any disease and any impairment of a person's physical or mental condition, and "injury" shall be construed accordingly;".
3. Section 4 of the principal Ordinance is amended by adding after subsection (7) the following new subsection— Amendment of section 4.
"1975 c. 54, Schedule.
(8) This section has effect subject to section 27.".
4. Section 22 of the principal Ordinance is amended by deleting subsection (2) and substituting the following— Amendment of section 22.
"1975 c. 54, s. 2.
(2) If the action is one to which section 27 or 28(3) applies subsection (1) shall have effect as if for the words "6 years" there were substituted the words "3 years".

(2A) Where this section applies by virtue of section 6, subsection (1) shall have effect as if for the words "6 years" there were substituted the words "2 years".

5. Sections 27, 28, 29, 29A, 29B, 30, 31, 32 and 33 of the principal Ordinance are repealed and replaced by the following—

"Time limit for personal injuries.
1975 c. 54,
s. 1.

27. (1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under an Ordinance or imperial enactment or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) Section 4 shall not apply to an action to which this section applies.

(3) Subject to section 30, an action to which this section applies shall not be brought after the expiration of the period specified in subsections (4) and (5).

(4) Except where subsection (5) applies, the said period is 3 years from—

- (a) the date on which the cause of action accrued; or
- (b) the date (if later) of the plaintiff's knowledge.

(5) If the person injured dies before the expiration of the period in subsection (4), the period as respects the cause of action surviving for the benefit of the estate of the deceased by virtue of section 20 of the Law Amendment and Reform (Consolidation) Ordinance shall be 3 years from—

- (a) the date of death; or
- (b) the date of the personal representative's knowledge, whichever is the later.

(6) In this section, and in section 28, references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts—

- (a) that the injury in question was significant; and
- (b) that that injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and
- (c) the identity of the defendant; and
- (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(7) For the purposes of this section an injury is significant if the plaintiff would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

Repeal and replacement of sections 27, 28, 29, 29A, 29B, 30, 31, 32 and 33.

(Cap. 23.)

(8) For the purposes of this section and section 28 a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him; or
- (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek,

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

(9) For the purposes of this section "personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate); and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

(10) If there is more than one personal representative, and their dates of knowledge are different, subsection (5)(b) shall be read as referring to the earliest of those dates.

28. (1) This section has effect subject to section 30.

(2) An action under the Fatal Accidents Ordinance shall not be brought if the death occurred when the person injured could no longer maintain an action and recover damages in respect of the injury (whether because of a time limit in this Ordinance or in any other Ordinance, or any other reason); and where any such action by the injured person would have been barred by the time limit in section 27, no account shall be taken of the possibility of that time limit being overridden under section 30.

(3) An action under the Fatal Accidents Ordinance shall not be brought after the expiration of 3 years from—

- (a) the date of death; or
- (b) the date of knowledge of the person for whose benefit the action is brought,

whichever is the later.

(4) Subsection (3) shall not apply to an action for which a period of limitation is prescribed by or under any Ordinance other than this Ordinance, and section 27 shall not apply to an action under the Fatal Accidents Ordinance.

(5) An action under the Fatal Accidents Ordinance shall be one to which section 22 applies, but otherwise sections 22 to 26, inclusive, and Part IV shall not apply to the action.

29. (1) This section applies where there is more than one person for whose benefit an action under the Fatal Accidents Ordinance is brought.

(2) Section 28(3)(b) shall be applied separately to each of them, and if that would debar one or more of them, but not all, the court shall direct that any person who would be so debarred shall be excluded from those for whom the action is brought unless it is shown that if the action were brought exclusively for the benefit of that person it

Time limit for actions under Fatal Accidents Ordinance.
1975 c. 54,
s. 1.
(Cap. 22.)

Defendants subject to different time limits.
1975 c. 54,
s. 1.
(Cap. 22.)

would not be defeated by a defence of limitation (whether in consequence of section 22, or an agreement between the parties not to raise the defence, or otherwise).

30. (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

- (a) the provisions of section 27 or 28 prejudice the plaintiff or any person whom he represents; and
- (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.

(2) The court shall not under this section disapply section 28(2) except where the reason why the person injured could no longer maintain an action was because of the time limit in section 27; so that if, for example, the person injured could at his death no longer maintain an action under the Fatal Accidents Ordinance because of the time limit under the Carriage by Air (Overseas Territories) Order 1967, the court has no power to direct that section 28(2) shall not apply.

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
- (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 27 or 28, as the case may be;
- (c) the conduct of the defendant after the cause of action arose, including the extent, if any, to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
- (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
- (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;
- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(4) In a case where the person injured died when, because of section 27, he could no longer maintain an action and recover damages in respect of the injury, the court shall have regard in particular to the length of, and the reasons for, the delay on the part of the deceased.

Court's power to override time limits.
1975 c. 54, s. 1.

(Cap. 22.)

(5) In a case under subsection (4), or any other case where the time limit, or one of the time limits, depends on the date of knowledge of a person other than the plaintiff, subsection (3) shall have effect with appropriate modifications, and shall have effect in particular as if references to the plaintiff included references to any person whose date of knowledge is or was relevant in determining a time limit.

(6) A direction by the court disapplying the provisions of section 28(2) shall operate to disapply the provisions to the same effect in section 3 of the Fatal Accidents Ordinance.

(7) In this section "the court" means the court in which the action has been brought.

(8) References in this section to section 27 include references to that section as extended by any provision of this Part and Part IV."

(Cap. 22.)

6. Section 38 of the principal Ordinance is amended by deleting subsections (1), (2) and (3) and substituting the following—

Amendment of section 38.

"1975 c. 54, s. 3.

(1) Sections 22(2) and (2A), 27, 28, 29 and 30 shall have effect in relation to causes of action which accrued before, as well as causes of action which accrue on or after, 1st February 1977 and shall have effect in relation to any cause of action which accrued before 1st February 1977 notwithstanding that an action in respect thereof has been commenced and is pending on 1st February 1977.

(2) For the purposes of this section an action shall not be taken to be pending at any time if a final order or judgment has been made or given therein, notwithstanding that an appeal is pending or that the time for appealing has not expired.

(3) A decision taken at any time by a court to grant, or not to grant, leave under the former sections 27 to 33 inclusive (which, so far as they relate to leave, are repealed by the Limitation (Amendment) Ordinance 1976) does not affect the determination of any question in proceedings under the Limitation (Amendment) Ordinance 1976, but in such proceedings account may be taken of evidence admitted in proceedings under the said sections repealed by the Limitation (Amendment) Ordinance 1976.

(3A) In this section "action" includes any proceeding in a court of law, an arbitration and a claim by way of set-off or counterclaim."

7. Section 38A of the principal Ordinance is repealed.

Repeal of section 38A.

8. Section 40 of the principal Ordinance is amended by inserting after "prescribed by" in the places where it occurs the following—

Amendment of section 40.

"or under".

9. The First Schedule to the principal Ordinance is repealed.

Repeal of First Schedule.

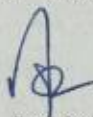
10. The Fatal Accidents Ordinance is amended in section 8 by deleting the following—

Amendment of section 8 of the Fatal Accidents Ordinance.

"and every such action shall be commenced within three years after the death of the person whose death has been so caused as aforesaid".

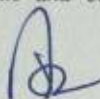
(Cap. 22.)

Passed by the Hong Kong Legislative Council this 28th day of October, 1976.



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.

Mr. H. Lehman

Governor.

HONG KONG

No. 68 OF 1976



I assent.

Governor.

28th October, 1976.

An Ordinance to amend the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance.

[29th October, 1976]

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 (Land Resumption and Related Provisions) (Amendment) Ordinance 1976. Short title.

2. Part I of the First Schedule to the principal Ordinance is amended in item 4 by— Amendment of
First Schedule.
(Cap. 276.)

(a) inserting after "street" in the first column thereof the following—
"or part of a street"; and

(b) deleting the fourth column thereof and substituting the following—

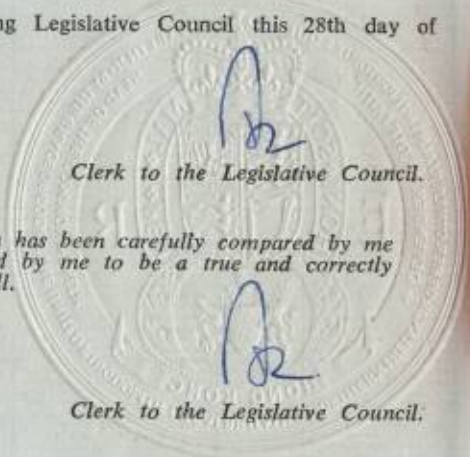
"Before the expiration of 1 year from—

(a) the closure of the street or part thereof in the case of a street or part of a street permanently closed;

(b) the re-opening of the street or part thereof in the case of a street or part of a street temporarily closed or closed for an indefinite period;

- (c) the completion of the substantial alteration of the street or part thereof in the case of a permanent alteration of a street or part of a street;
- (d) the reinstatement of the street or part thereof in the case of temporary substantial alteration of a street or part of a street or a substantial alteration of a street or part of a street for an indefinite period."

Passed by the Hong Kong Legislative Council this 28th day of October, 1976.



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.

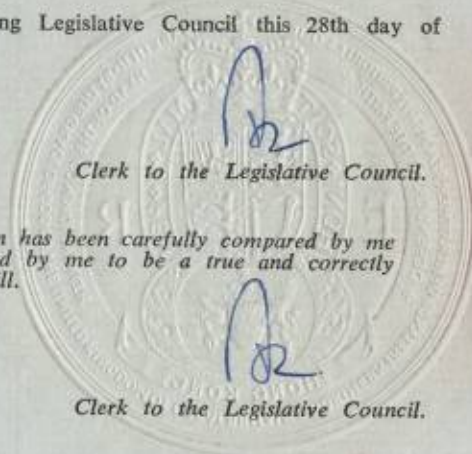


I assent.

M. M. Lehn.
Governor.

part of a street or a substantial alteration of a street or part of a street for an indefinite period."

Passed by the Hong Kong Legislative Council this 28th day of October, 1976.



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. 69 OF 1976



I assent.

Governor.

28th October, 1976.

An Ordinance to amend the Public Health and Urban Services Ordinance.

[29th October, 1976]

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 Public Health and Urban Services (Amendment) (No. 4) Ordinance 1976. Short title.

2. Section 113 of the principal Ordinance is amended by inserting after subsection (2) the following new subsection— Amendment of section 113. (Cap. 132.)

“(2A) The places specified in Part IVA of the Fifth Schedule shall be places set apart for use by the Commonwealth War Graves Commission as Commonwealth War Graves Commission Cemeteries.”

3. Section 115 of the principal Ordinance is amended— Amendment of section 115.

(a) in subsection (1) by inserting after “public cemeteries” the following—

“and Commonwealth War Graves Commission Cemeteries”;